CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
December 14, 2021 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

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

Videoconference Information

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. https://us06web.zoom.us/j/83759603711?pwd=OEJMbFBmZDNhRng3ckhMRWxEQithUT09

Passcode: 380151

Or One tap mobile:

+13462487799,,83759603711# US (Houston)

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Or join by phone:

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

Webinar ID: 837 5960 3711

International numbers available: https://us06web.zoom.us/u/kbey9ni6rk

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

OPENING ITEMS

1. Invocation – Minister Chase Gilbert, Stonegate Fellowship

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of the 2021 Texas Downtown Association President's Award for Best Public Improvement to Centennial Park

3b. Presentation of Proclamation proclaiming December 14, 2021 as “Greg Moore Day”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

4a. SPECIAL SESSION OF NOVEMBER 15, 2021

4b. BRIEFING SESSION OF NOVEMBER 16, 2021

4c. REGULAR SESSION OF NOVEMBER 16, 2021

5. 2021-167 – RESOLUTION CASTING THE CITY OF MIDLAND’S VOTES FOR DIRECTORS OF THE MIDLAND CENTRAL APPRAISAL DISTRICT FOR ROBERT MCNAUGHTON; AND DIRECTING THE CITY MANAGER TO FILE THE APPROPRIATE DOCUMENTS (DISTRICT: ALL) (FINANCE)

6. 2021-168 – RESOLUTION AUTHORIZING THE PURCHASE OF AN M2106 JET SEWER TRUCK FROM AUSTIN TRUCK & EQUIPMENT LTD DBA FREIGHTLINER OF AUSTIN THROUGH THE INTERLOCAL PURCHASING SYSTEM FOR A TOTAL COST OF $232,748.00 (DISTRICT: NONE) (GENERAL SERVICES)

7. 2021-169 – RESOLUTION APPROVING THE PURCHASE OF TWO (2) AUTOMATED REFUSE TRUCKS FROM CHASTANG ENTERPRISES, INC., THROUGH BUYBOARD AT A TOTAL COST OF $718,576.00 (DISTRICT: NONE) (GENERAL SERVICES)

8. 2021-170 – RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 STREET SWEEPING PROJECT TO MISTER SWEEPER LP OF DALLAS, TEXAS, AT A TOTAL COST NOT TO EXCEED $108,997.68; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

9. 2021-171 – RESOLUTION AWARDING A CONTRACT FOR THE PURCHASE OF READY-MIX CONCRETE AND CALICHE FOR THE TRANSPORTATION DIVISION TO THE SOLE BIDDER, HUNTER READY MIX OF MIDLAND, TEXAS, AT A TOTAL COST OF $655,215.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

10. 2021-172 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PICTOMETRY INTERNATIONAL CORP., OF ROCHESTER, NEW YORK, FOR AERIAL IMAGERY AND RELATED SERVICES FOR THE GEOGRAPHIC INFORMATION SYSTEMS DIVISION AT A TOTAL COST OF $208,020.00; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

11. 2021-173 – RESOLUTION AWARDING A CONTRACT FOR THE BENTON STREET PEDESTRIAN BRIDGE AND LEE STREET PEDESTRIAN BRIDGE PROJECT TO

AMSTAR, INC. OF SAN ANTONIO, TEXAS, THROUGH SOURCEWELL AT A TOTAL COST OF $599,998.33; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 2) (GENERAL SERVICES)

12. 2021-174 – RESOLUTION AWARDING A CONTRACT FOR THE THOMASON DRIVE ROUNDABOUT IMPROVEMENTS PROJECT TO THE SOLE BIDDER, ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST OF $189,701.04; AND AUTHORIZING PAYMENT (DISTRICT 4) (GENERAL SERVICES)

13. 2021-175 – RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MIDLAND CITYWIDE CONCRETE PROGRAM TO ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,500,000.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

14. 2021-176 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR TURF AND LANDSCAPE MAINTENANCE SERVICES WITH ALLDREGE GARDENS, L.P., FOR THE CITY OF MIDLAND PARKS, ATHLETIC FIELDS, AND OTHER CITY PROPERTIES MAINTAINED WITHIN THE PARKS AND RECREATION DIVISION IN THE AMOUNT OF $2,800,000.00 PER YEAR (DISTRICT: ALL) (GENERAL SERVICES)

15. 2021-177 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH FIRST SERVICE AIR CONDITIONING CONTRACTORS, INC., FOR HEATING, VENTILATION AND AIR CONDITIONING SERVICES FOR VARIOUS CITY BUILDINGS AT A TOTAL COST OF $1,227,790.20 (DISTRICT: ALL) (GENERAL SERVICES)

16. 2021-178 – RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES TO RANDALL SCOTT ARCHITECTS, INC., TO DEVELOP A MASTER PLAN FOR THE MIDLAND PUBLIC SAFETY TRAINING FACILITY FOR A COST OF $126,850.00; APPROVING $53,000.00 FOR SITE PLANNING; APPROVING $20,150.00 FOR PROJECT RELATED COSTS; AND TRANSFERRING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

17. 2021-179 – RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 DRAINAGE SYSTEM MOWING, MEDIAN MAINTENANCE AND TREE TRIMMING PROJECT TO VAULT MOBILE STORAGE, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,000,000.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

18. 2021-180 – RESOLUTION APPROVING THE TRANSFER FROM CALLON PETROLEUM OPERATING COMPANY (“OPERATOR”) TO SPIRIT O&G OPERATING, LLC (“TRANSFEREE”) OF ALL OF OPERATOR’S OIL AND GAS WELL PERMITS AND ROAD REPAIR AGREEMENTS ASSOCIATED WITH OPERATIONS LOCATED IN SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DISTRICT 4) (DEVELOPMENT SERVICES)

19. 155-2021 – MOTION REJECTING THE SOLE BID RECEIVED FOR THE PURCHASE OF CERTAIN AUTOMOBILES AND LIGHT TRUCKS FOR THE GENERAL SERVICES

DEPARTMENT; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO REISSUE AN ADVERTISEMENT FOR COMPETITIVE BIDS FOR THE PURCHASE OF SAID AUTOMOBILES AND LIGHT TRUCKS PURSUANT TO THE STATUTES OF THE STATE OF TEXAS (DISTRICT: NONE) (GENERAL SERVICES)

20. 156-2021 – MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN SPONSORSHIP LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX WITH AMERICAN MOMENTUM BANK (DISTRICT 4) (CITY MANAGER)

21. 157-2021 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF MDC BUSINESS PARK, SECTION 2, BEING A PLAT OF A 58.18-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, APPROXIMATELY 2,972-FEET EAST OF SOUTH COUNTY ROAD 1250 (DISTRICT 2) (DEVELOPMENT SERVICES)

22. 158-2021 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF WESTRIDGE PARK ADDITION, SECTION 49, BEING A PLAT OF A 30.80-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND AVALON DRIVE) (DISTRICT 4) (DEVELOPMENT SERVICES)

23. 159-2021 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF LONE STAR TRAILS II, SECTION 13, BEING A PLAT OF A 25.20-ACRE TRACT OF LAND LOCATED IN SECTION 7, BLOCK 38, T-1-S, T&P, RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF OCCIDENTAL PARKWAY, APPROXIMATELY 1,335 - FEET EAST OF CARRIAGE ROAD) (DISTRICT 1) (DEVELOPMENT SERVICES)

24. 160-2021 – MOTION APPROVING THE RECEIPT AND FILING OF THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM YEAR 2020/2021 (DISTRICT: NONE) (DEVELOPMENT SERVICES)

25. 2021-181 – RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SUMMIT CENTER, LLC FOR DEVELOPMENT OF MAYFIELD PLACE ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF BROMLEY PLACE AND MAYFIELD PLACE); APPROPRIATING FUNDS IN THE AMOUNT OF $62,882.64; AND AUTHORIZING PAYMENT; SAID AGREEMENT BEING AUTHORIZED BY CHAPTER 212, SUBCHAPTER C OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT 1) (ENGINEERING SERVICES)

26. 2021-182 – RESOLUTION AUTHORIZING MIDLAND COUNTY, TEXAS TO PERFORM

PAVING SERVICES ON INDUSTRIAL AVENUE, FROM LOOP 250 TO MIDKIFF ROAD, IN ACCORDANCE WITH THE CITY - COUNTY INTERLOCAL COOPERATION CONTRACT AUTHORIZED BY RESOLUTION NO. 2013-401; ALLOCATING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $1,340,662.00 OR FIFTY PERCENT OF THE TOTAL COST OF SAID PAVING SERVICES, WHICHEVER IS LESS (DISTRICT 2) (ENGINEERING SERVICES)

27. 2021-183 – RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO NEGOTIATE A DEVELOPMENT AGREEMENT AND LEASE AGREEMENT WITH THE PERMIAN BASIN QUALITY OF PLACE CONSERVANCY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, AND OPERATION OF CERTAIN PROPOSED IMPROVEMENTS TO HOGAN PARK; PROVIDING THAT SAID DEVELOPMENT AGREEMENT AND LEASE AGREEMENT SHALL HAVE CONCURRENT TERMS; AND PROVIDING THAT SAID DEVELOPMENT AGREEMENT AND LEASE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT 2) (LEGAL)

28. 161-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ENVIRONMENTAL DISPOSAL SYSTEMS, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 44, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

29. 162-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-044) WITH ENDEAVOR ENERGY RESOURCES, L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 13 AND 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

30. 163-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-045) WITH ENDEAVOR ENERGY RESOURCES, L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 12, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

31. 10251 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 7, BLOCK 5, FANNIN TERRACE, SECTION TWO, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF FANNIN AVENUE AND MABERRY STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

32. 10257 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

(GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH TYLER STREET AND ORCHARD LANE), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

33. 10258 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1 AND 2, BLOCK 24, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND SOUTH MAIN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

34. 10259 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

35. 10261 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 30.80-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND AVALON DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

36. 10262 – AN ORDINANCE VACATING AND ABANDONING AN APPROXIMATE 0.61-ACRE PORTION OF MOCKINGBIRD LANE / WEST COUNTY ROAD 50 RIGHT-OF-WAY LOCATED IN SECTION 10, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH HALF OF MOCKINGBIRD LANE, APPROXIMATELY 3,300 FEET WEST OF NORTH A STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $18,300.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 1) (DEVELOPMENT SERVICES) (FIRST READING HELD NOVEMBER 16, 2021)

37. 10263 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 57.55-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 530 FEET EAST OF SOUTH LAMESA 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) (FIRST READING HELD NOVEMBER 16, 2021)

38. 10265 – AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE 2020-2021 FISCAL YEAR BUDGET SO AS TO INCREASE AMOUNTS APPROPRIATED TO CERTAIN FUNDS (DISTRICT: NONE) (FINANCE) (FIRST READING HELD NOVEMBER 16, 2021)

39. 10266 – AN ORDINANCE AMENDING TITLE XIII, “AIRPORTS”, CHAPTER 2, “AIRPORT REGULATIONS”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 21, “CUSTOMER FACILITY CHARGE”, SO AS TO AUTHORIZE THE IMPOSITION OF A CUSTOMER FACILITY CHARGE TO BE PAID BY EACH PERSON RENTING A MOTOR VEHICLE FROM AN ON-SITE VEHICLE RENTAL CONCESSIONAIRE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF FEBRUARY 1, 2022 (DISTRICT 4) (AIRPORTS) (FIRST READING HELD NOVEMBER 16, 2021)

40. 10267 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (DISTRICT: ALL) (FINANCE) (FIRST READING HELD NOVEMBER 16, 2021)

PUBLIC HEARINGS

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

41. 10260 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 2, BECKLAND TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF COUNTRY CLUB DRIVE, APPROXIMATELY 312 FEET WEST OF DELMAR STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT AND A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (DEFERRED FROM NOVEMBER 16, 2021)

42. 10268 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,000-SQUARE FOOT PORTION OF LOT 31, BLOCK 10, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND WEST WALL STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

43. 10269 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1-28 AND THE WEST 28 FEET OF LOT 29, BLOCK 168, WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-2, OFFICE DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH LOOP 250 AND GRACELAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

44. 10270 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 3 AND 4, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 100 FEET SOUTH OF ORCHARD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO

THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

45. 10271 – AN ORDINANCE VACATING AND ABANDONING A 0.41-ACRE PORTION OF SOUTH CARRIZO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 60 AND LOTS 7-12, BLOCK 61, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON SOUTH CARRIZO STREET, BETWEEN WEST WALL STREET AND WEST MISSOURI AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $36,094.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

MISCELLANEOUS

46. 164-2021 – MOTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A DEVELOPMENT AGREEMENT WITH DEPALMA HOTELS AND RESORTS REGARDING A POTENTIAL HOTEL IN DOWNTOWN MIDLAND (DISTRICT 2) (CITY MANAGER)

PUBLIC COMMENT

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

Respectfully Submitted,

Robert Patrick
City Manager

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

CITY OF MIDLAND, TEXAS
MIDLAND CITY COUNCIL
SPECIAL MINUTES
November 16, 2021

DRAFT

The City Council convened in **Special** Session in the Martin Luther King Jr. Community Center, Midland, Texas, at 6:30 PM, Tuesday, November 16, 2021.

Council Members present:	Patrick Payton, Michael Trost, Scott Dufford, John Norman, Jack Ladd, Lori Blong
Council Members absent:	Spencer Robnett
Staff members present:	Deputy City Manager Morris Williams Jr, City Secretary Amy Turner, Deputy City Secretary Vanessa White, Assistant Director of Community Services Laurie Williams, Director of Community Services Cristina Odenborg Burns

The meeting was called to order at 6:32 p.m

SPECIAL SESSION

1. Attend a town hall meeting regarding the development of Hogan Park.

   Deputy City Manager Morris Williams Jr. welcomed all and made introductions. Council Member Ladd thanked everyone for coming noting they wanted to address any issues.

   Council Member Blong gave a brief history of how the proposed changes came into effect. She shared a presentation and explained the many different areas of the proposed park renovations.

   Jeff Beard explained they are leaning towards putting the park under the control of a conservancy but it would not be specific to Hogan Park meaning as other projects were identified they could be brought into the conservancy. He clarified the City will still own the land and appoint a majority of the board members.

   Comments from the audience included the need for more basketball courts for tournaments, the need to know where kids could play who currently use the field while they are under renovation, to make the parks similar to other cities that have recently made changes, the need for sports lighting at other existing parks, to keep the costs affordable to the public, and the need to continue to get community input.

   It was noted that if a team is based in Midland, they can call MISD to get on the schedule to use MISD fields. They will not allow them to be used by people from other areas.

Deputy City Manager Morris Williams wrapped up the meeting noting that six of the current seven Council Members are present and asked the community to please continue to share their thoughts and concerns with Council and City staff as the process moves forward.

All the business at hand having been completed, the meeting adjourned at 7:45 p.m.

PASSED AND APPROVED December 14, 2021.

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Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

MIDLAND CITY COUNCIL
BRIEFING SESSION
MINUTES
November 16, 2021

DRAFT

The City Council convened in briefing session in the Council Chamber, City Hall, Midland, Texas, at 9:15 AM, November 16, 2021.

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

The meeting was called to order at 9:16 a.m.

The following matter(s), and any matter listed on the agenda for this meeting, may be discussed by the City Council:

1. Receive an update from representatives of FORE Midland regarding their conservancy efforts

   Autumn Winkles, 5601 Ridgemont, founder of FORE Midland, reported that Nueva Vista (now, a registered non-profit) is special, has green grass, water, sunsets and is home to several species of animals. Ms. Winkles reported flooding concerns and shared pictures and a video of actual flooding in the area. Ms. Winkles also shared ideas for the area.

   Mayor Payton thanked Autumn for putting herself out there with an idea.

2. Receive a presentation from representatives of DePalma Hotels and Resorts regarding a proposed hotel in downtown Midland

   A presentation was given on a boutique hotel that will likely be a Tapestry by Hilton hotel consisting of 93 units located at 112 S. Loraine.

   Matt Clark reported Tapestry is one of Hilton's soft branded hotel chains, meaning, it encumbers the independent nature of the hotel in a very unique and individualized way. The hotel will be located downtown in order to capitalize on the unique nature of downtown. The hotel plugs into the Hilton engine so global reservations and the Hilton Honors programs may be utilized. The Tapestry brand launched in 2012 and is now 70 properties strong in eight continents spanning across the globe. There are also more than 80 projects in the

pipeline.

During the presentation it was reported that the Brian DePalma brand will promote local businesses by using items such as soaps, shampoos, meats and gift shop items. The total development cost is $25 million and will include a three-meal restaurant with two bars and 100% valet parking for restaurant and hotel guests. They have obtained off-site parking. The second floor will have a bar with an outdoor patio. The timeline goals are six to eight months from brand approval, city permitting and debt placement. They expect to be open 24 months from Council approval of the hotel. The hotel has no meeting space but there will be high-end board rooms. They are not competing against the Doubletree or Bush Convention center for meeting space. They are asking for $4,000,000.00 of Hotel Occupancy Tax rebates or grants. Their equity will be privately funded but their debt coverage ratios are 1.1 or 1.2 which banks will not fund as they want to see a ratio of 1.4 or 1.5 . The tax rebates will get them to the needed ratio. They are also asking for 100% of the ad valorem tax for the first year and to have their impact fees waived. The City sales tax rebate would be 50% of the taxes for a maximum of 7 years.

Council Member Dufford clarified that they are asking for a total of $4,000,000.00 in tax abatements for a maximum of seven years, but if they collect the $4,000,000.00 in four years the tax abatement would stop. He further clarified this request involves no cash up-front money. Mr. Clark emphasized that they already own the building as well as several surface parking lots and that Hilton has already approved this project.

All the business at hand having been completed, the meeting adjourned at 9:48 a.m.

PASSED AND APPROVED December 14, 2021.

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Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

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MIDLAND CITY COUNCIL
MINUTES
November 16, 2021

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The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., November 16, 2021.

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

The meeting was called to order at 10:02 A.M.

OPENING ITEMS

1. Invocation – Pastor Jon Slayden, Hope Community Church

2. Pledge of Allegiance

CONSENT AGENDA

Lori Blong moved to approve Consent Agenda items 3-25, excluding item(s) 6, 7, 9, 12, 14, 17, 18; seconded by Spencer Robnett.

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

3. MOTION APPROVING THE FOLLOWING MINUTES:

   a. REGULAR CITY COUNCIL MEETING OF OCTOBER 26, 2021

4. 2021-149 – RESOLUTION SUPPORTING THE ADOPTION AND APPROVAL OF THE TEXAS OPIOID ABATEMENT FUND COUNCIL AND SETTLEMENT ALLOCATION TERM SHEET; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS

NECESSARY AND APPROPRIATE TO EFFECTUATE THE CITY OF MIDLAND'S PARTICIPATION IN THE STATE OF TEXAS'S SETTLEMENT OF OPIOID-RELATED LEGAL CLAIMS (DISTRICT: ALL) (FINANCE)

5. 2021-150 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH PARAGON ROOFING, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR THE PURCHASE AND INSTALLATION OF DURO-LAST DURO-FLEECE 50-MIL ROOFING AT THE POLICE DEPARTMENT FOR A TOTAL COST OF $272,350.00; APPROVING $27,650.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID CONTRACT (DISTRICT 2) (GENERAL SERVICES)

8. 2021-153 – RESOLUTION APPROVING THE PURCHASE OF AN INTERNATIONAL HV607 6X4 CHASSIS FROM ROBERTS TRUCK CENTER OF TEXAS LLC DBA SUMMIT TRUCK GROUP THROUGH SOURCEWELL FOR THE GARAGE DIVISION AT A TOTAL COST OF $114,007.43 (DISTRICT: NONE) (GENERAL SERVICES)

10. 2021-155 – RESOLUTION AWARDING A CONTRACT FOR THE GARFIELD STREET WATER MAIN IMPROVEMENTS PROJECT TO TEC EXCAVATION, INC., IN THE AMOUNT OF $524,090.00; APPROVING $52,409.00 FOR CONTINGENCIES; APPROVING $50,000.00 FOR PROJECT RELATED COSTS; AND APPROPRIATING FUNDS (DISTRICT 3) (GENERAL SERVICES)

11. 2021-156 – RESOLUTION RATIFYING AND APPROVING THE PAYMENT FOR EMERGENCY REPAIR SERVICES OF THE WALL STREET SEWER MAIN BY BOLER EQUIPMENT SERVICE, INC., FOR A TOTAL COST OF $174,125.00 (DISTRICT 3) (GENERAL SERVICES)

13. 145-2021 – MOTION AUTHORIZING THE EXECUTION OF A PLANETARIUM COOPERATIVE AGREEMENT WITH THE MUSEUM OF THE SOUTHWEST REGARDING CERTAIN CITY-OWNED PROPERTY DESCRIBED AS A 2.617-ACRE TRACT OF LAND OUT OF BLOCK 104, WEST END, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (DISTRICT 3) (GENERAL SERVICES)

15. 2021-158 – RESOLUTION AUTHORIZING THE PURCHASE OF AMMUNITION OF ASSORTED TYPES AND IN ASSORTED QUANTITIES FOR THE MIDLAND POLICE DEPARTMENT FROM THE RESPECTIVE LOW BIDDERS, GT DISTRIBUTORS, INC., AND KIESLER POLICE SUPPLY, AT A TOTAL COST OF $197,997.44 (DISTRICT: NONE) (GENERAL SERVICES)

16. 2021-159 – RESOLUTION APPROVING THE PURCHASE OF SIX HUNDRED (600) THREE (3) CUBIC YARD RESIDENTIAL CONTAINERS, THREE HUNDRED (300) THREE AND A HALF (3.5) CUBIC YARD COMMERCIAL CONTAINERS AND ONE HUNDRED (100) ONE AND A HALF (1.5) CUBIC YARD RESIDENTIAL CONTAINERS FROM ROLL-OFFS USA, INC., THROUGH BUYBOARD AT A TOTAL COST OF $862,640.00 (DISTRICT: NONE) (GENERAL SERVICES)

19. 2021-161 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR

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ENERGY RESOURCES, L.P. (“OPERATOR”) TO DRILL SEVEN OIL AND GAS WELLS LOCATED IN SECTION 8, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 205 FEET SOUTH OF WEST INTERSTATE 20 SERVICE ROAD AND BETWEEN 873 FEET AND 994 FEET EAST OF SOUTH COUNTY ROAD 1220 EXTENSION) (DISTRICT 2) (DEVELOPMENT SERVICES)

20. 2021-162 – RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH ENDEAVOR ENERGY RESOURCES, L.P. REGARDING ITS APPLICATION TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 8, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DISTRICT 2) (DEVELOPMENT SERVICES)

21. 148-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ENDEAVOR ENERGY RESOURCES, L.P. (21-329-038) REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

22. 149-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ENDEAVOR ENERGY RESOURCES, L.P. (21-329-039) REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

23. 150-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ENDEAVOR ENERGY RESOURCES, L.P. (21-329-040) REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

24. 151-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ENVIRONMENTAL DISPOSAL SYSTEMS, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

25. 152-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-317-043) WITH WTG NORTH PERMIAN MIDSTREAM LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 36, BLOCK 39, AND SECTIONS 33 AND 34, BLOCK 38 TOWNSHIP 1 NORTH, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

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

6. 2021-151 – RESOLUTION APPROVING THE PURCHASE OF SIX (6) REFUSE SIDE-LOADER TRUCKS FROM ROBERTS TRUCK CENTER OF TEXAS LLC DBA SUMMIT TRUCK GROUP THROUGH SOURCEWELL FOR THE GARAGE DIVISION AT A TOTAL COST OF $1,234,026.06 (DISTRICT: NONE) (GENERAL SERVICES)

Council Member Trost felt that we were losing revenue by not having front loaders to pick up

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from commercial businesses. Solid Waste Director, Jeffery Ahrlett, reported that side loaders are able to pick up residential and most commercial. The area they are missing out on are some restaurants due to not having front loaders. He said he can look into it.

Michael Trost moved to approve Resolution No. 2021-151; seconded by Spencer Robnett.

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

7. 2021-152 – RESOLUTION AWARDING A CONTRACT FOR THE PARK AVENUE HEIGHTS 2 PAVING PROJECT TO REECE ALBERT, INC. OF MIDLAND, TEXAS, AT A TOTAL COST OF $1,455,032.00; ALLOCATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 2) (GENERAL SERVICES)

Council Member Norman asked if the paving project includes curb and gutter or is it just paving. Engineering Services Director Jose Ortiz reported it includes curb, gutter and paving but does not include sidewalks.

John Norman moved to approve Resolution No. 2021-152; seconded by Scott Dufford.

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

9. 2021-154 – RESOLUTION AWARDING A CONTRACT FOR THE GARFIELD STREET UTILITY BOND PROJECT-BREAK OUT SET 01 TO CD KING CONSTRUCTION, LLC, DBA JD KING, IN THE AMOUNT OF $1,509,689.40; APPROVING $150,968.94 FOR CONTINGENCIES; APPROVING $50,000.00 FOR PROJECT RELATED COSTS; AND APPROPRIATING FUNDS (DISTRICT 3) (GENERAL SERVICES)

Council Member Dufford asked for a report on the Garfield and A Street projects including how long until they are finished. Engineering Services Director Jose Ortiz reported there are a host of different issues with contractors including weather. A Street is expected to be completed in January of 2022. Garfield has been bid out but they are waiting for the pre-construction meeting with the contractor to determine the timeline; they anticipate it will take 12 months to complete. Council Member Trost reported he heard that A Street from Wall down to Missouri was recently shut down to put in a button at the crosswalk. Engineering Services Director Jose Ortiz clarified the work includes traffic signal upgrades and reconstruction of the asphalt.

Scott Dufford moved to approve Resolution No. 2021-154; seconded by Lori Blong.

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

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NAY: None
ABSTAIN: None
ABSENT: None

12. 2021-157 – RESOLUTION AWARDING A CONTRACT FOR THE NORTH A STREET PAVING BOND PROJECT TO CD KING CONSTRUCTION, LLC, DOING BUSINESS AS JD KING, OF SEMINOLE, TEXAS, AT A TOTAL COST OF $3,040,064.39; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 3) (GENERAL SERVICES)

Jack Ladd moved to approve Resolution No. 2021-157; seconded by Lori Blong.

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

14. 146-2021 – MOTION AUTHORIZING THE EXECUTION OF A PARKING LEASE AGREEMENT WITH ENDEAVOR ENERGY RESOURCES, LP, REGARDING CERTAIN CITY-OWNED PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (DISTRICT 3) (GENERAL SERVICES)

Council Member Ladd is curious to know how much parking there will be once the project is complete. General Services Director Regina Stephenson reported it looks like 25 spaces. Council Member Ladd asked if there would eventually be a parking garage and Ms. Stephenson reported no, just paving.

Jack Ladd moved to approve Motion No. 146-2021; seconded by John Norman.

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

17. 147-2021 – MOTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE AEGIS GROUP, LTD., FOR FEDERAL LOBBYING SERVICES FOR AN ANNUAL COST OF $99,996.00 (DISTRICT: NONE) (GENERAL SERVICES)

Council Member Blong reported that she intends to support keeping a lobbying service for municipal services. However, when it comes to state lobbying, she's not sure she's on board with keeping one on retainer.

Council Member Trost countered that with the passage of the new infrastructure bill there is so much information in it and that city staff does not have enough people to address every part of the bill. If we pay hourly he fears the cost would be exorbitantly high. City Manager Robert Patrick reported that a lobbyist for the airpark relocation will be about $350/hour

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and would probably not exceed $50,000 per year. Since there is no planned session, the State lobbyist is not needed. We have time to look into it if a session is called.

Michael Trost moved to approve Motion No. 147-2021; seconded by Scott Dufford.

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

18. 2021-160 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL EIGHT OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,575 FEET AND 1,697 FEET EAST OF RANKIN HIGHWAY AND BETWEEN 510 FEET AND 625 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

Council Member Blong asked for further clarity of the letter of objection. Oil & Gas Compliance Officer Ron Jenkins received one letter prior to the public meeting noting there are no structures within 500 feet.

Council Member Norman asked about waving the road repair agreement. Mr. Jenkins reported they are not using any city roads.

Lori Blong moved to approve Resolution No. 2021-160; seconded by Michael Trost.

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

SECOND READINGS

26. 10250 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,494-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 496 FEET NORTH OF WEST WADLEY AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (FIRST READING HELD OCTOBER 26,

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2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10250.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10250; seconded by John Norman.

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

27. 10252 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2A, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF ANDREWS HIGHWAY FRONTAGE ROAD, APPROXIMATELY 197 FEET EAST OF TRADEWINDS BOULEVARD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD OCTOBER 26, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10252.

Michael Trost moved to approve the second and final reading of Ordinance No. 10252; seconded by Jack Ladd.

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

28. 10253 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 9.162-ACRE TRACT OF LAND OUT OF SECTION 6, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF FAIRGROUNDS ROAD AND GARDEN CITY HIGHWAY); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES) (FIRST READING HELD OCTOBER 26, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10253.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10253; seconded by Spencer Robnett.

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

29. 10254 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 9.162-ACRE TRACT OF LAND OUT OF SECTION 6, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF FAIRGROUNDS ROAD AND GARDEN CITY HIGHWAY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (FIRST READING HELD OCTOBER 26, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10254.

Lori Blong moved to approve the second and final reading of Ordinance No. 10254; seconded by John Norman.

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

30. 10255 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 10, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH STONEWALL STREET, APPROXIMATELY 140 FEET NORTH 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) (FIRST READING HELD OCTOBER 26, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10255.

Lori Blong moved to approve the second and final reading of Ordinance No. 10255; seconded by Jack Ladd.

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

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31. 10256 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.72-ACRE TRACT OF LAND OUT OF LOT 2, BLOCK 4, AMARON ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS, FROM TP, TECHNOLOGY PARK DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF WOLCOTT AVENUE, APPROXIMATELY 465 FEET WEST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD OCTOBER 26, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10256.

Lori Blong moved to approve the second and final reading of Ordinance No. 10256; seconded by John Norman.

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

PUBLIC HEARINGS

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

32. 10251 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 7, BLOCK 5, FANNIN TERRACE, SECTION TWO, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF FANNIN AVENUE AND MABERRY STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (DEFERRED FROM OCTOBER 26,2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10251.

Development Services Director Chuck Harrington gave a brief overview of the item noting it was deferred from the October meeting. Staff took additional photos. The applicant currently parks in the right-of-way and wants to build an extension of their garage in line with their house. Staff feels there is no reason for eliminating the required setback and recommends denial. Council Member Robnett asked if their access from the street is existing or new. Mr. Harrington responded that it is existing. Council Member Blong asked if any letters of objection were received and Mr. Harrington said there were none as of November 10th.

Mayor Payton opened the public hearing at 10:54 a.m.

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Brad Burgeson, 1611 West Dengar, General Contractor, reported that behind the cinder block fence there is already a concrete pad which makes the most sense to have a garage there. There are several homes around the area that look exactly like this proposal. The garage follows the line of the house.

There being no one else wishing to speak, the public hearing was closed at 10:56 a.m.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10251; seconded by Spencer Robnett.

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

33. 153-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO MCM OPERATING, LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MB-8H; MB-9H; MB-10H; MB-11H; AND MB-12H; SAID WELLS BEING GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD (DISTRICT 1) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:57 a.m.

Chris Hamilton, Fort Worth, reported there are already approved wells on this particular site. The drilling is scheduled to take place in March of next year and there will be a masonry wall for screening. He is just here to answer any questions.

Council Member Norman asked if the wall will surround the entire pad. Mr. Hamilton reported it will span the whole length of property on the south side and around the pad on the other three sides. Council Member Blong asked if there was a variance for the distance to a structure. Mr. Hamilton reported there will be structures built in the future and that will be handled between the operator and developer. Council Member Norman asked if there is a variance for 24-hour operating. Mr. Hamilton reported yes there is a variance for 24-hour fracing. He added they will be using quiet frac to reduce noise. The tank battery will be located outside of the city limits and the frac ponds are offsite.

There being no one else wishing to speak, the public hearing was closed at 10:59 a.m. This was a public hearing only. No action was taken.

34. 10257 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH TYLER STREET AND ORCHARD LANE), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A

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CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10257.

Mayor Payton opened the public hearing at 11:02 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10257; seconded by Spencer Robnett.

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

35. 10258 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1 AND 2, BLOCK 24, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND SOUTH MAIN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10258.

Mayor Payton opened the public hearing at 11:03 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Michael Trost moved to approve the first of two readings of Ordinance No. 10258; seconded by John Norman.

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

36. 10259 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF

DRAFT

MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10259.

Mayor Payton opened the public hearing at 11:04 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10259; seconded by Michael Trost.

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

37. 10260 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 2, BECKLAND TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF COUNTRY CLUB DRIVE, APPROXIMATELY 312 FEET WEST OF DELMAR STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT AND A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10260.

Development Services Director Chuck Harrington reported the applicant would like to build a metal building on the property line. The yard is open and there are other options for the placement of the building. There is no hardship. There is a requirement for a 10-foot separation between buildings and if the neighbor would like to build in that area, the neighbor would have to accommodate the separation. The building also requires a 5-foot setback from the alley to account for vehicle swing. There were no comments or letters received from neighbors. Council Member Norman asked if the property owner could move over 5 more feet and Mr. Harrington noted that is the point staff was trying to make to the individual. Council Member Dufford asked if this would affect trash collection and Mr. Harrington reported this will not impact trash pickup. It was suggested to defer this item until the property owner could be available to answer questions.

Mayor Payton opened the public hearing at 11:07 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

DRAFT

Spencer Robnett moved to defer the first of two readings of Ordinance No. 10260; seconded by Lori Blong.

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

38. 10261 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 30.80-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND AVALON DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10261.

Mayor Payton opened the public hearing at 11:09 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10261; seconded by Lori Blong.

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

39. 10262 – AN ORDINANCE VACATING AND ABANDONING AN APPROXIMATE 0.61-ACRE PORTION OF MOCKINGBIRD LANE / WEST COUNTY ROAD 50 RIGHT-OF-WAY LOCATED IN SECTION 10, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH HALF OF MOCKINGBIRD LANE, APPROXIMATELY 3,300 FEET WEST OF NORTH A STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $18,300.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR

DRAFT

APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 1) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10262.

Development Services Director Chuck Harrington gave a brief overview of the item noting the applicant is requesting to vacate a portion of a right-of-way and this will clean up the property lines on the north side of Mockingbird. The value of the right-of-way is $30,000.00 per acre. This plot is .61 acres and the value is $18,000.00. City Attorney John Ohnemiller clarified that this is a "paper street", noting it only exists on paper. Staff has no objections to vacating this property.

Mayor Payton opened the public hearing at 11:15 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Lori Blong moved to approve the first of two readings of Ordinance No. 10262; seconded by Michael Trost.

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

40. 10263 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 57.55-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 530 FEET EAST OF SOUTH LAMESA 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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10263.

Development Services Director Chuck Harrington reported this is the area where we recently approved a Planned Development for the Oasis development. They now have amendments and want to adopt the overall plan rather than individual sections.

Mayor Payton opened the public hearing at 11:16 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Michael Trost moved to approve the first of two readings of Ordinance No. 10263; seconded by John Norman.

DRAFT

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

41. 10264 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 21, GRASSLAND ESTATES ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT AND A SHOPPING CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND CALLAWAY DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10264.

Discussion ensued with Council thanking everyone for their hard work. Autumn Winkles was thanked for the project she has put forward.

Mayor Payton opened the public hearing at 10:11 a.m.

Kevin Hammit, 3000 Calloway Drive, reported he watched the development of this land as it was turned into a golf course. He recognized that change can take place and would welcome it if it were the right change. They would like to see the land stay the way it is, or give the residents who live around golf course the opportunity to present a plan.

Amy Burkes, 6408 Homestead, reported this has been a long 9 months and every point has been made. She thanked Council Member Trost for standing with them since the beginning. This item stresses the importance of zoning.

Dan Corrales, 5712 Sabine, applauded the efforts of the residents, noting they saw something that merited attention and created opposition.

Eric West, Parkhill, representing the property owner, reported that drainage wise he looked at the drainage master plan that was approved in 2014 to evaluate how much storage was needed for watershed. They know what that number is and have proposed a plan. Density is a bigger picture issue for the City and not specifically for this site but rather understanding how we choose to approach density and the amount of revenue it generates from property tax which allows the City to do infrastructure. The City has gotten less and less dense and that strains our budget as a City so that we are not able to accomplish what we want to accomplish. Finally everything proposed in this area are things that we see all throughout town. Garden homes have been done in at least three areas. This will provide townhomes that are in high demand. This creates a unique area and provides 80 acres of green space. That is his proposal; he understands it is not popular to replace the golf course, noting that golf courses are closing at a rate of 200 per year in the United States.

DRAFT

There being no one else wishing to speak, the public hearing was closed at 10:23 a.m.

Michael Trost moved to approve the first of two readings of Ordinance No. 10264; seconded by Spencer Robnett.

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

Council Member Dufford asked when the developer can come back. City Attorney John Ohnemiller reported they can bring it back in 12 months, or if a material change is made, they can bring it back in six months.

MISCELLANEOUS

42. 154-2021 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF GRASSLAND ESTATES ADDITION, SECTION 25, BEING A RE-PLAT OF LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND CALLAWAY DRIVE) (DISTRICT 4) (DEVELOPMENT SERVICES)

Michael Trost moved to approve Motion No. 154-2021; seconded by John Norman.

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

43. 10265 – AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE 2020-2021 FISCAL YEAR BUDGET SO AS TO INCREASE AMOUNTS APPROPRIATED TO CERTAIN FUNDS (DISTRICT: NONE) (FINANCE)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10265.

Budget Manager Jamie Radcliff reported that the 2021 budget is finished, however, there are amendments that need to be done to finalize it. She explained the amendments needed.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10265; seconded by Jack Ladd.

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

DRAFT

44. 10266 – AN ORDINANCE AMENDING TITLE XIII, “AIRPORTS”, CHAPTER 2, “AIRPORT REGULATIONS”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 21, “CUSTOMER FACILITY CHARGE”, SO AS TO AUTHORIZE THE IMPOSITION OF A CUSTOMER FACILITY CHARGE TO BE PAID BY EACH PERSON RENTING A MOTOR VEHICLE FROM AN ON-SITE VEHICLE RENTAL CONCESSIONAIRE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF FEBRUARY 1, 2022 (DISTRICT 4) (AIRPORTS)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10266.

Airports Director Justine Ruff reported that the rental car companies support the fee noting that it gives them a pot of money that can go toward maintenance of their facilities.

Michael Trost moved to approve the first of two readings of Ordinance No. 10266; seconded by John Norman.

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

45. 10267 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (DISTRICT: ALL) (FINANCE)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10267.

Finance Director Christy Weakland gave a brief overview of the item noting this is updating the fee schedule and explained the changes being made.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10267; seconded by Lori Blong.

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

46. 2021-163 – RESOLUTION GRANTING VARIANCES FOR FIVE OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; AND APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 8, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 204 FEET SOUTH OF WEST INTERSTATE 20 SERVICE ROAD AND BETWEEN 415 FEET AND 495 FEET EAST OF SOUTH COUNTY ROAD 1220 EXTENSION) (DISTRICT 2) (DEVELOPMENT

DRAFT

SERVICES)

Oil & Gas Compliance Officer Ron Jenkins reported that all issues have been resolved and there are no remaining objections.

John Norman moved to approve Resolution No. 2021-163; seconded by Michael Trost.

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

47. 2021-164 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN OIL AND GAS LEASE TO MIDLAND-PETRO D.C. PARTNERS, LLC COVERING THE CITY-OWNED MINERALS LOCATED IN PORTIONS OF SECTIONS 14, 15, 22, 23, AND 26, ALL OUT OF BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AS MORE PARTICULARLY DESCRIBED IN SAID OIL AND GAS LEASE (SAID ACREAGE INCLUDING ACREAGE LOCATED AT MIDLAND AIRPARK AIRPORT AND ADJACENT CITY-OWNED TRACTS OF LAND AND BEING GENERALLY LOCATED SOUTH OF EAST LOOP 250 NORTH, EAST OF NORTH GARFIELD STREET, NORTH OF ILLINOIS AVENUE, AND WEST OF NORTH LAMESA ROAD), SAID LEASE TO REQUIRE COMPLIANCE WITH ALL APPLICABLE ORDINANCES, LAWS, RULES AND REGULATIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE A SURFACE USE AGREEMENT PROVIDING FOR DRILLING AND PRODUCTION OPERATIONS LOCATED ON TWO TRACTS OF LAND TOTALING APPROXIMATELY 607 ACRES OUT OF SECTIONS 14 AND 15, BOTH IN BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AS MORE PARTICULARLY DESCRIBED IN SAID SURFACE USE AGREEMENT; AND CONSENTING TO MIDLAND-PETRO D.C. PARTNERS, LLC'S ASSIGNMENT OF OPERATORSHIP OF SAID OIL AND GAS LEASE TO PERMIAN DEEP ROCK OIL COMPANY, LLC (DISTRICT 3) (DEVELOPMENT SERVICES)

Keith Bucy, 500 West Wall, representing Midland Petro, reported on the significant earthquakes that have been happening in the region noting that they have been isolated to a few wells who were using salt water injection. That practice has been reduced in those areas. This particular region is more tectonically quiet and not expected to be an issue.

Dan Corrales, 5712 Sabine, reported that when he spoke to Airports Director Justine Ruff, she made it clear the needs of the airport. He reviewed how this would benefit the City noting we need to be responsible and not add noise pollution.

Michael Trost moved to approve Resolution No. 2021-164; seconded by Scott Dufford.

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

DRAFT

48. 2021-165 – RESOLUTION GRANTING VARIANCES FOR TWO OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; AND APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 703 FEET AND 717 FEET EAST OF NORTH A STREET EXTENSION AND BETWEEN 1,909 FEET AND 1,922 FEET SOUTH OF WEST LOOP 250 NORTH) (DISTRICT 3) (DEVELOPMENT SERVICES)

City Attorney John Ohnemiller reported that this and the next items are companion items.

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting there will be 24-foot sound walls all the way around. They will use a quiet-frac system. Access will be off of Big Spring so there will be no traffic issues on Smith Road or Veterans Parkway. They are asking for five variances. No objections were received.

Jack Ladd moved to approve Resolution No. 2021-165; seconded by John Norman.

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

49. 2021-166 – RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH PERMIAN DEEP ROCK OIL CO., LLC REGARDING ITS APPLICATION TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (DISTRICT 3) (DEVELOPMENT SERVICES)

Lori Blong moved to approve Resolution No. 2021-166; seconded by Spencer Robnett.

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

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

Lori Blong moved to defer; seconded by Michael Trost.

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

DRAFT

PUBLIC COMMENT

51. 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.)

    Sharon Bobcock, 3501 Apache Drive, reported on an incident where she hired a constable to help her with an eviction, asked for a ride to the senior center and spoke about the high cost of funerals.

    Shirley Howard, 405 Magnolia, thanked Council Members Trost and Robnett for jobs well done and noted she was looking forward to working with the new Council Members. She noted she has dates for upcoming events to get on everyone's calendar.

All the business at hand having been completed, the meeting adjourned at 11:53 A.M.

PASSED AND APPROVED December 14, 2021.

_____

Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: RESOLUTION CASTING THE CITY OF MIDLAND'S VOTES FOR DIRECTORS OF THE MIDLAND CENTRAL APPRAISAL DISTRICT FOR ROBERT MCNAUGHTON; AND DIRECTING THE CITY MANAGER TO FILE THE APPROPRIATE DOCUMENTS (DISTRICT: ALL) (FINANCE)

Purpose:

Determine how the City of Midland would like to cast their votes for the MCAD Board of Directors

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

None

Discussion:

Elections for MCAD Board of Directors occurs biannually on odd numbered years. Midland City Council appointed Robert McNaughton as their nominee for the Board of Director's for 2022-2023. The City of Midland has been provided 557 out of 5,000 votes, based on the tax levy dollars managed by MCAD. The Council must review the ballot, and determine how to distribute the votes among the five candidates.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION CASTING THE CITY OF MIDLAND'S VOTES FOR DIRECTORS OF THE MIDLAND CENTRAL APPRAISAL DISTRICT FOR ROBERT MCNAUGHTON; AND DIRECTING THE CITY MANAGER TO FILE THE APPROPRIATE DOCUMENTS

WHEREAS, pursuant to the Tax Code procedure for the election of the directors for the Midland Central Appraisal District, it has been determined by the Chief Appraiser that the City of Midland is entitled to 557 votes; and

WHEREAS, the City Council of the City of Midland agrees to proceed with the concept of a five member Board of Directors of the Midland Central Appraisal District; and

WHEREAS, the Council finds and determines that it should cast the City's votes for the candidate nominated for the Board of Directors by the City;

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

SECTION ONE. That the City of Midland hereby casts 557 votes for Robert McNaughton for the office of Director of the Midland Central Appraisal District.

SECTION TWO. That the City Manager is hereby authorized and directed to indicate this action on the official ballot received from the Chief Appraiser of the Midland Central Appraisal District and to promptly deliver said ballot, together with a certified copy of this resolution, to the Chief Appraiser.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND CENTRAL APPRAISAL DISTRICT
4631 ANDREWS HWY.
P. O. BOX 908002 MIDLAND, TEXAS 79708-0002
(432) 699-4991 FAX (432) 689-7185

JERRY BUNDICK
RPA, RTA
Chief Appraiser

November 18, 2021

Mayor Patrick Payton
City of Midland
P O Box 1152
Midland, TX 79702

RE: Election of Board of Directors for Midland Central Appraisal District

Dear Mayor Payton:

Enclosed please find an Official Ballot and a (sample) Resolution for the election of the Board of Director members for the Midland Central Appraisal District.

Each voting unit must cast its vote by written Resolution and submit it to the Chief Appraiser before December 15, 2021. The unit may cast its votes among any number of candidates. A voting unit must cast its votes for a person nominated and named on the ballot. There is no provision for write-in candidates. The five individuals with the most votes will be elected to the Board of Directors.

If you have any questions, please do not hesitate to contact me. Thank you.

Respectfully,

Jerry Bundick, RPA,RTA
Chief Appraiser

cc: Mr. Robert Patrick, City Manager
Ms. Jamie Radcliff, Budget Manager

OFFICIAL BALLOT

BOARD OF DIRECTOR ELECTIONS FOR 2022-2023
MIDLAND CENTRAL APPRAISAL DISTRICT
MIDLAND COUNTY, TEXAS

The jurisdiction may cast all of its votes for one candidate or distribute the votes among any of the candidates listed below. There is not a provision for write-in candidates. Please write in the number of votes for each candidate and attach this ballot to your written resolution.

Each jurisdiction has the following number of votes

MIDLAND INDEPENDENT SCHOOL DISTRICT	3,354
CITY OF MIDLAND	557
MIDLAND COUNTY	468
GREENWOOD INDEPENDENT SCHOOL DISTRICT	302
MIDLAND COLLEGE	319
TOTAL	5,000

	CANDIDATES	NUMBER OF VOTES
MISD	COOKE, KELLY	
MISD	KENNEDY, JOHN	
COUNTY	KIDWELL, SCOTT	
MISD	KMIEC, ROBERT	
CITY	MCNAUGHTON, ROBERT	

*NOTE: NAMES ARE LISTED ON THE BALLOT, ALPHA BY SIR NAME, AS REQUIRED BY PTC, Sec 6.03 (j)

City Council Meeting

Item Number: 6

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF AN M2106 JET SEWER TRUCK FROM AUSTIN TRUCK & EQUIPMENT LTD DBA FREIGHTLINER OF AUSTIN THROUGH THE INTERLOCAL PURCHASING SYSTEM FOR A TOTAL COST OF $232,748.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution authorizing the purchase of one (1) M2106 Jet Sewer Truck from Austin Truck & Equipment LTD dba Freightliner of Austin through The Interlocal Purchasing System (TIPS) contract # 200206 for a cost of $232,748.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing is available in the FY22 Garage Fund Operating Budget.

Discussion:

The Garage Division is recommending the purchase of one (1) M2106 Jet Sewer Truck from Austin Truck & Equipment LTD dba Freightliner of Austin through The Interlocal Purchasing System (TIPS) Program. We are members of the TIPS Program cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. The budget for FY2022 for one (1) M2106 Jet Sewer Truck is $250,000.00. This truck will be a replacement for a unit that has gone beyond its serviceable life. Please see the attached memo from Manuel Salinas, Garage Superintendent, for additional information.

Therefore, please consider a resolution authorizing the purchase of one (1) M2106 Jet Sewer Truck from Austin Truck & Equipment LTD dba Freightliner of Austin through The Interlocal Purchasing System (TIPS) contract # 200206 for a cost of $232,748.00.

Tina Dang

City Manager's Office

Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: TIPS contract # 200206 Sewer Equipment Jet Truck

DATE: 11/05/21

Fleet services is requesting the purchase of one (1) M2106 Jet Sewer Truck. This new unit will be a replacement for a unit that has gone beyond its serviceable use. Budgeted amount for FY 2022 is $250,000.00 for one (1) M2106 Jet Sewer Truck. Purchasing price will be $ 232,748.00 for one (1) M2106 Jet Sewer Truck through TIPS contract # 200206 from Freightliner of Austin.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF AN M2106 JET SEWER TRUCK FROM AUSTIN TRUCK & EQUIPMENT LTD DBA FREIGHTLINER OF AUSTIN THROUGH THE INTERLOCAL PURCHASING SYSTEM FOR A TOTAL COST OF $232,748.00

WHEREAS, The Interlocal Purchasing System is a program in which the City participates on purchases in accordance with Tex. Loc. Gov't Code § 271.102; and

WHEREAS, Austin Truck & Equipment Ltd DBA Freightliner of Austin has submitted a total proposed cost to the City of $232,748.00 for the purchase of an M2106 jet sewer truck through The Interlocal Purchasing System; and

WHEREAS, the Council finds the price proposed by Austin Truck & Equipment Ltd DBA Freightliner of Austin for the purchase of an M2106 jet sewer truck to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve the purchase of an M2106 jet sewer truck from Austin Truck & Equipment Ltd DBA Freightliner of Austin through The Interlocal Purchasing System;

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 an M2106 jet sewer truck from Austin Truck & Equipment Ltd DBA Freightliner of Austin through The Interlocal Purchasing System for a total cost of $232,748.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Austin Truck & Equipment Ltd DBA Freightliner of Austin for said M2106 jet sewer truck from funds available in the FY22 Garage Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

FREIGHTLINER OF AUSTIN

1701 Smith Rd. (Hwy. 183 So.)
Austin, Texas 78721
Bus: 512-389-0000
FAX: 512-389-2663
Wats: 1800-395-2005

INV.

PURCHASING NAME: CITY OF MIDLAND ACCOUNTS PAYABLE
TELEPHONE: 432-685- 7235
ADDRESS: P.O. BOX 152
CITY: MIDLAND
STATE: TX
ZIP CODE: 79702-1152

I/We Hereby urchase rom You, Under the erms and onditions pec1 ied, the ollowing:

TLJ<				LICENSE
2023	1 IGHTLINER	2106	1; DER	

A documentary fee is not an official fee, a documentary fee is not required by law but may be charged to buyers for handling documents and performing services relating to the the closing of a sale. Buyers may avoid payment of the fee to the seller by handling the documents and performing the services relating to the closing of the sale. A documentary fee may not exceed $50.00. This notice is required by law.

El cobra documental no es un cobra oficial. El cobra documental no es un requisito bajo la fey, pera se le puede cobrar. Al comprador por el rendimiento de los servicios re/acionados con la completacion de la venta y por completar los documentos. El comprador puede evitar el pago al vendedor de este costo si el comprador mismo se encarga de mandejar los documentos y de los servicios necesarios para la completacion de la venta. El cobra documental no puede sobrepasar los $50.00 (U.S.) Este aviso es requerido bajo la fey.

u1sc1a1mer ot warranties

Any warranties on the products sold hereby are those made by the factory. The Seller, *Freightliner of Austin*, hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and *Freightliner of Austin, neither* assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle.

MILEAGE:		
	L;UN IKAL; I #200206	
	TIPS M2016 BASE MODEL PRICE	$ 69,413.40
	OPTION CONTENT	$ 8,669.60
	;:,c.vvt.K t.l.,/Ult'"IVlt.N I UU HI-'K -t.L;U	4!::1,bb!J.UU

CUSTOMER SIGNATURE

SALESMAN SIGNATURE KEVIN KRIEG

CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY. "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrieds any contrary provisions in the contract of sale."

MIL1:.Auc.:		IRAIJI:.-IN		
YEAR	IMAKE	IMODEL/BODY	IVIN	LICENSE PLATE
MIL1:.Auc.:		TRADE-IN		
YEAR	IMAKE	IMODEL/BODY	IVIN	LICENSE PLATE

		TOTAL	$ 232,748.00
PAYOFF TO:		Trade Allowance	N/A
ADDRESS:		Trading Difference	N/A
TELEPHONE: /FAX:		Sales Tax	N/A
GOOD UNTIL:		Vehicle Inventory Tax	N/A
QUOTED BY:		License Fee	N/A
SHOW LIEN TO:	Body Type:	Documentary Fee	N/A
ADDRESS:	License Wt.:	Federal Excise Tax	N/A
	State Insp.:	TOTAL SALE PRICE	$ 232,748.00
DATED: LIEN AMOUNT $	License:	Payoff on Trade	
DRAFT FOR $	Title:	Ext. Service Agreement	
DRAFT THRU:	Transfer:	Less Deposit	
ADDRESS:		Total Balance Due	$ 232,748.00

Full disclosure required by federal regulation •z. The Consumer Protection Act and The Texas Consumer Credit Code, w!!l be made prior to consummation of a credit sale. This written order comprises the entire agreement pertammg to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized. It is expressly agreed that the purchaser acquires no right. trtle or interest m or to the property which he agrees to purchase hereunder until such property is delivered to him/her and either the fu!t pnce is paid m cash or satisfactory deferred payment agreement. 1s executed by the parties hereto, the terms of which shall thereafter be controlling, and a clear title 1s furnished to dealer for the used cars or trucks involved, 1f any. THIS IS NOT A CONDITIONAL SALES CONTRACT, BUT rs A BUYER'S ORDER. All new vehicles carry the standard factory warranty. It 1s understood there 1s no guarantee on the above described new or used vehicle other than appears on this Buyer's Order. The used vehicle model 1s not guaranteed and a verbal agreement by the Seller can will not be considered binding on the Seller. !t 1s agreed that neither Freightliner of Austin, Inc. nor manufacturer will be

Brian Grabow
Regional Sales Manager
210-323-2749
bgrabow@IDSequip.com

IDS Industrial Disposal Supply

Payment Terms:		REV:	
Distributor:	Industrial Disposal Supply	WO#	
Salesman:	Matt White		
End User:	City of Midland		
Address:			
City, State, Zip:			
Phone:			
Contact:	Rex Swearinger		
Email:			

SEWER EQUIPMENT CO. of AMERICA

800-HPR-ECO SERIES IV Truck Mounted High Pressure Sewer Cleaner

Rear Compartment Options:
- Giant 65 GPM @ 2000 PSI w/30 Min Run Dry Capability
- Hydrostatic Drive Via Trans Power PTO
- Lighted NEMA 4 Control Panel
- Tachometer / Hour Meter
- Air Purge Valve
- Recirculation System at Highway Speed
- Painted Steel Shroud Enclosure w/3 Roll-Up Doors
- 80,000 BTU Compartment Heater
- Midship Water Manifold System
- Consolidated Water Drain System

Hose Reel & Hose Option:
- Telescoping & Rotating Safety Reel w/700' Capacity of 1" Hose

Tank & Fill:
- 1500 Gallon Duraprolene ™ (Black) Water Tank w/ 10 Year Warranty
- 2.5" Fill System

Truck:
- Mounting to Approved Chassis
- Mudflaps & Aluminum Side Skirting
- Bumper / Hitch Receiver
- Aluminum Underbody Toolboxes (2) Per Side, (1) Rear
- D.O.T. Approved LED lighting

Nozzles & Accessories:
- 10' Leader Hose
- BB Hose Guide
- Tri-Star {Chisel Point) Nozzle
- DD (High Flow) Nozzle
- Finned Nozzle Extension
- Nozzle Rack
- 25'Fill Hose
- Washdown Gun w/25' Ext. Hose
- Upstream Pulley Guide
- Paper Operator / Owner Manual

REAR COMPARTMENT OPTIONS:			
WASHDOWN SYSTEM W/50' RETRACTABLE HOSE REEL (ACCESS THROUGH REAR DOOR)		1	
HOSE REEL AND HOSE OPTIONS:			
SEWER HOSE (1" I.D. X 2500 PSI OPERATING PRESSURE) PER FT.		600	
AUTOMATIC LEVELWIND WITH HYDRAULIC UP/DOWN ACTION		1	
DIGITAL 'SMART COUNTER' FOOTAGE METER (made from 63289-00-X) ±3% ACCURACY		1	
TANK & FILL OPTIONS:			
FILL HOSE STORAGE RACK		1	
ELECTRICAL & LIGHTING:			
ENGINE/WATER PUMP COMPARTMENT LIGHT		1	
LED FLOOD LIGHT (FACTORY STANDARD)		1	
LED STROBE LIGHT (FACTORY STANDARD) - CLASS 1 RATING		1	
LED ARROW STICK (FACTORY STANDARD)		1	
TRUCK MOUNTING AND TOOL STORAGE OPTIONS:			
AIR PURGE SYSTEM (POWERED VIA CHASSIS)		1	
LOCKABLE LONG HANDLED TOOL STORAGE (2) 4" TUBES		1	
REAR BACK UP CAMERA W/7 INCH COLOR MONITOR MOUNTED IN CAB		1	
ETY CONES AND HOLDER MOUNTED FROM REAR BUMPER WITH (6) 28"D.O.T.SAFETYCONES		1	

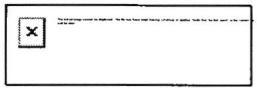
FREIGHT AND/OR APPLICABLE TAXES NOT INCLUDED



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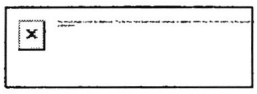
S P E C I F I C A T I O N P R O P O S A L

	Description	Weight Front	Weight Rear
Price Level			
	M2 PRL-26M (EFF:7/26/21)		
Data Version			
	SPECPR021 DATA RELEASE VER 022		
Vehicle'Configuration			
	M2 106 CONVENTIONAL CHASSIS	5,709	3,503
	2023 MODEL YEAR SPECIFIED		
	SET BACK AXLE - TRUCK		
	STRAIGHT TRUCK PROVISION		
	LH PRIMARY STEERING LOCATION		
General Service			
	TRUCK CONFIGURATION		
	DOMICILED, USA 50 STATES (INCLUDING CALIFORNIA AND CARB OPT-IN STATES)		
	REFUSE SERVICE		
	GOVERNMENT BUSINESS SEGMENT		
	LIQUID BULK COMMODITY		
	TERRAIN/DUTY: 100% (ALL) OF THE TIME, IN TRANSIT, IS SPENT ON PAVED ROADS		
	MAXIMUM 8% EXPECTED GRADE		
	SMOOTH CONCRETE OR ASPHALT PAVEMENT - MOST SEVERE IN-TRANSIT (BETWEEN SITES) ROAD SURFACE		
	MEDIUM TRUCK WARRANTY		
	EXPECTED FRONT AXLE(S) LOAD : 12000,0 lbs		
	EXPECTED REAR DRIVE AXLE(S) LOAD : 21000.0 lbs		
	EXPECTED GROSS VEHICLE WEIGHT CAPACITY : 33000.0 lbs		



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	Description	Weight Front	Weight Rear
Truck Service			
	SEWER/INDUSTRIAL VACUUM BODY		
	SEWER EQUIPMENT COMPANY		
	EXPECTED BODY/PAYLOAD CG HEIGHT ABOVE FRAME "XX" INCHES : 32.0 in		
Engine			
	CUM B6.7 250 HP @ 2400 RPM, 2600 GOV, 660 LB-FT @ 1600 RPM		
Electronic ParalTieters			
	75 MPH ROAD SPEED LIMIT		
	CRUISE CONTROL SPEED LIMIT SAME AS ROAD SPEED LIMIT		
	PTO MODE ENGINE RPM LIMIT - 1800 RPM		
	PTO MODE BRAKE OVERRIDE - SERVICE BRAKE APPLIED		
	PTO RPM WITH CRUISE SET SWITCH - 700 RPM		
	PTO RPM WITH CRUISE RESUME SWITCH - 700 RPM		
	PTO MODE CANCEL VEHICLE SPEED - 25 MPH		
	PTO GOVERNOR RAMP RATE - 300 RPM PER SECOND		
	FUEL DOSING OF AFTERTREATMENT ENABLED IN PTO MODE-CLEANS HYDROCARBONS AT HIGH TEMPERATURES ONLY		
	ONE REMOTE PTO SPEED		
	PTO SPEED 1 SETTING - 1450 RPM		
	PTO MINIMUM RPM - 700		
	REGEN INHIBIT SPEED THRESHOLD - 5 MPH		
Engine Equipment			
	2016 ONBOARD DIAGNOSTICS/2010 EPA/CARB/GHG21 CONFIGURATION		
	2008 GARB EMISSION CERTIFICATION - CLEAN IDLE (INCLUDES 6X4 INCH LABEL ON LOWER FORWARD CORNER OF DRIVER DOOR)		
	STANDARD OIL PAN		
	ENGINE MOUNTED OIL CHECK AND FILL		
	SIDE OF HOOD AIR INTAKE WITH FIREWALL MOUNTED DONALDSON AIR CLEANER		
	DR 12V 160 AMP 28-SI QUADRAMOUNT PAD ALTERNATOR WITH REMOTE BATTERY VOLT SENSE		
	(2) DTNA GENUINE, FLOODED STARTING, MIN 1900CCA, 350RC, THREADED STUD BATTERIES		



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Description	Weight Front	Weight Rear
BATTERY BOX FRAME MOUNTED		
STANDARD BATTERY JUMPERS		
SINGLE BATTERY BOX FRAME MOUNTED LH SIDE UNDER CAB		
WIRE GROUND RETURN FOR BATTERY CABLES WITH ADDITIONAL FRAME GROUND RETURN		
NON-POLISHED BATTERY BOX COVER		
CAB AUXILIARY POWER CABLE	5	
POSITIVE LOAD DISCONNECT WITH CAB MOUNTED CONTROL SWITCH MOUNTED OUTBOARD DRIVER SEAT	10	
POSITIVE AND NEGATIVE POSTS FOR JUMPSTART LOCATED ON FRAME NEXT TO STARTER	2	
CUMMINS TURBOCHARGED 18.7 CFM AIR COMPRESSOR WITH INTERNAL SAFETY VALVE		
STANDARD MECHANICAL AIR COMPRESSOR GOVERNOR		
AIR COMPRESSOR DISCHARGE LINE		
ELECTRONIC ENGINE INTEGRAL SHUTDOWN PROTECTION SYSTEM		
RH OUTBOARD UNDER STEP MOUNTED HORIZONTAL AFTERTREATMENT SYSTEM ASSEMBLY WITH RH B-PILLAR MOUNTED VERTICAL TAILPIPE	30	25
ENGINE AFTERTREATMENT DEVICE, AUTOMATIC OVER THE ROAD REGENERATION AND DASH MOUNTED REGENERATION REQUEST SWITCH		
11 FOOT 06 INCH (138 INCH+0/-5.9 INCH) EXHAUST SYSTEM HEIGHT		
RH CURVED VERTICAL TAILPIPE B-PILLAR MOUNTED ROUTED FROM STEP		
6 GALLON DIESEL EXHAUST FLUID TANK		
100 PERCENT DIESEL EXHAUST FLUID FILL		
LH MEDIUM DUTY STANDARD DIESEL EXHAUST FLUID TANK LOCATION		
STANDARD DIESEL EXHAUST FLUID PUMP MOUNTING		
STANDARD DIESEL EXHAUST FLUID TANK CAP		
ALUMINUM AFTERTREATMENT DEVICE/MUFFLER/TAILPI PE SHIELD(S)		
AIR POWERED ON/OFF ENGINE FAN CLUTCH		
AUTOMATIC FAN CONTROL WITH DASH SWITCH AND INDICATOR LIGHT, NON ENGINE MOUNTED		

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	Description	Weight Front	Weight Rear
	CUMMINS SPIN ON FUEL FILTER		
	FULL FLOW OIL FILTER		
	700 SQUARE INCH ALUMINUM RADIATOR		
	ANTIFREEZE TO -34F, OAT (NITRITE AND SILICATE FREE) EXTENDED LIFE COOLANT		
	GATES BLUE STRIPE COOLANT HOSES OR EQUIVALENT		
	CONSTANT TENSION HOSE CLAMPS FOR COOLANT HOSES		
	RADIATOR DRAIN VALVE		
	LOWER RADIATOR GUARD		
	PHILLIPS-TEMRO 750 WATT/115 VOLT BLOCK HEATER	4	
	BLACK PLASTIC ENGINE HEATER RECEPTACLE MOUNTED UNDER LH DOOR		
	ALUMINUM FLYWHEEL HOUSING		
	ELECTRIC GRID AIR INTAKE WARMER		
	DELCO 12V 29MT STARTER WITH INTEGRATED MAGNETIC SWITCH		
Transmission			
	ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH PTO PROVISION	200	60
Transmi!'sion Eqgipment			
	ALLISON VOCATIONAL PACKAGE 142 - AVAILABLE ON 3000/4000 PRODUCT FAMILIES WITH VOCATIONAL MODEL RDS		
	ALLISON VOCATIONAL RATING FOR REFUSE APPLICATIONS AVAILABLE WITH ALL PRODUCT FAMILIES		
	PRIMARY MODE GEARS, LOWEST GEAR 1, START GEAR 1, HIGHEST GEAR 6, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY		
	SECONDARY MODE GEARS, LOWEST GEAR 1, START GEAR 1, HIGHEST GEAR 6, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY		
	SS PERFORMANCE LIMITING PRIMARY SHIFT SCHEDULE, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY		
	S7 ECONOMY LIMITING SECONDARY SHIFT SCHEDULE, AVAILABLE FOR 3000/4000 PRODUCT FAMILIES ONLY		
	2400 RPM PRIMARY MODE SHIFT SPEED		
	2400 RPM SECONDARY MODE SHIFT SPEED		

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	Description	Weight Front	Weight Rear
	ENGINE BRAKE RANGE PRESELECT RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE		
	ENGINE BRAKE RANGE ALTERNATE PRESELECT RECOMMENDED BY DTNA AND ALLISON, THIS DEFINED BY ENGINE AND VOCATIONAL USAGE		
	FUEL SENSE 2.0 DISABLED - PERFORMANCE - TABLE BASED		
	DRIVER SWITCH INPUT - DEFAULT - NO SWITCHES		
	VEHICLE INTERFACE WIRING CONNECTOR WITHOUT BLUNT CUTS, AT END OF FRAME		
	ELECTRONIC TRANSMISSION CUSTOMER ACCESS CONNECTOR FIREWALL MOUNTED		
	CHELSEA PTO - CHL280GGFJP B5RK	50	
	CHELSEA PTO MODEL 877XAF-JP-M3XV (NEEDED FOR RATIO AND TORQUE		
	PTO MOUNTING, RH SIDE OF MAIN TRANSMISSION		
	MAGNETIC PLUGS, ENGINE DRAIN, TRANSMISSION DRAIN, AXLE(S) FILL AND DRAIN		
	PUSH BUTTON ELECTRONIC SHIFT CONTROL, DASH MOUNTED		
	TRANSMISSION PROGNOSTICS - ENABLED 2013		
	WATER TO OIL TRANSMISSION COOLER, IN RADIATOR END TANK		
	TRANSMISSION OIL CHECK AND FILL WITH ELECTRONIC OIL LEVEL CHECK		
	SYNTHETIC TRANSMISSION FLUID (TES-295 COMPLIANT)		
.Front Axle and Equipment			
	DETROIT DA-F-12.0-3 12,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE		
	MERITOR 15X4 Q+ CAM FRONT BRAKES		
	NON-ASBESTOS FRONT BRAKE LINING		
	CONMET CAST IRON FRONT BRAKE DRUMS		
	FRONT BRAKE DUST SHIELDS	5	
	FRONT OIL SEALS		
	VENTED FRONT HUB CAPS WITH WINDOW, CENTER AND SIDE PLUGS - OIL		
	STANDARD SPINDLE NUTS FOR ALL AXLES		
	MERITOR AUTOMATIC FRONT SLACK ADJUSTERS		
	TRW THP-60 POWER STEERING		

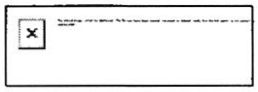
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	Description	Weight Front	Weight Rear
	POWER STEERING PUMP		
	2 QUART SEE THROUGH POWER STEERING RESERVOIR		
	CURRENT AVAILABLE SYNTHETIC 75W-90 FRONT AXLE LUBE		
Front Suspension			
	12,000# DUAL TAPERLEAF FRONT SUSPENSION	42	
	MAINTENANCE FREE RUBBER BUSHINGS - FRONT SUSPENSION		
	FRONT SHOCK ABSORBERS		
Rear Axle and g9uipment			
	DETROIT DA-RS-21.0-4 21,000# R-SERIES SINGLE REAR AXLE		
	6.14 REAR AXLE RATIO		
	IRON REAR AXLE CARRIER WITH STANDARD AXLE HOUSING		
	MXL 16T MERITOR EXTENDED LUBE MAIN DRIVELINE WITH HALF ROUND YOKES	-20	-20
	NO DRIVELINE U-JOINTS FROM BOC CROSSMEMBER CENTERLINE TO 30", HANG FROM 562 CROSSMEMBER IF POSSIBLE REFERENCE S/N LU0778		
	MERITOR 16.5X7 Q+ CAST SPIDER CAM REAR BRAKES, DOUBLE ANCHOR, FABRICATED SHOES		
	NON-ASBESTOS REAR BRAKE LINING		
	BRAKE CAMS AND CHAMBERS ON FORWARD SIDE OF DRIVE AXLE(S)		
	CONMET CAST IRON REAR BRAKE DRUMS		
	REAR BRAKE DUST SHIELDS		5
	REAR OIL SEALS		
	WABCO TRISTOP D LONGSTROKE 1-DRIVE AXLE SPRING PARKING CHAMBERS		
	MERITOR AUTOMATIC REAR SLACK ADJUSTERS		
	CURRENT AVAILABLE SYNTHETIC 75W-90 REAR AXLE LUBE		
***.:ear* SuspensiQrl'**			
	21,000# 52 INCH VARIABLE RATE MULTI-LEAF SPRING REAR SUSPENSION WITH LEAF SPRING HELPER		100
	SPRING SUSPENSION - NO AXLE SPACERS		
	STANDARD AXLE SEATS IN AXLE CLAMP GROUP		
Brake System			



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	Description	Weight Front	Weight Rear
	AIR BRAKE PACKAGE		
	WABCO 4S/4M ABS		
	REINFORCED NYLON, FABRIC BRAID AND WIRE BRAID CHASSIS AIR LINES		
	FIBER BRAID PARKING BRAKE HOSE		
	STANDARD BRAKE SYSTEM VALVES		
	STANDARD AIR SYSTEM PRESSURE PROTECTION SYSTEM		
	STD U.S. FRONT BRAKE VALVE		
	RELAY VALVE WITH 5-8 PSI CRACK PRESSURE, NO REAR PROPORTIONING VALVE		
	BW AD-IS (ORM) BRAKE LINE AIR DRYER WITH SHIELD, HEATER AND INTEGRAL RESERVOIR		
	AIR DRYER RESERVOIR MOUNTED		
	STEEL AIR TANKS MOUNTED AFT INSIDE AND/OR BELOW FRAME JUST FORWARD OF REAR SUSPENSION		
	STACK ON INSIDE LH RAIL. REFERENCE S/N LU0778		
	CLEAR FRAME BOTH RAILS (A) FROM TRANSMISSION PTO OPENING TO MINIMUM 30 INCHES BACK OF CAB (INSIDE/BELOW) AND (B) FROM BACK OF CAB TO REAR SUSPENSION (OUTBOARD)		
	PULL CABLES ON ALL AIR RESERVOIR(S)		
Trailer Connections			
	PRIMARY CONNECTOR/RECEPTACLE WIRED FOR COMBINATION STOP/TURN, CENTER PIN POWERED THROUGH IGNITION WITH STOP SIGNAL PREWIRE PACKAGE		
	SAE J560 7-WAY PRIMARY TRAILER CABLE RECEPTACLE MOUNTED END OF FRAME	5	5
	UPGRADED CHASSIS MULTIPLEXING UNIT		
	UPGRADED BULKHEAD MULTIPLEXING UNIT		
Wheelbase & Frame			
	4125MM (162 INCH) WHEELBASE		
	11/32X3-1/2X10-3/16 INCH STEEL FRAME (8.73MMX258.8MM/0.344X10.19 INCH) 120KSI	-70	110
	1600MM (63 INCH) REAR FRAME OVERHANG		
	FRAME OVERHANG RANGE: 61 INCH TO 70 INCH		
	CALC'D BACK OF CAB TO REAR SUSP C/L (CA) : 96.85 in		
	CALCULATED EFFECTIVE BACK OF CAB TO REAR SUSPENSION C/L (CA) : 93.85 in		



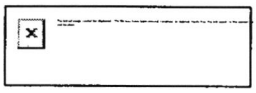
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	Description	Weight Front	Weight Rear
	CALC'D FRAME LENGTH - OVERALL : 264.37 in		
	CALCULATED FRAME SPACE LH SIDE : 67.81 in		
	CALCULATED FRAME SPACE RH SIDE : 124.8 in		
	CALC'D SPACE AVAILABLE FOR DECKPLATE : 90.45 in		
	SQUARE END OF FRAME		
	REAR TOW HOOKS		10
	FRONT CLOSING CROSSMEMBER		
	STANDARD WEIGHT ENGINE CROSSMEMBER		
	STANDARD CROSSMEMBER BACK OF TRANSMISSION		
	STANDARD MIDSHIP #1 CROSSMEMBER(S)		
	LOCATE CROSSMEMBER AT 30" FROM CENTER LINE OF CAB CROSSMEMBER REFERENCE S/N LU0778		
	STANDARD REARMOST CROSSMEMBER		
	STANDARD SUSPENSION CROSSMEMBER		
Cf!?ssis Equipment			
	THREE-PIECE 14 INCH PAINTED STEEL BUMPER WITH COLLAPSIBLE ENDS	30	
	FRONT TOW HOOKS - FRAME MOUNTED	15	
	BUMPER MOUNTING FOR SINGLE LICENSE PLATE		
	FENDER AND FRONT OF HOOD MOUNTED FRONT MUDFLAPS		
	GRADE 8 THREADED HEX HEADED FRAME FASTENERS		
	D15-16004-000 CENTER PUNCH TO MARK CENTERLINE OF REAR SUSPENSION ON FRAME WEB		
FuelTanks			
	50 GALLON/189 LITER SHORT RECTANGULAR ALUMINUM FUEL TANK - LH	20	
	RECTANGULAR FUEL TANK(S)		
	PLAIN ALUMINUM/PAINTED STEEL FUEUHYDRAULIC TANK(S) WITH PAINTED BANDS		
	FUEL TANK(S) FORWARD		
	PLAIN STEP FINISH		
	FUEL TANK CAP(S)		
	DETROIT FUEL/WATER SEPARATOR WITH WATER IN FUEL SENSOR AND HAND PRIMER	-5	
	EQUIFLO INBOARD FUEL SYSTEM		



Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
1701 SMITH ROAD
AUSTIN, TX 78721
Phone: 512-389-0000

	Description	Weight Front	Weight Rear
	AUXILIARY FUEL SUPPLY AND RETURN PORTS LOCATED ON LH FUEL TANK		
	HIGH TEMPERATURE REINFORCED NYLON FUEL LINE		
Tires			
	HANKOOK AL21 11R22.5 14 PLY RADIAL FRONT TIRES	12	
	HANKOOK DL11 11R22.5 14 PLY RADIAL REAR TIRES		60
Hubs			
	CONMET PRESET PLUS PREMIUM IRON FRONT HUBS		
	CONMET PRESET PLUS PREMIUM IRON REAR HUBS		
Wheels			
	MAXION WHEELS 90260 22.5X8.25 10-HUB PILOT 6.13 INSET 2-HAND HD STEEL DISC FRONT WHEELS	40	
	MAXION WHEELS 90260 22.5X8.25 10-HUB PILOT 2-HAND HD STEEL DISC REAR WHEELS		80
	FRONT WHEEL MOUNTING NUTS		
	REAR WHEEL MOUNTING NUTS		
	NO PUSHER!TAG WHEEL MOUNTING NUTS		
.Cab EXterior			
	106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB		
	RUBBER CAB MOUNTS		
	NONREMOVABLE BUGSCREEN MOUNTED BEHIND GRILLE		
	LH AND RH GRAB HANDLES		
	HOOD MOUNTED CHROMED PLASTIC GRILLE		
	CHROME HOOD MOUNTED AIR INTAKE GRILLE		
	FIBERGLASS HOOD		
	SINGLE 14 INCH ROUND POLISHED AIR HORN ROOF MOUNTED	4	
	SINGLE ELECTRIC HORN		
	SINGLE HORN SHIELD		
	DOOR LOCKS AND IGNITION SWITCH KEYED THE SAME		
	KEY QUANTITY OF 2		
	REAR LICENSE PLATE MOUNT END OF FRAME		

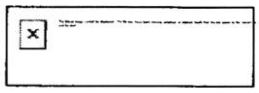


Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
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AUSTIN, TX 78721
Phone: 512-389-0000

Description	Weight Front	Weight Rear
INTEGRAL HEADLIGHT/MARKER ASSEMBLY WITH CHROME BEZEL		
LED AERODYNAMIC MARKER LIGHTS		
DAYTIME RUNNING LIGHTS		
INTEGRAL STOP/TAIUBACKUP LIGHTS WITH 7 EXTRA FEET OF WIRE MOUNTED AT END OF FRAME		
STANDARD FRONT TURN SIGNAL LAMPS		
DUAL WEST COAST MOLDED-IN COLOR MIRRORS		
DOOR MOUNTED MIRRORS		
102 INCH EQUIPMENT WIDTH		
LH AND RH 8 INCH MOLDED-IN COLOR CONVEX MIRRORS MOUNTED UNDER PRIMARY MIRRORS		
STANDARD SIDE/REAR REFLECTORS		
DUAL LEVEL CAB ENTRY STEPS ON BOTH SIDES		
2-STAGE ELECTRIC HORN AND HAZARD LAMP ALERT CONTROLLED BY PARTICULATE FILTER REGENERATION REQUIRED STATUS		
63X14 INCH TINTED REAR WINDOW		
TINTED DOOR GLASS LH AND RH WITH TINTED OPERATING WING WINDOWS		
MANUAL DOOR WINDOW REGULATORS		
1-PIECE SOLAR GREEN GLASS WINDSHELD		
2 GALLON WINDSHIELD WASHER RESERVOIR WITHOUT FLUID LEVEL INDICATOR, FRAME MOUNTED		
C¦ibIterior		
OPAL GRAY CLOTH INTERIOR		
MOLDED PLASTIC DOOR PANEL WITHOUT VINYL INSERT WITH ALUMINUM KICKPLATE LOWER DOOR		
MOLDED PLASTIC DOOR PANEL WITHOUT VINYL INSERT WITH ALUMINUM KICKPLATE LOWER DOOR		
BLACK MATS WITH SINGLE INSULATION		
DASH MOUNTED ASH TRAYS AND LIGHTER		
FORWARD ROOF MOUNTED CONSOLE WITH UPPER STORAGE COMPARTMENTS WITHOUT NETTING		
IN DASH STORAGE BIN		
(2) CUP HOLDERS LH AND RH DASH		

Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
1701 SMITH ROAD
AUSTIN, TX 78721
Phone: 512-389-0000

Description	Weight Front	Weight Rear
GRAY/CHARCOAL FLAT DASH		
10 LB. FIRE EXTINGUISHER WITH MOUNTING BRACKET	20	
HEATER, DEFROSTER AND AIR CONDITIONER		
STANDARD HVAC DUCTING		
MAIN HVAC CONTROLS WITH RECIRCULATION SWITCH		
PREP KIT FOR CUSTOMER INSTALLED AUXILIARY HEATER, PLUMBING FROM ENGINE TO BACK OF CAB WITH SHUTOFF VALVES ON LH	25	
STANDARD HEATER PLUMBING WITH BALL SHUTOFF VALVES AT SUPPLY LINES ONLY		
AUXILIARY HEATER PLUMBING		
VALEO HEAVY DUTY *NC* REFRIGERANT COMPRESSOR		
BINARY CONTROL, R-134A		
STANDARD INSULATION		
SOLID-STATE CIRCUIT PROTECTION AND FUSES		
12V NEGATIVE GROUND ELECTRICAL SYSTEM		
DOME LIGHT WITH 3-WAY SWITCH ACTIVATED BY LH AND RH DOORS		
CAB DOOR LATCHES WITH MANUAL DOOR LOCKS		
(1) 12 VOLT POWER SUPPLY IN DASH		
BASIC ISRINGHAUSEN HIGH BACK AIR SUSPENSION DRIVERS SEAT WTIH MECHANICAL LUMBAR AND INTEGRATED CUSHION EXTENSION	30	
BASIC ISRINGHAUSEN HIGH BACK NON SUSPENSION TOOL BOX PASSENGER SEAT		
DUAL DRIVER AND PASSENGER SEAT ARMRESTS	8	
LH AND RH INTEGRAL DOOR PANEL ARMRESTS		
BLACK CORDURA PLUS CLOTH DRIVER SEAT COVER		
BLACK CORDURA PLUS CLOTH PASSENGER SEAT COVER		
BLACK SEAT BELTS		
FIXED STEERING COLUMN		
4-SPOKE 18 INCH (450MM) STEERING WHEEL		
DRIVER AND PASSENGER INTERIOR SUN VISORS		



Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
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AUSTIN, TX 78721
Phone: 512-389-0000

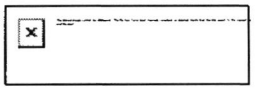
Description	Weight Front	Weight Rear
Instruments & Controls		
GRAY DRIVER INSTRUMENT PANEL		
GRAY CENTER INSTRUMENT PANEL		
ENGINE REMOTE INTERFACE WITH PARK BRAKE INTERLOCK		
BLACK GAUGE BEZELS		
LOW AIR PRESSURE INDICATOR LIGHT AND AUDIBLE ALARM		
2 INCH PRIMARY AND SECONDARY AIR PRESSURE GAUGES		
INTAKE MOUNTED AIR RESTRICTION INDICATOR WITHOUT GRADUATIONS		
97 DB BACKUP ALARM		3
ELECTRONIC CRUISE CONTROL WITH SWITCHES IN LH SWITCH PANEL		
KEY OPERATED IGNITION SWITCH AND INTEGRAL START POSITION; 4 POSITION OFF/RUN/START/ACCESSORY		
ICU3S, 132X48 DISPLAY WITH DIAGNOSTICS, 28 LED WARNING LAMPS AND DATA LINKED		
HEAVY DUTY ONBOARD DIAGNOSTICS INTERFACE CONNECTOR LOCATED BELOW LH DASH		
2 INCH ELECTRIC FUEL GAUGE		
ENGINE REMOTE INTERFACE WITH INCREMENT/DECREMENT		
ENGINE REMOTE INTERFACE CONNECTOR IN ENGINE COMPARTMENT		
ELECTRICAL ENGINE COOLANT TEMPERATURE GAUGE		
2 INCH TRANSMISSION OIL TEMPERATURE GAUGE		
ENGINE AND TRIP HOUR METERS INTEGRAL WITHIN DRIVER DISPLAY		
CUSTOMER FURNISHED AND INSTALLED PTO CONTROLS		
ELECTRIC ENGINE OIL PRESSURE GAUGE		
NO OVERHEAD INSTRUMENT PANEL		
AM/FM/WB WORLD TUNER RADIO WITH BLUETOOTH, USB AND AUXILIARY INPUTS, J1939	10	
DASH MOUNTED RADIO		
(2) RADIO SPEAKERS IN CAB		
AM/FM ANTENNA MOUNTED ON FORWARD LH ROOF		



Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
1701 SMITH ROAD
AUSTIN, TX 78721
Phone: 512-389-0000

	Description	Weight Front	Weight Rear
	ELECTRONIC MPH SPEEDOMETER WITH SECONDARY KPH SCALE, WITHOUT ODOMETER		
	STANDARD VEHICLE SPEED SENSOR		
	ELECTRONIC 3000 RPM TACHOMETER		
	IDLE LIMITER, ELECTRONIC ENGINE		
	DIGITAL VOLTAGE DISPLAY INTEGRAL WITH DRIVER DISPLAY		
	SINGLE ELECTRIC WINDSHIELD WIPER MOTOR WITH DELAY		
	MARKER LIGHT SWITCH INTEGRAL WITH HEADLIGHT SWITCH		
	ONE VALVE PARKING BRAKE SYSTEM WITH WARNING INDICATOR		
	SELF CANCELING TURN SIGNAL SWITCH WITH DIMMER, WASHERNVIPER AND HAZARD IN HANDLE		
	INTEGRAL ELECTRONIC TURN SIGNAL FLASHER WITH HAZARD LAMPS OVERRIDING STOP LAMPS		
Design			
	PAINT: ONE SOLID COLOR		
Color			
	CAB COLOR A: L0006EY WHITE ELITE EY		
	BLACK, HIGH SOLIDS POLYURETHANE CHASSIS PAINT		
	POWDER WHITE (N0006EA) FRONT WHEELS/RIMS (PKWHT21, TKWHT21, W, TW)		
	POWDER WHITE (N0006EA) REAR WHEELS/RIMS (PKWHT21, TKWHT21, W, TW)		
	BUMPER PAINT: FP24812 ARGENT SILVER DUPONT FLEX		
	STANDARD E COAT/UNDERCOATING		
Certification / Compliance			
	u_s FMVSS CERTIFICATION, EXCEPT SALES CABS AND GLIDER KITS		
Secondary Factory Options			
	CORPORATE POI CENTER IN-SERVICE ONLY		
Raw Performance Data			
	CALCULATED EFFECTIVE BACK OF CAB TO REAR SUSPENSION C/L (CA) : 93.85 in		
	CALC'D SPACE AVAILABLE FOR DECKPLATE : 90-45 in		





Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
1701 SMITH ROAD
AUSTIN, TX 78721
Phone: 512-389-0000

Description	Weight Front	Weight Rear

Sales Programs

NO SALES PROGRAMS HAVE BEEN SELECTED

T 0..:r A ■ V E H I C ■E S U M M A R Y

Weight Summary

	Weight Front	Weight Rear	Total Weight
Factory Weight+	6181 lbs	3941 lbs	10122 lbs
Total Weight+	6181 lbs	3941 lbs	10122 1bs

Extended Warranty

TOWING: 1 YEAR/UNLIMITED MILES/KM EXTENDED TOWING
COVERAGE $550 CAP FEX APPLIES

(+) Weights shown are estimates only.
If weight is critical, contact Customer Application Engineering.

(***) All cost increases for major components (Engines, Transmissions, Axles, Front and Rear Tires) and government mandated requirements, tariffs, and raw material surcharges will be passed through and added to factory invoices.

City Council Meeting

Item Number: 7

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING THE PURCHASE OF TWO (2) AUTOMATED REFUSE TRUCKS FROM CHASTANG ENTERPRISES, INC., THROUGH BUYBOARD AT A TOTAL COST OF $718,576.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution approving the purchase of two (2) automated refuse trucks from Chastang Enterprises, Inc. through Buyboard contract 601-19 for a cost of $718,576.00 for the General Services Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing is available in the FY22 Garage Fund Operating Budget.

Discussion:

The Garage Department recommends purchasing two (2) automated refuse trucks from Chastang Enterprises, Inc. through Buyboard contract 601-19. We are members of the Buyboard cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. The budget for FY2022 for two (2) automated refuse trucks is $684,000.00. These units are replacements for units that have gone beyond their serviceable life. Please see the attached memo from Manuel Salinas, Garage Superintendent for additional information.

Therefore, please consider a resolution approving the purchase of two (2) automated refuse trucks from Chastang Enterprises, Inc. of Houston, Texas through Buyboard contract 601-19 for a cost of $718,576.00.

Tina Gauz

City Manager's Office

Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: BuyBoard # 601-19 cab and chassis with an automated refuse body

DATE: 11/5/21

Fleet services is requesting the purchase of (2) two automated refuse trucks. These new trucks will be replacements for units that have gone beyond their serviceable life. Budgeted amount for (2) two automated refuse trucks for FY 2022 is $684.000. The purchasing amount for (2) two automated refuse trucks that is being offered through BuyBoard # 601-19 is $718,575 by Chastang Enterprises, Inc.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF TWO (2) AUTOMATED REFUSE TRUCKS FROM CHASTANG ENTERPRISES, INC., THROUGH BUYBOARD AT A TOTAL COST OF $718,576.00

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, Chastang Enterprises, Inc., has submitted a total proposed cost to the City of $718,576.00 for the purchase of two (2) automated refuse trucks through Buyboard, as shown on the quote attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Chastang Enterprises, Inc., for the purchase of two (2) automated refuse trucks to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase two (2) automated refuse trucks from Chastang Enterprises, Inc., 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 two (2) automated refuse trucks from Chastang Enterprises, Inc., through Buyboard at a total cost of $718,576.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Chastang Enterprises, Inc., for two (2) automated refuse trucks from funds available in the FY22 Garage Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

Chastang

AUTOCAR

Chastang Enterprises, Inc.
6200 N. Loop East
Houston, TX 77026
713.678.5000

TEXAS LOCAL GOVERNMENT PUCHASING COOPERATIVE

CUSTOMER:	City of Midland	QUOTE DATE:	11/2/2021
CONTACT	Manuel Eloy Salinas	QUOTED BY:	Carl Norberg
PHONE:	432-685-7451	PHONE:	713-678-5060 512-557-7453
EMAIL:	msalinas@midlandtexas.gov	EMAIL:	cnorberg@chastangford.com

ITEM DESCRIPTION:	2023 Autocar ACX64 with Heil 28yd DuraPack Python Automated Side Load Refuse Body						
CONTRACT:	BuyBoard	PROPOSAL NO.	601-19	ITEM NO.	3	ITEM PRICE:	51782

CHASSIS EQUIPMENT

STANDARD EQUIPMENT	STANDARD EQUIPMENT
Single LH Drive Cab	Air Conditioning
Tilt/Telescope Steering Column	Technical Training Manuals
Cummins L9 350HP	Autocar 24/7 Tech Support

OPTIONAL EQUIPMENT	OPTIONAL EQUIPMENT
Right Hand Drive Cab	Auto Neutral Trans and programming
Autocar Diagnostic Display	Autocar Diagnostic Display
46,000 Rear Axle	Heil Wrench Spec Chassis
46,000 Rear Suspension	Double Frame
Cummins 500K Comm System	Air Ride Driver's Seat
Trans PTO Prep	Heated, Moto Mirrors
Allison Transmission Retarder	16.5x7 Front Brakes
16" Two Stage Air Cleaner	16.5x8.62 Rear Brakes
Pneumatic Cab Lift Assist	Engine Oil Pan Guard
Sears Air Ride Driver's Seat	Dual Fire Extinguishers
LH Vertical Exhaust	5 Year/150k Mile Cummins ISL Warranty
Roof-Mounted A/C Condensor	5 Year Transmission Warranty
RP170 Refuse Connectors	
Rear Shock Absorbers	
Landfill-use Suspension	
Dual Evaporator A/C	

CHASSIS OPTIONS	134299
OPTION DISCOUNT (-3.2%)	-4298
CHASSIS TOTAL	181783

BODY EQUIPMENT

BODY VENDOR:	Heil of TX	PROPOSAL NO.		ITEM NO.		ITEM PRICE:	177305
BODY MFG:	Heil	MODEL:	DuraPack Python	TYPE:	ASL	CAPACITY:	28 Yard

OPTIONAL EQUIPMENT	COST	OPTIONAL EQUIPMENT	COST

BODY OPTIONS	0
BODY TOTAL	177305

Submit Approved Quote to BuyBoard:
Fax: 800-211-5454 Email: info@buyboard.com

ESTIMATED DELIVERY	approx. 350 days

UNIT PRICE	359088
QUANTITY	2
CONTRACT FEE (per PO)	400
TOTAL PURCHASE	718576

Exhibit A

Chastang AUTOCAR

Chastang Enterprises, Inc.
6200 N. Loop East
Houston, TX 77026
713.678.5000

TEXAS LOCAL GOVERNMENT PUCHASING COOPERATIVE

CUSTOMER:	City of Midland	QUOTE DATE:	11/2/2021
CONTACT	Manuel Eloy Salinas	QUOTED BY:	Carl Norberg
PHONE:	432-685-7451	PHONE:	713-678-5060 512-557-7453
EMAIL:	msalinas@midlandtexas.gov	EMAIL:	cnorberg@chastangford.com

ITEM DESCRIPTION:	2023 Autocar ACX64 with Heil 28yd DuraPack Python Automated Side Load Refuse Body						
CONTRACT:	BuyBoard	PROPOSAL NO.	601-19	ITEM NO.	3	ITEM PRICE:	51782

CHASSIS EQUIPMENT

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Single LH Drive Cab	Air Conditioning
Tilt/Telescope Steering Column	Technical Training Manuals
Cummins L9 350HP	Autocar 24/7 Tech Support

OPTIONAL EQUIPMENT	OPTIONAL EQUIPMENT
Right Hand Drive Cab	Auto Neutral Trans and programming
Autocar Diagnostic Display	Autocar Diagnostic Display
46,000 Rear Axle	Heil Wrench Spec Chassis
46,000 Rear Suspension	Double Frame
Cummins 500K Comm System	Air Ride Driver's Seat
Trans PTO Prep	Heated, Moto Mirrors
Allison Transmission Retarder	16.5x7 Front Brakes
16" Two Stage Air Cleaner	16.5x8.62 Rear Brakes
Pneumatic Cab Lift Assist	Engine Oil Pan Guard
Sears Air Ride Driver's Seat	Dual Fire Extinguishers
LH Vertical Exhaust	5 Year/150k Mile Cummins ISL Warranty
Roof-Mounted A/C Condensor	5 Year Transmission Warranty
RP170 Refuse Connectors	
Rear Shock Absorbers	
Landfill-use Suspension	
Dual Evaporator A/C	

CHASSIS OPTIONS	134299
OPTION DISCOUNT (-3.2%)	-4298
CHASSIS TOTAL	181783

BODY EQUIPMENT

BODY VENDOR:	Heil of TX	PROPOSAL NO.		ITEM NO.		ITEM PRICE:	177305
BODY MFG:	Heil	MODEL:	DuraPack Python	TYPE:	ASL	CAPACITY:	28 Yard

OPTIONAL EQUIPMENT	COST	OPTIONAL EQUIPMENT	COST

BODY OPTIONS	0
BODY TOTAL	177305

Submit Approved Quote to BuyBoard:
Fax: 800-211-5454 Email: info@buyboard.com

ESTIMATED DELIVERY	approx. 350 days

UNIT PRICE	359088
QUANTITY	2
CONTRACT FEE (per PO)	400
TOTAL PURCHASE	718576

Vendor Contract Information Summary

Vendor Name	Chastang Enterprises-Houston, LLC
Contact	Ed Miller
Phone Number	713-678-5007
Email	emiller@chastangford.com
Website	www.chastangford.com
Federal ID	81-4796879
Accepts RFQs	Yes
Address Line 1	6200 North Loop East
Vendor City	Houston
Vendor Zip	77026
Vendor State	TX
Vendor Country	USA
Delivery Days	10
Freight Terms	FOB Destination
Payment Terms	Net 30 days
Shipping Terms	Pre-paid and added to invoice
Ship Via	Common Carrier
Is Designated Dealer	No
EDGAR Forms Received	Yes
Service-Disabled Veteran Owned	No
Minority Owned	Yes
Women Owned	No
Certificate Number	1760423419900
Certifying Agency	State of Texas / Texas Comptroller of Public Accounts
Is National	No
No Excluded Foreign Terrorist Orgs	Yes
No Israel Boycott Certificate	Yes
Is MWBE	Yes
Regions Served	All Texas Regions
States Served	All States
Contract Name	Vehicles, Heavy Duty Trucks, Police Motorcycles, Parts, and Service Labor
Contract #	601-19
Effective Date	12/01/2019
Expiration Date	11/30/2022
Service Fee Note	Vehicle purchase orders are subject to a $400 service fee

Vendor Contract Information Summary

Quote Reference Number	BB082919
Return Policy	No returns
Additional Dealers	Chastang Chrysler Dodge Jeep Ram, Angleton, TX

City Council Meeting

Item Number: 8

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 STREET SWEEPING PROJECT TO MISTER SWEEPER LP OF DALLAS, TEXAS, AT A TOTAL COST NOT TO EXCEED $108,997.68; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract with Mister Sweeper LP for the FY2022 Sweeping Project for a cost of $108,997.68 plus 10% contingency of $10,899.76 for a total cost of $119,897.44.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing of $119,897.44 is available in the FY22 Drainage Fund Operating Budget.

Discussion:

The Transportation Division recommends awarding a contract to Mister Sweeper LP for the FY2022 Sweeping Project. Street Sweeping is done to remove debris that would otherwise run into and/or clog storm sewer inlets. Sweeping also prevents automotive fluids and other contaminants from polluting Midland's channels, basins, and waterways downstream. In short, street sweeping keeps roadways beautiful and clean, controlling dust, and decreasing pollution. The unit price appears to be in line with current pricing and trends. This bid request was sent to twenty-four (24) bidders and we received two (2) bids. Please see the attached memo from Abe Langston, Transportation Manager, for additional information.

Therefore, please consider a resolution awarding a contract with Mister Sweeper LP for the FY2022 Sweeping Project for a cost of $108,997.68 plus 10% contingency of $10,899.76 for a total cost of $119,897.44.

Tina Dawg

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Ricky Brown, Transportation Project Manager

SUBJECT: Recommend Award; FY 2022 Sweeping Project; Bid # 22000396

DATE: November 10, 2021

CC: Abe Langston, Transportation Manager

The bid tabulation for the Fiscal Year 2022 Sweeping Project has been reviewed by the Transportation Division. Street Sweeping is done to remove debris that would otherwise run into and/or clog storm sewer inlets. Sweeping also prevents automotive fluids and other contaminants from polluting Midland's channels, basins, and waterways downstream. In short, street sweeping keeps roadways beautiful and clean, controlling dust, and decreasing pollution. Mister Sweeper, LP is the apparent low bidder. The unit price appears to be in line with current pricing and trends. Therefore, we are recommending award of the Fiscal Year 2022 Street Sweeping Project to Mister Sweeper in the amount of $108,997.68 (Base Bid) plus 10% contingency for a total amount of $119,897.44 Please see the funding source below:

Funding Sources:

Base Bid: $108,997.68 (Stormwater Administration; 400482; Stormwater Fund; 400)

Contingency (10%) $10,899.76 (Stormwater Administration; 400482; Stormwater Fund; 400)

Total Amount: **$119,897.44**

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 STREET SWEEPING PROJECT TO MISTER SWEEPER LP OF DALLAS, TEXAS, AT A TOTAL COST NOT TO EXCEED $108,997.68; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager advertised for competitive bids for the Fiscal Year 2022 Street Sweeping Project (the "Project"); and

WHEREAS, Bid No. 22000396 was opened on November 10, 2021, with the lowest responsible bidder being Mister Sweeper LP of Dallas, Texas ("Contractor"), having submitted a bid of $108,997.68 to establish unit prices as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the total cost of the work to be completed, according to the previously advertised specifications and the unit prices in Exhibit "A", shall not exceed $108,997.68; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Contractor for said Project;

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 Contractor for said Project at a total cost not to exceed $108,997.68, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, change orders to said contract if the change orders, in total, do not increase the original contract price by more than 10 percent ($10,899.76).

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract and change orders executed in

accordance with this resolution in an amount not to exceed $119,897.44 from funds available in the Fiscal Year 2022 Drainage Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 22000396 **FY 2022 Sweeping Project** **OPENED** November 10, 2021			Mister Sweeper LP 3522 Doug Dr. Dallas, TX 75247 Jodie Thompson jodie@mistersweeper.com		Sweeping Services of Texas - Operating, LP 9000 Trinity Blvd Hurst, TX 76053 Ian Hall rkendrix@wastepartners.com	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
		BASE BID				
1	636	All necessary equipment, labor and materials necessary to sweep all City-owned arterial, collector, and downtown's curb and gutter, inverts, including all valley gutters and over all portions of painted medians and/or islands.	171.38	$108,997.68	385.22	$244,999.92
		Cash Discount:	N/A		0% 0 Days	
		Delivery:	within 3 weeks of request			
		TOTAL PROPOSAL		$108,997.68		$244,999.92

Bidding Summary:

24 **Bid requests were issued.**

2 **Bids listed above**

0 **NO BIDS were received.**

22 **Bidders did not respond.**

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CITY OF MIDLAND
SERVICE CONTRACT
#22000396

THIS CONTRACT, effective this 15th day of December, 2021, by and between the City of Midland, hereinafter referred to as the "CITY" and Mister Sweeper LP, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $108,997.68.

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING

ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be one (1) year. CITY shall have the right to extend the term of this Contract for four (4) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. Mister Sweeper LP
PO Box 560048
Dallas, TX 75356

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS

CONTRACT.

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

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

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

20. **<u>NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES</u>:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days

after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described

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

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

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

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

28. **TERMINATION AT WILL:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the

flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit -
	Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets

or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of CITY of Midland and policies that name CITY of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

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

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

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

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

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

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

information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Mister Sweeper LP, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____

Notary Public, State of _____

EXHIBIT A

CITY OF MIDLAND

PURCHASING DIVISION DATE: 10/6/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000396**

OPENING TIME: 2:00 PM **CLOSING DATE: 11/10/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Loraine, Ste 330, Midland, Texas
UNTIL 2:00 P.M. 11/10/21 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Various Locations, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Furnishing of materials and labor for the Arterial and Downtown Sweeping Project, work for the City of Midland in accordance with the attached general notes and city and/or specifications.	$171.38	$108,997.68
				TOTAL	_____

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. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. 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.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **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.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

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: Mister Sweeper, LP
ADDRESS 3522 Doug Dr.
CITY Dallas ST TX ZIP 75247
PHONE NO. 877-752-5693 FAX NO. _____
EMAIL: jodie@mistersweeper.com

CASH DISCOUNT: _____ % _____ DAYS
DELIVERY CAN BE MADE Within 3 weeks of request
AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

MIDLAND
Purchasing Division

On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

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

OR

Physical Address:

The Office of the Purchasing Manager
City of Midland
300 N. Loraine, Suite 220
Midland, TX 79701

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, all bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

USPS Mailing Address:		***Physical Address for mail carriers other than USPS:***
City of Midland, Texas Attn: City Secretary's Office P O Box 1152 Midland, TX 79702	OR	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. Social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be in person or shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

The deadline for submitting additional questions is 72 working hours before the bid opening date and time. Questions submitted before the deadline will be included in the Addendum. Questions submitted after the deadline will not receive any additional information and will instead only be directed to the information already provided.

BID SCHEDULE

FY 2022 Sweeping Project

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the various items of the project.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City.

The initial term of the contract shall be from the date of award until September 30, 2022. If the Owner and Contractor agree in writing, this contract may be renewed for up to two additional one year terms (October 1, 2022 to September 30, 2023; October 1, 2023 to September 30, 2024). Each annual renewal will be for an amount not to exceed $250,000.00. The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

Award of contract shall be determined by the lowest responsible bid. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished.

FY 2022 Sweeping Project – Arterials & Downtown

Item	Description	Unit	Qty	Unit	TOTAL
1	All necessary equipment, labor and materials necessary to sweep all City-owned arterial and downtown's curb and gutter, inverts, including all valley gutters and over all portions of painted medians and/or islands located on the attached map. The sweeping operation shall consist of removing all dirt, leaves, twigs, branches, mud, silt, sand, paper, rocks, cans, glass, and other debris. Waste recycling/disposal, and all other items incidental to performing arterial and downtown street sweeping services as well as any other tools or other equipment and incidentals necessary to complete the work in accordance with attached Bid Item Notes and Specifications. **This quantity is for 3 cycles of sweeping (212CM each).**	CM	636	$171.38	$108,997.68

TOTAL BASE BID: $108,997.68

Submitted: Mister Sweeper, LP
Contractor

Available Fleet of Vehicles

SWEEPERS

Unit	Year	Make	Model	Hopper	GPS
9	2006	Tymco	210	2.4cy	Y
96	2004	Tymco	210	2.4cy	Y
154	2012	Tymco	210	2.4cy	Y
160	2012	Tymco	210	2.4cy	Y
162	2005	Tymco	210	2.4cy	Y
163	2006	Tymco	210	2.4cy	Y
165	2006	Tymco	210	2.4cy	Y
176	2007	Tymco	210	2.4cy	Y
177	2005	Tymco	210	2.4cy	Y
183	2006	Tymco	210	2.4cy	Y
201	2016	Tymco	210	2.4cy	Y
205	2017	Tymco	210	2.4cy	Y
206	2017	Tymco	210	2.4cy	Y
212	2017	Tymco	210	2.4cy	Y
213	2019	Tymco	210	2.4cy	Y
221	2019	Tymco	210	2.4cy	Y
222	2009	Tymco	210	2.4cy	Y
202	2002	Tymco	435	4cy	Y
223	2020	Tymco	435	4cy	Y
126	2007	Tymco	600	7.3cy	N
184	2005	Tymco	600	7.3cy	Y
191	2002	Tymco	600	7.3cy	Y
193	2002	Tymco	600	7.3cy	Y
198	2004	Tymco	600	7.3cy	Y
204	2008	Tymco	600	7.3cy	Y
211	2005	Tymco	600	7.3cy	Y
217	2007	Tymco	600	7.3cy	Y
218	2007	Tymco	600	7.3cy	Y
224	2020	Tymco	600	7.3cy	Y
125	2001	Elgin	Eagle	4.5cy	Y
127	2003	Elgin	Eagle	4.5cy	Y
128	2003	Elgin	Eagle	4.5cy	Y
151	2002	Elgin	Eagle	4.5cy	Y
167	2003	Elgin	Eagle	4.5cy	Y
182	2004	Elgin	Eagle	4.5cy	Y
186	2006	Elgin	Eagle	4.5cy	Y
187	2005	Elgin	Eagle	4.5cy	Y
188	2007	Elgin	Eagle	4.5cy	Y
189	2004	Elgin	Eagle	4.5cy	Y
214	2007	Elgin	Eagle	4.5cy	Y
215	2007	Elgin	Eagle	4.5cy	Y
216	2004	Elgin	Eagle	4.5cy	Y
43	2001	Isuzu	Mini moble	4cy	Y
48	2002	Isuzu	Mini moble	4cy	Y
129	2003	GMC	Mini moble	4cy	Y

169	2002	GMC	Mini moble	4cy	Y
174	2006	Isuzu	Mini moble	4cy	Y
175	2014	Isuzu	Mini moble	4cy	Y
178	2002	Isuzu	Mini moble	4cy	Y
195	2007	Isuzu	Mini moble	4cy	Y
196	2006	Isuzu	Mini moble	4cy	Y
207	2005	Isuzu	Mini moble	4cy	Y

Other Equipment

Unit	Year	Make	Model	GPS
30	2008	Vorteg	Attenuator	N
219	2018	Vorteg	Attenuator	N
47	2001	International	Roll off bin truck	N
131	2001	International	Dump truck	n
197	2007	Freightliner	dump truck	n
168	2013	Ford	F150 pickup	Y
170	2013	Ford	F150 pickup	Y
171	2013	Ford	F150 pickup	Y
141	2010	Ford	Water recorvery	Y
158	2012	Ford	Power Wash	Y
199	2014	Ford	Power Wash	Y

CONTRACT INTEREST DISCLSOURE

11/05/2021

This letter is provided as disclosure to the City of Midland, that if Mister Sweeper LP is awarded bid 22000396 – Street Sweeping, Niagara Consulting, Inc. will be collecting a commission fee from Mister Sweeper LP.

Niagara Consulting provides procurement consulting services to private sector clients assisting them in winning public sector contracts. Niagara Consulting makes its clients aware of bidding opportunities and assists with the completion of bidding paperwork to ensure bid responsiveness.

Mister Sweeper LP has an arrangement with Niagara Consulting in which Niagara Consulting assisted with the submitted bid paperwork and will be compensated by Mister Sweeper LP if Mister Sweeper LP is awarded the bid in question. Mister Sweeper LP is inclined to bring its arrangement with Niagara Consulting to the attention of the City of Midland in the promotion of transparency, and to ensure Mister Sweeper LP is not unknowingly violating any of the City of Midland's contracting regulations.

To be clear, Mister Sweeper LP is solely responsible for the contract if awarded. Mister Sweeper LP will be providing its own Certificate of Insurance, its own bonds (bid bond, performance bond, payment bond), and signing the contract on its own behalf.

If the City of Midland has any issue with Mister Sweeper LP's arrangement with Niagara Consulting as it pertains to the bid in question, we ask that Mister Sweeper LP's bid be withdrawn from consideration and the bid bond be returned to Mister Sweeper LP.

Signed



Jodie Thompson, President

Mister Sweeper LP

Date: January 8, 2020

Phone: 214-688-4444

Email: jodie@mistersweeper.com

Street Sweeping Project

FY 2022 Sweeping Project

GENERAL NOTES

1. If used, all barricades, signs and traffic control for this project shall conform to the latest edition of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
2. Proper traffic control is the sole responsibility of the Contractor and shall be in accordance with the TMUTCD.
3. If traffic control is to be used, the Contractor shall be responsible for the traffic control plan and shall submit it to the Transportation Project Manager for approval forty-eight (48) hours prior to the beginning of work.
4. Contractor shall examine the project site(s) and completely familiarize themselves with the nature and extent of the work to be accomplished. No extra compensation will be allowed for any work made necessary by unusual conditions or obstacles encountered during the progress of the work, which conditions or obstacles are readily apparent upon a visit to the site. If there are any questions in this regard or if there are any discrepancies between the plans and the actual site conditions, the contractor shall notify the engineer prior to the submission of bids.
5. All Contractor operations shall be accomplished in accordance with applicable regulations of the U.S. Occupational Safety and Health Administration. Copies of the OSHA Standards may be purchased from the U.S. Government Printing Office; information and related reference materials may be obtained from OSHA; 903 San Jacinto, Austin, Texas.
6. Contractor shall comply with all applicable local, state, and federal requirements regarding excesses and waste material, including methods of handling and disposal.
7. Care shall be used to create a safe work area, with minimal impact on the flow of traffic.
8. Any existing pavement, curbs, and/or sidewalk damaged by the contractor are to be repaired by the contractor to at least the preexisting condition at their expense before acceptance of the work.
9. Contractor shall make all due precautions to protect existing facilities from damage. Any damage to existing facilities incurred as a result of these construction operations are to be repaired immediately by the contractor to at least the pre-existing condition at no additional cost to the owner.
10. Contractor is responsible for complying with all applicable environmental laws.
11. The contractor shall not use any facilities of a private property owner without a written agreement that is furnished to the City of Midland. These facilities shall include but not limited to private properties for storage, water, trash receptacles, etc. All City ordinances must be followed.
12. The contractor shall not place spoils on private property without a written agreement that is furnished to the City of Midland.
13. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.

STREET SWEEPING NOTES

Scope of Work

This Contract shall include three (3) times a year sweeping of City-owned arterial and downtown's curb and gutter, including all valley gutters, inverts, and over all portions of painted medians and/or islands located on the attached map. The sweeping operation shall consist of removing all dirt, leaves, twigs, branches, mud, silt, sand, paper, rocks, cans, glass, and other debris. Unforeseen conditions, such as weather, can bring unusual amounts of debris to city streets. Removal of all debris regardless of scope and level is the responsibility of the Contractor. These conditions include but are not limited to leaves, heavy silt, sand or other types of large debris. If debris is determined to be beyond the intent of this Contract, then the Project Manager may authorize in-house crews to supplement the cleaning/sweeping operation. This supplemental work shall not be the usual. Most locations are within the City limits of the City of Midland. Services shall include furnishing of all labor, equipment, tools, fuel, materials, insurance, supervision, waste recycling/disposal, and all other items incidental to performing arterial and downtown street sweeping services potentially in heavy traffic.

The rounds of sweeping should occur at the following times:

- Round 1—March/April
- Round 2—May/June
- Round 3—July/August

The initial term of the contract shall be from the date of award until September 30, 2022. If the Owner and Contractor agree in writing, this contract may be renewed for up to two additional one year terms (October 1, 2022 to September 30, 2023; October 1, 2023 to September 30, 2024). Each annual renewal will be for an amount not to exceed $250,000.00. The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

1. Contractor shall submit a list of the type of equipment to be utilized, including the year, make, and model of each sweeper proposed for providing these services to the City for approval. The City reserves the right to request descriptive literature or specification sheets for each type of vehicle or equipment listed as it deems necessary to properly administer specifications of the contract. Upon request of the City, the Contractor shall demonstrate the equipment is suitable for the proposed services. At a minimum, the Contractor shall provide two (2) primaries and one (1) back up sweeper.
2. All sweepers used shall be of sufficient size and hopper capacity (4 useable cubic yard minimum) to be rated by the manufacturer as street worthy sweepers. Smaller and/or specialized parking lot sweepers shall not be permitted.
3. **TRAVEL TIME:** All costs for travel time between roads and/or to and from refuse disposal sites will be included in the unit price and shall be incidental to the performance of this contract.
4. **SWEEPING REQUIREMENTS:** Sweeping areas will include all curb lines along both sides of the roadways, or to the edge of pavement where no curbs exist, along all curbs on raised medians, over all portions of painted medians and all intersection cross gutters. Contractor is responsible for the 8' strip (sweeper width) along all curbs and raised medians.
    a. **Sweeping Inverted Streets**: Streets that are inverted shall be swept along the curbs (if present) and then along the invert to pick up any debris left by runoff.
    b. Sweeping will always be accomplished in the same direction as traffic flow.

c. Contractor shall make every reasonable effort to minimize streaks left by sweepers.
d. Sweeping operations on arterial and downtown streets will be permitted overnight at the Contractor's discretion.

5. **Dump Truck**—Contractor shall use at least one no less than 12 cubic yard dump truck to dispose sweepings into in order to expedite the sweeping process.
6. Contractor shall dispose of all refuse and debris collected during cleaning/sweeping operations by hauling them to either of the City of Midland's stockpile locations: on Cuthbert Ave. between Fairgrounds Rd. and Tilden St, and the other at 6400 W Highway 80. These locations will be available to the contractor free of charge. However, if the Contractor chooses to dispose of debris at the landfill or at another location, the cost for disposal shall be incidental to this project.
    a. NOTE: No "on road" storage or dumping shall be permitted
    b. Dumping into a disposal truck is mandated by these specifications
7. Contractor shall use all reasonable methods to minimize dust emissions during sweeping operations. Sweepers shall be equipped with a dust suppressant system that shall be used during sweeping operations. No separate payment will be made for work performed or material used to control dust resulting from Contractor's performance of the work.
8. The City reserves the right to add additional streets and/or other rights-of-way to the street schedule. The Contractor shall provide any additional sweeping services at the agreed upon curb mile unit price.
9. **PERSONNEL:** Contractor shall provide a supervisor or foreman who communicates effectively and who shall be present at all times during Contract operations. Any request or communication given to the foreman shall be deemed as delivered to the Contractor.
    a. No workman shall be employed on any work under these specifications that is found to be incompetent, disorderly, troublesome, intemperate, or otherwise objectionable.
    b. Sweeping Operators: Contractor shall attempt to provide adequately trained operators to minimize disruption of service. Contractor is responsible for ensuring that any and all new sweeping operators will be adequately trained in their area by Contractor Supervisors.
10. **WATER:** Contractor shall furnish all water required for the performance of this work and will make all arrangements for obtaining the water needed and will comply with all the requirements set forth by the governing water entity.
11. **SOUND CONTROL:** Contractor will comply with all local sound control and noise level rules, regulations, and ordinances, which apply to any work performed pursuant to the Contract, and will make every effort to control any undue noise resulting from its operation.
12. **SAFETY:** Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions or premises and ways at all times, including safely stored equipment, machines and materials. This includes compliance with City, Local County, State or other legal intents and terms of the applicable OSHA safety orders at all times so as to protect all persons, including Contractor's employees and City against injury or damage to their property.
13. The Contractor shall submit to the City a sweeping report after each cycle of sweeping has been completed. Each report shall contain the following:
    a. Number of curb miles swept
    b. Cubic Yards of debris disposed of
    c. Gallons of water used

14. All sweeping equipment, as well as disposal trucks and skid loaders shall be equipped with adequate warning devices and lights for safe operation and must meet all vehicle operating requirements of the State of Texas Department of Motor Vehicles, OSHA regulations and all other applicable codes required in the State of Texas.
15. All equipment shall be adequately maintained both mechanically and visually and will be fully operational during all sweeping operations.
16. All units shall be clearly and prominently marked with Contractor's name and unit number.
17. All equipment must be properly registered and insured according to the Motor Vehicle laws of the State of Texas.

PERFORMANCE

18. Worn brushes and brooms shall be replaced and adjusted to insure maximum efficiency.
19. Sweeping shall normally consist of a single pass over an area. However, Contractor shall make as many additional passes or such extra effort as may be required to adequately clean the street. Obstructions such as accumulations of silt, compacted dirt, leaves and similar debris will be removed unless removal of such obstruction cannot be accomplished without damage to equipment, inflicting personal injury, or clearly is beyond the capabilities of specified equipment. Obstructions such as small tree limbs and rocks will be removed from the sweeping path and hauled away by the Contractor rather than by-passing the area. Larger obstructions such as impaired vertical and/or horizontal clearance by tree limbs, parked vehicles, large fallen tree limbs, construction equipment, or materials, and/or other similar items may be by-passed.
20. Inspections shall be performed on a regular basis.
    a. Inspector shall decide adequacy of sweeping.
    b. In the event a sweep is considered to be unsatisfactory, Contractor shall re-sweep the unsatisfactory area at Contractor's expense within three (3) days after receiving notification.
    c. City reserves the right to withhold payment for missed, incomplete or unsatisfactory sweeping performance.

PROJECT SCHEDULE

1. Contractor agrees that one round of sweeping of all areas on the attached map shall be completed in no later than two (2) weeks. Contractor further agrees that sweeping shall commence within three (3) weeks of the City's request for sweeping operations to commence.
2. It shall be the responsibility of the contractor to provide a project schedule to the Project Manager prior to the onset of operations. The schedule should outline the anticipated start and end dates for each round of sweeping operations.

ADDITIONAL NOTES

1. All temporary erosion and sedimentation (e&s) control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. Erosion controls protection shall also be placed at storm drain inlets in the work zone. If inspection indicates a control has been used inappropriately, or incorrectly, the Contractor must replace or modify the control for site

situations. The controls must remain in place until disturbed areas are revegetated and the areas have become permanently stabilized.

2. Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (E.G., screening outfalls, picked up daily).

PAY ITEM NOTES

1. Shall include all necessary equipment, supervision, labor, materials, tools, water, temporary disposal sites, debris disposal, and all incidentals necessary to clean/sweep all agreed upon arterials and other streets on the attached map. Sweeping shall be done three (3) times a year at the times specified by the City of Midland. Unit of payment shall be by the curb mile (CM) swept and/or cleaned by the Contractor. **NOTE:** Curb Mile (CM) totals in the Bid Tab are the total CMs for one year of sweeping (3 cycles combined).

FY 2022 Midland Sweeping Project

Arterial	From	To	Centerline Feet	Curb Feet*	Invert	TOTAL Curb Feet
A Street**	Mockingbird Ln.	Loop 250	5,282	12,534	0	12,534
A Street	Veterans Airpark Ln.	Indiana Ave.	14,895	29,790	3,584	33,374
Big Spring St./Rankin Hwy.**	Occidental	CR 114	42,950	103,944	0	103,944
Briarwood Ave.	Coyote	Midland Dr.	12,483	35,744	0	35,744
Cloverdale	Lamesa	Fairgrounds Rd.	5,375	10,750	0	10,750
Fairgrounds Rd.**	Loop 250	Front St. (BI20)	15,698	36,138	0	36,138
Fairgrounds Rd.**	600 Ft north of Garden City Hwy (TX 158)	I 20	2,192	5,584	0	5,584
Florida Ave./Garden City Hwy.	Garfield St.	CR 1150	29,215	61,090	0	61,090
Front St. (BI120)	Wall St.	Fairgrounds Rd.	21,700	45,880	0	45,880
Garfield St.	Bluebird	Wadley Ave.	7,890	15,780	0	15,780
Golf Course Rd.	Andrews Hwy.	Scharbauer Dr.	9,665	19,330	6,721	26,051
Green Tree Blvd.	Sandstone Dr.	Midland Dr.	6,648	26,592	0	26,592
Holiday Hill Rd.	Green Tree Blvd.	Loop 250	14,950	29,900	0	29,900
Illinois Ave.	Thomason Dr.	Front St. (BI20)	22,089	44,178	0	44,178
Kittyhawk Rd.	west of Loop 40	Loop 40	188	376	0	376
La Force Blvd.	Sloan Field Blvd.	Hwy 80 (BI20)	8,613	18,870	0	18,870
Lamesa Rd.	Solomon Ln.	Loop 250	2,665	5,330	0	5,330
Lamesa Rd.**	Loop 250	City Limit south of I 20	27,321	63,317	0	63,317
Marienfeld St.	Scharbauer Dr.	Storey	4,396	8,792	0	8,792
Marienfeld St.	Big Spring St.	Collins Ave.	8,104	16,208	0	16,208
Midkiff Rd.**	Passage Way	CR 113 (City Limit south of I 20)	37,089	80,126	0	80,126
Midland Dr.**	Island Dr.	Wall St.	34,988	77,684	0	77,684
Mockingbird Ln.	Midland Dr.	Midkiff Rd.	5,300	10,600	0	10,600
Mockingbird Ln.	Big Spring St. (TX 349)	Fairgrounds Rd.	5,530	11,060	0	11,060
Occidental Pkwy.	Big Spring St. (TX 349)	Carriage (end of the rd)	8,840	17,680	0	17,680
Scharbauer Dr.	Golf Course Rd.	Golf Course Rd.	17,031	68,124	0	68,124
Sloan Field Blvd.	Wright Dr.	La Force Blvd.	1,645	3,290	0	3,290
Soloman Ln.	Big Spring (TX 349)	east of Trenwood Dr.	2,996	5,992	0	5,992
Texas Ave.	Andrews Hwy.	Front St. (BI20)	9,450	19,620	0	19,620
Thomason	Tradewinds	Illinois Ave.	2,050	4,100	0	4,100
Wadley Ave.	west of Callaway Dr.	Fairgrounds Rd.	35,583	71,166	13,300	84,466
Wall St	Bankhead Hwy.	Front St. (BI20)	19,734	44,870	0	44,870
TOTAL LINEAR FEET			**442,555**			**1,028,044**
TOTAL MILES			**84**			**195**
Downtown	**FROM**	**TO**	**Centerline Feet**	**Curb Feet***	**Invert**	**TOTAL Curb Feet**
Baird St.	Kansas Ave.	Illinois Ave.	1,873	3,746	0	3,746
Baird St.	Texas Ave.	Wall St.	368	736	0	736
Carrizo St.	Louisiana Ave.	Missouri Ave.	2,632	5,264	0	5,264
Colorado St.	Kansas Ave.	Missouri Ave.	3,030	6,060	0	6,060
Cuthbert Ave.	A Street	Main St.	3,408	6,816	0	6,816
Holmsley	A Street	Marienfeld St.	1,643	3,286	0	3,286
Indiana	A Street	Marienfeld St.	757	1,514	0	1,514
Kansas Ave.	Pecos St.	Marienfeld St.	370	740	0	740
Kansas Ave.	Marienfeld St.	Big Spring St.	348	696	0	696
Kansas Ave.	Big Spring St.	Baird St.	1,505	3,010	1,505	4,515
Kentucky	B Street	Marienfeld St.	873	1,746	0	1,746
Loraine St.	Kansas Ave.	Texas Ave.	2,262	4,524	0	4,524
Laraine St.	Wall St.	Front St. (BI20)	741	1,482	0	1,482
Louisiana Ave.	A Street	Baird St.	3,351	6,702	0	6,702
Main St.	Cuthbert Ave.	Front St. (BI20)	4,716	9,432	0	9,432
Michigan Ave.	A Street	Baird St.	3,276	6,552	0	6,552
Missouri Ave.	A Street	Main St.	2,344	4,688	0	4,688
Ohio Ave.	A Street	Main St.	2,696	5,392	2,696	8,088
Pecos St.	Holmsley	Ohio Ave.	1,678	3,356	0	3,356
Pecos St.	Texas Ave.	Front St. (BI20)	2,000	4,000	0	4,000
San Angelo St.	Louisiana Ave.	Michigan Ave.	332	664	0	664
Tennessee Ave.	A Street	east of San Angelo	330	660	0	660
Tennessee Ave.	Carrizo	Baird St.	2,675	5,350	0	5,350
Washington	B Street	Front St. (BI20)	513	1,026	0	1,026
TOTAL LINEAR FEET			**43,721**			**91,643**
TOTAL MILES			**8**			**17**

*Curb Feet=Center Line*2 (or *4 if median)

**Extra curb feet added for sweeping underpass(es)

FY 2022 Arterial and Downtown Sweeping Project

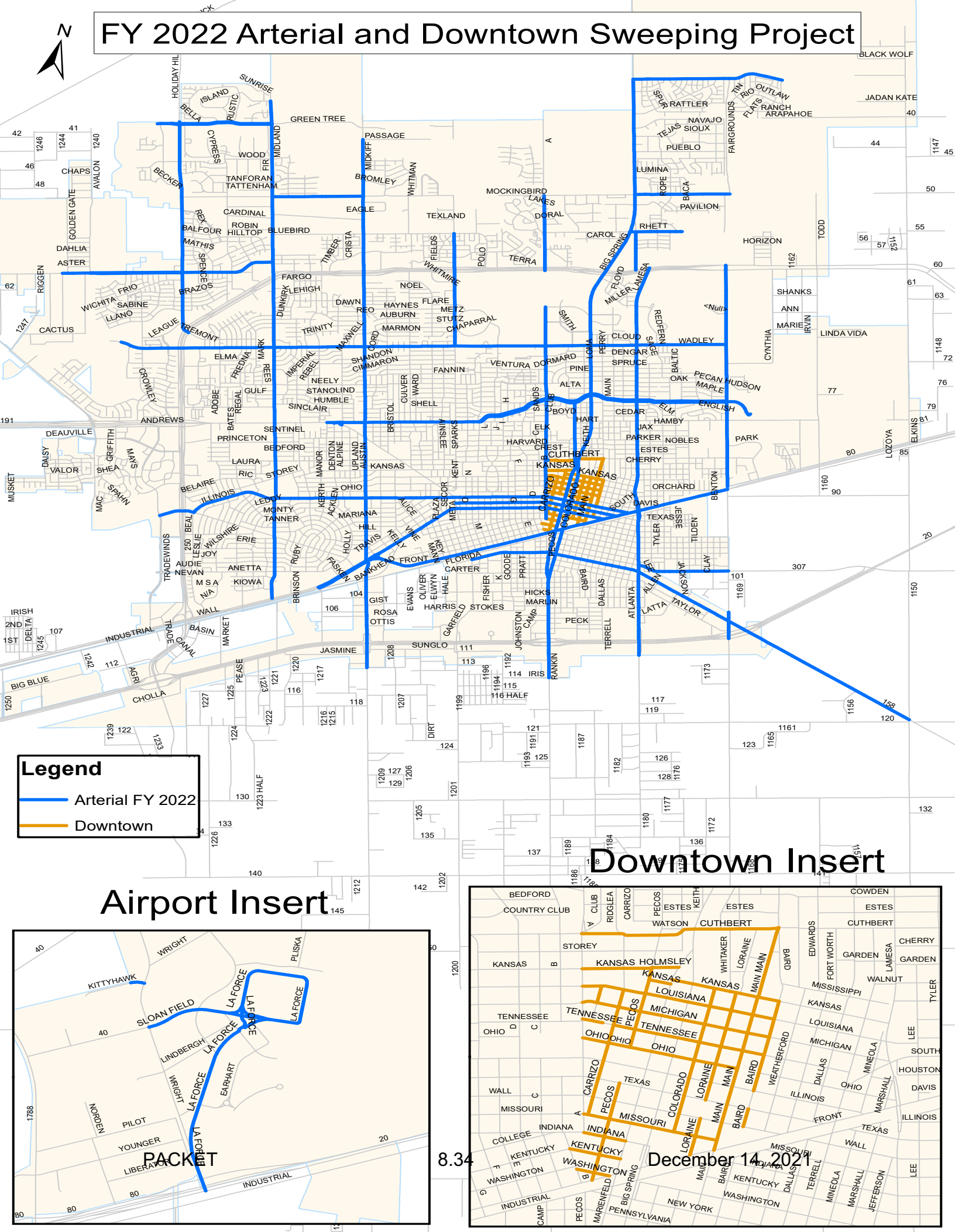


EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER	$ 11.22	0.00
TILE SETTER	$ 14.74	0.00
TRUCK DRIVER: Dump Truck	$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck	$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck	$ 12.50	0.00
TRUCK DRIVER: Water Truck	$ 12.00	4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

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: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* 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.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY
Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____
Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____
Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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.

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.

Consideration of Location of Bidder's Principal Place of Business
For Bids of $50,000 up to $100,000 for Services and $500,000 for Commodities
Affidavit of Eligibility

Pursuant to Texas Local Government Code 271.9051, in purchasing real property, personal property that is not affixed to real property, or services, if the City receives one or more bids from a bidder whose principal place of business is in the City of Midland and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a resident of the City of Midland, the City may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the City of Midland if the City Council determines, in writing, that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City of Midland created by the contract award, including the employment of residents of the City of Midland and increased tax revenues to the City of Midland.

In order to receive consideration, bidders must submit this affidavit to:

Erika Martinez
Purchasing Manager
City of Midland
300 N. Loraine St.,
PO BOX 1152
Midland, TX 79702-1152

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

Local Address (must be within the City limits): _____

1. Is the above address the principal place of business for the business named above? ☐ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? _____
3. Year your business was established in the City of Midland: _____
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: _____

   Company Name and Address (as it appears on permit):

   _____

   _____

   _____

5. Does your business have more than one office in the State of Texas? ☐ Yes ☐ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

   _____

   _____

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☐ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☐ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted through the City of Midland's Vendor Self Service on forms and in format provided.

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."
Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

32. ATTORNEY FEES - 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.

No-Bid
Response
For
Request #: 22000396

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Manager
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523. IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.

City Council Meeting

Item Number: 9

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE PURCHASE OF READY-MIX CONCRETE AND CALICHE FOR THE TRANSPORTATION DIVISION TO THE SOLE BIDDER, HUNTER READY MIX OF MIDLAND, TEXAS, AT A TOTAL COST OF $655,215.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution awarding an annual master agreement for Fiscal Year 2022 Ready-Mix Concrete and Caliche to Hunter Ready Mix LLC for the Transportation Division for the cost of $655,215.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds available in the FY22 General Fund Operating Budget.

Discussion:

The Transportation Division recommends awarding an annual master agreement to Hunter Ready Mix, LLC for fiscal year 2022 Readymix concrete and concrete-related products. These products are commonly used by the City of Midland's Transportation Division for a variety of right of way maintenance activities and at various locations citywide. Curb and gutter maintenance and repair, ADA ramp installation, concrete paving and storm drain maintenance also require readymix concrete and concrete-related products. This bid request was sent to ten (10) companies and we received one (1) bid. Please see the attached memo from Abe Langston, Transportation Manager, for additional information.

Therefore, please consider a resolution awarding an annual master agreement for Readymix

Concrete and Caliche to Hunter Ready Mix LLC of Midland, Texas for a cost of $655,215.00.

Tina Gaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: **Erika Munoz Martinez, Purchasing Manager**

FROM: **Abe Langston, Transportation Manager**

SUBJECT: **Ready-mix Concrete and Caliche Supporting Memo; Bid# 22000556**

DATE: **November 11, 2021**

CC: **Gabe McClelland**

Ready-mix concrete and concrete-related products are commonly used by The City of Midland's Transportation Division for a variety of right of way maintenance activities. The Transportation Division's concrete crew will use ready-mix concrete and concrete-related products at various locations citywide. Storm drain maintenance and repair and drainage maintenance and repair require ready-mix concrete and concrete-related products. Curb and gutter maintenance and repair, ADA ramp installation, and concrete paving also require the use of ready-mix concrete and concrete related products.

I have reviewed the Bid Tabulation for Ready-mix Concrete and Caliche. Hunter Ready Mix is the apparent low bidder, and the unit prices appear to be in line with current pricing trends. Therefore, I am recommending award of the Ready-mix and Caliche Contract to Hunter Ready Mix for the total proposal price of $655,215.00

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE PURCHASE OF READY-MIX CONCRETE AND CALICHE FOR THE TRANSPORTATION DIVISION TO THE SOLE BIDDER, HUNTER READY MIX OF MIDLAND, TEXAS, AT A TOTAL COST OF $655,215.00; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the specifications and authorized advertisement for bids for the purchase of ready-mix concrete and caliche (the "Goods"); and

WHEREAS, Bid No. 22000556 was opened on November 10, 2021, with the sole bidder and the lowest responsible bidder being Hunter Ready Mix of Midland, Texas ("Seller"), having submitted a bid of $655,215.00 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Seller for the purchase of the Goods;

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 Seller for the purchase of the Goods at a total cost of $655,215.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Seller pursuant to the terms of said contract in an amount not to exceed $655,215.00 from funds available in the Fiscal Year 2022 General Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit "A"

City of Midland - Bid Tabulation

BID # 22000556 FY 2022 Ready-Mix and Caliche OPENED November 10, 2021			Hunter Ready Mix 3118 N County Rd 1108 Midland, TX 79706 Bobby Robertson bobby@hunteragginc.com	
ITEM	QTY	DESCRIPTION	Unit Cost	Total Cost
1	30 CY	2000 PSI Ready-Mix (4 Sack)	$118.00	$3,540.00
2	30 CY	2500 PSI Ready-Mix (4.5 Sack)	$120.00	$3,600.00
3	60 CY	3000 PSI Ready-Mix (5 Sack)	$125.00	$7,500.00
4	4500 CY	3600 PSI Ready-Mix (5.5 Sack) with 3 lbs of synthetic macrofiber per cubic yard	$127.00	$571,500.00
5	200 CY	3600 PSI Ready-Mix (5.5 Sack) with 1 lb microfibers per cubic yard	$133.00	$26,600.00
6	200 CY	4000 PSI Ready-Mix (6 Sack)	$130.00	$26,000.00
7	30 CY	Concrete Sand	$60.00	$1,800.00
8	30 CY	Ty C; grade 3 aggregate (Pea Gravel)	$60.00	$1,800.00
9	30 CY	Integrally Colored Concrete 3600 PSI	$135.00	$4,050.00
10	10 CY	2% Accelerator (Calcium)	$18.00	$180.00
11	100 LF	Expansion Joints	$0.45	$45.00
12	10 Ea	Cost to Remix	$60.00	$600.00
12A	100 CY	Stabilized Base (2 Sack Caliche)	$80.00	$8,000.00
		Time notice for Delivery:	24 Hour	
		Additional Charge for order less than minimum load:	3.00	
		State Minimum load size:	nything under 3 yards will have $150 load fee	
		TOTAL PROPOSAL		$655,215.00

Bidding Summary:

10 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

9 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 22000556 FY 2022 Ready-Mix and Caliche OPENED November 10, 2021			Hunter Ready Mix 3118 N County Rd 1108 Midland, TX 79706 Bobby Robertson bobby@hunteragginc.com	
ITEM	QTY	DESCRIPTION	Unit Cost	Total Cost
1	30	2000 PSI Ready-Mix (4 Sack)	$118.00	$3,540.00
	CY			
2	30	2500 PSI Ready-Mix (4.5 Sack)	$120.00	$3,600.00
	CY			
3	60	3000 PSI Ready-Mix (5 Sack)	$125.00	$7,500.00
	CY			
4	4500	3600 PSI Ready-Mix (5.5 Sack) with 3 lbs of synthetic macrofiber per cubic yard	$127.00	$571,500.00
	CY			
5	200	3600 PSI Ready-Mix (5.5 Sack) with 1 lb microfibers per cubic yard	$133.00	$26,600.00
	CY			
6	200	4000 PSI Ready-Mix (6 Sack)	$130.00	$26,000.00
	CY			
7	30	Concrete Sand	$60.00	$1,800.00
	CY			
8	30	Ty C; grade 3 aggregate (Pea Gravel)	$60.00	$1,800.00
	CY			
9	30	Integrally Colored Concrete 3600 PSI	$135.00	$4,050.00
	CY			
10	10	2% Accelerator (Calcium)	$18.00	$180.00
	CY			
11	100	Expansion Joints	$0.45	$45.00
	LF			
12	10	Cost to Remix	$60.00	$600.00
	Ea			
12A	100	Stabilized Base (2 Sack Caliche)	$80.00	$8,000.00
	CY			
		Time notice for Delivery:	24 Hour	
		Additional Charge for order less than minimum load:	3.00	
		State Minimum load size:	nything under 3 yards will have $150 load fee	
		TOTAL PROPOSAL		$655,215.00

Bidding Summary:

10 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

9 **Bidders did not respond.**

Master Agreement
 # 22000556
For Ready-mix Concrete and Caliche

This Master Agreement (the "*Agreement*"), is entered into this 15th day of December 2021, by and between the City of Midland, Texas, a home-rule municipal corporation ("*City*"), and Hunter Ready Mix ("*Company*").

1. Company agrees to sell the Ready-mix concrete and caliche listed in the attached **Exhibit A**, as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Cost: $655,215.00

The above stated prices shall remain in effect for the full term of this Agreement.

2. The Ready-mix concrete and caliche shall be delivered in such quantities and at such times as designated by City's Purchasing Manager. The total quantity of products that City is obliged to purchase shall be the total of the quantities ordered from time to time by the Purchasing Manager, and which are delivered and accepted.

3. Payment by City shall be made within thirty (30) days after receipt of invoices from Company, which shall be subject to verification as to quantities and quality delivered as herein provided.

4. The Ready-mix concrete and caliche shall be delivered to City's relevant departments and divisions as directed by the Purchasing Manager. Freight and delivery charges are included in the purchase prices stated above.

5. The term of this Agreement shall be for a period of 1 (one) year, commencing on December 15, 2021and terminating on December 15, 2022, unless sooner terminated as provided in this Agreement. City may, at its option, renew this Agreement for an additional period of one (1) year. City shall give Company notice of its intent to renew not less than thirty (30) days prior to the expiration of this Agreement.

If no funds or insufficient funds are appropriated and budgeted, or are otherwise unavailable in any fiscal period during the term of this Agreement, then this Agreement 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.

6. If Company fails (in any manner) to fully perform and carry out all terms, covenants and obligation of this Agreement, Company shall be in default. If City gives Company written notice of such default, and Company fails to cure such default within forty-five (45) days of its receipt of such notice, City, acting by and through the Purchasing Manager, may and cancel and terminate this Agreement, and, at the expense of Company, complete the agreement or cause the same to be completed. In the event of such termination, all monies due to Company under this Agreement shall be retained by City (but such retention shall not release Company from liability for its default); provided, however, Company shall be credited with the amount of

money so retained toward any amount by which the cost of completion of this Agreement, as above provided, exceeds the Total Cost in Section 1. Such termination shall not affect or terminate City's existing or future rights (in equity or at law) as against Company regarding Company's default. City's waiver of a breach by Company shall not operate as a waiver of any subsequent breach or any other term, covenant or condition hereof.

Notwithstanding any contrary provision contained in this Agreement, City may terminate this Agreement at-will, for any or no reason, by giving Company thirty (30) days' written notice. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of this Agreement without penalty to City. Company has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

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

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

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

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

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

EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

11. **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 *respondent superior* shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

12. Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company shall settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, Company's failure to comply with the requirements of this Section shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or

constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

13. **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.

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

15. **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.

16. **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.

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

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

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

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

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

20. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Agreement and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on City is hereby made void and of no

force or effect. City's sole and exclusive obligations under this Agreement are contained in the numbered provisions of this Agreement that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

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_____, 20 personally appeared, ._____, an officer of Hunter Ready Mix, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the day of_____, 20 __.

_____
Notary Public, State of Texas

CITY OF MIDLAND

PURCHASING DIVISION DATE: 10/15/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000556**

OPENING TIME: 2:00 PM **CLOSING DATE: 11/10/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Loraine, Ste 330, Midland, Texas UNTIL 2:00 P.M. 11/10/21 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various Locations, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			FY 2022 Ready-Mix and Caliche in accordance with the attached detail sheet, and master agreement		
				TOTAL	

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. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. 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.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **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.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

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: Hunter Ready Mix
ADDRESS 3118 N CR Rd 1108
CITY Midland ST TX ZIP 79706
PHONE NO. 432-664-4115 FAX NO. _____
EMAIL: bobby@hunteraggiinc.com

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE Mailed

AUTHORIZED SIGNATURE B. Robb

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Company Name: Hunter Ready Mix

City of Midland, Texas
Detail Sheet for 22000556
FY 2022 Ready-Mix and Caliche Master Agreement

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	TOTAL COST
1	30	cy	2000 PSI Ready-mix (4 Sack)	$ 118.00	$ 3540
2	30	cy	2500 PSI Ready-mix (4.5 Sack)	$ 120.00	$ 3600
3	60	cy	3000 PSI Ready-mix (5 Sack)	$ 125.00	$ 7500
4	4,500	cy	3600 PSI Ready-mix (5.5 Sack) with 3 lbs. of synthetic Macrofiber per cubic yard*	$ 127.00	$ 571,500
5	200	cy	3600 PSI Ready-mix (5.5 Sack) with 1 lb. microfiber per cubic yard**	133.00	$6,600
6	200	cy	4000 PSI Ready-mix (6 Sack)	$ 130.00	$ 26,001
7	30	cy	Concrete Sand	$ 60.00	$ 1800
8	30	cy	Ty C; grade 3 aggregate (Pea gravel)	$ 60.00	$ 1800
9	30	cy	Integrally colored concrete 3600 PSI***	$ 135.00	$ 4050
10	10	cy	2% Accelerator (Calcium)	$ 18.00	$ 180
11	100	Lf	Expansion Joints	$ .45	$ 45.00
12	10	ea	Cost to Remix	$ 60.00	

Texas Highway Department guidelines for ready-mix concrete shall be adhered to relative to all classes of concrete listed above.

☐ Exact quantity is undetermined, but these products have been ordered from time to time.

12	100	cy	Stabilized Base (2 Sack Caliche)	$ 80.00	$ 8000

TOTAL COST FOR ALL ITEMS $ 634,616

Bidder to indicate:

1. Time notice for Delivery: 24 hour

Company Name: Hunter Ready Mix

2. Additional charge for order less than minimum load: $3

3. State minimum load size: Anything under 3 yards will have $150.00 load fee

All items contained in this Detail Sheet are to be delivered as needed during the contract period. The stated quantities are estimated for a 1-year period.

*Macrofiber:
On projects where synthetic macrofibers are specified or noted: Synthetic Macrofiber: Polypropylene/polyethylene synthetic macrofiber complying with ASTM C 1116 Type 3, minimum 2-inch length, aspect ratio 50 to 90. Fiber manufacturer shall have ISO 9001 certification. Synthetic macrofiber shall be tested in concrete to meet the requirements of ICC-AC383. Basis of design, Tuf-Strand SF or Tuf-Strand MaxTen by the Euclid Chemical Company or approved equal.

**Microfiber:
On projects where synthetic microfibers are specified or noted: Concrete shall contain 100% virgin multifilament polypropylene fibers complying with ASTM C 1116/C 1116M at a dosage rate of 1 pound per cubic yard. Basis of design, PSI Fiberstrand 100 or 150 by the Euclid Chemical Company or approved equal. Fiber manufacturer shall have ISO 9001 certification.

***Integrally colored concrete:
On projects where integrally colored concrete is specified or noted on the drawings, concrete shall include integral color pigments that meet or exceed ASTM C979 requirements. Color will be noted on the drawings. Blues, greens and black pigments are not included due to their price premiums. Basis of design, Increte Color-Crete by the Euclid Chemical Company or approved equal.

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 OR FAX: (432) 685-0523
P.O. Box 1152 E-mail: purchasing@midlandtexas.gov
Midland, TX 79702

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

Award:

Company Name: Hunter Ready Mix

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. WAIVER OF ATTORNEY FEES: 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.

Hunter Ready Mix
Company Name

B. Roberts
Authorized Signature

Bobby Robertson
Print Above Name

11-8-21
Date

432-664-4155
Phone

Fax



On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

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

OR

Physical Address:

The Office of the Purchasing Manager
City of Midland
300 N. Loraine, Suite 220
Midland, TX 79701

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, all bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

USPS Mailing Address:		***Physical Address for mail carriers other than USPS:***
City of Midland, Texas Attn: City Secretary's Office P O Box 1152 Midland, TX 79702	OR	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. Social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be in person or shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

The deadline for submitting additional questions is 72 working hours before the bid opening date and time. Questions submitted before the deadline will be included in the Addendum. Questions submitted after the deadline will not receive any additional information and will instead only be directed to the information already provided.

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.**

Hunter Ready Mix

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 B Roberts

Signature of vendor doing business with the governmental entity

11-8-21

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.

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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.

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: Hunter Ready Mix

Local Address (must be within the City limits): 3118 N CR3 1108 Midland, TX 79706

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? 8
3. Year your business was established in the City of Midland: 2019
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 3-20695-2313-5

   Company Name and Address (as it appears on permit):

   Hunter Ready Mix
   3323 N Midland Dr STE 113 PMB 125
   Midland, TX 79707
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: B. Roberts Date: 11-8-21

Printed Name and Title: Bobby Roberson

Revised: 10/7/2011

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted through the City of Midland's Vendor Self Service on forms and in format provided.

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. GOVERNMENTAL IMMUNITY - By executing this agreement the Buyer is not waiving its right of governmental 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 GOVERNMENTAL 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 GOVERNMENTAL 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 OF MIDLAND

ADDENDUM

BID #22000556

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: October 19, 2021

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

Please see updated Specification Detail Sheet.

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

All other terms and conditions shall remain the same.

Hunter Ready Mix
Company Name

B. Roberts
Bidder Authorized Signature

11-8-21
Date

Bobby Roberts
Please Print Above Name

432-664-4455
Phone

City Council Meeting

Item Number: 10

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PICTOMETRY INTERNATIONAL CORP., OF ROCHESTER, NEW YORK, FOR AERIAL IMAGERY AND RELATED SERVICES FOR THE GEOGRAPHIC INFORMATION SYSTEMS DIVISION AT A TOTAL COST OF $208,020.00; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution for the purchase of a perpetual license from Pictometry International Corporation to secure updated aerial imagery of Midland, Texas for the Graphic Information System (GIS) Division.

Recommended City Council Action:

Approve

Fiscal Impact:

$208,020.00 is available in the FY22 General Fund Operating Budget.

Discussion:

Pictometry International Corporation holds patents on oblique display and analysis software. They are the sole source provider for this type imagery. This type procurement is exempted from the sealed bid requirements in the Local Government Code under Section 252.022 GENERAL EXEMPTIONS, Paragraph (7) “a procurement of items that are available from only one source including (A) items that are available from only one source because of patents, copyrights, secret processes or natural monopolies”. Please see the attached memo from Gabe McClelland, Senior Engineering Manager, for more information.

Therefore, please consider approval of a resolution authorizing an agreement with Pictometry International Corporation of Rochester, New York for a cost of $208,020.00 for six (6) projects during a six (6) year time period.

Tina Gaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Gabe McClelland, Senior Engineering Manager

SUBJECT: Consider a resolution approving an agreement between Eagleview™ (Pictometry International Corporation) and the City of Midland

DATE: November 3, 2021

CC: Jose Ortiz, Director of Engineering Services

Purpose

To secure updated aerial imagery from Eagleview™ (Pictometry International Coropration)

Executive Overview

The City of Midland first acquired Pictometry imagery in 2008 in cooperation with the Midland/Odessa MPO. Additional imagery was acquired in subsequent years as the City has experienced growth. All previous sets of imagery have been an invaluable resource for the City's day-to-day GIS operations, being utilized by Transportation, Planning, Code Compliance, Utilities, Fire and Police, in addition to other groups in need of the City's GIS data. Aerial imagery can also be used for floodplain management.

During the first quarter of calendar year 2022, the City has the opportunity to acquire high-resolution, updated imagery that would cover the City Limits, ETJ, and portions of Martin, Loving, and Winkler Counties, Tx. In addition, the City of Midland has the opportunity to update this imagery annually through calendar year 2027.

Discussion

Eagleview™ (Pictometry International Corporation), a sole source provider (see sole source letter), has submitted a proposal that includes 6 projects over 6 years. Based on the proposal, the annual cost per project is $34,670.00. The total cost to acquire aerial imagery over 6 years is $208,020.00.

The GIS Division and Engineering staff have reviewed the proposal, and based on the proposal, the annual cost will be significantly less than the previous 6-year agreement. In addition, the previous agreement included only 3 projects over a six-year period. The current proposal includes the capture of aerial imagery annually for 6 consecutive years (6 projects). Therefore, based on the information above,

GIS and Engineering staff recommend the approval of a resolution authorizing an agreement with Eaglview™ (Pictometry International) of Rochester, New York. The annual cost will be $34,670.00 for six years totaling $208,020.00. Funds are available in the GIS Divisions operating budget line 001075 53390.

Through the proposed agreement, the City of Midland will purchase a perpetual license from a sole-source vendor, allowing the City and its designated agents access to proprietary imagery without further charge; no maintenance fees will be associated with the use of this imagery at any time in the future.

All products acquired will integrate with current and planned future GIS systems.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PICTOMETRY INTERNATIONAL CORP., OF ROCHESTER, NEW YORK, FOR AERIAL IMAGERY AND RELATED SERVICES FOR THE GEOGRAPHIC INFORMATION SYSTEMS DIVISION AT A TOTAL COST OF $208,020.00; AND AUTHORIZING PAYMENT

WHEREAS, the City Council finds it to be in the public interest to execute an agreement for aerial imagery and related services with Pictometry International Corp., of Rochester, New York, as the sole provider of such items;

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, an agreement for aerial imagery and related services with Pictometry International Corp., of Rochester, New York, at a total cost of $208,020.00, said agreement being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Pictometry International Corp. an amount not to exceed $208,020.00 from funds available in the Fiscal Year 2022 General Fund 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., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Pictometry®

October 29, 2021

Daniel Armentrout
GIS Division Manager, City of Midland, Texas
300 N. Loraine Street
Midland, TX 79701

Dear Mr. Armentrout,

As technological leader in the field of high resolution geo-referenced aerial imagery, Pictometry International Corp. holds 94 U.S. patents issued and in force and 32 pending U.S. patent applications that relate to various aspects of capturing, processing, displaying, and using geo-referenced aerial imagery (information current as of September 18, 2020). The Pictometry patent portfolio protects, among other things, Pictometry's (and its EagleView affiliates') exclusive rights to use or provide the following capabilities:

- Determine from an oblique image distance along the surface of the earth following the terrain instead of a straight line that ignores changing terrain (US Patent 7,995,799);
- Use tessellated ground plane data with an oblique image to produce greater accuracy when converting from pixels to geo-locations and when making linear and area measurements (US Patent 7,787,659);
- Use Pictometry's proprietary file structure for oblique images (US Patents 7,787,659 and 8,068,643);
- Select a measurement mode (including distance, height, relative elevation) from a list of tools while viewing an oblique image and using the associated metadata and ground plane information for the oblique image to obtain the corresponding measurements directly from the imagery (US Patent 8,068,643);
- Use a geographic location, whether manually input or from an address lookup, to search a database of oblique images, each with metadata and ground plane data, in order to retrieve the image that contains that location and display it for analysis (US Patent 8,204,341);
- Calculate a desired measurement in a displayed oblique image by referencing positional data for the oblique image and a pre-calculated or created ground plane having elevation data conforming to the topography of an area within the oblique image (US Patents 8,204,341; 9,811,922; and 10,607,357);
- Calculate multiple elevations of a tessellated ground plane for an oblique image using positional data and data indicative of topography represented by the oblique image such that the elevations of the tessellated ground plane conform to the topography of the oblique image (US Patent 8,204,341);
- Measure distance, height, area and relative elevation dependent upon ground plane data that closely approximates the terrain within an oblique image (US Patents 8,223,666 and 8,634,594);
- Extract area measurements of vertical or pitched surfaces using an oblique image, its associated camera information and ground plane information (US Patent 8,223,666);
- Pan through an oblique library by detecting the border of the current image and automatically selecting the oblique image that best matches the current camera orientation and scale while extending farther in the direction the user is panning. (US Patents 8,593,518; 8,643,720; and 9,530,181);
- Transmit post-disaster imagery to the ground from an airplane in real-time through a high-speed directional communications link that is synced with a "non-line of sight communication system" such as a satellite telephone (US Patents 8,477,190; 9,723,269; and 9,743,046);
- Use a capture system that acquires the geo-location of a camera during image acquisition, and controls multiple cameras separately (US Patent 9,182,657);
- Measure between at least two selected points on a man-made structure, such as a building, using an intermediate selection of points or a summation of at least two line segments (US Patent 9,443,305);
- Securely process images of sensitive geographic regions (US Patents 9,881,163 and 10,311,328); and
- Ensure full coverage of acceptable images without costly reflights or delays (US Patents 8,385,672; 8,515,198; 9,262,818; 9,633,425; 9,959,609; 10,198,803; and 10,679,331).

Those patented technologies enable Pictometry to deliver combinations of product and service offerings, features, functions and quality not available through other vendors.

Frank Giuffrida - Senior Vice President – Image Capture R & D

AGREEMENT BETWEEN
PICTOMETRY INTERNATIONAL CORP. ("PICTOMETRY") AND
CITY OF MIDLAND, TX ("CUSTOMER")

1. This order form ("Order Form"), in combination with the contract components listed below:

   Section A: Product Descriptions, Prices and Payment Terms
   Section B: License Terms:
   - Delivered Content Terms and Conditions of Use
   - Online Services General Terms and Conditions
   - Software License Agreement

   Section C: Non-Standard Terms and Conditions
   Appendix 1: Photogrammetric Product Specifications
   Map(s)

   (all of which, collectively, constitute this "Agreement") set forth the entire understanding between Pictometry and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Any modifications to this Agreement must be made in writing and be signed by duly authorized officers of each party. Any purchase order or similar document issued by Customer in connection with this Agreement is issued solely for Customer's internal administrative purposes and the terms and conditions set forth on any such purchase order shall be of no force or effect as between the parties.

2. In the event of any conflict among any contract components comprising this Agreement, order of precedence for resolving such conflict shall be, from highest (i.e., supersedes all others) to lowest (i.e., subordinate to all others): Section C: Non-Standard Terms and Conditions; Appendix 1: Photogrammetric Product Specifications; Section A: Product Descriptions, Prices and Payment Terms; License Terms in order as listed above under the heading 'Section B: License Terms'; and Order Form.

3. All notices under this Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS
300 N. Loraine
Midland, TX 79707
Attn: Daniel Armentrout, GIS Division Manager
Phone: (432) 685-7570 Fax:

PICTOMETRY NOTICE ADDRESS
25 Methodist Hill Drive
Rochester, New York 14623
Attn: General Counsel
Phone: (585) 486-0093 Fax: (585) 486-0098

   Either party may change their respective notice address by giving written notice of such change to the other party at the other party's then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

4. This Agreement, including all licenses granted pursuant to it, shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not be assignable by either party except that (i) Pictometry shall have the right to assign its right to receive Fees under this Agreement, provided no such assignment shall affect Pictometry's obligations hereunder, and (ii) Pictometry shall have the right to assign all its rights under this Agreement to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement.

5. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. With respect to any claims that Customer may have or assert against Pictometry on any matter relating to this Agreement, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry pursuant to this Agreement.

7. The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.

8. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.

9. Except with respect to Customer's payment obligations for services delivered, reports delivered or any ongoing subscription payment obligation, each party will be excused from performance under this Agreement, will not be deemed to be in breach hereof, and will have no liability to the other party whatsoever if either party is prevented from performing any of its obligations hereunder, in whole or in part, as a result of a Force Majeure Event. A "Force Majeure Event" means an event or occurrence beyond the control of the nonperforming party, such as an act of God or of the public enemy, embargo or other act of government in either its sovereign or contractual capacity, government regulation, travel ban or request, court order, civil disturbance, terrorism, war, quarantine restriction, epidemic, virus, fire, weather, flood, accident, strike, slowdown, delay in transportation, electrical power outage, interruption or degradation in electronic communications systems, inability to obtain necessary labor, materials or manufacturing facilities, and other similar events. In the event of any delay resulting from a Force Majeure Event, any date of delivery hereunder will be extended for a period equal to the time lost because of the delay.

10. In consideration of, and subject to, payment by Customer of the Fees specified in Section A of this Agreement, Pictometry agrees to provide Customer with access to and use of the products specified in Section A of this Agreement, subject to the terms and conditions set forth in this Agreement. Customer hereby agrees to pay the Fees specified in Section A of this Agreement in accordance with the stated payment terms and accepts and agrees to abide by the terms of this Agreement.

This Agreement shall become effective upon execution by duly authorized officers of Customer and Pictometry and receipt by Pictometry of such fully executed document, such date of receipt by Pictometry being the "Effective Date."

PARTIES:

CUSTOMER	**PICTOMETRY**
CITY OF MIDLAND, TX	**PICTOMETRY INTERNATIONAL CORP.**
	a Delaware corporation
SIGNATURE:	**SIGNATURE:**
NAME:	**NAME:**
TITLE:	**TITLE:**
DATE:	**EXECUTION DATE:**
	DATE OF RECEIPT (EFFECTIVE DATE):

SECTION A — PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp.
25 Methodist Hill Drive
Rochester, New York 14623

ORDER #
C16530268

BILL TO
City of Midland, TX
Daniel Armentrout, GIS Division Manager
300 N. Loraine Midland, TX 79707
(432) 685-7570
darmentrout@midlandtexas.gov

SHIP TO
City of Midland, TX
Daniel Armentrout, GIS Division Manager
300 N. Loraine Midland, TX 79707
(432) 685-7570
darmentrout@midlandtexas.gov

CUSTOMER ID	SALES REP	FREQUENCY OF PROJECT
A116315	KBeer	Annual

FIRST PROJECT

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT[1]
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 70.00		$ 14,070.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:*	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00

		Leaf Off: Less than 30% leaf cover			
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 250.00		$ 1,500.00
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 2,000.00	$ 500.00 (75%)	$ 500.00
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	$ 0.00		$ 0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access	$ 10,000.00	$ 0.00 (100%)	$ 0.00

		imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions			
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:* Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov	$ 2,200.00	$ 0.00 (100%)	$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
				SUBTOTAL	$34,670.00

SECOND PROJECT

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT[1]
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 70.00		$ 14,070.00
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00

15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 250.00		$ 1,500.00
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 2,000.00	$ 500.00 (75%)	$ 500.00
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media	$ 0.00		$ 0.00

		specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement			
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:* Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov	$ 2,200.00	$ 0.00 (100%)	$ 0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 10,000.00	$ 0.00 (100%)	$ 0.00
				SUBTOTAL	$34,670.00

THIRD PROJECT

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT[1]
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 70.00		$ 14,070.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 50.00		$ 6,600.00

		Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover			
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 250.00		$ 1,500.00
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 2,000.00	$ 500.00 (75%)	$ 500.00
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:*	$ 2,200.00	$ 0.00 (100%)	$ 0.00

		Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov			
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 10,000.00	$ 0.00 (100%)	$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	$ 0.00		$ 0.00
				SUBTOTAL	$34,670.00

FOURTH PROJECT					
QTY	**PRODUCT NAME**	**PRODUCT DESCRIPTION**	**LIST PRICE**	**DISCOUNT PRICE (%)**	**AMOUNT[1]**
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata.	$ 70.00		$ 14,070.00

		Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover			
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 250.00		$ 1,500.00
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 2,000.00	$ 500.00 (75%)	$ 500.00

1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	$ 0.00		$ 0.00
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 10,000.00	$ 0.00 (100%)	$ 0.00
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:* Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov	$ 2,200.00	$ 0.00 (100%)	$ 0.00

				SUBTOTAL	$34,670.00

FIFTH PROJECT					
QTY	**PRODUCT NAME**	**PRODUCT DESCRIPTION**	**LIST PRICE**	**DISCOUNT PRICE (%)**	**AMOUNT[1]**
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 70.00		$ 14,070.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	$ 250.00		$ 1,500.00
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service	$ 2,000.00	$ 500.00 (75%)	$ 500.00

		pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions			
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 10,000.00	$ 0.00 (100%)	$ 0.00
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:* Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov	$ 2,200.00	$ 0.00 (100%)	$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation.	$ 0.00		$ 0.00

		Applicable Terms and Conditions: Software License Agreement			
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
				SUBTOTAL	$34,670.00

SIXTH PROJECT					
QTY	**PRODUCT NAME**	**PRODUCT DESCRIPTION**	**LIST PRICE**	**DISCOUNT PRICE (%)**	**AMOUNT[1]**
201	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 70.00		$ 14,070.00
132	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to customers' orthomosaic imagery Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
132	Reveal Certified Ortho Property	Certified Ortho upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 50.00		$ 6,600.00
15	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 400.00	$ 360.00 (10% - Long Term Incentive Discount)	$ 5,400.00
6	Reveal 3D Textured Mesh	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is.	$ 250.00		$ 1,500.00

		Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use			
1	CONNECT ImageService CA	Connect Image Service - CA (Custom Access) provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows use by Customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the "Monthly Image Request Limit"). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with Customer, increase the price for Customer's Connect Image Service with Customer's consent or, in Pictometry's discretion, suspend further access by Customer to the Connect Image Service. This offering is provided solely for internal use within Customer's organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 2,000.00	$ 500.00 (75%)	$ 500.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	$ 10,000.00	$ 0.00 (100%)	$ 0.00
1	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions;Software License Agreement Product Parameters: *Admin User Name:* Daniel Armentrout *Admin User Email:* darmentrout@midlandtexas.gov	$ 2,200.00	$ 0.00 (100%)	$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	$ 0.00		$ 0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions	$ 0.00		$ 0.00

		of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement			
333	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
1	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: *Leaf:* Leaf Off: Less than 30% leaf cover	$ 0.00		$ 0.00
				SUBTOTAL	$34,670.00

Thank you for choosing Pictometry as your service provider.	**TOTAL**	$ 208,020.00

[1]Amount per product = ((1-Discount %) * Qty * List Price)

STANDARD ORTHO MOSAIC PRODUCTS

Pictometry standard ortho mosaic products are produced through automated mosaicking processes that incorporate digital elevation data with individual Pictometry ortho frames to create large-area mosaics on an extremely cost-effective basis. Because these products are produced through automated processes, rather than more expensive manual review and hand-touched corrective processes, there may be inherent artifacts in some of the resulting mosaics. While Pictometry works to minimize such artifacts, the Pictometry standard ortho mosaic products are provided on an 'AS IS' basis with respect to visible cutlines along mosaic seams resulting from the following types of artifacts:

i. Disconnects in non-elevated surfaces generally caused by inaccurate elevation data;
ii. Disconnects in elevated surfaces (e.g., roadways, bridges, etc.) generally caused by elevated surfaces not being represented in the elevation data;
iii. Building intersect and clipping generally caused by buildings not being represented in the elevation data;
iv. Seasonal variations caused by images taken at different times during a season, or during different seasons;
v. Ground illumination variations caused by images taken under different illumination (e.g., sunny, high overcast, morning light, afternoon light, etc.) within one flight day or during different flight days;
vi. Single GSD color variations caused by illumination differences or multiple-aircraft/camera captures;
vii. Mixed GSD color variations caused by adjacent areas being flown at different ground sample distances (GSDs); and
viii. Water body color variations caused by multiple individual frames being used to create a mosaic across a body of water (e.g., lakes, ponds, rivers, etc.).

Other Pictometry products may be available that are less prone to such artifacts than the Pictometry standard ortho mosaic products.

Geofences:

FIRST PROJECT

For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

SECOND PROJECT

For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

THIRD PROJECT

For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

FOURTH PROJECT

For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

FIFTH PROJECT
For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

SIXTH PROJECT
For the Pictometry Connect - CA - 50, CONNECT ImageService CA product(s) in this project, the following geofences apply:
TX Midland (Primary)

FEES; PAYMENT TERMS

All amounts due to Pictometry pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to Pictometry without reducing any amount owed to Pictometry unless documents satisfactory to Pictometry evidencing exemption from such taxes is provided to Pictometry prior to billing. To the extent any amounts properly invoiced pursuant to this Agreement are not paid within thirty (30) days following the invoice due date, such unpaid amounts shall accrue, and Customer shall pay, interest at the rate of 1.5% per month (or at the maximum rate allowed by law, if less). In addition, Customer shall pay Pictometry all costs Pictometry incurs in collecting past due amounts due under this Agreement including, but not limited to, attorneys' fees and court costs.

FIRST PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

SECOND PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

THIRD PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

FOURTH PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

FIFTH PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

SIXTH PROJECT

Due at Initial Shipment of Imagery	$34,670.00
Total Payments	**$34,670.00**

RapidAccess—Disaster Response Program ("DRP")
Customer is eligible for DRP described below from the Effective Date through the second anniversary of the initial Project delivery. Following payment to Pictometry of amounts due with respect to each subsequent Project, Customer will be eligible for the then-current DRP for a period of two years from delivery of such subsequent Project. Customer must be in good-standing with Pictometry to maintain eligibility for DRP.

A. Disaster Coverage Imagery at No Additional Charge – Pictometry will, upon request of Customer and at no additional charge, provide standard quality imagery of up to 200 square miles of affected areas (as determined by Pictometry) upon the occurrence of any of the following events during any period Customer is eligible for DRP:

- **Hurricane:** areas affected by hurricanes of Category 2 and higher.
- **Tornado:** areas affected by tornados rated EF4 and higher.
- **Terrorist:** areas affected by damage from terrorist attack.
- **Earthquake:** areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.
- **Tsunami:** areas affected by damage to critical infrastructure resulting from tsunamis.

B. Discounted Rate – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates.

C. Online Services – Use of Pictometry Connect Explorer™ – Pictometry's DRP includes the use of Connect Explorer for a term of ninety days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.

PICTOMETRY DELIVERED CONTENT TERMS AND CONDITIONS OF USE

These Pictometry Delivered Content Terms and Conditions of Use (the "Delivered Content Terms and Conditions"), in combination with the corresponding Agreement into which these terms are incorporated, collectively set forth the terms and conditions that govern use of Delivered Content (as hereinafter defined) for use within computing environments operated by parties other than Pictometry. As used in the Delivered Content Terms and Conditions the terms "you" and "your" in uppercase or lowercase shall mean the Customer that entered into the Agreement into which the Delivered Content Terms and Conditions are incorporated.

1. DEFINITIONS

1.1 "Authorized Subdivision" means, if you are a county or a non-state consortium of counties, any political unit or subdivision located totally or substantially within your boundaries that you authorize to have access to Delivered Content pursuant to the Delivered Content Terms and Conditions.

1.2 "Authorized System" means a workstation or server that meets each of the following criteria (i) it is owned or leased by you or an Authorized Subdivision, (ii) it is located within and only accessible from facilities that are owned or leased by you or an Authorized Subdivision, and (iii) it is under the control of and may only be used by you or Authorized Subdivisions.

1.3 "Authorized User" means any employee of you or Authorized Subdivisions that is authorized by you to have access to the Delivered Content through an Authorized System.

1.4 "Delivered Content" means the images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments included in, provided with, or derived from the information delivered to you by or on behalf of Pictometry pursuant to the Agreement.

1.5 "Project Participant" means any employee or contractor of persons or entities performing services for compensation for you or an Authorized Subdivision that has been identified by written notice to Pictometry prior to being granted access to Delivered Content and, unless Pictometry expressly waives such requirement for any individual, has entered into a written agreement with Pictometry authorizing such access.

2. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

2.1 Subject to the terms and conditions of the Agreement, you are granted nonexclusive, nontransferable, limited rights to:
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(b) permit access and use of the Delivered Content through Authorized Systems by:
(i) Authorized Users for performance of public responsibilities of you or Authorized Subdivisions that are to be performed entirely within facilities of you or Authorized Subdivisions;
(ii) Project Participants under the supervision of Authorized Users for performance of tasks or preparation of materials using only hard copies (or jpg copies) of Delivered Content solely for fulfilling public responsibilities of you or Authorized Subdivisions to be performed entirely within facilities of you or Authorized Subdivisions; and
(iii) individual members of the public, but only through Authorized Users and solely for the purpose of making hard copies or jpg copies of images of individual properties or structures (but not bulk orders of multiple properties or structures) to the individual members of the public requesting them.

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3.1 **Geographic Data.** If available, you agree to provide to Pictometry geographic data in industry standard format (e.g., shape, DBF) including, but not limited to, digital elevation models, street centerline maps, tax parcel maps and centroids, which data, to the extent practicable, shall be incorporated into the Delivered Content. You agree that any of this data that is owned by you may be distributed and modified by Pictometry as part of its products and services, provided that at no time shall Pictometry claim ownership of that data.

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6. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES

6.1 Limited Warranties; Exclusive Remedy. Pictometry warrants that the Delivered Content will contain true and usable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended.

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[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

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   B. **Foreign Trade Restrictions.** The parties acknowledge that certain information, software technology, accompanying documentation and technical information may be subject to United States export control laws. You will not directly or indirectly export or re-export the Pictometry Software in violation of the Export Administration Regulations of the U.S. Department of Commerce.

   C. **Governing Law.** This License will be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of laws principles.

   D. **Assignment.** You may not assign this License without Pictometry's prior written consent. Any assignment in violation of this License will be null, void and of no force and effect. For all purposes under this License, any merger, consolidation, spin-off, acquisition or change-in-control will be deemed an assignment.

   E. **Partial Invalidity; Survival.** If any provision of this License is held invalid or unenforceable by competent authority, that provision will be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it will then appear. The total invalidity or unenforceability of any particular provision of this License will not affect its other provisions and this License will be construed in all respects as if the invalid or unenforceable provision were omitted. The provisions of this License that by their nature would survive its termination will survive indefinitely.

F. **Force Majeure.** Except with respect to Customer's payment obligations for services delivered, reports delivered or any ongoing subscription payment obligation, each party will be excused from performance under this Agreement, will not be deemed to be in breach hereof, and will have no liability to the other party whatsoever if either party is prevented from performing any of its obligations hereunder, in whole or in part, as a result of a Force Majeure Event. A "Force Majeure Event" means an event or occurrence beyond the control of the nonperforming party, such as an act of God or of the public enemy, embargo or other act of government in either its sovereign or contractual capacity, government regulation, travel ban or request, court order, civil disturbance, terrorism, war, quarantine restriction, epidemic, virus, fire, weather, flood, accident, strike, slowdown, delay in transportation, electrical power outage, interruption or degradation in electronic communications systems, inability to obtain necessary labor, materials or manufacturing facilities, and other similar events. In the event of any delay resulting from a Force Majeure Event, any date of delivery hereunder will be extended for a period equal to the time lost because of the delay.

G. **Waiver.** No waiver of a breach of any term of this License will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this License. No failure on the part of a party to exercise, and no delay in exercising any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this License or the rights or obligations of any party hereunder.

H. **Entire Agreement; Construction.** This License contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings regarding that subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Pictometry. There are no representations, warranties, or obligations of any party not expressly contained herein. The headings in this License are for convenience only. They do not constitute a portion of this License and will not be used in any construction of it.

[END OF SOFTWARE LICENSE AGREEMENT]

SECTION C NON-STANDARD TERMS AND CONDITIONS

1. Online Services Eligible Users: Notwithstanding anything in the Online Services General Terms and Conditions incorporated in this Agreement to the contrary, the terms 'Eligible User' and 'Eligible Users' as defined in those Online Services General Terms and Conditions shall, for the purposes of this Agreement, also include each 'Authorized User' as that term is defined in the Delivered Content Terms and Conditions of Use incorporated in this Agreement.

2. Applicable Law: Notwithstanding anything to the contrary set forth elsewhere in this Agreement, this Agreement and any modifications, amendments or alterations shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Texas, excluding its conflicts of law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of Texas in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.

3. Non-appropriation of Funds. Notwithstanding anything herein to the contrary, in the event that the funds due for subsequent projects and related deliverables under the terms and conditions of this Agreement are not lawfully appropriated, the following provisions shall apply:

a. Customer shall provide Pictometry with written documentation of non-appropriation of funds from its funding source prior to commencement of a subsequent project;

b. This Agreement shall remain in full force and effect, however commencement of the subsequent project shall be deemed postponed until such time as funds for the subsequent project have been appropriated and all other sums due under the terms and conditions of this Agreement have been paid by Customer. In the event that the postponement exceeds eighteen months, Pictometry reserves the right to terminate any and all obligations with respect to the postponed project and all subsequent projects included in this Agreement; and

c. If Customer, or any party authorized under the terms and conditions of this Agreement to use the licensed products set forth in Section A, is in possession of licensed products for which Pictometry has not been fully compensated in accordance with the payment terms of this Agreement, Customer or such authorized party shall immediately cease use of those licensed products, purge those licensed products from all Customer and authorized party computers, and return those licensed products to Pictometry.

4. Delivery of the the Existing Imagery set forth in this Agreement is contingent on Pictometry completing associated imagery captures for Midland Central Appraisal District. If Pictometry does not complete the captures for Midland Central Appraisal District, it is under no obligation to deliver the Existing Imagery set forth in this Agreement.

[END OF NON-STANDARD TERMS AND CONDITIONS]

Essentials+ Property deliverables

Product	Essentials+ Property
Ortho Frame Imagery	• Nominal 2in GSD ortho imagery, Imagery as good as 1.2in and no worse than 3in
Orthomosaic Specifications	• Typical Positional Horizontal Accuracy: 1m at a 95% confidence level • Fully automated photogrammetric orthomosaic. Imagery may contain seamlines • Project-wide color and contrast balancing
Oblique Imagery	Nominal 2.6in GSD oblique imagery ranging from 1.7in to 3.5in GSD: • Where available fully automated photogrammetric mosaiced imagery. Imagery may contain seamlines
Metadata and Reporting	Metadata: • Metadata generated that meets FGDC Standards upon request • Shapefile(s) with discrete deliverable boundaries and directional metadata
Orthomosaic Deliverable Format (Online)	Resolution: • Nominal 2in GSD, no worse than 3in (Best Available Provided) Access Methods: • Available via web-based viewer (Connect) - Contracted separately • Also available via WMS/WMTS (Image Service) - Contracted separately
Orthomosaic Deliverable Format (Physical)	Resolution: • Nominal 2in GSD, no worse than 3in (Best Available Provided) Projection/Coordinate System: • Customer Selectable Datum: • Customer Selectable File Format: • Mosaic Tiles o Available as JPEG, GeoTIFF, JPEG2000, PNG, ECW, MrSID (All versions) with world file o Includes separate Pictometry Map Image (PMI) trailer file • Project-Wide Mosaic o Available in ECW, MrSID (All versions) format
Oblique Imagery & Frame Imagery Deliverable Format	Access methods: • Available via web-based viewer (Connect) - Contracted separately
Delivery Timeline	• Best efforts to make frame imagery available online within 20 days of capture complete • Best efforts to make ortho and oblique imagery available online and/or ready for physical delivery within 30 days of capture completion

Essentials Add-on - Certified Ortho

Products Related to	Essentials Essentials+ Advanced
Product Description	*Certified Ortho* upgrades an Essentials orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements
Product Eligibility	• Reveal Certified Ortho can only be purchased in conjunction with a related product type • Reveal Certified Ortho is only applicable to Reveal orthomosaic imagery
Orthomosaic Accuracy	Absolute Horizontal Accuracy: • Produced to meet ASPRS Horizontal Accuracy Standards of ≤3 px RMSEx,y • Optional 2 px RMSEx,y (where available)
ASPRS Accuracy Standards	https://www.asprs.org/a/society/committees/standards/Positional_Accuracy_Standards.pdf
Metadata and Reporting	Reporting • FGDC Compliant metadata • Project report in accordance with state and local requirements
Optional Reporting*	• Signed & Sealed Produced to Accuracy Statement • Signed & Sealed Tested to Accuracy Statement ○ Requires Independent Accuracy Assessment to ASPRS Standards Product
Delivery Timeline	Best efforts to ensure orthomosaic and related reports will be made available online and/or ready for physical delivery within 60 – 90 days of data collected, depending on size

* Available upon request. May require purchase of additional products

Essentials+ Community deliverables

Product	Essentials+ Community
Orthomosaic Specifications	• Typical Positional Horizontal Accuracy: 1m at a 95% confidence level • Fully automated photogrammetric orthomosaic. Imagery may contain seamlines • Project-wide color and contrast balancing
Oblique Imagery	Nominal 9in GSD oblique imagery or better: • Where available fully automated photogrammetric mosaiced imagery. Imagery may contain seamlines
Metadata and Reporting	Metadata: • Metadata generated that meets FGDC Standards upon request • Shapefile(s) with discrete deliverable boundaries and directional metadata
Orthomosaic Deliverable Format (Online)	Resolution: • Nominal 9in GSD Access Methods: • Available via web-based viewer (Connect) - Contracted separately • Also available via WMS/WMTS (Image Service) - Contracted separately

Orthomosaic Deliverable Format (Physical)	Resolution:
	• Nominal 9in GSD
	Projection/Coordinate System:
	• Customer Selectable
	Datum:
	• Customer Selectable
	File Format:
	• Mosaic Tiles
	  ○ Available as JPEG, GeoTIFF, JPEG2000, PNG, ECW, MrSID (All versions) with world file
	  ○ Includes separate Pictometry Map Image (PMI) trailer file
	• Project-Wide Mosaic
	  ○ Available in ECW, MrSID (All versions) format

Oblique Imagery Deliverable Format	Access methods: • Available via web-based viewer (Connect) - Contracted separately
Delivery Timeline	• Best efforts to make ortho and oblique imagery available online and/or ready for physical delivery within 30 days of capture completion

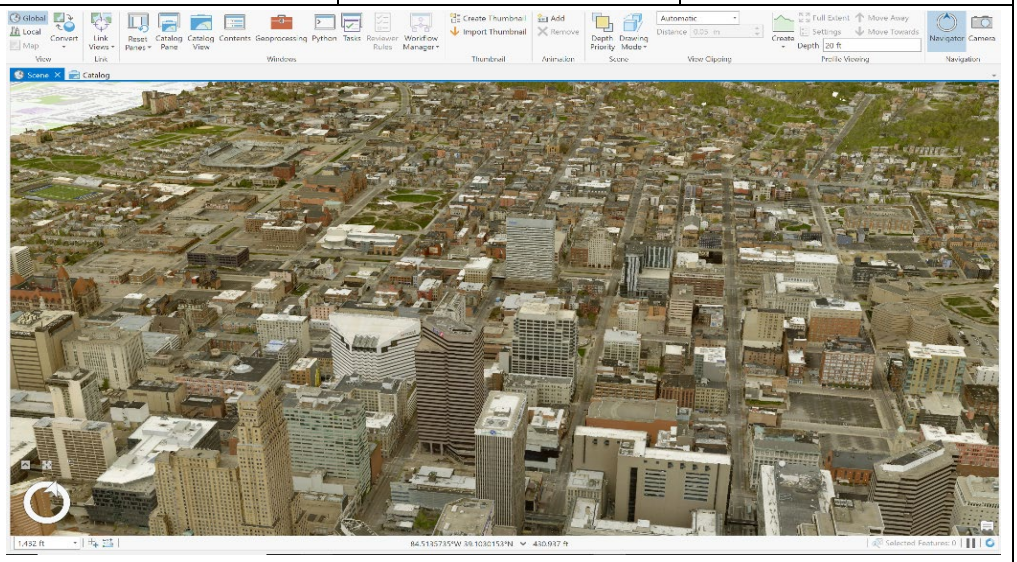
Essentials Add-on - TrueTouch

Products Related to	Essentials Essentials+ Advanced
Product Description	TrueTouch is the application of visual improvements to customers' orthomosaic imagery
Product Eligibility	Can only be purchased with appropriate Reveal product TrueTouch is only applicable to customer RGB and CIR orthomosaic imagery

Content Specifications	<u>Seam Artifacts</u>
	• There will be no obvious seam edges between two adjacent orthophotos
	• Orthomosaic will have edits to eliminate feature misalignment caused by seamlines which pass through features above the elevation surface including roads. Feature alignment across seamlines will be 3px or better.
	  ○ Exceptions may include residential buildings and industrial complexes
	<u>Building and Bridge Lean</u>
	• Correction of bridges
	• Correction of major buildings obstructing roadways
	  ○ Exceptions may include residential buildings and industrial complexes

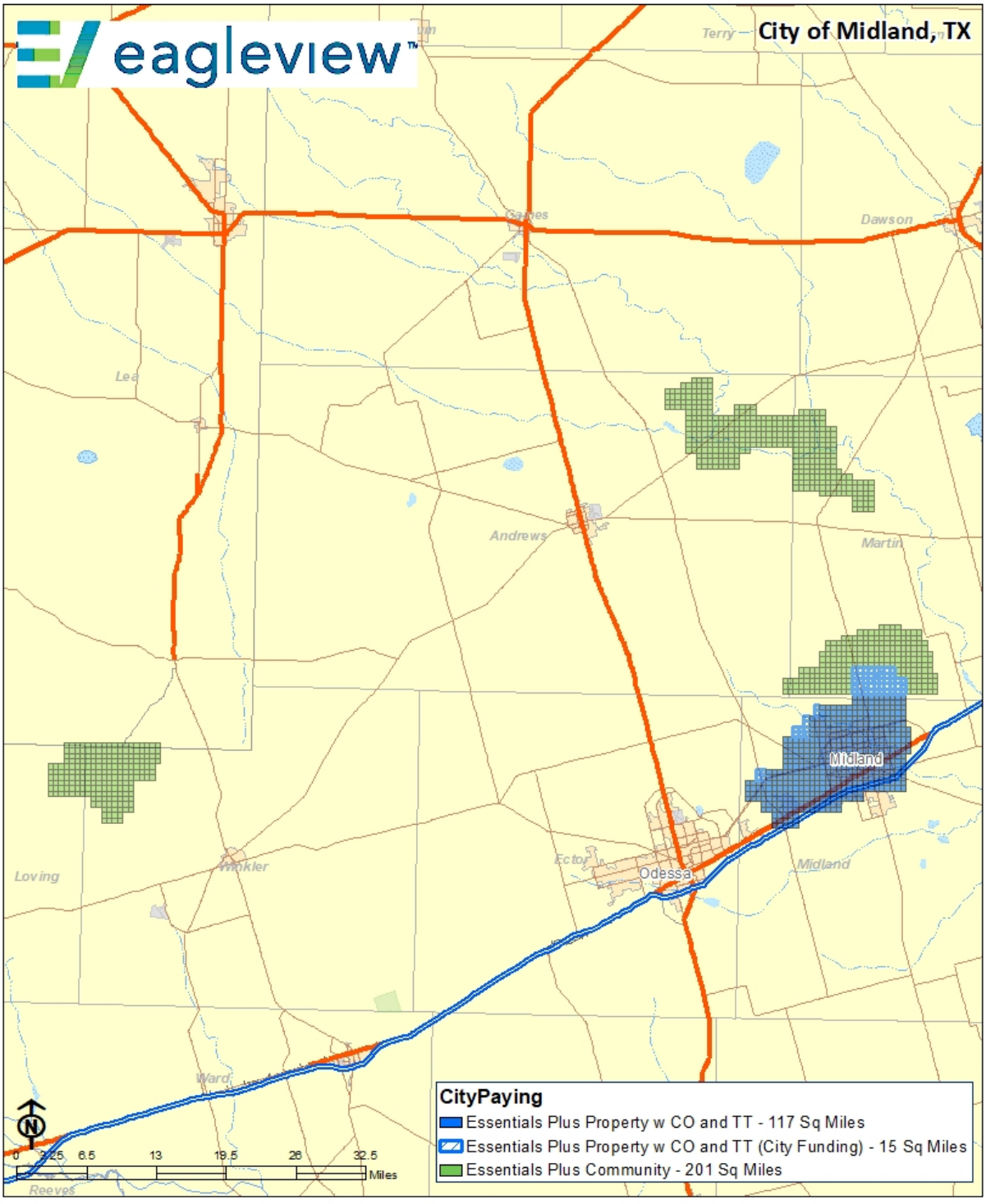
Delivery Timeline	• Imagery will be made available online and/or ready for physical delivery within 120 days of completion of capture

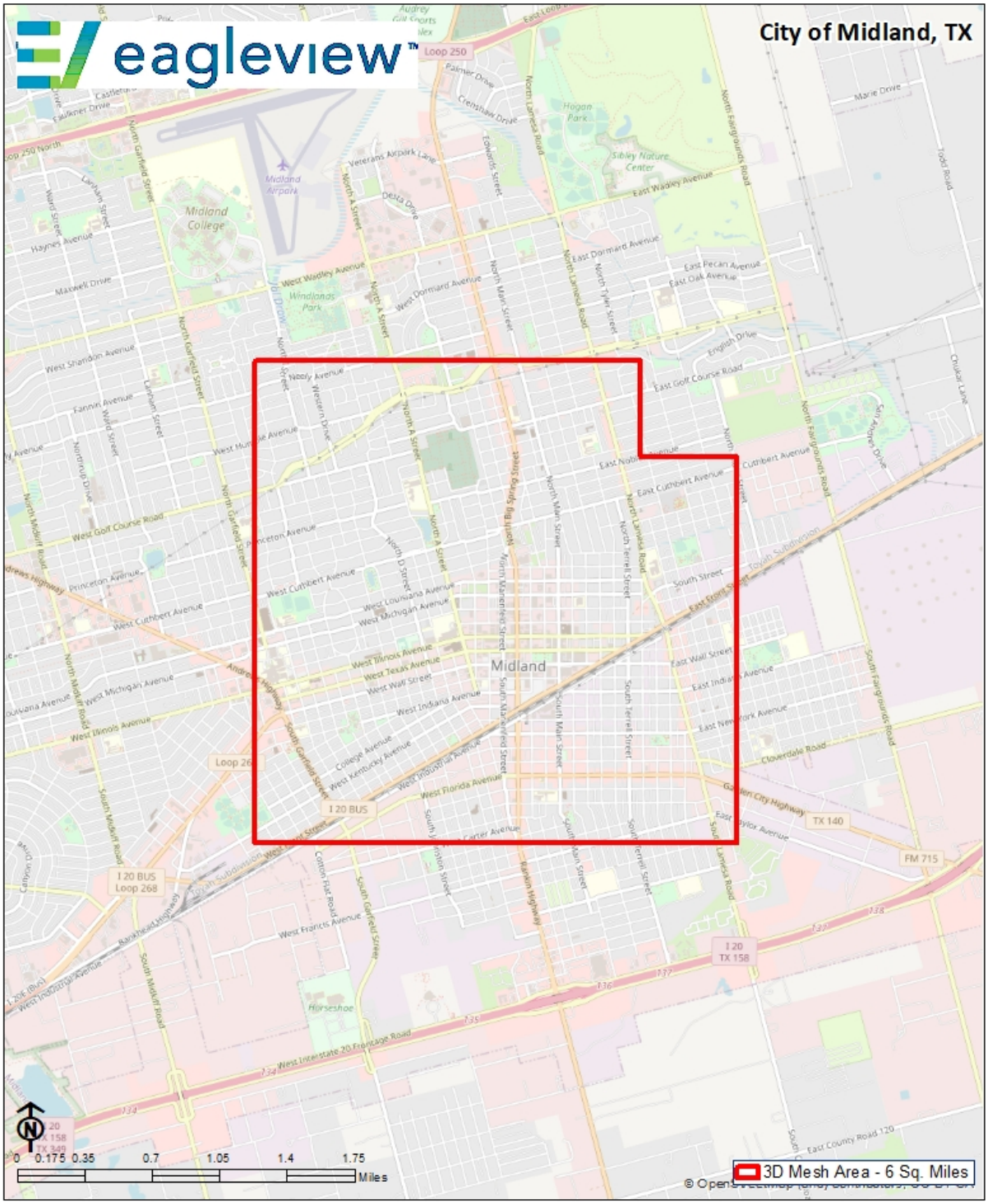
Reveal Add-on – 3D Textured Mesh

Related Products	Reveal Essentials+ Reveal Advanced		
Product Description	3D Textured Mesh is an Imagery-derived realistic and high-resolution photo-textured 3D model in the form of a Triangulated Irregular Network created through automated aerial triangulation process. Final data set may contain some anomalies and is provided as is.		
Product Eligibility	3D Textured Mesh is available for purchase on new Reveal collections and/or where Essentials+ or Advanced products are available.		
3D Textured Mesh - Deliverable File Formats [#1]	ESRI Format • SLPK	Skyline Format • 3DML	Cesium Format • 3D Tiles
Sample Image	 *3D Mesh accessed via ESRI ArcGIS Pro		
Delivery Timeline	Best efforts to ensure 3D Textured Mesh will be made available for physical delivery within 30 days from EagleView data approval. Delivery times may vary depending on size of project.		

[#1] Customers may select up to 2 deliverable formats. Default format deliverable will be *.SLPK for use within ArcGIS Pro

MAP(S)


eagleview
City of Midland, TX
Terry
Gaines
Dawson
Lea
Andrews
Martin
Midland
Loving
Winkler
Ector
Odessa
Midland
Ward
Reeves
N
0 3.25 6.5 13 19.5 26 32.5
Miles
CityPaying
Essentials Plus Property w CO and TT - 117 Sq Miles
Essentials Plus Property w CO and TT (City Funding) - 15 Sq Miles
Essentials Plus Community - 201 Sq Miles


eagleview
City of Midland, TX
Midland
3D Mesh Area - 6 Sq. Miles
0 0.175 0.35 0.7 1.05 1.4 1.75
Miles

Budget Proposal

Proposal for: City of Midland, TX
Project Name: City of Midland - Imagery LTI (additional 9")
Quote Number: Q-83258
Contract Term: 6 Year(s)
Number of Projects: 6

EagleView Rep: Kevin Beers
Phone Number:
Email: kevin.beers@eagleview.com
Expiration Date: 11/24/2021
Targeted Capture: 2022-a-Winter

Multi-Project Summary

6 Projects over 6 year(s)

Project 1 Total:	Project 2 Total:	Project 3 Total:	Project 4 Total:	Project 5 Total:	Project 6 Total:
$34,670.00	$34,670.00	$34,670.00	$34,670.00	$34,670.00	$34,670.00



This quote is non-binding, creates no legal rights, duties or obligations, expressed or implied, on either party, and shall become binding only in the event that Pictometry and Customer enter into a definitive agreement incorporating it. The pricing quoted above does not reflect applicable taxes, which will be reflected in any resulting definitive agreement with Customer. This quote is valid until the date shown above, after which it expires. All Discounts are approximate.

Budget Proposal

Proposal for: City of Midland, TX
Project Name: City of Midland - Imagery LTI (additional 9")
Contract Term: 6 Year(s)
Number of Projects: 6

EagleView Rep: Kevin Beers
Expiration Date: 11/24/2021
Targeted Capture: 2022-a-Winter

Project 1

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00
1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 1 TOTAL:	**$34,670.00**

Project 2

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00
1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 2 TOTAL:	**$34,670.00**

Project 3

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00

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1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 3 TOTAL:	**$34,670.00**

Project 4

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00
1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 4 TOTAL:	**$34,670.00**

Project 5

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00
1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 5 TOTAL:	**$34,670.00**

Project 6

Qty	Product	List Price	Discount (%)	Subtotal
1	Existing Imagery	$0.00		$0.00
15	Reveal Essentials+ Property	$400.00	10	$5,400.00
132	Reveal Certified Ortho Property	$50.00		$6,600.00
132	Reveal TrueTouch Property	$50.00		$6,600.00
201	Reveal Essentials+ Community	$70.00		$14,070.00
333	Reveal Orthomosaic - Combined	$0.00		$0.00
1	Oblique Imagery Bundle w/One (1) Year of EFS Maint & Support	$0.00		$0.00
1	RapidAccess - Disaster Response Program	$0.00		$0.00
1	Pictometry Connect - CA - 50	$2,200.00	100	$0.00
1	CONNECT ImageService CA	$2,000.00	75	$500.00
1	Pictometry Connect - EarlyAccess	$10,000.00	100	$0.00
6	Reveal 3D Textured Mesh	$250.00		$1,500.00
			Project 6 TOTAL:	**$34,670.00**

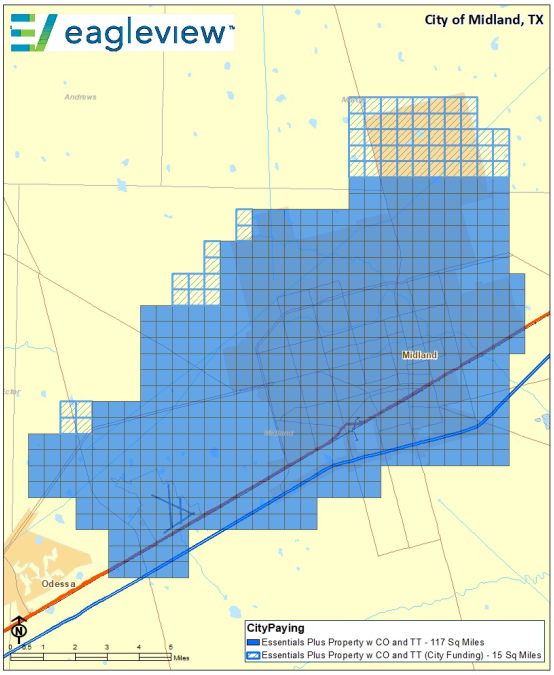
TOTAL: $208,020.00

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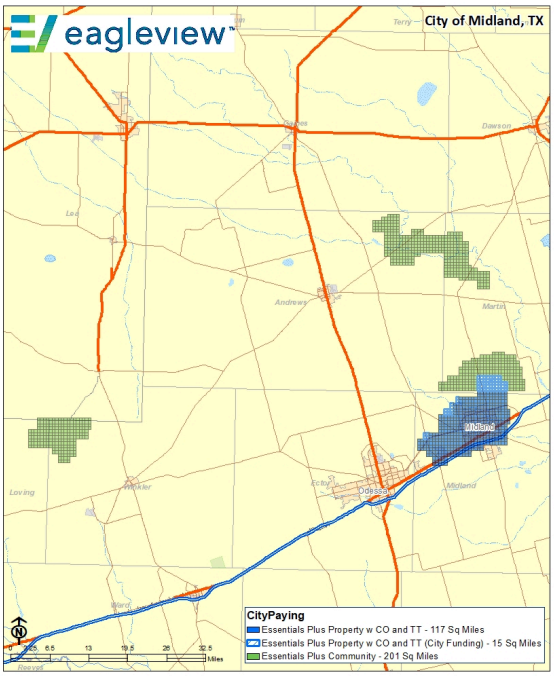
Coverage Map

Proposal for: City of Midland, TX
Project Name: City of Midland - Imagery LTI (additional 9")
Contract Term: 6 Year(s)
Number of Projects: 6

EagleView Rep: Kevin Beers
Expiration Date: 11/24/2021
Targeted Capture: 2022-a-Winter



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City Council Meeting

Item Number: 11

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE BENTON STREET PEDESTRIAN BRIDGE AND LEE STREET PEDESTRIAN BRIDGE PROJECT TO AMSTAR, INC. OF SAN ANTONIO, TEXAS, THROUGH SOURCEWELL AT A TOTAL COST OF $599,998.33; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 2) (GENERAL SERVICES)

Purpose:

Resolution approving a contract with Amstar, Inc. for purchase and installation of two (2) pedestrian walkways at Benton Street and Lee Street through Sourcewell contract #TX-PB-GC-121819-AMS for the cost of $599,998.33 plus contingency of $89,999.75 for a total cost of $689,998.08.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the ARPA Grant and will be appropriated to a project for said purpose.

Discussion:

Staff is recommending approving a contract with Amstar, Inc. for purchase and installation of two (2) pedestrian walkways at Benton Street and Lee Street through Sourcewell contract #TX-PB-GC-121819-AMS for the cost of $599,998.33 plus contingency of $89,999.75 for a total cost of $689,998.08. We are members of the Sourcewell formerly National Joint Powers Alliance (NJPA) 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.

Therefore, please consider a resolution approving a contract for purchase and installation of two (2) pedestrian walkways at Benton Street and Lee Street from Amstar, Inc. of San Antonio, Texas through Sourcewell contract #TX-PB-GC-121819-AMS for the cost of $599,998.33 plus contingency of $89,999.75 for a total cost of $689,998.08.

Tina Gaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: Supporting Memo for Pedestrian Bridge Replacement/Installation

DATE: November 19, 2021

CC: Gabe McClelland, Senior Engineering Manager

Pedestrian bridges often link buildings and places with popular destinations. Bridges are useful for linking areas separated by highways, rivers, rail roads, or other obstacles where at-grade crossings are not permitted. The Benton Street and Lee Street pedestrian bridges will provide safe crossings over drainage channels in areas that are prone to flooding. Both bridges will link residential areas with schools in the vicinity.

In addition, the two proposed bridges will replace existing bridges that are showing signs of distress due to age. Safety is a concern, and Engineering staff recommends replacement of the two existing bridges due to age of the two structures.

The two existing bridges are also not compliant with current ADA standards. The two new prefabricated bridges will meet current ADA requirements and provide safe crossings for many years.

Amstar, Inc. has a history of successfully completing projects for various governmental agencies in Texas. Their prices appear to be in line with current pricing trends. Therefore, based on the information above, Engineering staff recommends award of the Benton Street and Lee Street Pedestrian Bridge Installation Project to Amstar, Inc. in the amount of $689,998.08 (Base + 15% Contingency).

Base Quote: $599,998.33 (700315-065: Pedestrian Bridge Infrastructure)

Contingency 15%: $89,999.75 (700315-065: Pedestrian Bridge Infrastructure)

TOTAL: **$689,998.08 (700315-065: Pedestrian Bridge Infrastructure)**

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE BENTON STREET PEDESTRIAN BRIDGE AND LEE STREET PEDESTRIAN BRIDGE PROJECT TO AMSTAR, INC. OF SAN ANTONIO, TEXAS, THROUGH SOURCEWELL AT A TOTAL COST OF $599,998.33; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT

WHEREAS, Sourcewell is a cooperative purchasing program in which the City participates in purchases; and

WHEREAS, the General Services Department has arranged for the execution of a contract with Amstar, Inc. of San Antonio, Texas ("Contractor") for the Benton Street Pedestrian Bridge and Lee Street Pedestrian Bridge Project (the "Services") through Sourcewell at a total cost to the City of $599,998.33 as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the prices proposed for the Services through Sourcewell to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a contract with Contractor for the Services through Sourcewell;

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 Contractor for said Services through Sourcewell at a total cost of $599,998.33, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, change orders to said contract if (1) each change order involves a decrease or an increase of $50,000.00 or less and (2) the change orders, in total, do not increase the original contract price by more than $89,999.75.

SECTION THREE. That the sum of $689,998.08 shall be appropriated from the City's American Rescue Plan Act funds to a project account for said Services.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract and change orders executed in accordance with this resolution in an amount not to exceed $689,998.08 from funds available in said project account upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Amstar Inc.

SOURCEWELL COST PROPOSAL

Date: October 6, 2021

Owner:	Midland
Contractor:	Amstar, Inc.
Project Name:	**Benton Pedestrian Bridge**
Project Location:	Midland, TX
Job Order Date:	Pending
Project Manager for this Job Order:	Abe Langston
RFP No.:	0201209

This Proposal is offered as set forth in the terms and conditions of the contract based on Bridge Brothers

Amstar, Inc. will provide equipment, material, and labor to accomplish the following:

Benton Bridge

1. Manufacture 1 6x41'4" pedestrian bridge.
2. Finish to be aluminum mill
3. Design to be Pratt truss configuration
4. Bridge shall have horizontal railing
5. Bridge shall have composite decking with 90 PSF live loading
6. Removal or existing bridge
7. Site grading for bridge footings Geo tech and survey by others
8. Form and pour bridge foundations – no more than 6' tall
9. Piles will be additional if required
10. Backfill bridge foundations (excludes rip rap piles dewatering and wingwalls)
11. Unload and splice fit bridges
12. Erect bridges and install bridge anchors

Total Fixed Price Benton **$ 310,691.33**

Estimated times

Owner Geo tech report	???
Structural and civil designs	4 weeks
Owner review	2 weeks
Manufacturing & Freight	12 weeks
Construction and site preparation	12 weeks
Bridge Erection and Project Closeout	3 weeks

Payment schedule

20 percent down

15 percent Top Completed drawings

P.O. BOX 14311 • San Antonio, Texas 78214 • Office: (210) 927-5705 • Fax: (210) 927-5710

15 percent material encumbered

15 percent documented fabrication

15 percent delivered to site

10 percent site work

10 percent final inspection

All lines are subject to 5% retainage.

Exclusions

1. Work to be performed during normal business hours.
2. No work not specified in the above scope of work.
3. All haul off included.
4. No handling or disposal of hazardous materials.
5. We exclude all unforeseen conditions.
6. Exclude hazardous materials.
7. This proposal excludes roofing and fencing. Separate proposal will be sent.

Respectfully,

Mickey Aliff

Mickey Aliff
Estimator/Project Manager

FOR THE USE AND BENEFIT OF CITY OF MIDLAND(OWNER)

By: _____
Name: _____
Title: _____
Date: _____

P.O. BOX 14311 ● San Antonio, Texas 78214 ● Office: (210) 927-5705 ● Fax: (210) 927-5710

Amstar Inc.

SOURCEWELL COST PROPOSAL

Date: October 6, 2021

Owner:	Midland
Contractor:	Amstar, Inc.
Project Name:	**Lee Pedestrian Bridge**
Project Location:	Midland, TX
Job Order Date:	Pending
Project Manager for this Job Order:	Abe Langston
RFP No.:	0201209

This Proposal is offered as set forth in the terms and conditions of the contract based on Bridge Brothers

Amstar, Inc. will provide equipment, material, and labor to accomplish the following:

Lee Bridge

1. Manufacture 1 6x36' pedestrian bridge. Including 2 ramps approximately 6x15'.
2. Finish to be aluminum mill
3. Design to be Pratt truss configuration
4. Bridge shall have horizontal railing
5. Bridge shall have composite decking with 90 PSF live loading
6. Removal or existing bridge
7. Site grading for bridge footings (Geo tech and survey by others)
8. Form and pour bridge foundations – no more than 6' tall
9. Piles will be additional if required
10. Backfill bridge foundations (excludes rip rap piles dewatering and wingwalls)
11. Unload and splice fit bridges
12. Erect bridges and install bridge anchors

Total Fixed Price Lee **$ 289,307.00**

Estimated times

Geotech report	???
Structural and civil designs	4 weeks
Owner Review	2 weeks
Manufacturing & Freight	12 weeks
Construction and site preparation	12 weeks
Bridge Erection and Project Closeout	3 weeks

Payment schedule

20 percent down

P.O. BOX 14311 • San Antonio, Texas 78214 • Office: (210) 927-5705 • Fax: (210) 927-5710

15 percent shop Completed drawings

15 percent material encumbered

15 percent documented fabrication

15 percent delivered to site

10 percent site work

10 percent final inspection

All lines are subject to 5% retainage.

Exclusions

1. Work to be performed during normal business hours.
2. No work not specified in the above scope of work.
3. All haul off included.
4. No handling or disposal of hazardous materials.
5. We exclude all unforeseen conditions.
6. Exclude hazardous materials.
7. This proposal excludes roofing and fencing. Separate proposal will be sent.

Respectfully,

Mickey Aliff

Mickey Aliff
Estimator/Project Manager

FOR THE USE AND BENEFIT OF CITY OF MIDLAND(OWNER)

By: _____
Name: _____
Title: _____
Date: _____

P.O. BOX 14311 ● San Antonio, Texas 78214 ● Office: (210) 927-5705 ● Fax: (210) 927-5710

THE CITY OF MIDLAND

CONTRACT

Contract No. 22000952

THIS CONTRACT, effective the 15th day of December 2021, by and between the City of Midland, hereinafter referred to as "CITY", and Amstar, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 599,998.33 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for Benton Pedestrian Bridge and Lee Pedestrian Bridge Project in the following documents, attached hereto and incorporated herein by reference for all legal 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 Jose Ortiz 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 240 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; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

16.1. The CITY may make periodic payments to COMPANY; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by COMPANY and approved by the CITY. The approval shall be in the CITY's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the 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.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY 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." COMPANY 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 COMPANY 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.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY'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 day that COMPANY 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 COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY 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.

17.3. 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 COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or 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 COMPANY, 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.

17.4. Provided, further, that COMPANY shall, within ten (10) 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 COMPANY within a reasonable time of its decision in the matter.

17.5. **COMPANY 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, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'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.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY 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. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **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.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

20. **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.

21. **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.

22. **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.

23. **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**.

24. **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.

25. **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.

26. **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.

27. **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.

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

29. **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.

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

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

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

31. **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.

32. **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.

33. **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.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §

§

COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Amstar, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____

Notary Public, State of

Amstar Inc.

SOURCEWELL COST PROPOSAL

Date: October 6, 2021

Owner:	Midland
Contractor:	Amstar, Inc.
Project Name:	**Benton Pedestrian Bridge**
Project Location:	Midland, TX
Job Order Date:	Pending
Project Manager for this Job Order:	Abe Langston
RFP No.:	0201209

This Proposal is offered as set forth in the terms and conditions of the contract based on Bridge Brothers

Amstar, Inc. will provide equipment, material, and labor to accomplish the following:

Benton Bridge

1. Manufacture 1 6x41'4" pedestrian bridge.
2. Finish to be aluminum mill
3. Design to be Pratt truss configuration
4. Bridge shall have horizontal railing
5. Bridge shall have composite decking with 90 PSF live loading
6. Removal or existing bridge
7. Site grading for bridge footings Geo tech and survey by others
8. Form and pour bridge foundations – no more than 6' tall
9. Piles will be additional if required
10. Backfill bridge foundations (excludes rip rap piles dewatering and wingwalls)
11. Unload and splice fit bridges
12. Erect bridges and install bridge anchors

Total Fixed Price Benton **$ 310,691.33**

Estimated times

Owner Geo tech report	???
Structural and civil designs	4 weeks
Owner review	2 weeks
Manufacturing & Freight	12 weeks
Construction and site preparation	12 weeks
Bridge Erection and Project Closeout	3 weeks

Payment schedule

20 percent down

15 percent Top Completed drawings

P.O. BOX 14311 • San Antonio, Texas 78214 • Office: (210) 927-5705 • Fax: (210) 927-5710

15 percent material encumbered

15 percent documented fabrication

15 percent delivered to site

10 percent site work

10 percent final inspection

All lines are subject to 5% retainage.

Exclusions

1. Work to be performed during normal business hours.
2. No work not specified in the above scope of work.
3. All haul off included.
4. No handling or disposal of hazardous materials.
5. We exclude all unforeseen conditions.
6. Exclude hazardous materials.
7. This proposal excludes roofing and fencing. Separate proposal will be sent.

Respectfully,

Mickey Aliff

Mickey Aliff
Estimator/Project Manager

FOR THE USE AND BENEFIT OF CITY OF MIDLAND(OWNER)

By: _____
Name: _____
Title: _____
Date: _____

P.O. BOX 14311 ● San Antonio, Texas 78214 ● Office: (210) 927-5705 ● Fax: (210) 927-5710

Amstar Inc.

SOURCEWELL COST PROPOSAL

Date: October 6, 2021

Owner:	Midland
Contractor:	Amstar, Inc.
Project Name:	**Lee Pedestrian Bridge**
Project Location:	Midland, TX
Job Order Date:	Pending
Project Manager for this Job Order:	Abe Langston
RFP No.:	0201209

This Proposal is offered as set forth in the terms and conditions of the contract based on Bridge Brothers

Amstar, Inc. will provide equipment, material, and labor to accomplish the following:

Lee Bridge

1. Manufacture 1 6x36' pedestrian bridge. Including 2 ramps approximately 6x15'.
2. Finish to be aluminum mill
3. Design to be Pratt truss configuration
4. Bridge shall have horizontal railing
5. Bridge shall have composite decking with 90 PSF live loading
6. Removal or existing bridge
7. Site grading for bridge footings (Geo tech and survey by others)
8. Form and pour bridge foundations – no more than 6' tall
9. Piles will be additional if required
10. Backfill bridge foundations (excludes rip rap piles dewatering and wingwalls)
11. Unload and splice fit bridges
12. Erect bridges and install bridge anchors

Total Fixed Price Lee **$ 289,307.00**

Estimated times

Geotech report	???
Structural and civil designs	4 weeks
Owner Review	2 weeks
Manufacturing & Freight	12 weeks
Construction and site preparation	12 weeks
Bridge Erection and Project Closeout	3 weeks

Payment schedule

20 percent down

P.O. BOX 14311 ● San Antonio, Texas 78214 ● Office: (210) 927-5705 ● Fax: (210) 927-5710

15 percent shop Completed drawings

15 percent material encumbered

15 percent documented fabrication

15 percent delivered to site

10 percent site work

10 percent final inspection

All lines are subject to 5% retainage.

Exclusions

1. Work to be performed during normal business hours.
2. No work not specified in the above scope of work.
3. All haul off included.
4. No handling or disposal of hazardous materials.
5. We exclude all unforeseen conditions.
6. Exclude hazardous materials.
7. This proposal excludes roofing and fencing. Separate proposal will be sent.

Respectfully,

Mickey Aliff

Mickey Aliff
Estimator/Project Manager

FOR THE USE AND BENEFIT OF CITY OF MIDLAND(OWNER)

By: _____
Name: _____
Title: _____
Date: _____

P.O. BOX 14311 ● San Antonio, Texas 78214 ● Office: (210) 927-5705 ● Fax: (210) 927-5710

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

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: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* 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.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

City Council Meeting

Item Number: 12

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE THOMASON DRIVE ROUNDABOUT IMPROVEMENTS PROJECT TO THE SOLE BIDDER, ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST OF $189,701.04; AND AUTHORIZING PAYMENT (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Resolution approving a contract with Onyx Contractors, LLC for the Thomason Drive Roundabout Improvements Project for a cost of $189,701.04 plus contingency of $18,970.10 for a total cost of $208,671.14.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the Thomason Drive Bond Paving Project.

Discussion:

The City Manager approved specifications and authorized advertisement for bids. Thirty (30) bid requests were issued for the Thomason Drive Roundabout Improvements Project. We received four (4) bids. Staff recommends awarding to the apparent low bidder, Onyx Contractors, LLC. Please see the attached memo from Gabe McClelland, Senior Engineering Manager, for further information.

Therefore, please consider a resolution awarding a contract to Onyx Contractors, LLC. of Midland, Texas for the Thomason Drive Roundabout Improvements Project for the cost of $189,701.04 plus $18,970.10 in contingencies for a project total of $208,671.14.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: **Regina Stephenson, Director of General Services**

FROM: **Gabe McClelland, Senior Engineering Manager**

SUBJECT: **Resolution awarding a contract for the Thomason Drive Roundabout Improvements Project; Bid # 22000561**

DATE: **November 24, 2021**

CC: **Jose Ortiz, Director of Engineering Services**

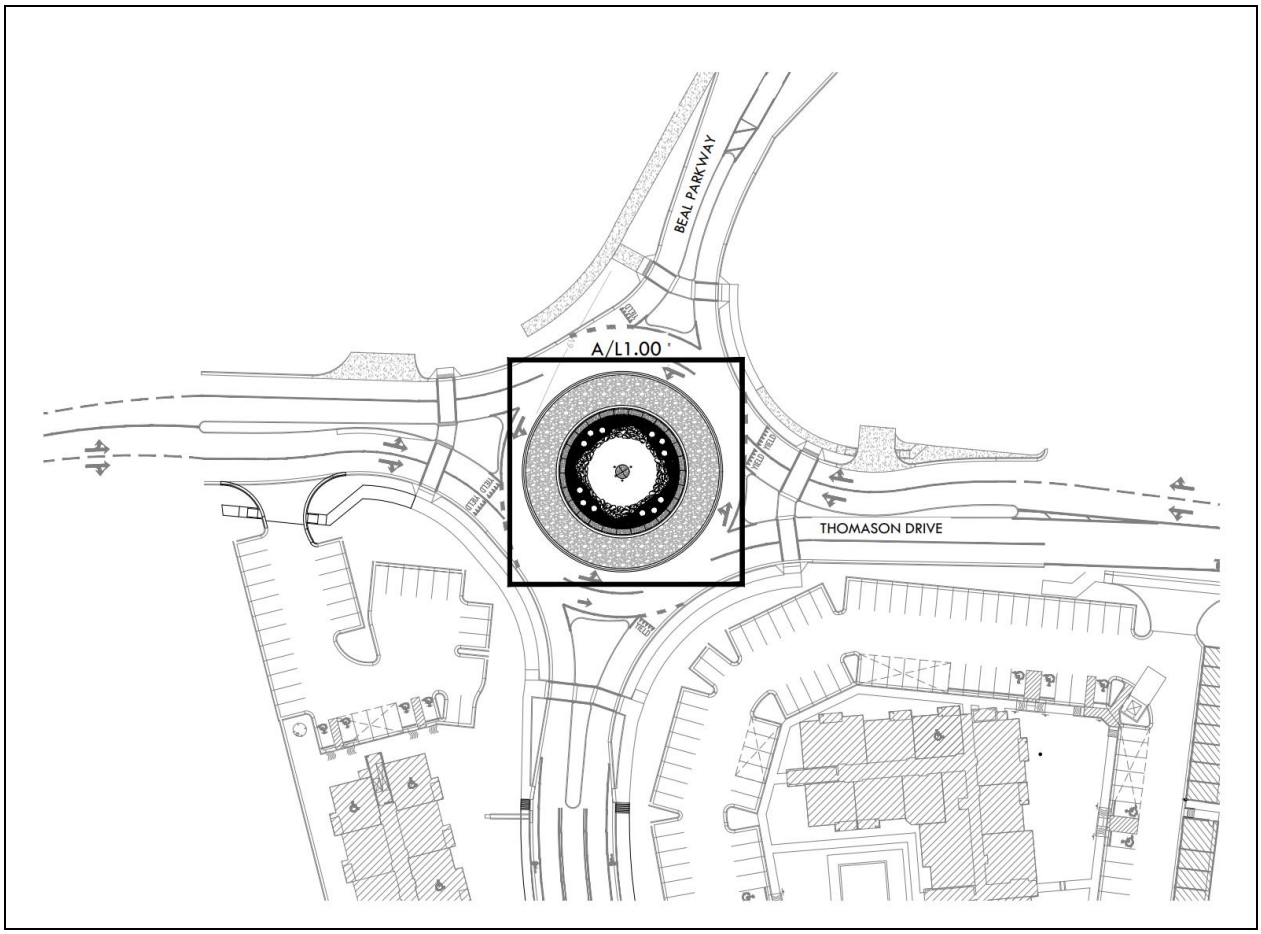
The Thomason Drive Bond Paving Project is ongoing, but the paving project excludes needed improvements within the roundabout at Beal Parkway and Illinois Avenue. The proposed work includes erosion control, earthwork, concrete placement, irrigation and landscaping, and lighting in accordance with the drawings, notes, and specifications. One of the goals of this project includes providing the recommended elevations within the roundabout to address traffic operations. Other goals include providing relatively low-maintenance landscaping that is aesthetically appealing.

Onyx Contractors, LLC (Onyx) is the sole bidder and has submitted a total bid price of $189,701.04. Onyx has a history of successfully completing projects in our area, including the City of Midland's annual Citywide Concrete Program. In addition, the unit costs submitted by Onyx appear to be in line with current pricing trends.

Therefore, please consider a resolution awarding a contract for the Thomason Drive Roundabout Improvements Project for the Engineering Services Department to Onyx Contractors, LLC for a total amount $208,671.14 (Total Base Bid + $18,970.10 (10%) for Contingency). Funds are available in the Thomason Drive Bond Paving Project.

Please note the Advertisement for Bids included Additive Alternate 1. Onyx submitted a bid for Additive Alternate 1, but the alternate should not be awarded. City staff recommends awarding the Base Bid only.

Please see the image on page 2 showing the project limits of the proposed improvements:


BEAL PARKWAY
A/L1.00
THOMASON DRIVE

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE THOMASON DRIVE ROUNDABOUT IMPROVEMENTS PROJECT TO THE SOLE BIDDER, ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST OF $189,701.04; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the plans and specifications and advertised for competitive bids for the Thomason Drive Roundabout Improvements Project (the "Project"); and

WHEREAS, Bid No. 22000561 was opened on November 10, 2021, with the sole bidder and the lowest responsible bidder being Onyx General Contractors, LLC of Midland, Texas ("Contractor"), having submitted a bid of $189,701.04 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the total cost of the work to be completed, according to the previously advertised plans and specifications and the unit prices in Exhibit "A", shall not exceed $189,701.04; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Contractor for said Project;

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 Contractor for said Project at a total cost of $189,701.04, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, change orders to said contract if the change orders, in total, do not increase the original contract price by more than 10 percent ($18,970.10).

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract and change orders executed in accordance with this resolution in an amount not to exceed $208,671.14 from funds available in the Thomason Drive Bond Paving Project upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 22000561	Thomason Roundabout Improvements	ONYX GENERAL CONTRACTORS 1010 S FM 1788 MIDLAND, TX 79706 432-561-8900 MICHAEL.I@ONYXCONTRACTORS.COM	
OPENED November 10, 2021			
ITEM	QTY	DESCRIPTION	Unit Cost	Total Cost
		ROUNDABOUT IMPROVEMENTS		
1	1 LS	Mobilization which includes, insurance, bonds, and associated start- up cost, complete, in place, the Sum of	$10,500.00	$10,500.00
2	22 CY	Prove 8" of #57 compacted aggregate complete, in place, the Sum of	$131.25	$2,887.50
3	270 CY	Provide imported fill complete, in place, the Sum of	$49.50	$13,365.00
4	1 LS	Provide earthwork including landscape grading complete, in place, the Sum of	$7,250.00	$7,250.00
5	1 LS	Provide for erosion control complete, in place, the Sum of	$3,125.00	$3,125.00
6	1 LS	Provide for disposal of excess excavated material complete, in place, the Sum of	$6,250.00	$6,250.00
7	826 SF	Provide for 4" thick, broom finish, 300 PSI reinforced concrete sidewalks as specidied complete, in place, the Sum of	$25.00	$20,650.00
8	133 EA	Provide Leuders Limestone Quarry boulders in Buff color. Size varies from 1'-2' W x 2'-5" L x 11" ht. complete, in place, the Sum of	$531.25	$70,656.25
9	160 LF	Provide 4" PVC sleeves complete, in place, the Sum of	$28.13	$4,500.80
10	1 LS	Provide DX Controller for lighting complete, in place, the Sum of	$1,562.50	$1,562.50
11	3 EA	Provide light fixture complete, in place, the Sum of	$468.75	$1,406.25
12	1 EA	Provide J-box for future art lighting complete, in place, the Sum of	$206.25	$206.25
13	35 LF	Provide direct burial, low voltage light as shown on the electrical plans. Complete, in place, the Sum of	$31.25	$1,093.75
14	1 LS	Provide complete irrigation system including new tap, meter and backflow prevention valve as designed and specified complete, in place, the Sum of	$10,625.00	$10,625.00
15	40 EA	Provide 5 gal, 15"-18" ht Compact Texas Sage as specified complete, in place, the Sum of	$87.50	$3,500.00
16	12 EA	Provide 3 gal, 18"-24"ht Spineless Yucca as specified complete, in place, the Sum of	$81.25	$975.00
17	151 EA	Provide 1 gal, 8"-10" ht Blue Grama Grass 'Blonde Ambition' as specified complete, in place, the Sum of	$37.50	$5,662.50
18	1,270 EA	Provide 1"-2" River Rocks mulch, 3" depth as specified complete, in place, the Sum of	$4.06	$5,156.20
19	1,380 SF	Provide 4"-6" River Cobble mortared in place as specified complete, in place, the Sum of	$11.25	$15,525.00
20	454 CF	Provide #57 compacted aggregate as specified complete, in place, the Sum of	$3.72	$1,688.88
21	1,657 SF	Provide filter fabric as specified complete, in place, the Sum of	$1.88	$3,115.16
		Grand Toal Roundabout bid		$189,701.04
		ADDITIVE ALTERNATE I- BRIARWOOD AVENUE MEDIAN IMPROVEMENTS		
1	1 LS	Mobilization which includes insurance, bonds and associated start-up cost	$8,500.00	$8,500.00
2	1 LS	Provide erosion control complete, in place	$1,020.00	$1,020.00
3	38,207 SF	Excavation, grading and disposal of excavated material	$2.04	$77,942.28
4	38,207 SF	Provide 4" thick, broom finish, 3000 PSI reinforced concrete sidewalks	$12.24	$467,653.68
5	450 EA	Provide boulders embedded into 4" thick concrete. Size varies from 1'-4'	$397.80	$179,010.00
		Total Alternate I		$734,125.96
		TOTAL PROPOSAL		$923,827.00

Bidding Summary:

179 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

178 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 22000561

Thomason Roundabout Improvements

OPENED November 10, 2021

ONYX GENERAL CONTRACTORS
1010 S FM 1788
MIDLAND, TX 79706
432-561-8900
MICHAEL.I@ONYXCONTRACTORS.COM

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THE CITY OF MIDLAND

CONTRACT

Contract No. 22000561

THIS CONTRACT, effective the 15th day of December 2021, by and between the City of Midland, hereinafter referred to as "CITY", and Onyx General Contractors, LLC, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 189,701.04 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for Thomason Drive Roundabout & Median Improvements in the following documents, attached hereto and incorporated herein by reference for all legal 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 Jose Ortiz 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 45 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; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

16.1. The CITY may make periodic payments to COMPANY; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by COMPANY and approved by the CITY. The approval shall be in the CITY's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the 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.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY 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." COMPANY 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 COMPANY 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.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY'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 day that COMPANY 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 COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY 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.

17.3. 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 COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or 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 COMPANY, 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.

17.4. Provided, further, that COMPANY shall, within ten (10) 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 COMPANY within a reasonable time of its decision in the matter.

17.5. **COMPANY 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, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'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.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY 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. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **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.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

20. **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.

21. **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.

22. **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.

23. **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**.

24. **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.

25. **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.

26. **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.

27. **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.

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

29. **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.

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

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

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

31. **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.

32. **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.

33. **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.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Onyx General Contractors, LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____
Notary Public, State of

EXHIBIT "A"

CITY OF MIDLAND

PURCHASING DIVISION DATE: 10/15/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000561**

OPENING TIME: 2:00 PM **CLOSING DATE: 11/10/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Loraine, Suite 330, Midland Texas UNTIL 2:00 P.M. 11/10/2021 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Engineering

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	1	LS	Thomason Drive Roundabout & Median Improvements in accordance with the attached notes, drawings and contract	$ 189, 693.75	
				TOTAL	$ 189, 693.75 BASE BID

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. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. 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.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **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.
6. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.
7. **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 685-7233. FAX NO. (432) 685-0523

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: Onyx General Contractors, LLC
ADDRESS 1010 S FM 1788
CITY Midland ST TX ZIP 79706
PHONE NO. 432-561-8900 FAX NO. _____
EMAIL: michael.i@onyxcontractors.com

CASH DISCOUNT: _____ %_____DAYS

DELIVERY CAN BE MADE_____

AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

MIDLAND
Purchasing Division

On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

The City Secretary's Office
City of Midland
P. O. Box 1152
Midland, TX 79702

OR

Physical Address:

The City Secretary's Office
City of Midland
300 N. Loraine, Suite 330
Midland, TX 79701

ATTENTION: The public bid opening will be in the City Council Chambers in order to maintain social distancing due to COVID-19.

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, all bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

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 make arrangements in advance to drop the bid packets off at the north doors of City Hall before the bid opening deadline, and social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

The deadline for submitting additional questions is 72 working hours before the bid opening date. Questions submitted before the Noon deadline will be included in the Addendum. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

City of Midland Transportation Department
Contract Bid Schedule
Thomason Roundabout Improvements

ITEM NO.	DESCRIPTION AND UNIT PRICE IN WORDS	QUANTITY (EST.)	UNIT	UNIT PRICE	TOTAL PRICE
	ROUNDABOUT IMPROVEMENTS				
1	Mobilization which includes, insurance, bonds and associated start-up cost. complete, in place, the Sum of	1	LS	$ 10,500.00	$ 10,500.00
2	Provide 8" of #57 compacted aggregate complete, in place, the Sum of	22	CY	$ 131.25	$ 2,887.50
3	Provide imported fill complete, in place, the Sum of	270	CY	$ 49.50	$ 13,365.00
4	Provide earthwork including landscape grading complete, in place, the Sum of	1	LS	$ 7,250.00	$ 7,250.00
5	Provide for erosion control complete, in place, the Sum of	1	LS	$ 3,125.00	$ 3,125.00
6	Provide for disposal of excess excavated material complete, in place, the Sum of	1	LS	$ 6,250.00	$ 6,250.00
7	Provide for 4" thick, broom finish, 3000 PSI reinforced concrete sidewalks as specified complete, in place, the Sum of	826	SF	$ 25.00	$ 20,650.00
8	Provide Leuders Limestone Quarry boulders in Buff color. Size varies from 1'-2' W x 2'-5" L x 11" ht. complete, in place, the Sum of	133	EA	$ 531.25	$ 70,656.25
9	Provide 4" PVC sleeves complete, in place, the Sum of	160	LF	$ 28.13	$ 4,500.00
10	Provide DX Controller for lighting complete, in place, the Sum of	1	LS	$ 1,562.50	$ 1,562.50
11	Provide light fixture complete, in place, the Sum of	3	EA	$ 468.75	$ 1,406.25
12	Provide J-box for future art lighting complete, in place, the Sum of	1	EA	$ 206.25	$ 206.25
13	Provide direct burial, low voltage light as shown on the electrical plans. complete, in place, the Sum of	35	LF	$ 31.25	$ 1,093.75
14	Provide complete irrigaton system including new tap, meter and backflow prevention valve as designed and specified complete, in place, the Sum of	1	LS	$10,625.00	$ 10,625.00
15	Provide 5 gal, 15"-18" ht Compact Texas Sage as specified complete, in place, the Sum of	40	EA	$ 87.50	$ 3,500.00
16	Provide 3 gal, 18"-24" ht Spineless Yucca as specified complete, in place, the Sum of	12	EA	$ 81.25	$ 975.00
17	Provide 1 gal, 8"-10" ht Blue Grama Grass 'Blonde Ambition' as specified complete, in place, the Sum of	151	EA	$ 37.50	$ 5,662.50
18	Provide 1"-2" River Rocks mulch, 3" depth as specified complete, in place, the Sum of	1270	SF	$ 4.06	$ 5,159.38
19	Provide 4"-6" River Cobble mortared in place as specified complete, in place, the Sum of	1380	SF	$ 11.25	$ 15,525.00
20	Provide #57 compacted aggregate as specified complete, in place, the Sum of	454	CF	$ 3.72	$ 1,687.50
21	Provide filter fabric as specified complete, in place, the Sum of	1657	SF	$ 1.88	$ 3,106.88

GRAND TOTAL ROUNDABOUT BID : $ $ 189, 693.75 BASE BID

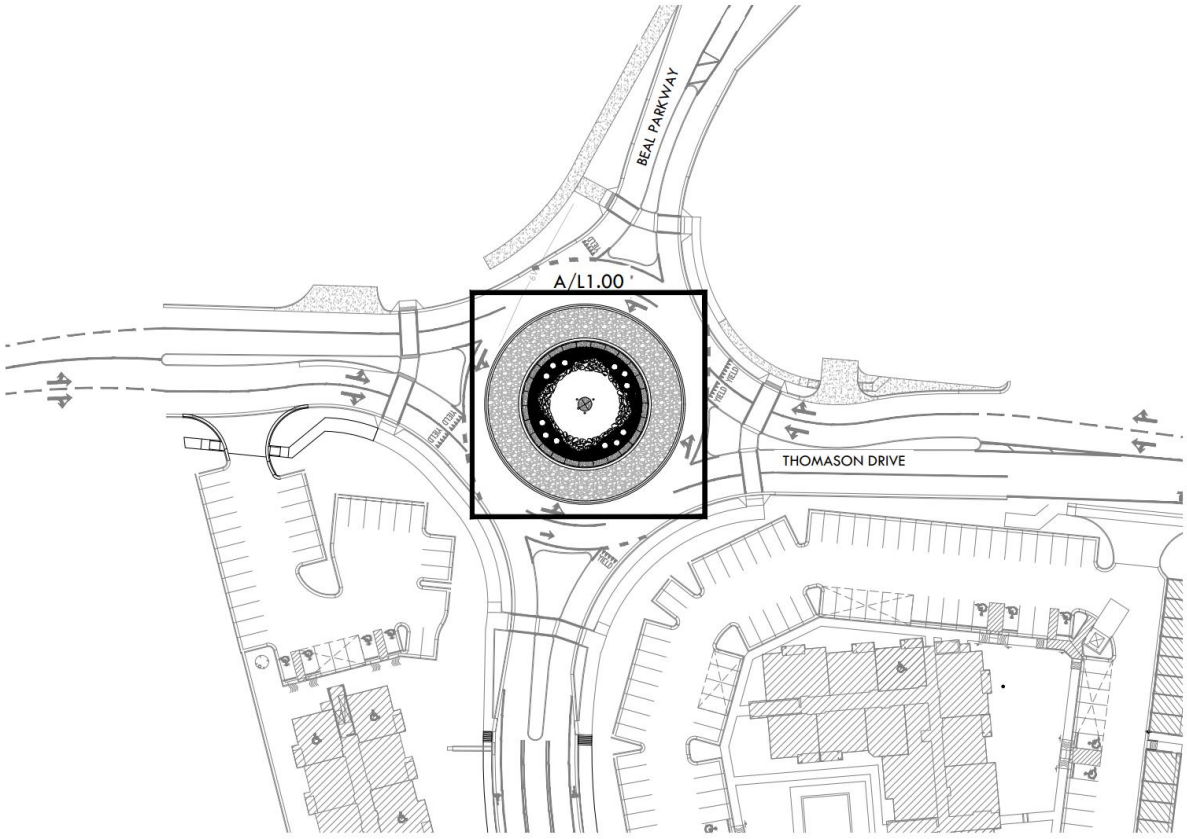
ONE HUNDRED EIGHTY-NINE THOUSAND SIX HUNDRED NINETY-THREE dollars and SEVENTY-FIVE cents

Thomason Drive Roundabout Improvements (Base Bid)

Scope Description:

The proposed work includes improvements to the roundabout at Thomason Drive, Beal Parkway, and Illinois Avenue in accordance with the drawings, notes, and specifications provided. Specifically, the proposed work includes erosion control, earthwork, concrete placement, irrigation and landscaping, and lighting in accordance with the drawings, notes, and specifications provided. Please see the project location in the image below.

All traffic control necessary for the completion of the Thomason Drive Roundabout Improvement project shall be provided by the City of Midland.



Briarwood Avenue Median Improvements (Additive Alternate 1)

Scope Description:

The work for Additive Alternate I includes improvements to the medians at Briarwood Avenue between Holiday Hill Road and Avalon Drive. Due to maintenance issues, the City of Midland wishes to remove the existing chat blend and river rock and replace with concrete sidewalk with boulders embedded into the 4" thick concrete. Excavation shall be to a depth of 4" below the existing curb. All excavated material shall become the property of the contractor, and all work shall be completed in accordance with City of Midland Design Standards and Specifications.

All traffic control necessary for the completion of the Briarwood Avenue Median Improvements shall be provided by the City of Midland.

Please see the bid schedule, project layout, existing conditions, proposed improvements, and example layout plan included in the bid documents.

CONTRACT BID SCHEDULE

Additive Alternate I
Briarwood Avenue Median Improvements

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the construction of the various items for Additive Alternate I.

The City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished. The median sections to be improved are shown on this document below the Bid Schedule.

Additive Alternate I – Briarwood Avenue Median Improvements

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization which includes insurance, bonds, and associated start-up cost	LS	1	$ 8,500.00	$ 8,500.00
2	Provide erosion control complete, in place	LS	1	$ 1,020.00	$ 1,020.00
3	Excavation, grading and disposal of excavated material	SF	38,207	$ 2.04	$ 77,942.28
4	Provide 4" thick, broom finish, 3000 PSI reinforced concrete sidewalks	SF	38,207	$ 12.24	$ 467,653.68
5	Provide boulders embedded into 4" thick concrete. Size varies from 1' – 4'	EA	450	$ 397.80	$ 179,010.00

TOTAL BASE BID: $ 189, 693.75
TOTAL ALTERNATE I : $ 734,125.96
TOTAL BASE BID + ALTERNATE I : $ 923,819.71

X

Contractor Michael Iaquaniello
Onyx General Contractors, LLC

Date: 11/10/2021

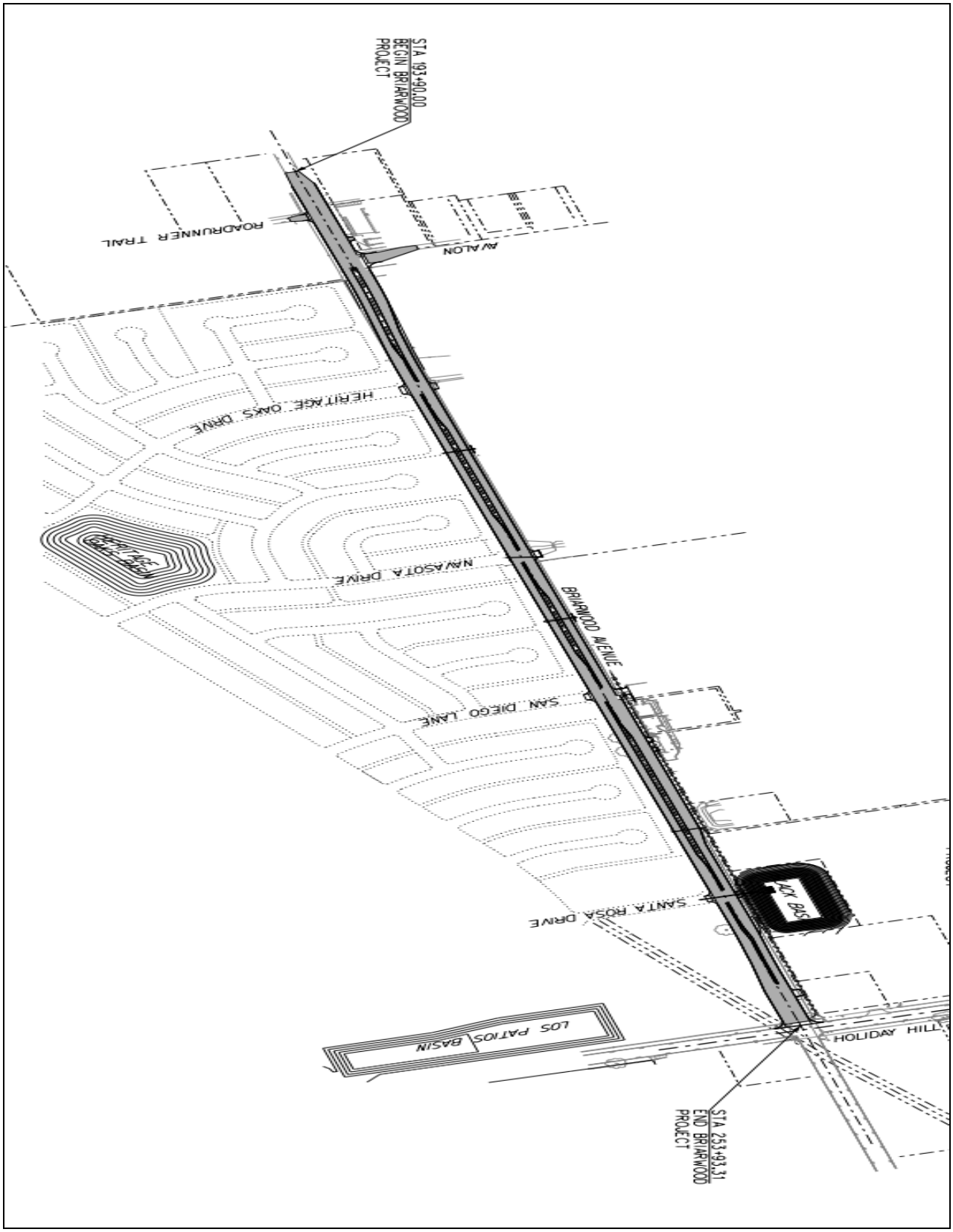
Scope Description

The work for Additive Alternate I includes improvements to the medians at Briarwood Avenue between Holiday Hill Road and Avalon Drive. Due to maintenance issues, the City of Midland wishes to remove the existing chat blend and river rock and replace with concrete sidewalk with boulders embedded into the 4" thick concrete. Excavation shall be to a depth of 4" below the existing curb. All excavated material shall become the property of the contractor, and all work shall be completed in accordance with City of Midland Design Standards and Specifications.

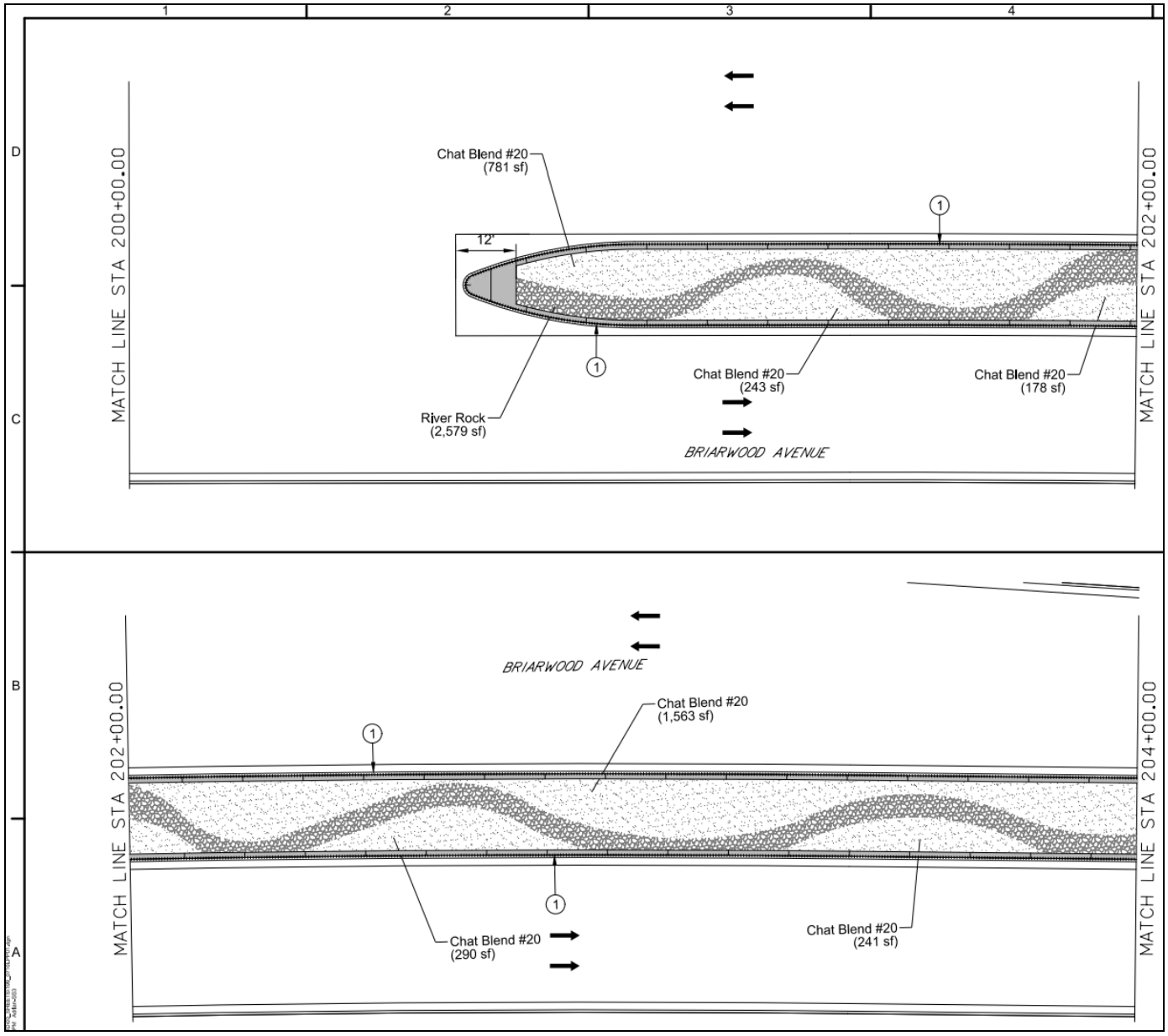
All traffic control necessary for the completion of the Briarwood Avenue Median Improvements shall be provided by the City of Midland.

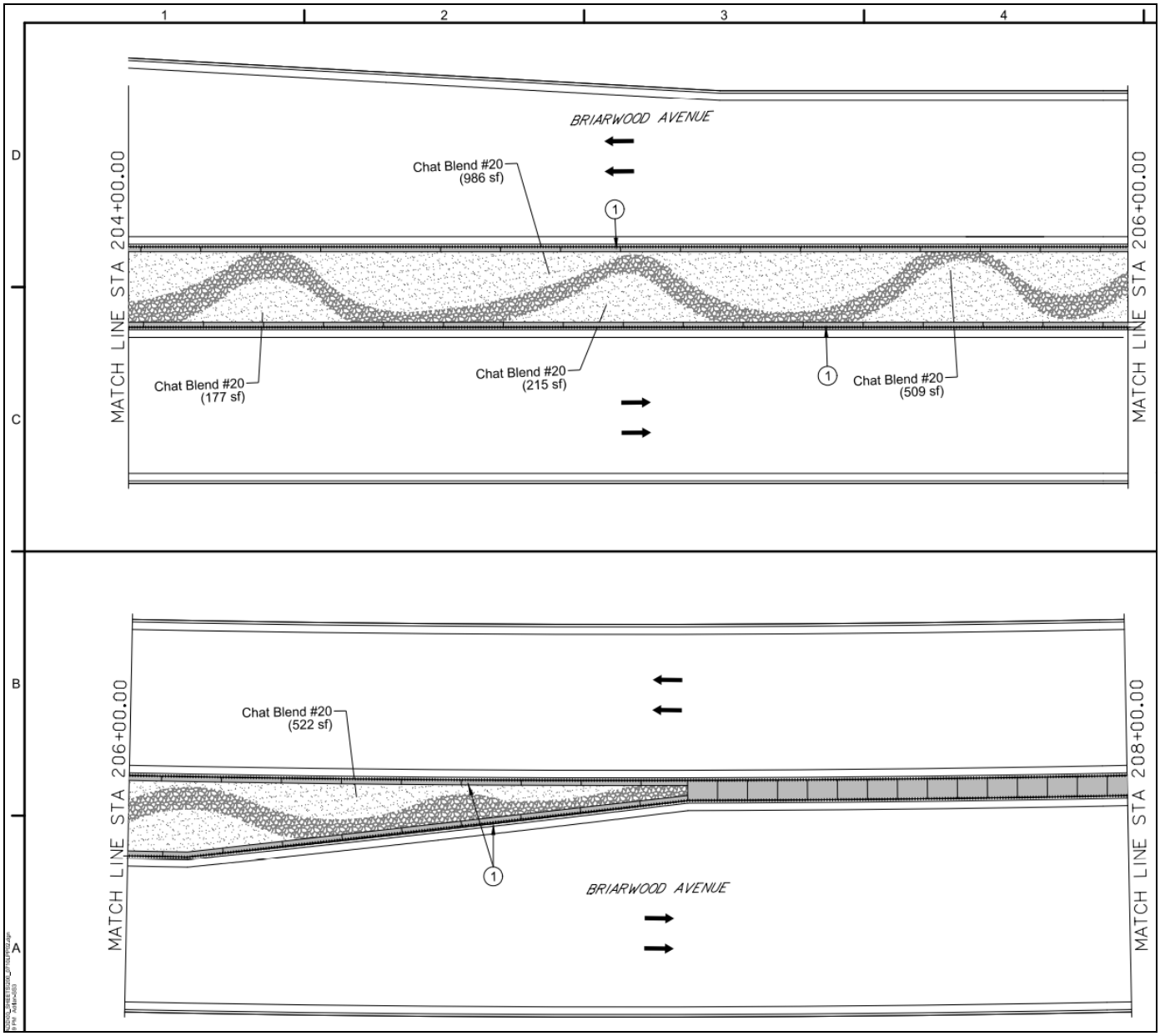
Please see the project layout, existing conditions, proposed improvements, and example layout plan in the pages that follow.

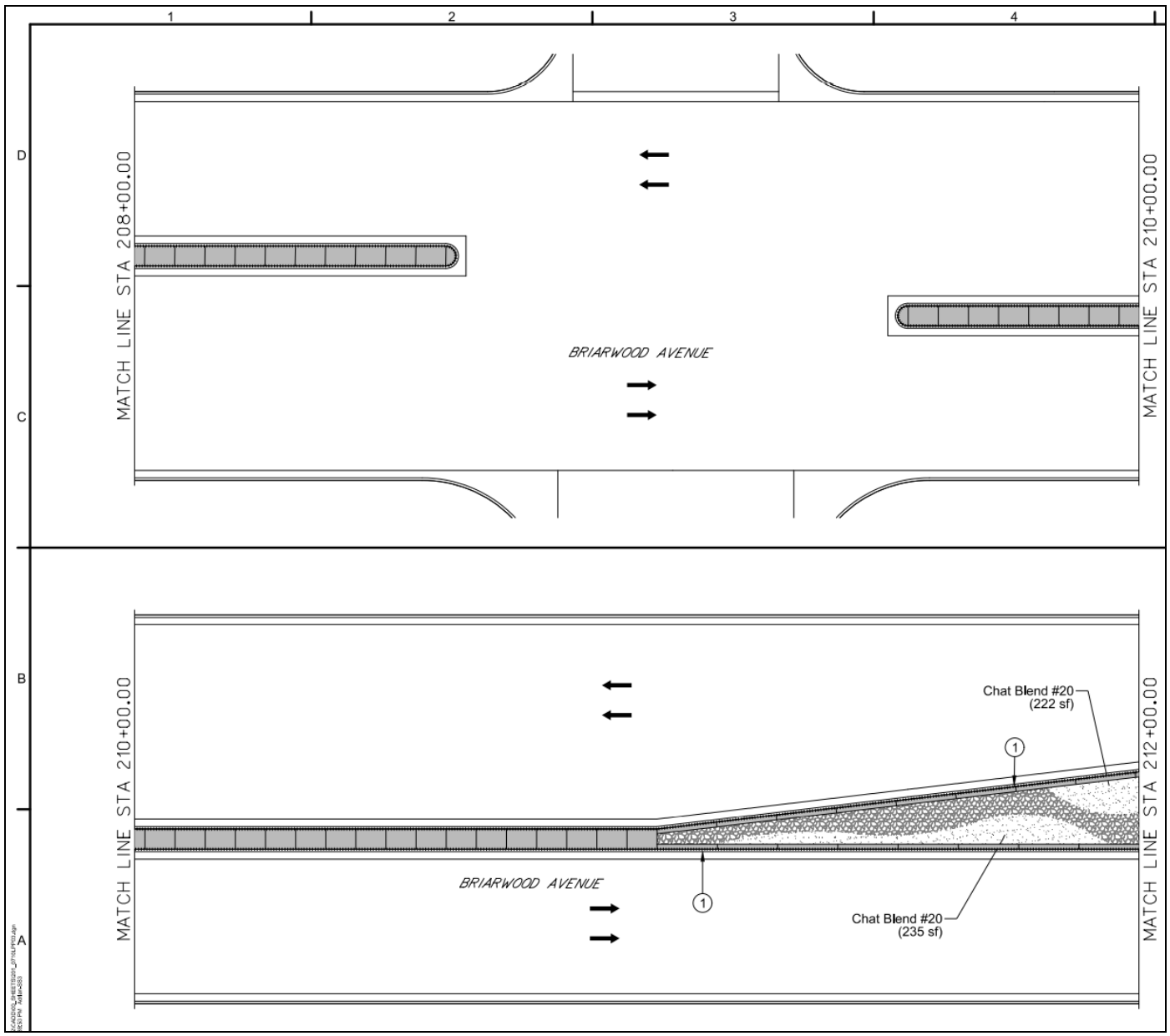
Project Layout

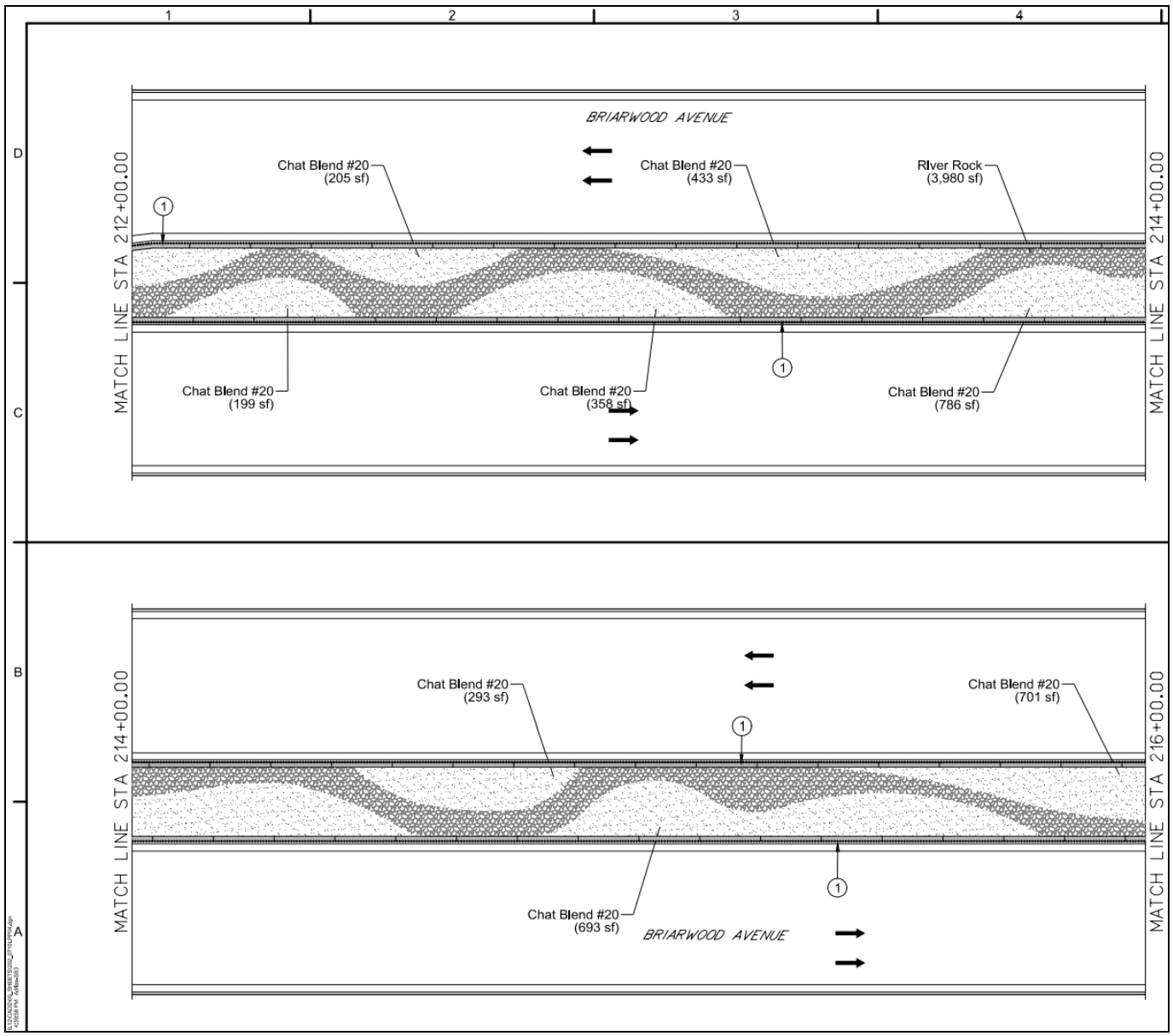


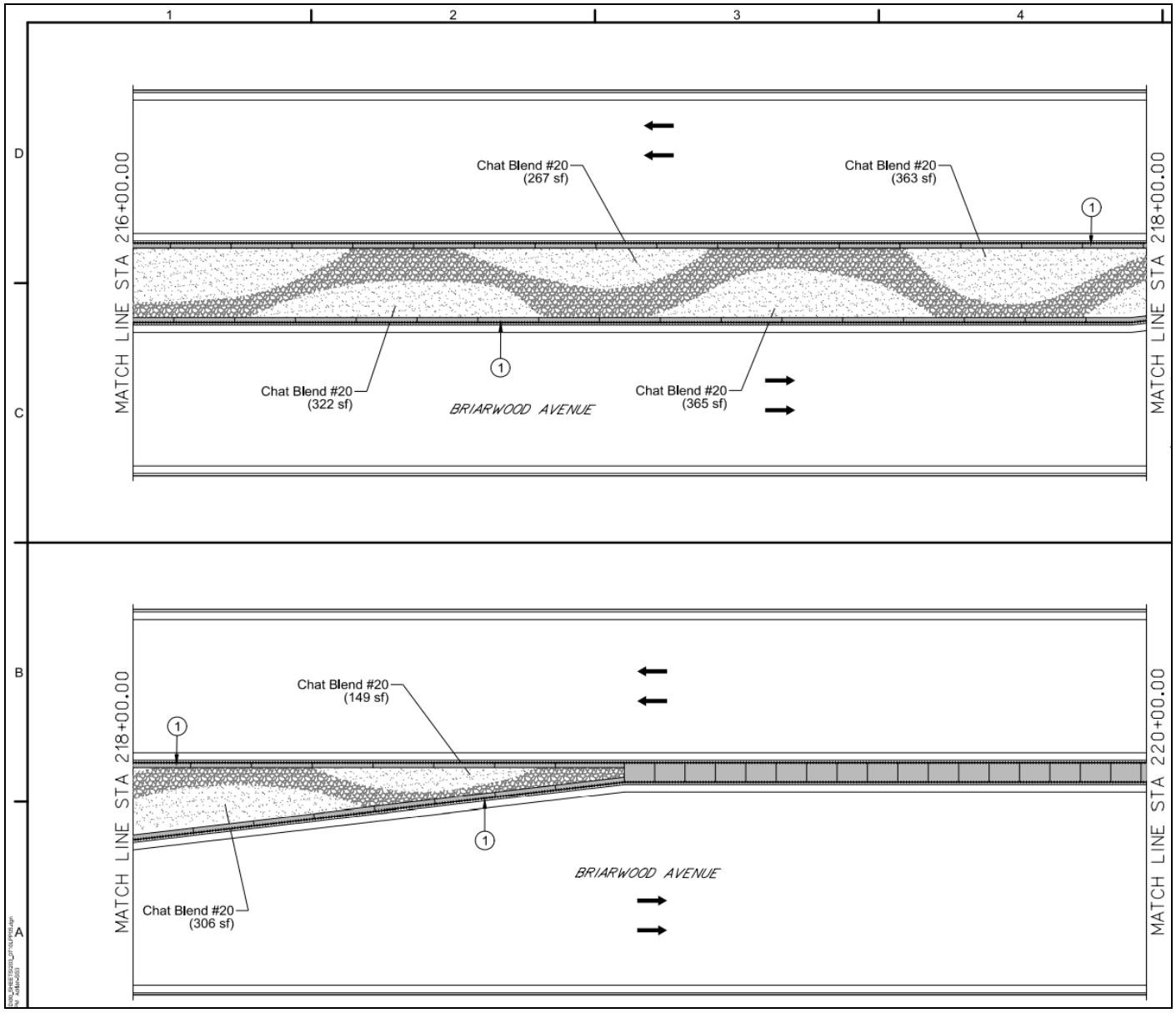
Existing Conditions

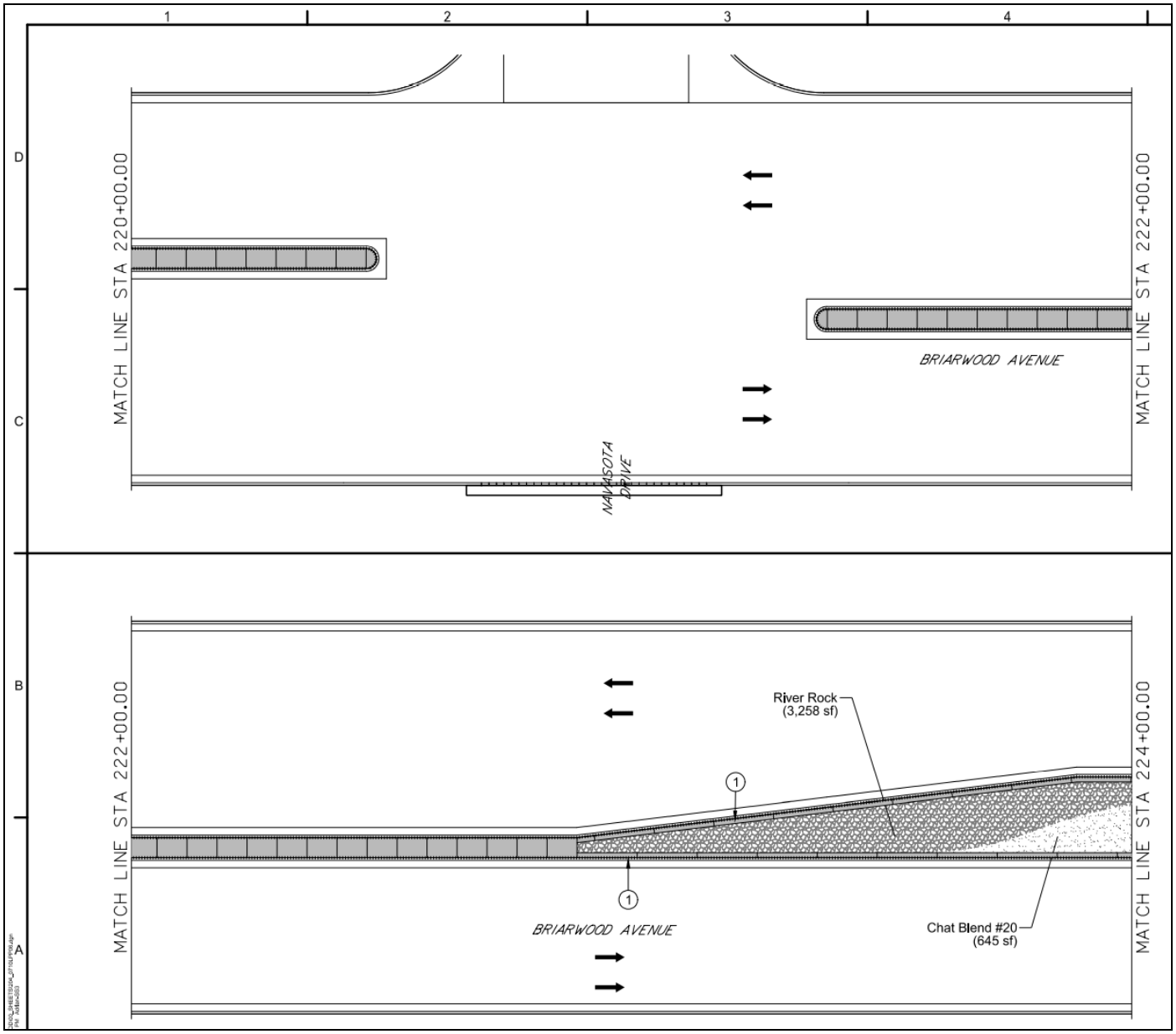


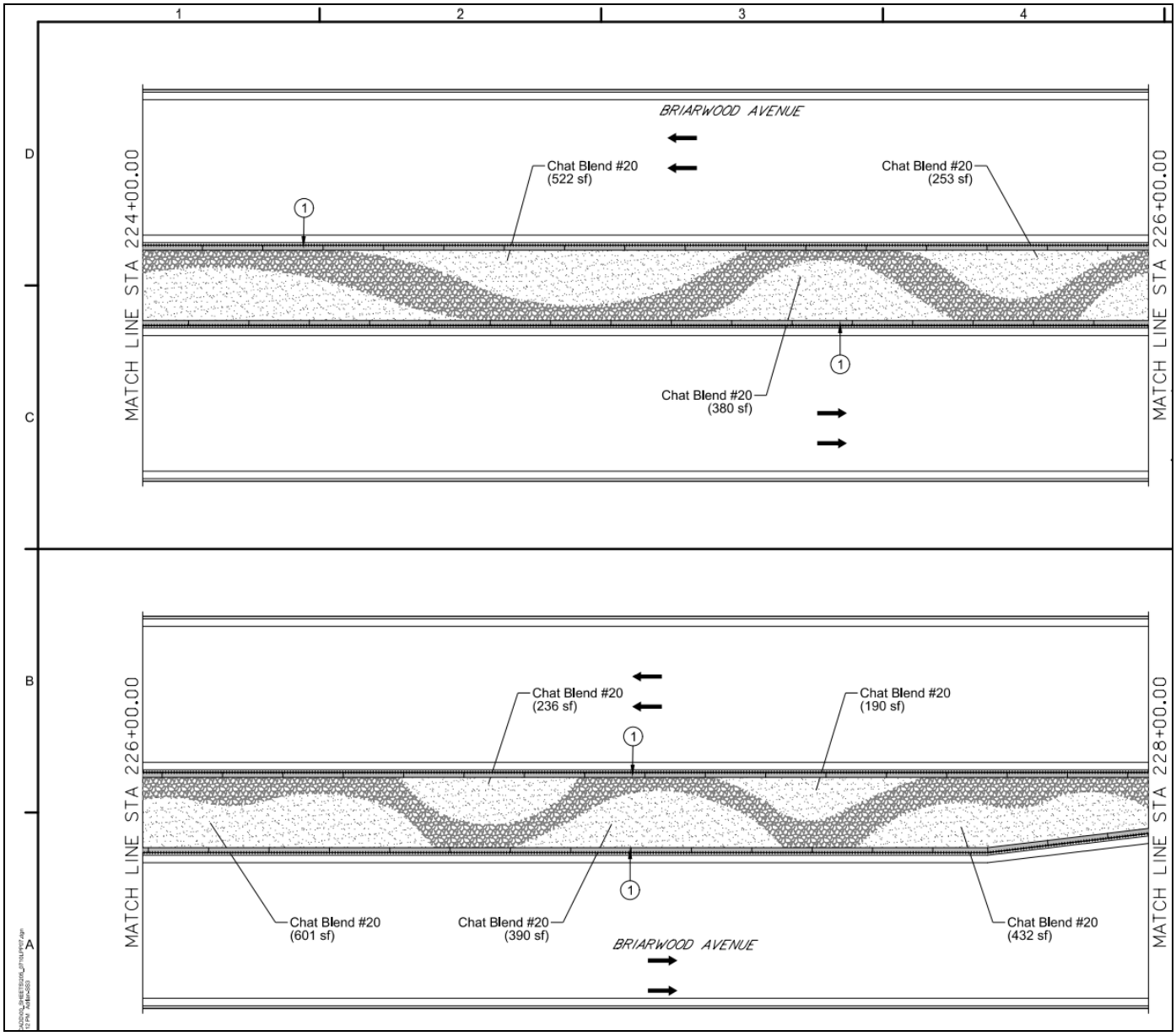

1
2
3
4
D
C
B
A
BRIARWOOD AVENUE
Chat Blend #20
(986 sf)
1
MATCH LINE STA 204+00.00
MATCH LINE STA 206+00.00
Chat Blend #20
(177 sf)
Chat Blend #20
(215 sf)
1
Chat Blend #20
(509 sf)
MATCH LINE STA 206+00.00
MATCH LINE STA 208+00.00
Chat Blend #20
(522 sf)
1
BRIARWOOD AVENUE

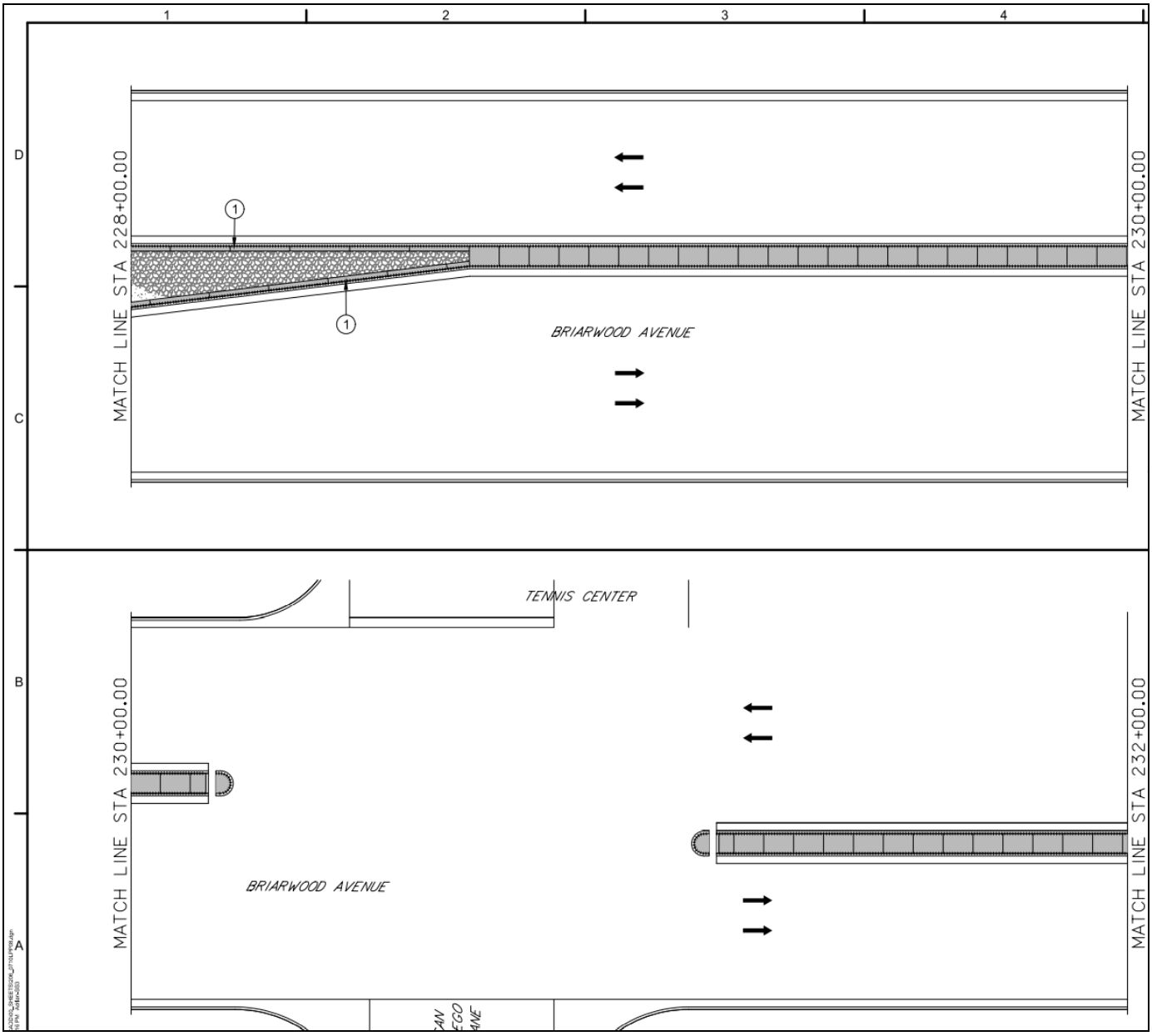

1
2
3
4
D
C
B
A
MATCH LINE STA 208+00.00
MATCH LINE STA 210+00.00
BRIARWOOD AVENUE
MATCH LINE STA 210+00.00
MATCH LINE STA 212+00.00
BRIARWOOD AVENUE
Chat Blend #20
(222 sf)
Chat Blend #20
(235 sf)
1
1

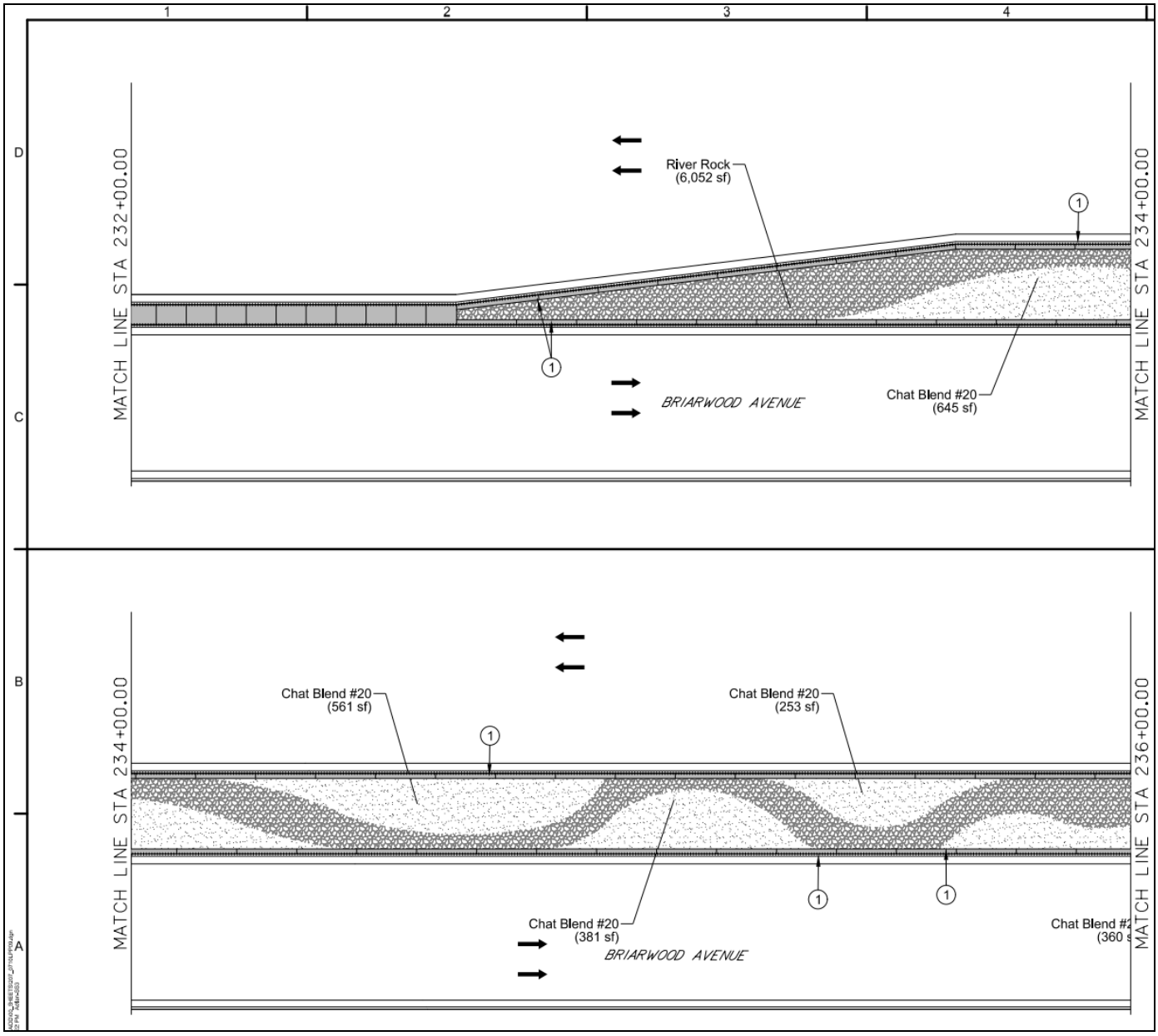

BRIARWOOD AVENUE
Chat Blend #20
(205 sf)
Chat Blend #20
(433 sf)
River Rock
(3,980 sf)
MATCH LINE STA 212+00.00
MATCH LINE STA 214+00.00
Chat Blend #20
(199 sf)
Chat Blend #20
(358 sf)
Chat Blend #20
(786 sf)
Chat Blend #20
(293 sf)
Chat Blend #20
(701 sf)
MATCH LINE STA 214+00.00
MATCH LINE STA 216+00.00
Chat Blend #20
(693 sf)
BRIARWOOD AVENUE

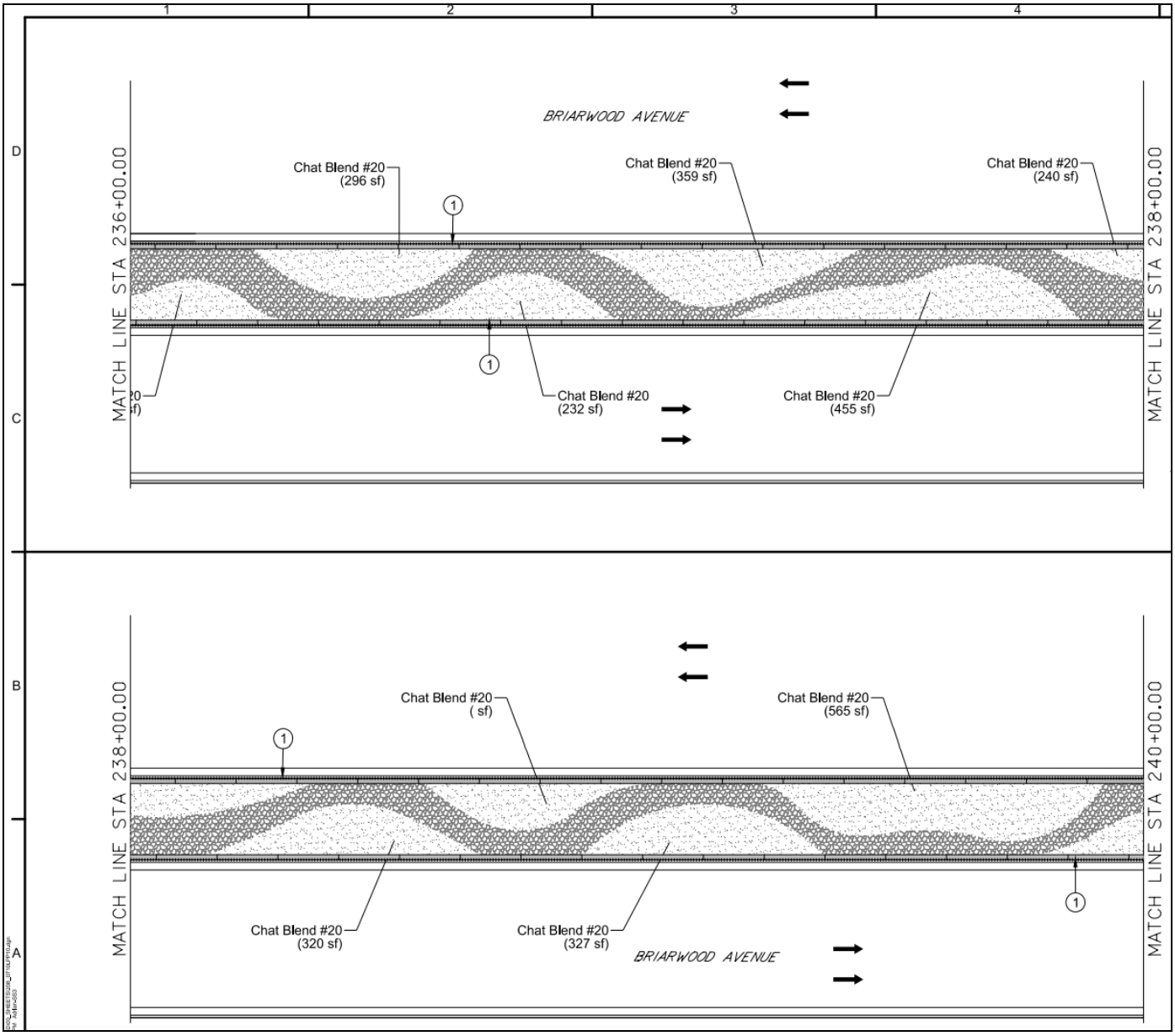

1
2
3
4
D
C
B
A
MATCH LINE STA 216+00.00
MATCH LINE STA 218+00.00
MATCH LINE STA 218+00.00
MATCH LINE STA 220+00.00
Chat Blend #20
(267 sf)
Chat Blend #20
(363 sf)
Chat Blend #20
(322 sf)
Chat Blend #20
(365 sf)
BRIARWOOD AVENUE
Chat Blend #20
(149 sf)
Chat Blend #20
(306 sf)
BRIARWOOD AVENUE
1

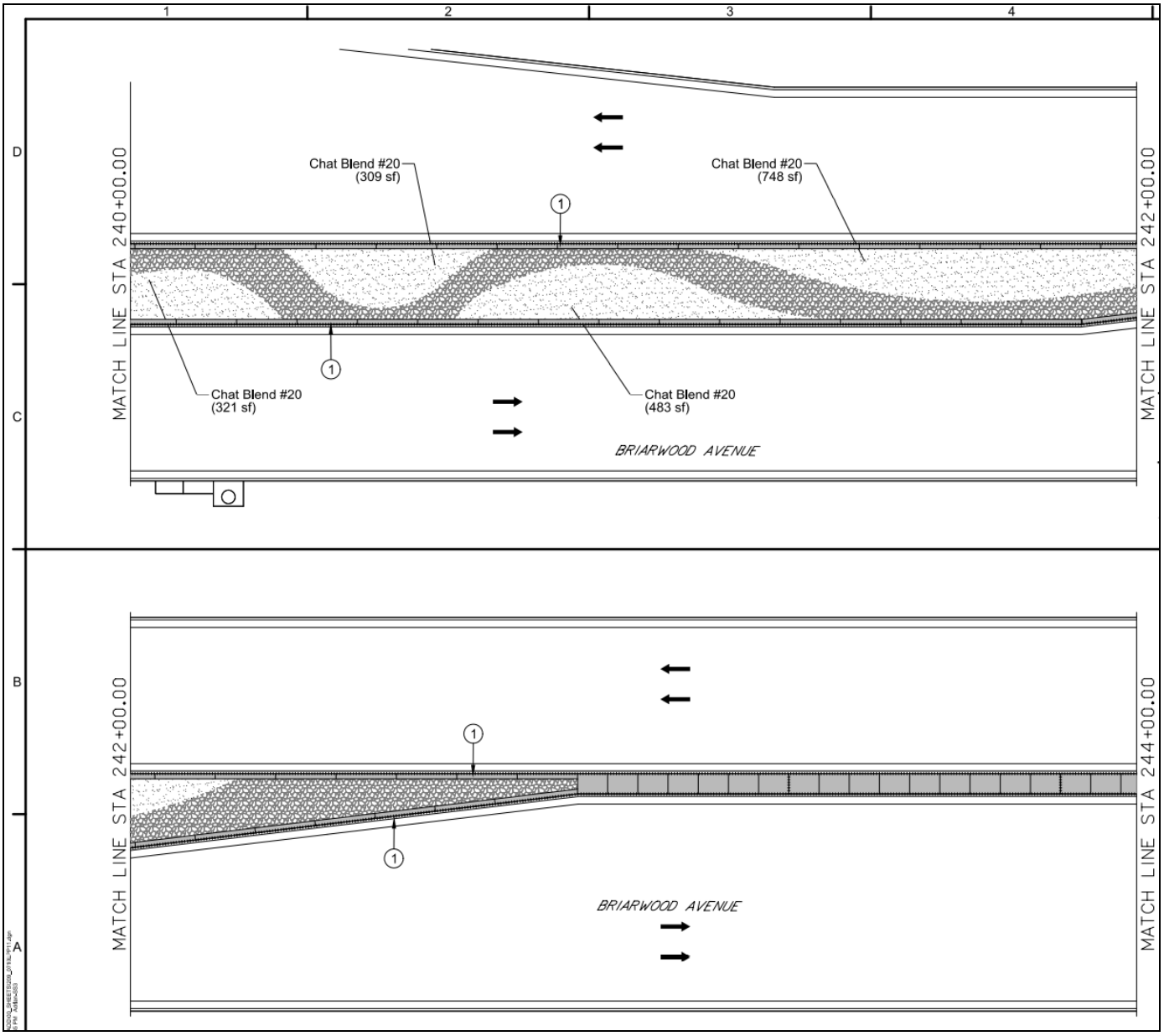

1
2
3
4
D
C
B
A
MATCH LINE STA 220+00.00
MATCH LINE STA 222+00.00
BRIARWOOD AVENUE
NAVASOTA DRIVE
MATCH LINE STA 222+00.00
MATCH LINE STA 224+00.00
River Rock
(3,258 sf)
1
1
BRIARWOOD AVENUE
Chat Blend #20
(645 sf)


1
2
3
4
D
C
B
A
BRIARWOOD AVENUE
MATCH LINE STA 224+00.00
MATCH LINE STA 226+00.00
Chat Blend #20
(522 sf)
Chat Blend #20
(253 sf)
Chat Blend #20
(380 sf)
1
MATCH LINE STA 226+00.00
MATCH LINE STA 228+00.00
Chat Blend #20
(236 sf)
Chat Blend #20
(190 sf)
Chat Blend #20
(601 sf)
Chat Blend #20
(390 sf)
Chat Blend #20
(432 sf)
BRIARWOOD AVENUE


1
2
3
4
D
C
B
A
MATCH LINE STA 228+00.00
MATCH LINE STA 230+00.00
BRIARWOOD AVENUE
TENNIS CENTER
MATCH LINE STA 230+00.00
MATCH LINE STA 232+00.00
BRIARWOOD AVENUE


1
2
3
4
D
C
B
A
MATCH LINE STA 232+00.00
MATCH LINE STA 234+00.00
River Rock
(6,052 sf)
1
BRIARWOOD AVENUE
Chat Blend #20
(645 sf)
MATCH LINE STA 234+00.00
MATCH LINE STA 236+00.00
Chat Blend #20
(561 sf)
Chat Blend #20
(253 sf)
Chat Blend #20
(381 sf)
BRIARWOOD AVENUE


BRIARWOOD AVENUE
MATCH LINE STA 236+00.00
MATCH LINE STA 238+00.00
Chat Blend #20
(296 sf)
Chat Blend #20
(359 sf)
Chat Blend #20
(240 sf)
Chat Blend #20
(232 sf)
Chat Blend #20
(455 sf)
MATCH LINE STA 238+00.00
MATCH LINE STA 240+00.00
Chat Blend #20
(sf)
Chat Blend #20
(565 sf)
Chat Blend #20
(320 sf)
Chat Blend #20
(327 sf)
BRIARWOOD AVENUE


1
2
3
4
D
C
B
A
MATCH LINE STA 240+00.00
MATCH LINE STA 242+00.00
MATCH LINE STA 242+00.00
MATCH LINE STA 244+00.00
Chat Blend #20
(309 sf)
Chat Blend #20
(748 sf)
Chat Blend #20
(321 sf)
Chat Blend #20
(483 sf)
BRIARWOOD AVENUE
BRIARWOOD AVENUE
1

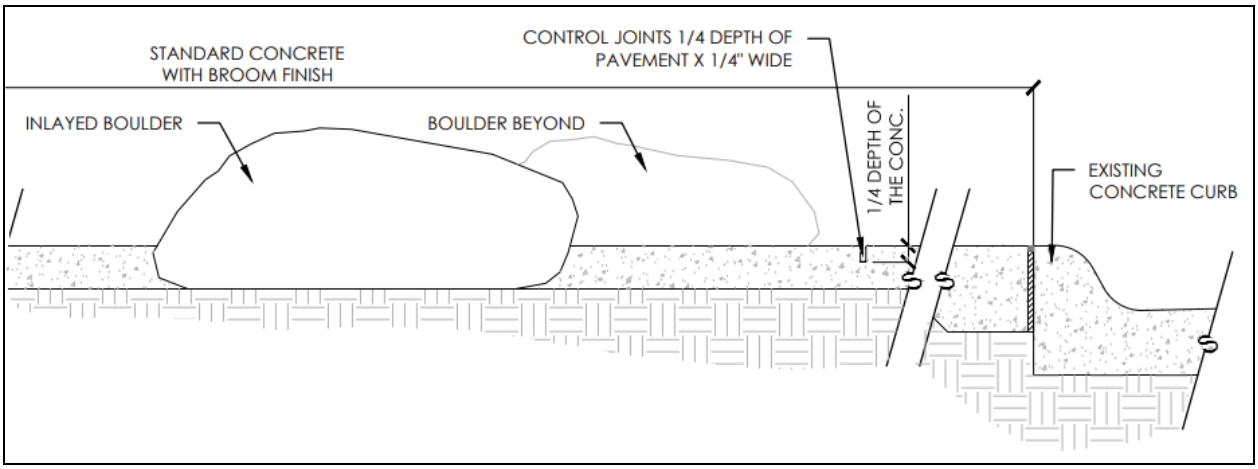
Proposed Improvements

The proposed improvements include the excavation and grading necessary to place 4” concrete sidewalk with boulders embeded into the concrete. Boulders shall be 1’ – 4’ Manzano Red.

BOULDERS:
MANZANO RED
SIZE: VARIES 1'-4'

STONE & BOULDER SUPPLIER:
CORONA STONE
4000 NCR 1150
MIDLAND, TX 79705
432-661-1792
coronastone@yahoo.com

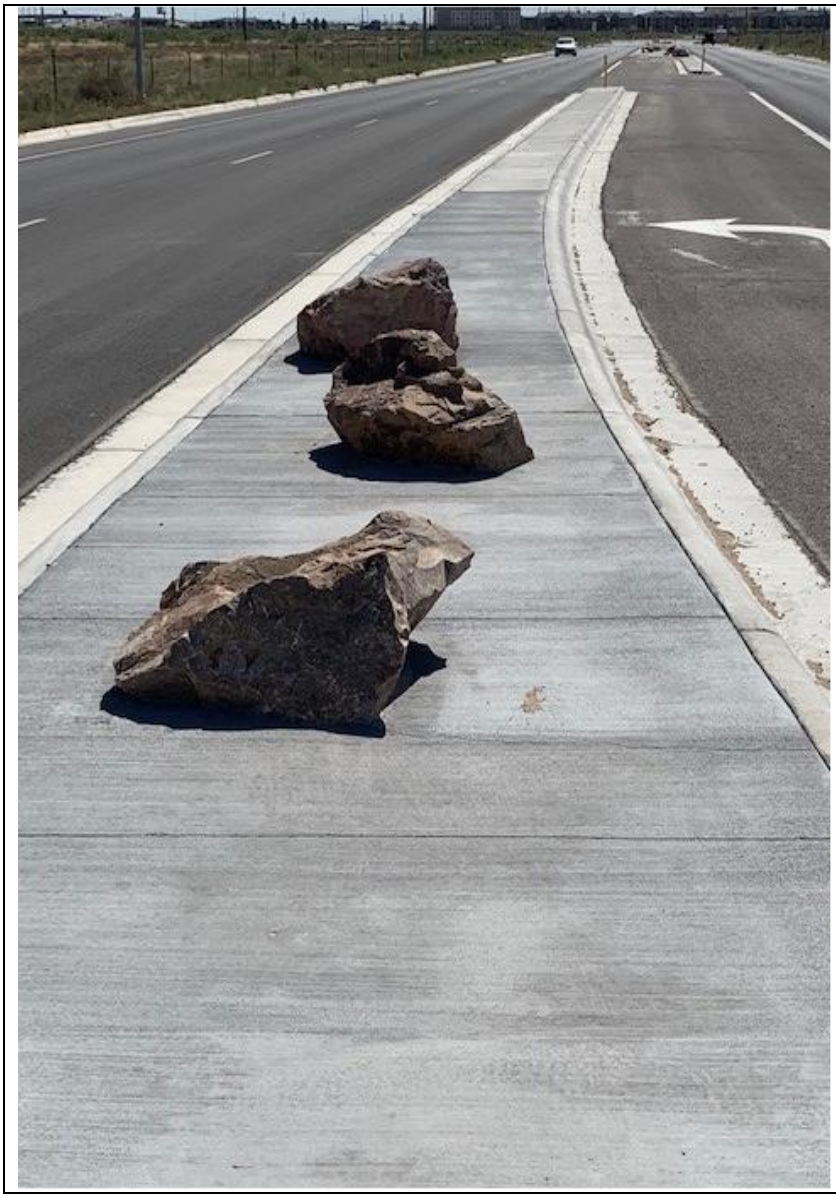
Typical Section:

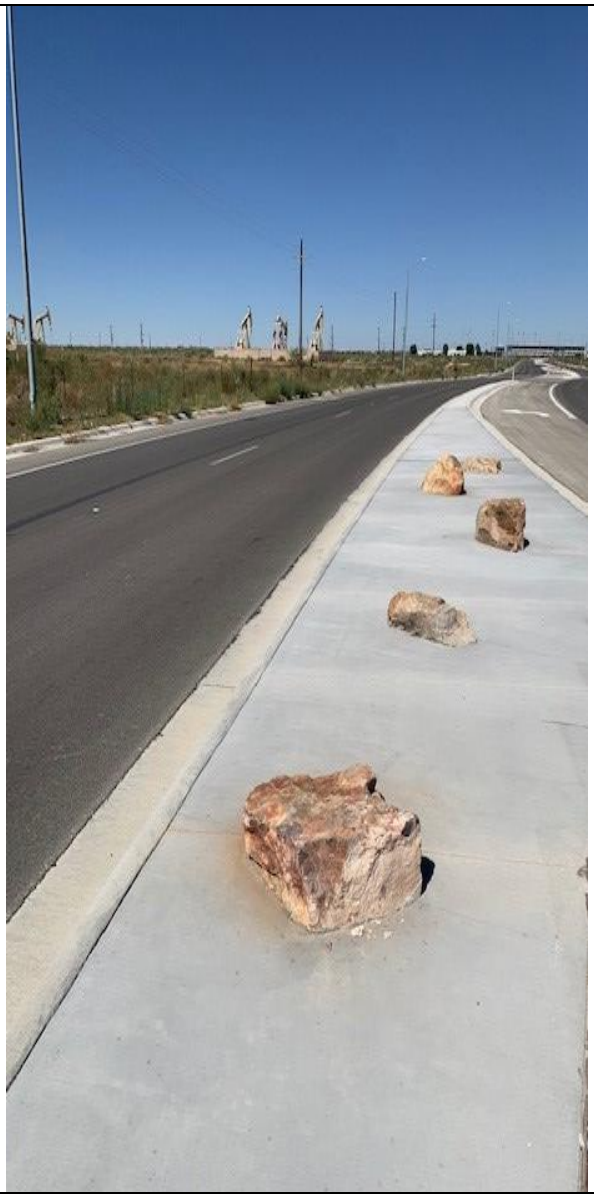


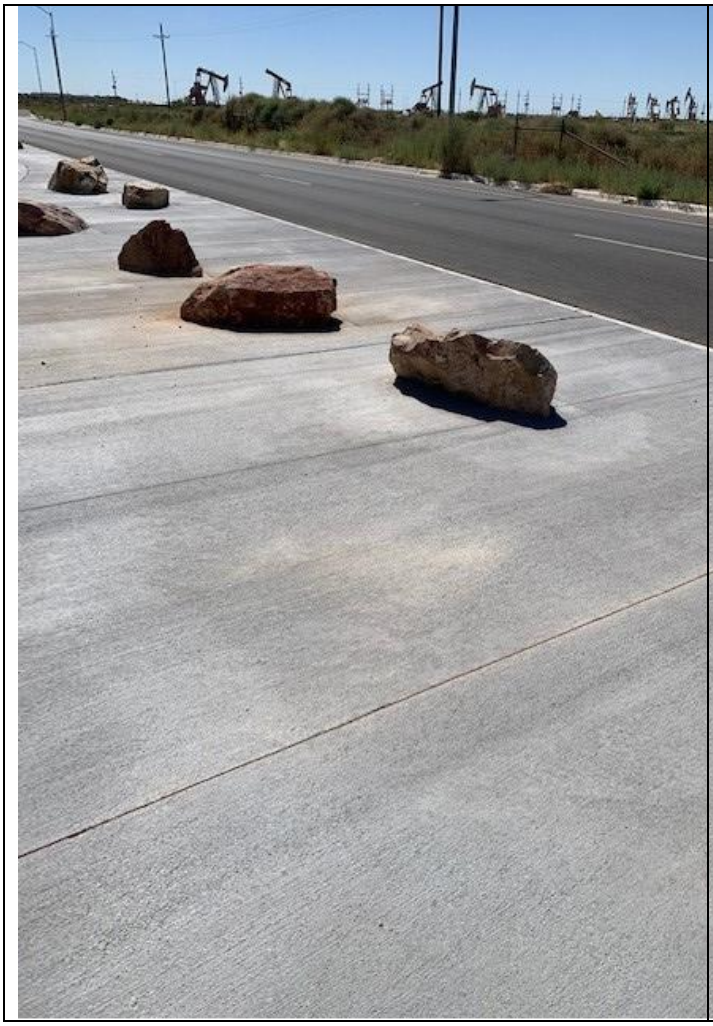
Notes:

1. Concrete to be City of Midland Class “A” and have a minimum 28-day compression strength of 3000 PSI. Use Micro-fiber reinforced concrete thorughout at a rate of 1lb./cy.
2. Concrete to be placed a minimum of 4” thick.
3. Concrete to have Type A sawcut joints or tooled joints every 5’.
4. Expansion joints to be located wherever new concrete is placed adjacent to existing concrete and not to exceed 50’.
5. All concrete surfaces shall have a course broom finish or other rough non-skid type fnish as approved by City staff.
6. Materials and construction methods to conform to the City of Midland Standards and Specifications.
7. Final boulder placement shall be marked in field for landscape and owner’s review and approval prior to concrete installation.

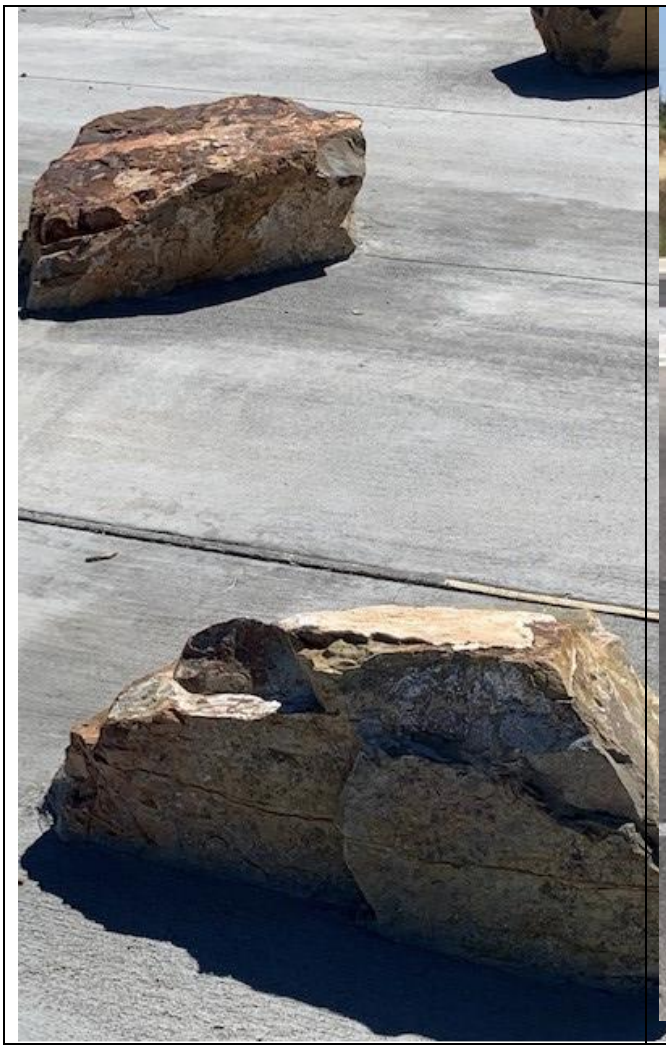
Example Layout Plan











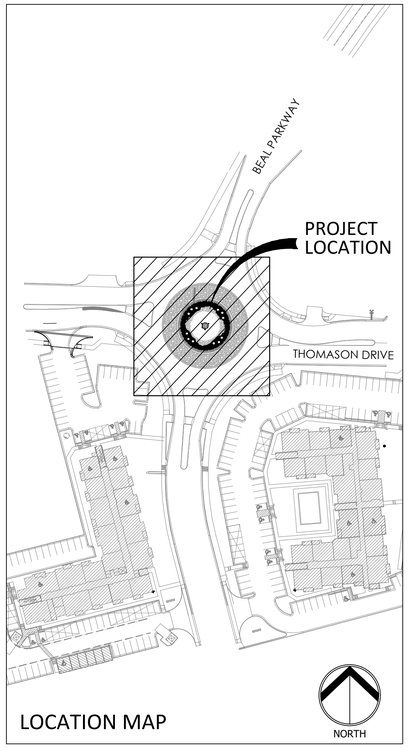


DALP NO. 006166.001

CITY OF MIDLAND
THOMASON ROUNDABOUT ENHANCEMENTS

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
Tel: 432.699.4889 • Fax: 432.682.7722
(TX REG. F-1114)

SHEET INDEX	
SHEET	DESCRIPTION
L0.00	REFERENCE PLAN
L0.01	GENERAL NOTES
L1.00	ROUNDABOUT LAYOUT PLAN
L1.01	ROUNDABOUT GRADING PLAN
L1.02	ROUNDABOUT LIGHTING LAYOUT PLAN
L2.00	PLANTING PLAN
L3.00	IRRIGATION PLAN
L3.01	IRRIGATION NOTES & DETAILS
L3.02	IRRIGATION DETAILS



LOCATION MAP

AUGUST 27, 2021

MAYOR

PATRICK PAYTON

COUNCIL MEMBERS

SCOTT DUFFORD	DISTRICT 1
JOHN NORMAN	DISTRICT 2
JACK LADD	DISTRICT 3
LORI BLONG	DISTRICT 4
SPENCER ROBNETT	AT LARGE
MICHAEL TROST	AT LARGE

CITY MANAGER

ROBERT PATRICK

TRAFFIC ENGINEER

MIKE PACELLI, PE, PTOE

TRANSPORTATION MANAGER

GABRIEL MCCLELLAND

MIDLAND
Feel the Energy!

811 Know what's below. Call before you dig.

CONTRACTOR _____

DATE CONSTRUCTOR BEGAN _____

WORK _____

DATE WORK WAS COMPLETED _____

DATE WORK WAS ACCEPTED _____

FINAL CONTRACT COST _____

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
2706
STATE OF TEXAS
08/27/2021

SUBMITTED _____

LANDSCAPE ARCHITECT

RECOMMENDED _____

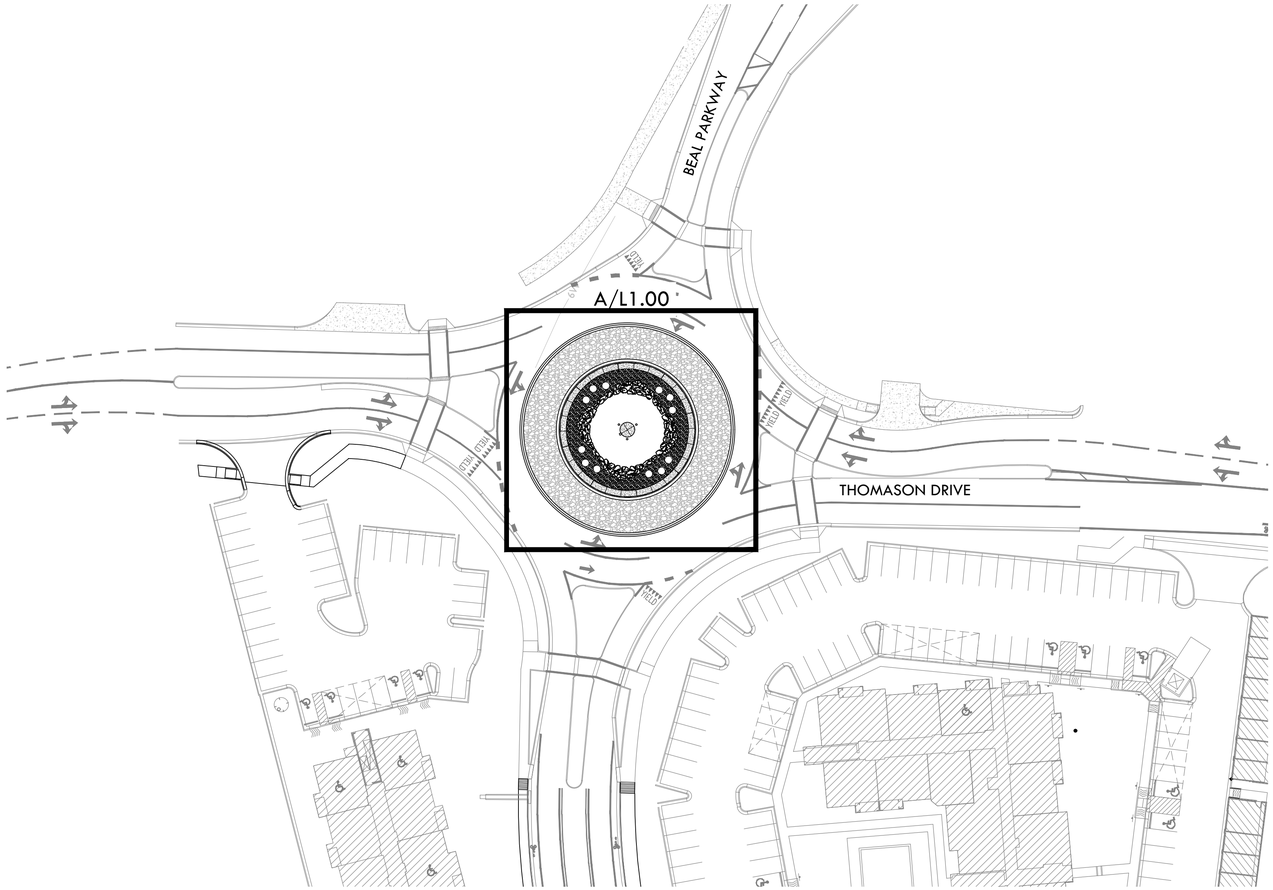
CITY ENGINEER

RECOMMENDED _____

ENGINEERING SERVICES DIRECTOR

LEGEND

PROPERTY LINE	
FENCE LINE	X X X
OVERHEAD ELECTRIC	OH
SEWER LINE	S
WATER LINE	W
EXISTING CONCRETE CURB	
EXPANSION JOINT	EJ
CONTROL JOINT	
PLANTING AREA	PA



NORTH

GRAPHIC SCALE
0 40 80
1 inch = 40'

REVISIONS		
NO.	DATE	DESCRIPTION
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#

REFERENCE

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 687-0865
TX REG. F-11124

THOMASON ROUNDABOUT
MIDLAND, TEXAS

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
2706
STATE OF TEXAS

08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L0.00

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PLOTTED BY: Megan Abernathy
PLOTTED ON: Thursday, August 26, 2021
PLOTTED AT: 1:40:03 PM
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GENERAL NOTES:

1. THE CONTRACTOR SHALL COORDINATE ALL CONSTRUCTION ACTIVITIES WITH THE CITY AND ADJUST CONSTRUCTION ACTIVITIES, DELIVERIES, STORAGE, ETC. TO ACCOMMODATE THE CITY'S NEEDS FOR USE OF THESE FACILITIES.

SITE PLAN NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CONSTRUCTION SURVEYING FOR THIS PROJECT.
2. THE CONTRACTOR, AND THEIR AGENTS, SUBCONTRACTOR, ENGINEER, OR SURVEYOR ARE COMPLETELY RESPONSIBLE FOR THE VERIFICATION OF THE ACCURACY OF THE DIMENSION CONTROL FURNISHED HEREIN. THE CITY, AND HIS AGENTS, IS NOT RESPONSIBLE FOR THE ACCURACY OF THE COORDINATES FURNISHED. THE CONTRACTOR IS REQUIRED TO VERIFY ALL THE COORDINATES FOR ACCURACY.
3. WRITTEN DIMENSIONS AND COORDINATES SHALL GOVERN OVER SCALED DRAWINGS.
4. ALL IMPROVEMENTS SHALL BE STAKED IN THE FIELD BY THE CONTRACTOR AND APPROVED BY LANDSCAPE ARCHITECT AND CITY OF MIDLAND REPRESENTATIVE PRIOR TO CONSTRUCTION.
5. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB, FACE OF WALL, OR FACE OF BUILDING UNLESS OTHERWISE NOTED.
6. LAYOUT AND GRADING FOR THE IMPROVEMENTS SHALL OCCUR AS DIRECTED BY THE LANDSCAPE ARCHITECT WITH THE FOLLOWING GUIDELINES:
   - ALL WALKS SHALL HAVE A MAXIMUM CROSS SLOPE OF 2% (1:48) IN THE DIRECTION OF THE DOWNHILL SIDE.
   - THE LONGITUDINAL SLOPE OF THE WALKS SHALL BE NO GREATER THAN 5% (1:20) UNLESS OTHERWISE NOTED.
   - ALL GRADES SHALL BE FINISHED TO A SMOOTH, FLOWING CONTOUR, MAINTAINING EXISTING FLOW PATTERNS UNLESS DIRECTED OTHERWISE.
7. THE CONTRACTOR SHALL VERIFY ALL BUILDING SETBACK LINES, EASEMENT LINES, AND VISIBILITY LINES IN THE FIELD PRIOR TO CONSTRUCTION.
8. CONTRACTOR TO PROVIDE 5'x5' MOCKUP OF ALL CONCRETE FINISHES INCLUDING BOULDERS, INTEGRAL COLOR, PATTERNS AND JOINTING FOR APPROVAL BY LANDSCAPE ARCHITECT AND CITY OF MIDLAND REPRESENTATIVE PRIOR TO CONSTRUCTION.
9. AN AUTOCAD FILE WILL BE PROVIDED TO THE GENERAL CONTRACTOR FOR DIMENSIONS, LAYOUT, AND CONSTRUCTION OF PROJECT FEATURES.

UTILITY NOTES:

1. IN THE EVENT THAT EXISTING UTILITIES SUCH AS WATER, GAS, TELEPHONE, ELECTRIC, ETC., MUST BE TAKEN OUT OF SERVICE TO FACILITATE CONSTRUCTION, THE CONTRACTOR SHALL PROVIDE TEMPORARY UTILITIES TO THE SATISFACTION OF THE CITY.
2. THE CONTRACTOR SHALL USE EXTREME "CAUTION" WHEN WORKING IN AREAS ADJACENT TO GAS LINES, UNDERGROUND ELECTRIC CABLE, FIBER OPTIC CABLE AND UNDERGROUND TELEPHONE CABLE.
3. WHERE EXISTING UTILITIES OR SERVICE LINES ARE CUT, BROKEN OR DAMAGED, THE CONTRACTOR SHALL REPLACE OR REPAIR THE UTILITIES OR SERVICE LINES WITH THE SAME TYPE OF ORIGINAL MATERIAL AND CONSTRUCTION, OR BETTER, UNLESS OTHERWISE SHOWN OR NOTED ON THE PLANS. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE LANDSCAPE ARCHITECT OF ANY CONFLICTS IN GRADES AND ALIGNMENT.
4. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO PROTECT IN PLACE ALL EXISTING UTILITIES. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED AT NO ADDITIONAL COST TO THE CITY.

DEMOLITION PLAN NOTES:

1. THE CONTRACTOR IS RESPONSIBLE FOR THE DEMOLITION, REMOVAL, AND DISPOSING OF ANYTHING EXISTING WITHIN CONSTRUCTION AREA.
2. STATE LAW REQUIRES THAT DIG-TESS BE CONTACTED 48 HOURS PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITIES.
3. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS REQUIRED FOR DEMOLITION AND DISPOSAL,
4. PRIOR TO DEMOLITION OCCURRING, ALL EROSION CONTROL DEVICES ARE TO BE INSTALLED PER THE CITY OF MIDLAND STANDARDS AND MAINTAINING THROUGH THE DURATION OF THE PROJECT.
5. ANY AND ALL ON-SITE REFUSE SHALL BE PROPERLY REMOVED AT CONTRACTOR'S EXPENSE.
6. THE LOCATIONS OF ALL EXISTING UTILITIES SHOWN ON THESE PLANS HAVE BEEN DETERMINED FROM THE BEST INFORMATION AVAILABLE AND ARE GIVEN FOR THE CONVENIENCE OF THE CONTRACTOR. THE LANDSCAPE ARCHITECT ASSUMES NO RESPONSIBILITY FOR THEIR ACCURACY. PRIOR TO THE START OF ANY DEMOLITION ACTIVITY, THE CONTRACTOR SHALL NOTIFY THE UTILITY COMPANIES FOR ON-SITE LOCATIONS OF EXISTING UTILITIES.
7. ALL EXISTING SEWERS, PIPING AND UTILITIES SHOWN ARE NOT TO BE INTERPRETED AS THE EXACT LOCATION, OR AS THE ONLY OBSTACLES THAT MAY OCCUR ON THE SITE. VERIFY EXISTING CONDITIONS AND PROCEED WITH CAUTION AROUND ANY ANTICIPATED FEATURES. GIVE NOTICE TO ALL UTILITY COMPANIES REGARDING DESTRUCTION AND/OR REMOVAL OF ALL SERVICE LINES AND CAP ALL LINES BEFORE PROCEEDING WITH THE WORK. EXISTING UTILITIES, NOT IN USE, UNDER BUILDING FOOTPRINTS SHALL BE ABANDONED PER GEOTECHNICAL RECOMMENDATIONS.
8. CONTINUOUS ACCESS SHALL BE MAINTAINED FOR THE SURROUNDING PROPERTIES AT ALL TIMES DURING DEMOLITION OF THE EXISTING FACILITIES.
9. CONTRACTOR MAY LIMIT SAWCUT AND PAVEMENT REMOVAL TO ONLY THOSE AREAS WHERE IT IS REQUIRED AS SHOWN ON THESE CONSTRUCTION PLANS, BUT IF ANY DAMAGE IS INCURRED ON ANY OF THE SURROUNDING PAVEMENT, ETC. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ITS REMOVAL AND REPAIR.
10. ALL FENCES REMOVED TO FACILITATE CONSTRUCTION SHALL BE REPLACED AT THE EXISTING OR PROPOSED LOCATION AS DIRECTED BY THE OWNER'S PROJECT REPRESENTATIVE.
11. AT SITES WHERE DEMOLITION WILL OCCUR AT OR NEAR A PUBLIC STREET, THE CONTRACTOR SHALL SCHEDULE CONSTRUCTION ACTIVITIES AS SOON AS POSSIBLE SO THAT EDGES OF THE PAVEMENT WILL NOT BE LEFT UNPROTECTED LONGER THAN NECESSARY.
12. IF WATER WELL(S) IS DISCOVERED, NOTIFY OWNER AND LANDSCAPE ARCHITECT IMMEDIATELY.
13. COORDINATE ALL DEMOLITION AND CONSTRUCTION ACTIVITIES PRIOR TO COMMENCEMENT WITH OTHER CONTRACTORS AND TRADES.
14. CONTRACTOR SHALL DETERMINE LOCATIONS AND EXTENT OF ALL EXISTING SITE UTILITIES PRIOR TO COMMENCEMENT OF WORK.
15. CONTRACTOR SHALL ERECT LIMITS OF WORK BARRICADES OR SECURITY FENCING TO ALLOW PEDESTRIAN CIRCULATION TO CONTINUE UNINTERRUPTED.

REVISIONS

NO.	DATE	DESCRIPTION

GENERAL NOTES

THOMASON ROUNDABOUT

MIDLAND, TEXAS

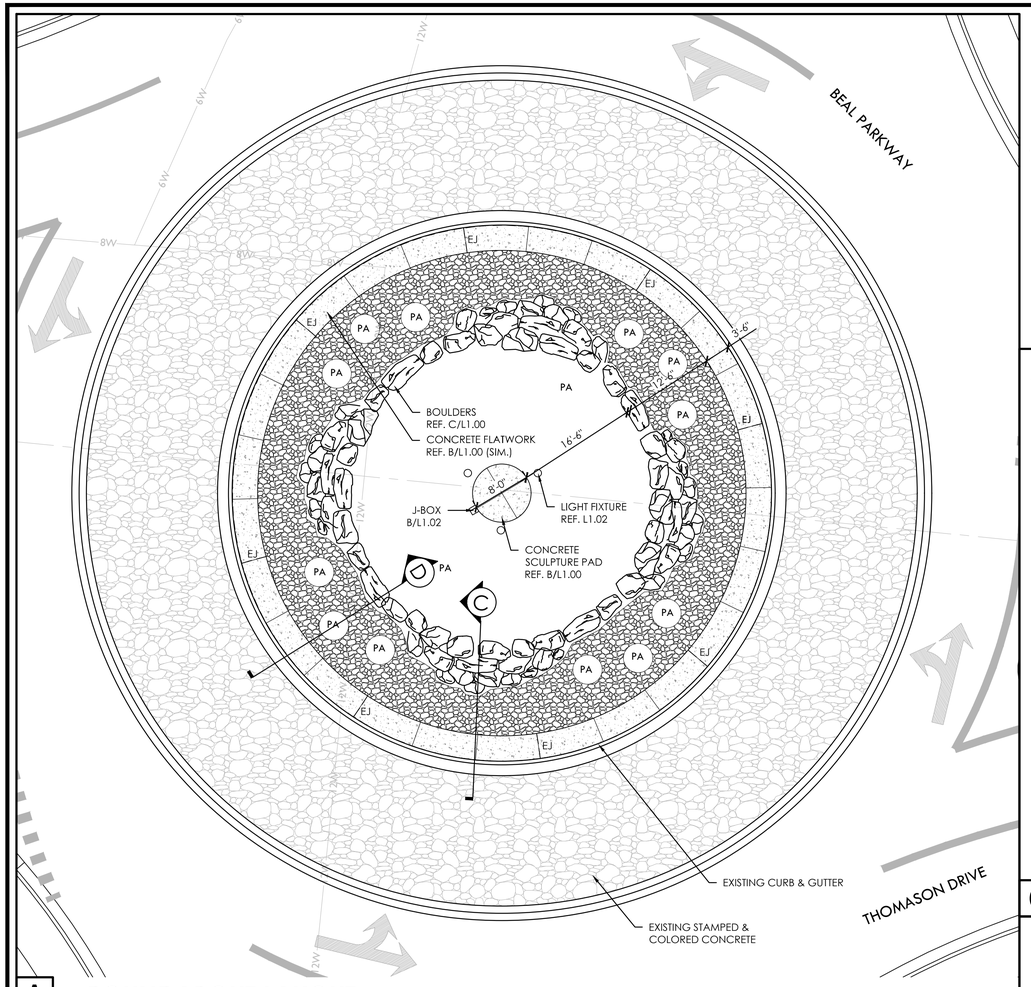
DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 687-0865
TX REG. F-11174

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
2705
STATE OF TEXAS

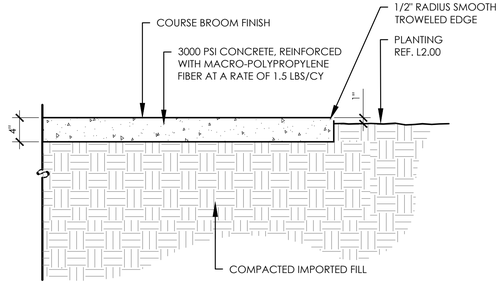
08/27/2021

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DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L0.01

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PLOTTED BY: Megan Abernathy
PLOTTED ON: Thursday, August 26, 2021
PLOTTED FROM: ACAD 2018
PLOTTED WITH: DWG To PDF.pc3



A ROUNDABOUT LAYOUT



B CONCRETE FLATWORK

SCALE: 1" = 1'-0"

NOTES:
1. REFER TO PLANS FOR CONTROL AND EXPANSION JOINT LOCATIONS.
2. CONCRETE TO BE CITY OF MIDLAND CLASS "A" AND HAVE A MINIMUM 28 DAY COMPRESSION STRENGTH OF 3000 PSI. USE FIBER REINFORCED CONCRETE PAVEMENT THROUGHOUT.
3. EXPANSION JOINTS TO BE LOCATED WHEREVER NEW FLATWORK IS PLACED ADJACENT TO EXISTING CONCRETE AND AS SHOWN ON THE ROUNDABOUT LAYOUT PLAN.
4. ATTACHED FLATWORK TO BE LOCATED ADJACENT TO THE BACK OF CURB.
5. ALL EXPOSED FLATWORK EDGES TO HAVE A 1/2" RADIUS.
6. FLATWORK SHALL HAVE A COURSE BROOM FINISH OR OTHER ROUGH NON-SKID TYPE FINISH AS APPROVED BY THE CITY ENGINEER.
7. MATERIALS AND CONSTRUCTION METHODS TO CONFORM TO THE CITY OF MIDLAND STANDARDS AND SPECIFICATIONS.

GRAPHIC SCALE
0 10 20
1 inch = 10'

NORTH

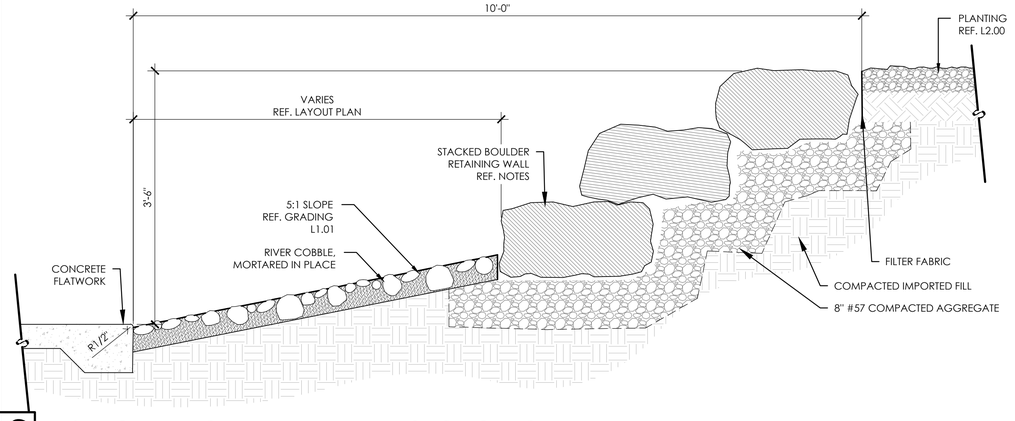
NOTE:

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO PROTECT IN PLACE ALL EXISTING UTILITIES. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED AT NO ADDITIONAL COST TO THE CITY.

LEGEND

PROPERTY LINE	
FENCE LINE	X X X
OVERHEAD ELECTRIC	OH
SEWER LINE	S
WATER LINE	W
EXISTING CONCRETE CURB	
EXPANSION JOINT	EJ
CONTROL JOINT	
PLANTING AREA	PA

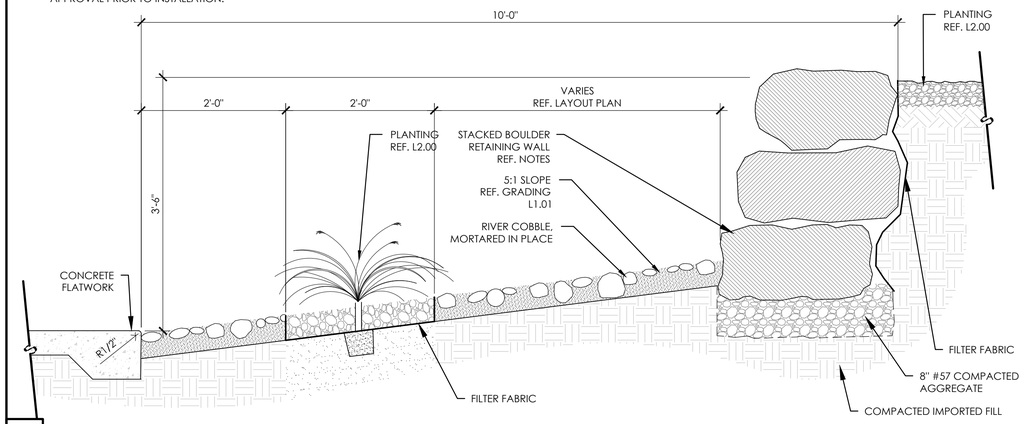
NOTES:
1. BOULDERS: LEUDERS LEDGE BLOCKS, 18"-24" W. X 2'-5' L. X 11" HT. COLOR: BUFF
2. RIVER COBBLE: MANZANO RED, 4"-6" IN DIAMETER, MORTARED IN PLACE, 2" MORTAR JOINT BETWEEN RIVER COBBLE STONES TYP.
3. CONTRACTOR SHALL CONSTRUCT 5'x5' MOCK-UP OF MORTARED RIVER COBBLE FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
4. FINAL BOULDER PLACEMENT SHALL BE MARKED IN FIELD FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.



C STACKED BOULDER WALL AT SECTION C

SCALE: 1"=1'-0"

NOTES:
1. BOULDERS: LEUDERS LEDGE BLOCKS, 18"-24" W. X 2'-5' L. X 11" HT. COLOR: BUFF
2. RIVER COBBLE: MANZANO RED, 4"-6" IN DIAMETER, MORTARED IN PLACE, 2" MORTAR JOINT BETWEEN RIVER COBBLE STONES TYP.
3. CONTRACTOR SHALL CONSTRUCT 5'x5' MOCK-UP OF MORTARED RIVER COBBLE FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
4. FINAL BOULDER PLACEMENT SHALL BE MARKED IN FIELD FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.



D STACKED BOULDER WALL AT SECTION D

SCALE: 1"=1'-0"

REVISIONS

NO.	DATE	DESCRIPTION

ROUNDABOUT LAYOUT PLAN

THOMASON ROUNDABOUT

MIDLAND, TEXAS

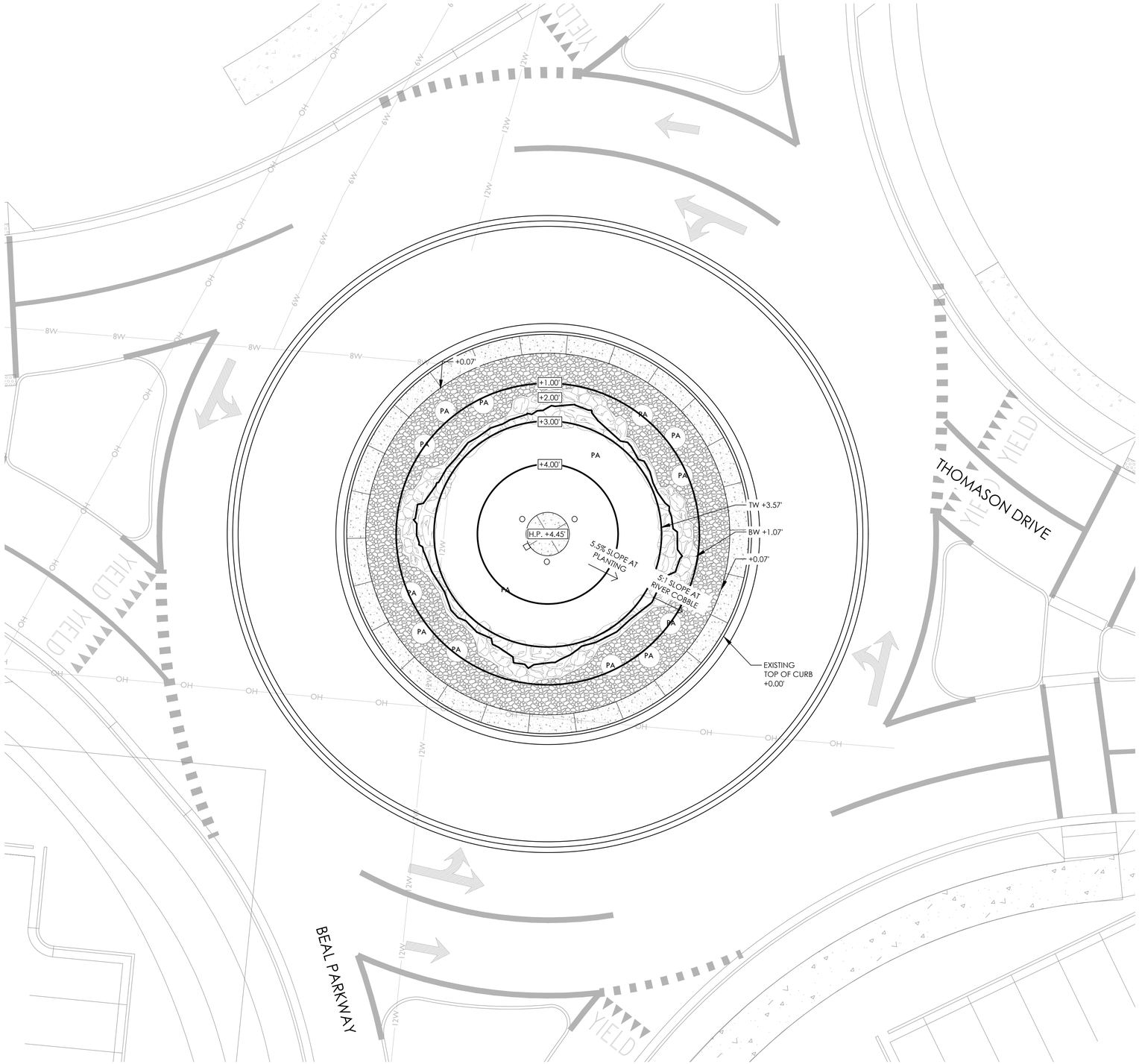
DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 262-2539 • dunaway.com
TX REG. F-11124

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
2705
STATE OF TEXAS
Megan Abernathy
08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L1.00

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FILENAME: 6166-Layout Plan.dwg
PLOTTED BY: Megan Abernathy
PLOTTED ON: Thursday, August 26, 2021
PLOTTED FROM: Model
PLOTTED WITH: DWG To PDF.pc3



GRADING NOTES

1. STRIP TOPSOIL TO A DEPTH NOT TO EXCEED 6" STOCKPILE AND REDISTRIBUTE TO GRADED AREAS ONCE ROUGH GRADING OPERATIONS ARE COMPLETE. STOCKPILE AREA TO BE APPROVED BY OWNER AND LANDSCAPE ARCHITECT PRIOR TO GRADING.
2. ALL PROPOSED GRADES INDICATED ARE FINISHED GRADES. THE PROPOSED PAVING IS SHOWN TO FINISHED GRADE AND THE CONTRACTOR IS RESPONSIBLE FOR EXCAVATING FOR IMPROVEMENTS AS PART OF THE OVERALL MASS GRADING.
3. ALL LAND FORMS AND SWALES SHALL BE GRADED TO BE A SMOOTH, FLOWING, ROUNDED SURFACE PROVIDING POSITIVE DRAINAGE AND VISUAL CONTINUITY.
4. CONTRACTOR IS RESPONSIBLE FOR REMOVAL OF ALL CLEARED BRUSH, DEBRIS, ETC. FROM WITHIN THE LIMITS OF CONSTRUCTION. DISPOSE OF MATERIAL OFF SITE.
5. WHEN CLEARING FOR GRADING, THE CONTRACTOR SHALL COORDINATE TREE PRESERVATION WITH THE LANDSCAPE ARCHITECT AND OWNERS REPRESENTATIVE.
6. GRADING FOR THE IMPROVEMENTS SHALL OCCUR AS DIRECTED BY THE LANDSCAPE ARCHITECT WITH THE FOLLOWING GUIDELINES:
   - ALL WALKS SHALL HAVE A MAXIMUM CROSS SLOPE OF 2% (1:48) IN THE DIRECTION OF THE DOWNHILL SIDE.
   - THE LONGITUDINAL SLOPE OF THE WALKS SHALL BE NO GREATER THAN 5%. (1:20)
   - ALL GRADES SHALL BE FINISHED TO A SMOOTH, FLOWING CONTOUR, MAINTAINING EXISTING FLOW PATTERNS UNLESS DIRECTED OTHERWISE.
7. REFER TO EXISTING CONDITIONS AND REMOVAL ITEMS PLAN FOR SURVEY, BENCHMARKS, DEMOLITION, EXISTING TREE REMOVAL, AND CLEARING INFORMATION.
8. REFER TO LAYOUT SHEETS FOR LAYOUT INFORMATION.
9. CONTRACTOR IS RESPONSIBLE FOR THE LOCATION AND MARKING OF ALL EXISTING UNDERGROUND OR ABOVE GROUND UTILITIES WITHIN THE PROJECT AREA.

IMPORTED FILL NOTES

EMBANKMENT SHALL BE CONSTRUCTED AT THE LOCATIONS AND TO THE LINES AND GRADES SHOWN ON THE PLANS. 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 LANDSCAPE ARCHITECT. 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 LANDSCAPE ARCHITECT 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.

NORTH

GRAPHIC SCALE
0 10 20
1 inch = 10'

REVISIONS

NO.	DATE	DESCRIPTION

ROUNDABOUT GRADING PLAN

THOMASON ROUNDABOUT
MIDLAND, TEXAS

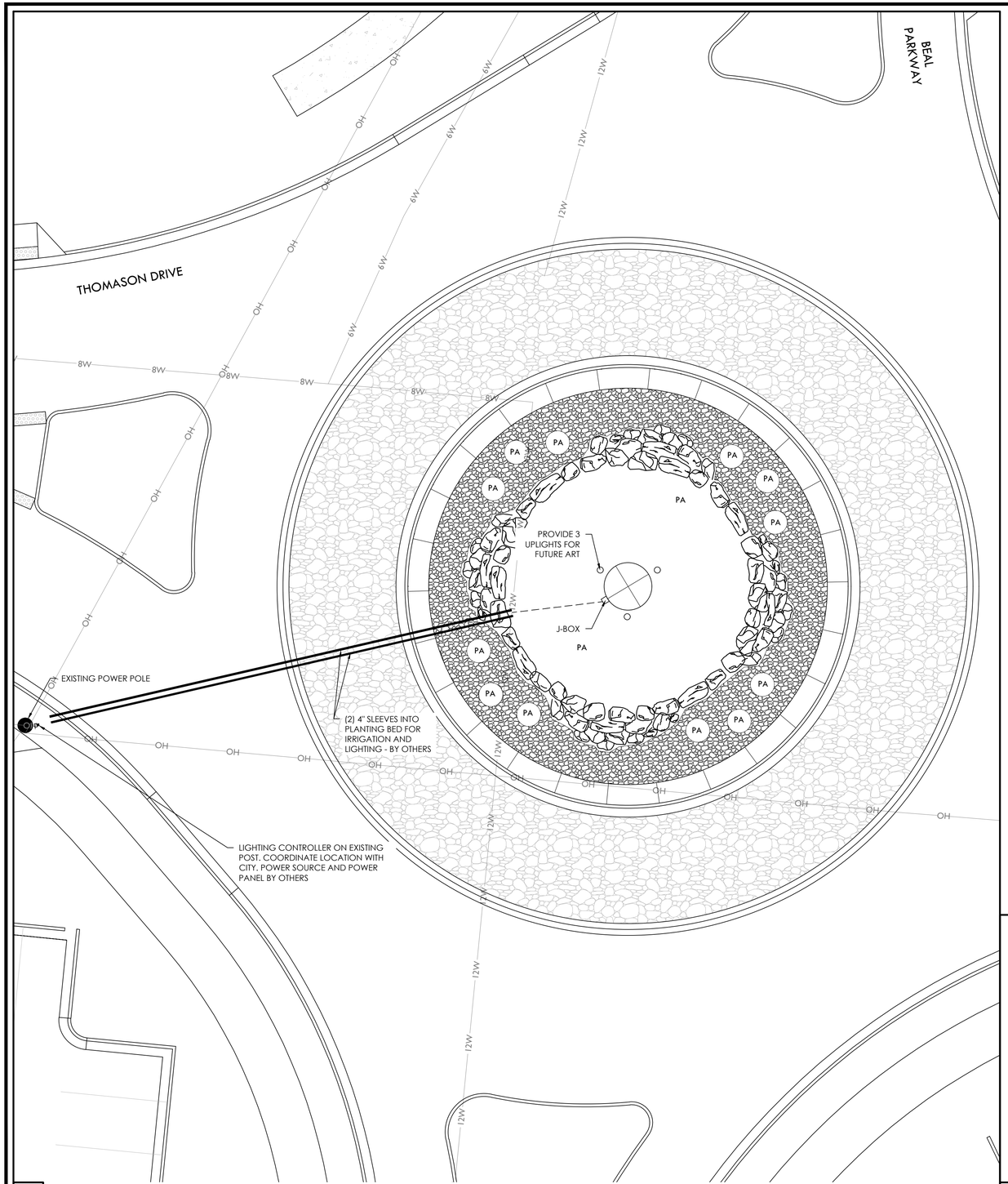
DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 687-0865
TX REG. F-11744

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
STATE OF TEXAS
2705
08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L1.01

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FILENAME: 6166 Grading Plan.dwg
PLOTTED BY: Megan Abernathy
PLOTTED ON: Friday, August 27, 2021
PLOTTED FROM: PDF Model
PLOTTED WITH: DWG To PDF.pc3



A **ROUNDABOUT LIGHTING LAYOUT**

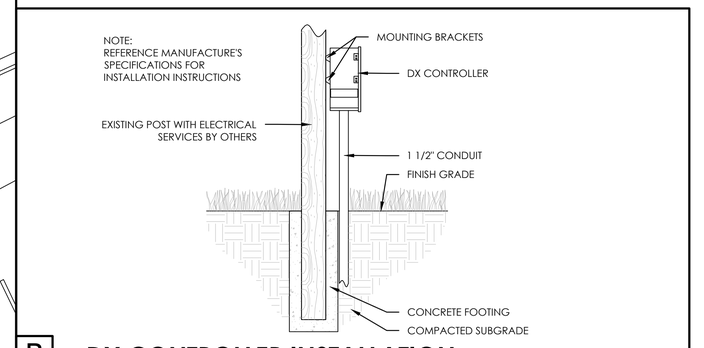
LEGEND

PROPERTY LINE	
FENCE LINE	X X X
OVERHEAD ELECTRIC	OH
SEWER LINE	S
WATER LINE	W
EXISTING CONCRETE CURB	
EXPANSION JOINT	EJ
CONTROL JOINT	
PLANTING AREA	PA

LIGHTING SCHEDULE

TYPE	Q.	MANUF.	SPEC.	DESCRIPTION	INSTALLATION
J-BOX	1				Flush with grade
CONTROL	1	FX LUMINAIRE (OR EQUAL)	DX	DX-300-SS	Attach to wood post per manufacturer's specifications & B/L1.02
UPLIGHT	3	FX LUMINARE (OR EQUAL)	MP	MP-ECO20WFL-FB	PER MANUF. SPEC.

GRAPHIC SCALE
0 10 20
1 inch = 10'
NORTH



B **DX CONTROLLER INSTALLATION** SCALE: 1"=1'-0"

NO.	DATE	REVISIONS DESCRIPTION

ROUNDABOUT LIGHTING LAYOUT PLAN

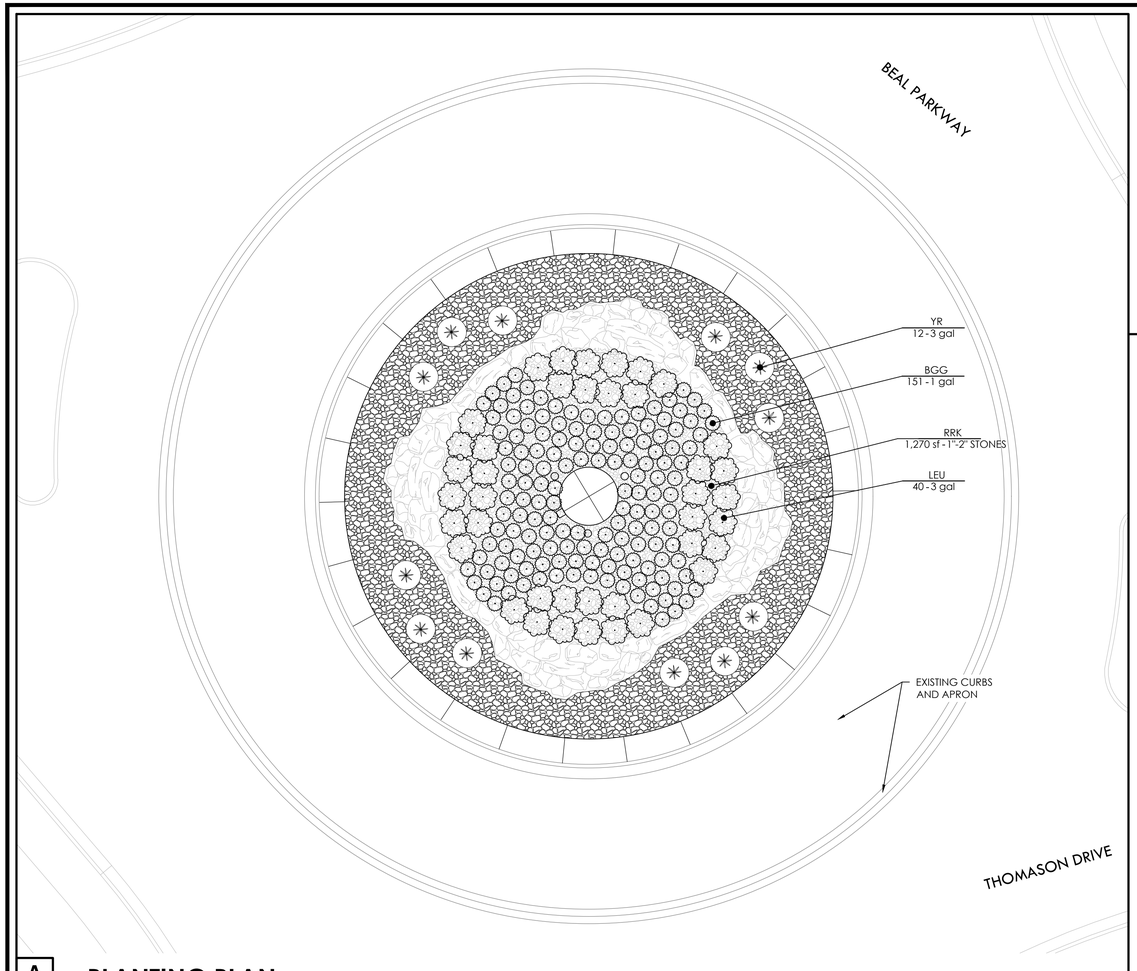
THOMASON ROUNDABOUT
MIDLAND, TEXAS

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4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 262-2539 • dunaway.com
TX REG. F-11744

REGISTERED LANDSCAPE ARCHITECT
MEGAN ABERNATHY
2706
STATE OF TEXAS
Megan Abernathy
08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L1.02

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PLOTTED BY: Megan Abernathy
PLOTTED ON: Thursday, August 26, 2021
PLOTTED AT: 1:1
PLOTTED WITH: DWG To PDF.pc3



A **PLANTING PLAN**

PLANT SCHEDULE

SHRUBS	CODE	QTY	COMMON NAME	BOTANICAL NAME	CONT.	HEIGHT	SPREAD	SPACING
	LEU	40	COMPACT TEXAS SAGE	LEUCOPHYLLUM FRUTESCEN `COMPACTA`	3 GAL	15"-18"	15"-18"	48" O.C.
	YR	12	SPINELESS YUCCA	YUCCA RECURVIFOLIA	3 GAL	18"-24"	NA	NA
GRASSES	**CODE**	**QTY**	**COMMON NAME**	**BOTANICAL NAME**	**CONT.**	**HEIGHT**	**SPREAD**	**SPACING**
	BGG	151	BLUE GRAMA GRASS `BLONDE AMBITION`	BOUTELOUA GRACILIS `BLONDE AMBITION`	1 GAL	8"-10"	FULL	18" O.C.
ROCK/GRAVEL	**CODE**	**QTY**	**COMMON NAME**	**BOTANICAL NAME**	**CONT.**	**HEIGHT**	**SPREAD**	**SPACING**
	RRK	1,270 SF	RIVER ROCK	MANZANO RED RIVER ROCK	1"-2" STONES	NA	NA	NA

NOTE:

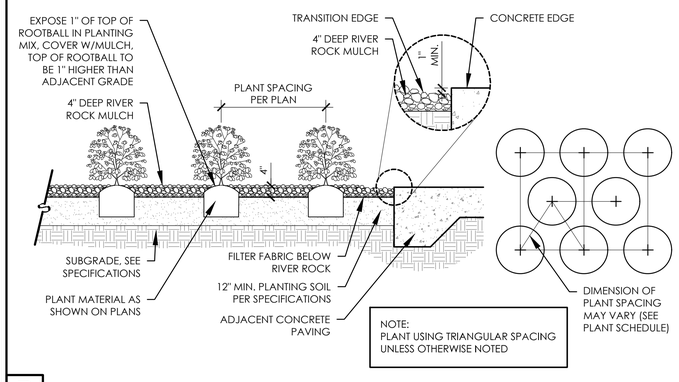
- IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO PROTECT IN PLACE ALL EXISTING UTILITIES. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED AT NO ADDITIONAL COST TO THE CITY.
- PROVIDE A 1 GALLON MINIMUM SAMPLE OF THE MANZANO RIVER ROCK MULCH PRIOR TO SUBMITTAL APPROVAL.

NORTH

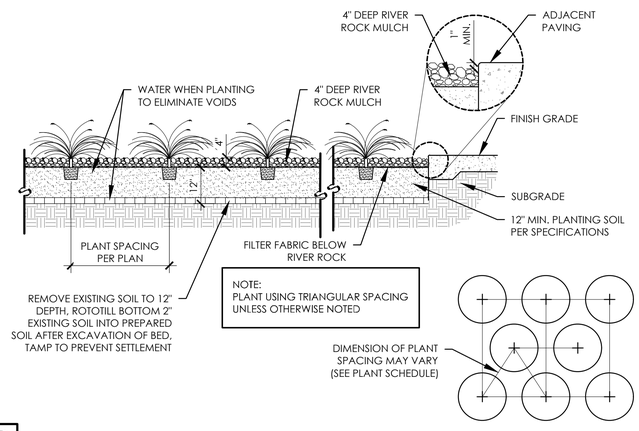
GRAPHIC SCALE
0 10 20
1 inch = 10'

PLANTING NOTES

1. ISOLATED PLANT MATERIAL TO RECEIVE DRIP TUBING IN A RING PATTERN AROUND THE ROOT BALL. WHERE POSSIBLE, ELIMINATE DRIP TUBING FROM LARGE AREAS VOID OF PLANT MATERIAL.
2. SOIL MIX FOR ALL PLANTING AREAS SHALL BE MANUFACTURED SOIL, CONSISTING OF MANUFACTURER'S BASIC TOPSOIL, BLENDED IN A MANUFACTURING FACILITY WITH SAND, STABILIZED ORGANIC SOIL AMENDMENTS, AND OTHER MATERIALS TO PRODUCE VIABLE PLANTING SOIL. MANUFACTURED SOIL SHOULD ACHIEVE PH OF 5 TO 7.5 AND MINIMUM OF 4 PERCENT ORGANIC-MATTER CONTENT, FRIABLE, AND WITH SUFFICIENT STRUCTURE TO GIVE GOOD TILL AND AERATION.
3. AMEND MANUFACTURER'S BASIC SOIL WITH SULFUR (1-1/2 POUNDS PER CUBIC YARD), AND COMMERCIAL FERTILIZER (1/2 POUND PER CUBIC YARD).
4. IN TREE AND SHRUB PLANTINGS, APPLY AMENDED SOIL TO MINIMUM DEPTH OF 12 INCHES.
   A) ALL TOPSOIL SHALL BE FREE OF STONES, ROOTS, CLODS, CONCRETE, BASE, CALICHE, CONSTRUCTION DEBRIS, AND ANY OTHER FOREIGN MATERIAL NOT BENEFICIAL FOR PLANT GROWTH
5. ALL TREES AND SHRUB AREAS TO BE MULCHED PER PLANTING DETAILS AND PLANT SCHEDULE. MAINTAIN A 1FT CLEAR AREA FROM THE BASE OF THE TREE FREE OF MULCH TO ALLOW OXYGEN EXCHANGE.
6. SPECIAL WARRANTY: INSTALLER AGREES TO REPAIR OR REPLACE PLANTINGS AND ACCESSORIES THAT FAIL IN MATERIALS, WORKMANSHIP, OR GROWTH WITHIN SPECIFIED WARRANTY PERIOD.
   A) FAILURES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:
      A)A) DEATH AND UNSATISFACTORY GROWTH, EXCEPT FOR DEFECTS RESULTING FROM ABUSE, LACK OF ADEQUATE MAINTENANCE, OR NEGLECTED BY OWNER.
      A)B) STRUCTURAL FAILURES INCLUDING PLANTINGS FALLING OR BLOWING OVER.
   B) WARRANTY PERIODS: FROM DATE OF SUBSTANTIAL COMPLETION.
      B)A) TREES, SHRUBS, VINES, AND ORNAMENTAL GRASSES: 12 MONTHS.
7. LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT OF ANY QUESTIONS REGARDING APPLICATION OF PROPOSED PLANT MATERIAL PRIOR TO INSTALLATION - ESPECIALLY QUESTIONS THAT MAY AFFECT OR ALTER THE WARRANTY OF SAID MATERIAL.
8. REMOVE ALL STONES AND DEBRIS LARGER THAN 1 INCH IN ANY DIMENSION ON THE SURFACE IN AREAS WHERE TURF IS APPLIED.
9. ALL QUANTITIES SHOWN ON PLANS TO BE VERIFIED BY LANDSCAPE CONTRACTOR. LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR INSTALLING ALL LABELED PLANT MATERIAL ON PLANS.
10. ALL FINAL SHAPING AND RAKING OF THE TOPSOIL/FINISH GRADES SHALL BE REVIEWED BY OWNER OR LANDSCAPE ARCHITECT PRIOR TO APPLICATION OF PLANT MATERIAL. BERMS, IF REQUIRED SHALL BE INSTALLED IN 12 INCH LAYERS/LIFTS AND COMPACTED. EXCESSIVE SLOPES ON BERMS WHICH MAY CAUSE MAINTENANCE PROBLEMS SHALL BE REVIEWED BY THE LANDSCAPE ARCHITECT.
11. VERIFY EXISTENCE OF UNDERGROUND UTILITIES PRIOR TO EXCAVATION FOR SITE WORK AND PLANTING.
12. CONTRACTOR SHALL TAKE ALL NECESSARY STEPS TO PROTECT EXISTING UTILITIES AT ALL TIMES.
13. INSTALL IRRIGATION SYSTEM PRIOR TO APPLICATION OF TOPSOIL OR PLANTING SOIL MIX.
14. ANY EXISTING SITE IMPROVEMENT OR UTILITY REMOVED, DAMAGED, OR UNDERCUT BY THE CONTRACTOR'S OPERATIONS SHALL BE REPAIRED OR REPLACED AS DIRECTED BY THE CONTRACTING OFFICER'S REPRESENTATIVE AND APPROVED BY THE RESPECTIVE UTILITY AT THE CONTRACTOR'S EXPENSE.
15. CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING TO ITS ORIGINAL OR BETTER CONDITION ANY DAMAGES DONE TO EXISTING FENCES, CONCRETE ISLANDS, STREET PAVING, CURBS, SHRUBS, TREES, DRIVEWAYS, ETC., SCHEDULE TO REMAIN (NO SEPARATE PAY ITEM).



B **SHRUBS PLANTED W/ DECOMPOSED GRANITE MULCH** SCALE: NTS



C **GRASS PLANTED W/ DECOMPOSED GRANITE MULCH** SCALE: 1/2"=1'-0"

REVISIONS

NO.	DATE	DESCRIPTION
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PLANTING PLAN

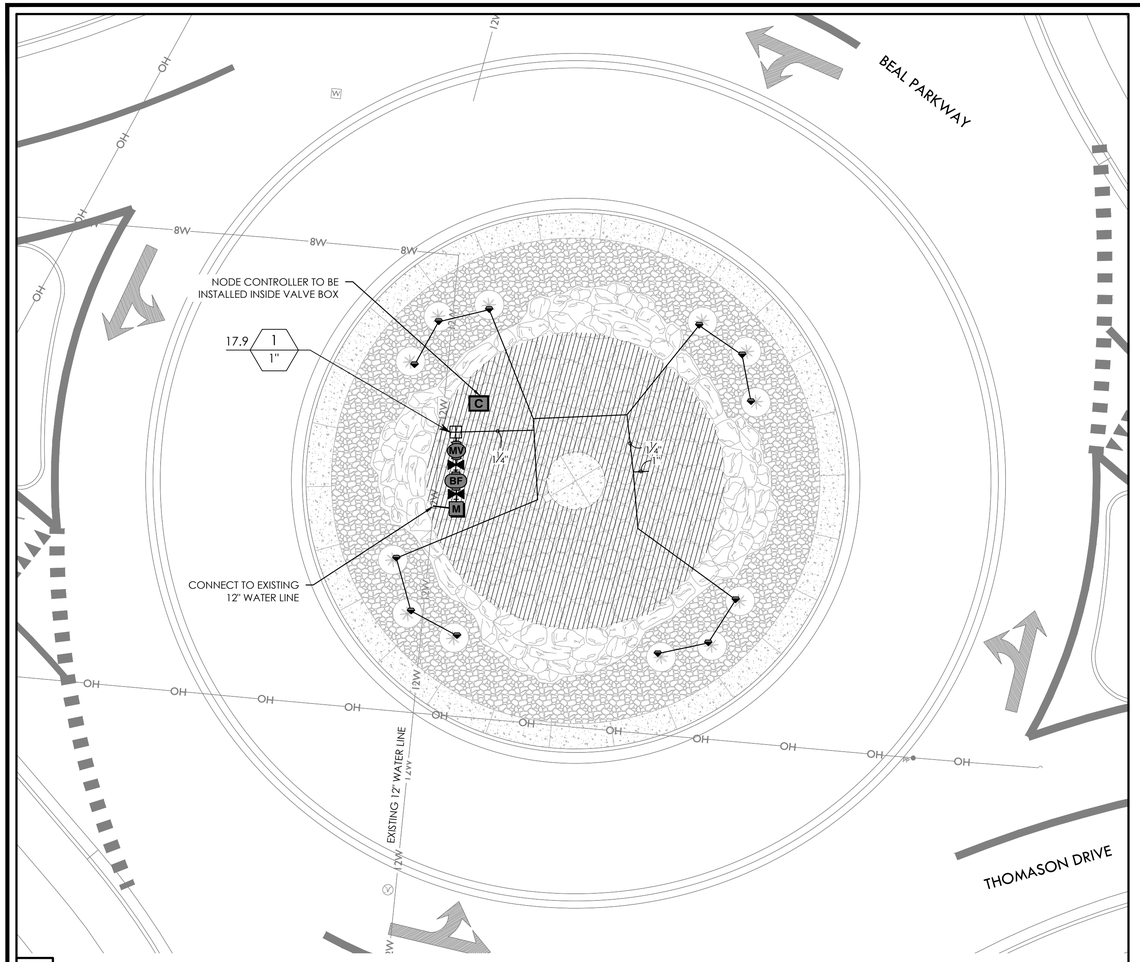
THOMASON ROUNDABOUT
MIDLAND, TEXAS

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 687-0865
TX REG. F-11744

REGISTERED LANDSCAPE ARCHITECT
MEAGAN ABERNATHY
2705
STATE OF TEXAS
08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L2.00

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FILENAME: 6166 Planting Plan.dwg
PLOTTED BY: Meagan Abernathy
PLOTTED ON: Thursday, August 26, 2021
PLOTTED WITH: Plot Plot
PLOTTED WITH: DWG To PDF.pc3



A **IRRIGATION PLAN**

NORTH

GRAPHIC SCALE
0 10 20
1 inch = 10'

IRRIGATION SCHEDULE

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION
⊞	DRIP VALVE: RAIN BIRD XACZ-100-PRF MEDIUM FLOW DRIP CONTROL KIT, 1" ANTI-SIPHON VALVE FILTER, 1" RBY FILTER, AND 40PSI PRESSURE REGULATOR, FOR ABOVE GRADE INSTALLATION. 3GPM TO 15GPM.
5 7 10 12 18 24	DRIP EMITTER: RAIN BIRD PC SINGLE OUTLET, PC DRIP EMITTER SINGLE OUTLET, PRESSURE COMPENSATING DRIP EMITTERS WITH SELF-PIERCING BARB INLET. FLOW RATE: 5GPH=LIGHT BROWN; 7GPH=VIOLET; 10GPH=GREEN; 12GPH=DARK BROWN; 18GPH=WHITE; 24GPH=ORANGE.
▭	AREA TO RECEIVE DRIPLINE DRIP: RAIN BIRD XFS-06-12 XFS SUB-SURFACE PRESSURE COMPENSATING DRIPLINE W/COPPER SHIELD TECHNOLOGY. 0.6 GPH EMITTERS AT 12" O.C. LATERALS SPACED AT 12" APART, WITH EMITTERS OFFSET FOR TRIANGULAR PATTERN. UV RESISTANT. SPECIFY XF INSERT FITTINGS.

SYMBOL	MANUFACTURER/MODEL/DESCRIPTION
⋈	SHUT OFF VALVE PVC SCHEULE 40 BALL VALVE
MV	MASTER VALVE: RAIN BIRD PEB-PRS-D 1" 1", 1-1/2", 2" PLASTIC INDUSTRIAL VALVES. LOW FLOW OPERATING CAPABILITY. GLOBE CONFIGURATION. WITH PRESSURE REGULATOR MODULE.
BF	BACKFLOW: FEBCO 850, 1" DOUBLE CHECK BACKFLOW PREVENTION
C	CONTROLLER: HUNTER NODE-BT-200 2-STATION BLUETOOTH CONTROLLER, OUTDOOR, BATTERY POWERED.
M	WATER METER 3/4" ASSUMED WATER PRESSURE OF 50 PSI.
———	IRRIGATION LATERAL LINE: PVC CLASS 200 SDR 21
— — —	IRRIGATION MAINLINE: PVC SCHEDULE 40 MAINLINE SIZE 1 1/4"

Valve Callout
Valve Number
Valve Flow
Valve Size

REVISIONS

NO.	DATE	DESCRIPTION
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#

IRRIGATION PLAN

THOMASON ROUNDABOUT
MIDLAND, TEXAS

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 684-4849
TX REG. F-11744

STATE OF TEXAS
JANEL MOODY
20529
REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT
08/27/2021

JOB NO.	6166
DESIGNED BY:	JMM
DRAWN BY:	JMM
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L3.00

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PLOTTED BY: Janel Moody
PLOTTED ON: Thursday, August 26, 2021
PLOTTED AT: 2:52 PM
PLOTTED WITH: DWG to PDF.pc3

IRRIGATION NOTES:

1. IRRIGATION PLAN IS SCHEMATIC. ALL PIPING HEADS, VALVES, ETC. SHALL BE LOCATED AS SHOWN ON THE DETAILS. REPORT ANY DISCREPANCIES BETWEEN ACTUAL AND PROPOSED SITE CONDITIONS TO THE OWNER. DO NOT PROCEED WITH WORK UNTIL SAID DISCREPANCIES ARE RESOLVED.

2. VERIFY THAT THE WORK OF OTHER CONTRACTORS/TRADES IS SUFFICIENTLY COMPLETE TO ALLOW COMMENCEMENT OF IRRIGATION INSTALLATION PRIOR TO BEGINNING OF WORK. CONTRACTORS SHALL COORDINATE INSTALLATION OF ALL IRRIGATION SLEEVES UNDER PAVEMENT WITH OTHER CONTRACTORS.

3. COORDINATE IRRIGATION INSTALLATION WITH THE WORK OF OTHER CONTRACTORS/TRADES AND PROTECT THE WORK OF OTHER CONTRACTOR/TRADES. IRRIGATION CONTRACTOR IS RESPONSIBLE FOR ALL DAMAGES RESULTING FROM HIS ACTIONS.

4. THE IRRIGATION CONTRACTOR SHALL PROVIDE THE OWNER WITH TWO COPIES OF THE PARTS LIST AND MANUFACTURER'S CATALOG SHOWING PERFORMANCE, QUALITY AND FUNCTION OF EACH ITEM OF EQUIPMENT IN THE SYSTEM. IN ADDITION, THE IRRIGATION CONTRACTOR SHALL PROVIDE THE OWNER WRITTEN INSTRUCTIONS FOR OPERATION AND MAINTENANCE OF THE SYSTEM.

5. PRIOR TO THE ACCEPTANCE OF IRRIGATION SYSTEM BY OWNER, A PERSON QUALIFIED TO REPRESENT THE IRRIGATION CONTRACTOR SHALL BE PRESENT AT THE FINAL INSPECTION TO DEMONSTRATE THE SYSTEM AND PROVE ITS PERFORMANCE PRIOR TO THE INSPECTION. ALL WORK SHALL HAVE BEEN COMPLETED, TESTED, ADJUSTED, AND PLACED IN OPERATION.

6. WORK MUST BE GUARANTEED FOR TWO YEARS.

7. IRRIGATION SYSTEM INSTALLATION TO BE PERFORMED IN ACCORDANCE WITH ALL PERTINENT CODES AND ORDINANCES.

8. NO PVC PIPING SHALL BE LOCATED UNDER TREE ROOTBALLS.

9. THE CONTRACTOR SHALL VERIFY LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO INSTALLATION. IF ANY UNDERGROUND OR ABOVE GROUND CONSTRUCTION IS LOCATED AS TO SIGNIFICANTLY HINDER INSTALLATION OR FUNCTION OF THE IRRIGATION SYSTEM, THE OWNER SHALL BE NOTIFIED IMMEDIATELY.

10. MAIN LINE PIPING AND LATERAL PIPING MAY BE PLACED IN SAME TRENCH WHEN POSSIBLE. MAIN LINE PIPING SHALL BE INSTALLED IN BOTTOM OF TRENCH WITH LATERALS ON TOP.

11. SLEEVES SHALL BE INSTALLED WHEREVER PIPES RUN UNDER PAVEMENT. SLEEVES SHALL BE SCH 40 AND A MINIMUM OF TWO PIPE SIZES LARGER THAN THE PIPE.

12. THE CONTRACTOR IS RESPONSIBLE FOR COORDINATING ELECTRICAL POWER TO ALL CONTROLLERS.

13. PRIOR TO BEGINNING OF WORK, CONTRACTOR SHALL VERIFY MINIMUM STATIC PRESSURE AT THE POINT OF CONNECTION OF <<50>> PSI. IF THE STATIC PRESSURE IS LESS THAN <<50>> PSI AT THE POINT OF CONNECTION, STOP WORK, NOTIFY ENGINEER AND DO NOT PROCEED UNTIL INSTRUCTED BY ENGINEER.

14. ATTACH A PREPRINTED, HEAVY DUTY PLASTIC SERIALIZED TAG TO EACH CONTROL VALVE WITH ITS ASSOCIATED CONTROLLER STATION NUMBER. TAGS SHOULD BE AS SUPPLIED BY RAINBIRD OR APPROVED EQUAL.

15. THE PIPE SHOWN IN PAVED AREAS WITHOUT SLEEVES IS SHOWN IN THESE AREAS FOR PURPOSE OF DRAWING CLARITY. PIPE TO BE IN NEAREST UNPAVED LOCATION.

16. THE IRRIGATION CONTROLLER(S) SHALL BE EQUIPPED WITH RAIN/FREEZE SENSOR(S). MOUNT THE TRANSMITTER(S) IN AN OPEN AREA AS DIRECTED BY THE OWNER.

17. ALL BACKFLOW INSTALLATIONS AND CONNECTIONS TO CITY WATER LINES MUST BE PERMITTED SEPARATELY BY THE CITY INSPECTION STAFF.

18. THE IRRIGATION SYSTEM SHALL BE MAINTAINED IN ITS PROPER WORKING ORDER DURING THE 2 YEAR MAINTENANCE PERIOD.

19. ALL WIRING SHALL BE RATED FOR DIRECT BURIAL.

INSPECTION NOTES:

1. HEADS SHALL NOT SPRAY ON IMPERVIOUS SURFACES.

2. HEADS SHALL NOT SPRAY ON WALLS OR FENCES.

3. HEADS SHALL NOT BE CLOSER THAN 4 INCHES OF THE EDGE OF HARDSCAPE.

4. NO DRINKING DOMESTIC USES ALLOWED ON IRRIGATION LINES, NO SWIMMING POOL USE OR FOUNTAINS.

5. CONTRACTOR SHALL COMPLY WITH ALL INSPECTION REQUIREMENTS OF THE MUNICIPALITY.

6. FOR FINAL INSPECTION, IRRIGATOR'S REPRESENTATIVE MUST BE PRESENT.

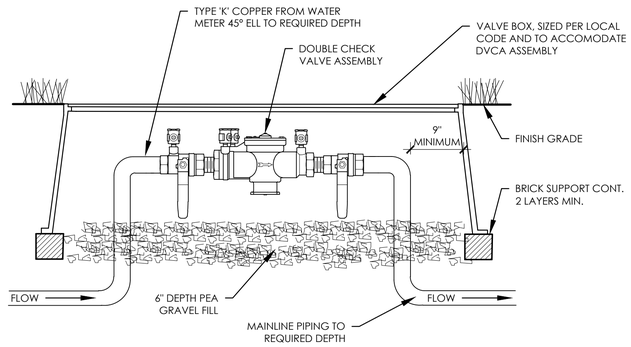
DRIP NOTES:

1. AIR RELIEF VALVE TO BE PLACED AT HIGH POINT IN BED.

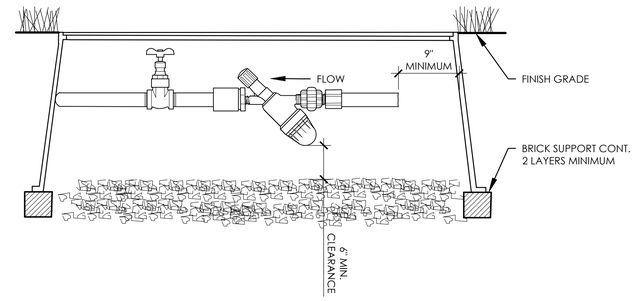
2. FLUSH VALVE TO BE PLACED AT LOW POINT IN BED ON EXHAUST LINE.

3. THESE LAYOUTS ARE TYPICAL AND ARE SUBJECT TO CHANGE DUE TO SITE CONDITIONS SUCH AS GRADING.

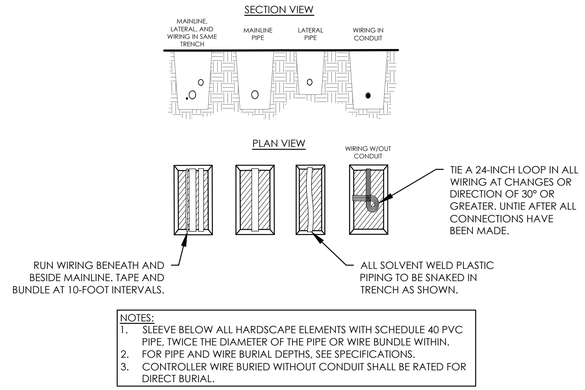
4. IRRIGATION LATERAL LINES FEED SUPPLY HEADERS.



A **DOUBLE CHECK VALVE ASSEMBLY** SCALE: NTS

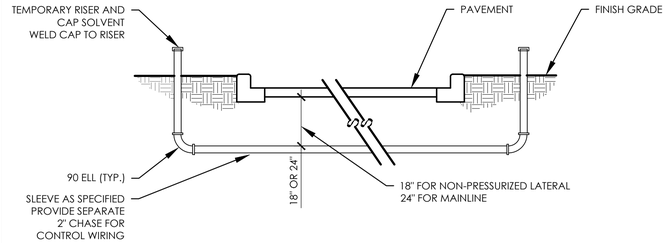


B **WYE STRAINER** SCALE: NTS

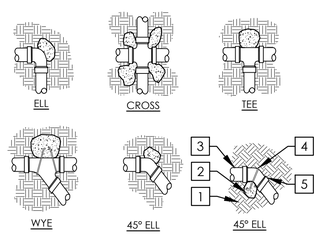


NOTES:
1. SLEEVE BELOW ALL HARDSCAPE ELEMENTS WITH SCHEDULE 40 PVC PIPE, TWICE THE DIAMETER OF THE PIPE OR WIRE BUNDLE WITHIN.
2. FOR PIPE AND WIRE BURIAL DEPTHS, SEE SPECIFICATIONS.
3. CONTROLLER WIRE BURIED WITHOUT CONDUIT SHALL BE RATED FOR DIRECT BURIAL.

C **PIPE AND WIRE TRENCHING** SCALE: NTS



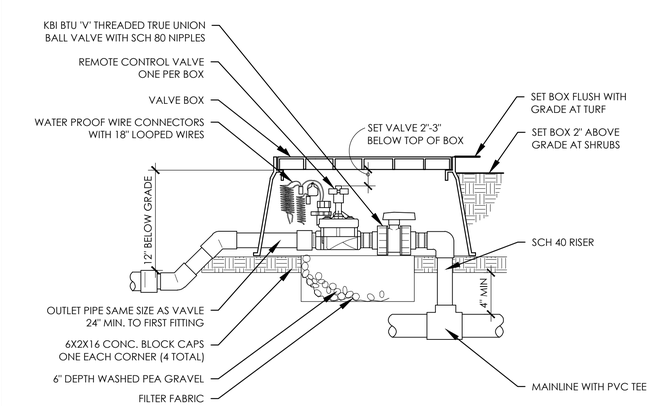
D **SLEEVE INSTALLATION** SCALE: NTS



NOTES:
1. SUPPLY LINES 2-1/2" IN DIAMETER OR LARGER SHALL RECEIVE CONCRETE THRUST BLOCKS.
2. SEE SPECIFICATIONS FOR AMOUNT OF CONCRETE TO BE USED FOR THRUST BLOCK.

1. UNDISTURBED SOIL (TYP.)
2. CONCRETE THRUST BLOCK (TYP.)
3. PIPE (TYP.)
4. REBAR BENT AROUND FITTING (TYP.)
5. FITTING (TYP.)

E **THRUST BLOCK** SCALE: NTS



F **MASTER VALVE** SCALE: NTS

REVISIONS

NO.	DATE	DESCRIPTION
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#

IRRIGATION NOTES & DETAILS

THOMASON ROUNDABOUT

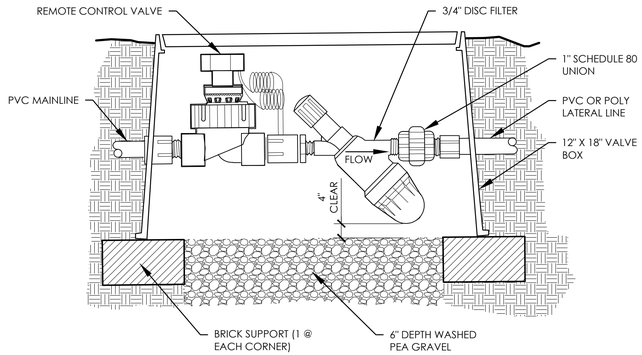
MIDLAND, TEXAS

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
432.262.2539 • 432.262.2549
TX REG. F-11124

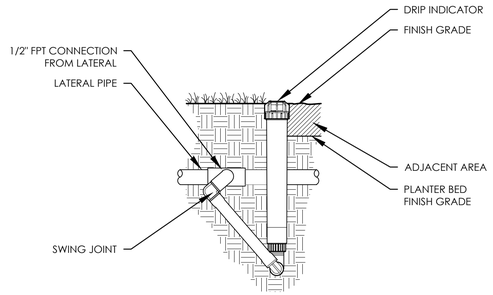
STATE OF TEXAS
JANEL MOODY
20529
LICENSED IRRIGATOR
08/27/2021

JOB NO.	6166
DESIGNED BY:	JMM
DRAWN BY:	JMM
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L3.01

FILE PATH: C:\Production\6000s\6061s\6166\001\PLA\Drawings\Plot Sheets\ThomasonS\Production\6000s\6061s\6166\001\PLA\Drawings\Plot Sheets\Thomason\6166 Irrigation Plan
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PLOTTED By: Janel Moody
PLOTTED On: Thursday, August 26, 2021
PLOTTED At: 2:52:29 PM
PLOTTED With: DWG To PDF.pc3

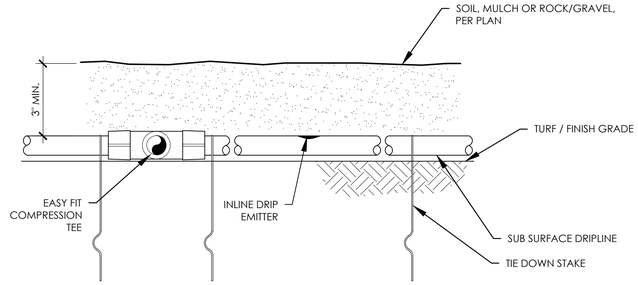


A **DRIP REMOTE CONTROL VALVE** SCALE: NTS

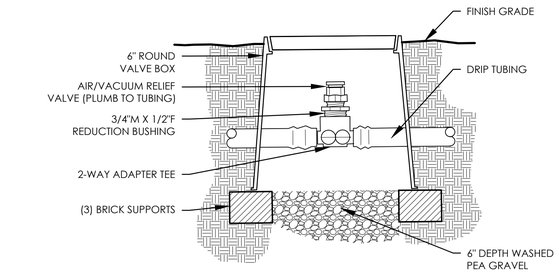


B **DRIP INDICATOR ON SWING JOINT** SCALE: NTS

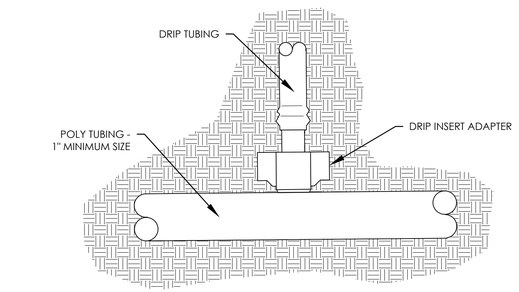
NOTES:
1. PLACE TIE DOWN STAKES EVERY THREE FEET IN SAND, FOUR FEET IN LOAM, AND FIVE FEET IN CLAY.
2. AT FITTINGS WHERE THERE IS A CHANGE OF DIRECTION SUCH AS TEES OR ELBOWS, USE TIE-DOWN STAKES ON EACH LEG OF THE CHANGE OF DIRECTION.



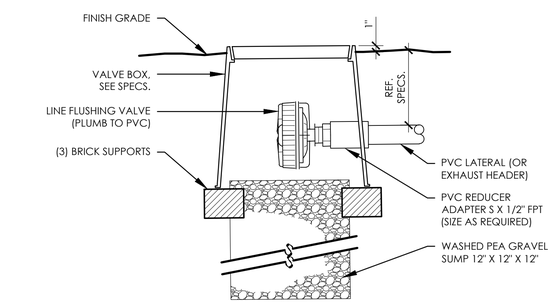
C **DRIP TUBING INSTALLATION** SCALE: NTS



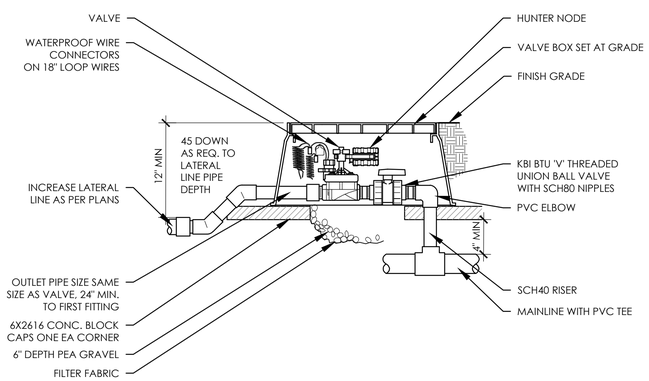
D **DRIP AIR/VACUUM RELIEF VALVE** SCALE: NTS



E **DRIP START CONNECTION** SCALE: NTS

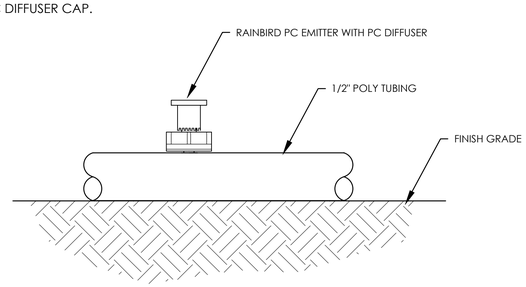


F **DRIP LINE FLUSHING VALVE** SCALE: NTS



G **NODE CONTROLLER IN VALVE BOX** SCALE: NTS

NOTES:
1. USE RAIN BIRD XERIMAN TOOL XM-TOOL TO INSERT EMITTER DIRECTLY INTO ½" POLYETHYLENE TUBING.
2. RAIN BIRD PC BARB X BARB EMITTER MODEL PC-05 MODELS.
3. BLACK PC DIFFUSER CAP.



H **POINT SOURCE EMITTER** SCALE:

REVISIONS		
NO.	DATE	DESCRIPTION
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#

IRRIGATION DETAILS

THOMASON ROUNDABOUT

MIDLAND, TEXAS

DUNAWAY
4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
(432) 687-0865
TX REG. F-11174

STATE OF TEXAS
JANEL MOODY
20529
LICENSED IRRIGATOR
08/27/2021

JOB NO.	6166
DESIGNED BY:	MEA
DRAWN BY:	MEA
CHECKED BY:	TEH
DATE:	August 27, 2021
SHEET:	L3.02

FILE PATH: G:\Production\6000\6061\61-66\601\PLA\Drawings\Plot Sheets\Thomason\Production\6000\6061\61-66\601\PLA\Drawings\Plot Sheets\Thomason\L3.02 Irrigation Plan
FILENAME: 61-66 Irrigation Plan.dwg
EDITED BY: Mary Alice Arrington
PLOTTED ON: Thursday, August 26, 2021
PLOTTED AT: 4:47 PM
PLOTTED WITH: DWG To PDF.pc3

PLEASE SEE ATTACHED BID BOND

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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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.

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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: ONYX GENERAL CONTRACTORS, LLC

Local Address (must be within the City limits): 1010 S. FM 1788 Midland, Texas 79706

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? 60+
3. Year your business was established in the City of Midland: 2000
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):

   ONYX GENERAL CONTRACTORS, LLC
   PO Box 60547
   Midland, Texas 79711

5. Does your business have more than one office in the State of Texas? ☐ Yes ☒ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☒ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☒ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: 11/10/2021

Printed Name and Title: Michael Iaquaniello - Construction Manager

THE AMERICAN INSTITUE OF ARCHITECTS

AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we
Onyx General Contractors, LLC

as Principal, hereinafter called the Principal, and
FCCI Insurance Company
6300 University Parkway, Sarasota, Fl 34240
a corporation duly organized under the State of **Florida**
as Surety, hereinafter called the Surety, are held and firmly bound unto
City of Midland

as Obligee, hereinafter called the Obligee, in the sum of
*****FIVE PERCENT OF BID AMOUNT*** (5%)**

for the payment of which sum well and truly to be made, the said Principal and said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for
Thomason Drive Roundabout & Median Improvements

NOW, THEREFORE, if the Obligee, shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee, in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding of Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee, the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for with the Obligee, may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this **November 10, 2021** .

Onyx General Contractors, LLC

(Witness)

(Seal)

Vice President
(Title)

FCCI Insurance Company

(Witness)

(Seal)

Tina McLelland **Attorney-in-Fact**

FCCI INSURANCE GROUP

GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Garland Martin; Robbie Martin; Josh Andrajack; Tina G McLelland; Haevyn Knobloch

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed $20,000,000.00): $20,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest: Christina D. Welch

Christina D. Welch, President
FCCI Insurance Company

FCCI INSURANCE COMPANY CORPORATE SEAL 1994 FLORIDA

Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida Peggy Snow My Commission GG 283505 Expires 02/27/2023

Peggy Snow
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christopher Shoucair, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida Peggy Snow My Commission GG 283505 Expires 02/27/2023

Peggy Snow
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 10th day of November 2021

Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

FCCI INSURANCE COMPANY CORPORATE SEAL 1994 FLORIDA

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

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: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* 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.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

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.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

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

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

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

33. CONSIDERATION - The terms of this agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

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

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

City Council Meeting

Item Number: 13

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MIDLAND CITYWIDE CONCRETE PROGRAM TO ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,500,000.00; AND AUTHORIZING PAYMENT (GENERAL SERVICES)

Purpose:

Approval of a resolution authorizing the execution of a contract for FY 2022 Citywide Concrete Program.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY22 General Fund Operating Budget.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for the Fiscal Year 2022 Midland Citywide Concrete Program. Forty-five (45) bid requests were issued. We received two (2) bids. Staff recommends awarding the contract to the apparent low bidder, Onyx General Contractors LLC. This contract is based on unit prices for a not to exceed amount of $1,500,000.00. Please see the attached memo from, Abe Langston, Transportation Manager, for additional information.

Therefore, please consider a resolution awarding a contract to Onyx General Contractors LLC. of Midland, Texas for the Fiscal Year 2022 Midland Citywide Concrete Program for a not to exceed amount of $1,500,000.00.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: FY2022 Citywide Concrete Program
Bid# 22000573
Recommend Award

DATE: November 19, 2021

CC: Gabe McClelland, Senior Engineering Manager

The City of Midland's concrete needs are numerous and continue to grow. The 2022 Midland Citywide Concrete Program will allow the Transportation Division to address drainage issues, pavement issues, ride quality issues, ADA compliance, and storm drain issues. The Citywide Concrete Program will also allow Transportation to adjust manhole lids and water valve covers to match the adjacent pavement and to complete improvements at our draws, channels, and drainage basins.

I have reviewed the completed Bid Schedules for the Fiscal Year 2022 Citywide Concrete Program, and I recommend award to the low bidder, Onyx General Contractors, LLC (Onyx). Onyx has a track record of successfully completing work in the City of Midland and the surrounding area. In addition, the unit prices appear to be in line with current pricing and trends. Therefore, I am recommending award of the FY 2022 Midland Citywide Concrete Program to Onyx for an amount not to exceed $1,500,000.00.

Total Bid Amount: $1,900,450.00

Contract Amount Not to Exceed: **$1,500,000.00** (001085 54220: Maintenance Streets and Roadways)

City of Midland - Bid Tabulation

BID # 22000573
Midland Citywide Concrete Program FY2022
Contract not to exceed $1,500,000.00
OPENED: November 17, 2021

ITEM	QTY	DESCRIPTION	Onyx General Contractors LLC 1010 S FM 1788 Midland, TX 79706 Michael Iaquaniello 432-561-8900		Desert Paving, Inc. 900 S. Meadow Odessa, TX 79761 Brent Clayton (432) 332-0939	
			COST EA.	TOTAL	COST EA.	TOTAL
1	15000 SF	Remove Existing Asphalt Pavement & Base	2.00	$30,000.00	$3.50	$52,500.00
2	1000 LF	Remove Existing Curb & Gutter	8.00	$8,000.00	$12.00	$12,000.00
3	2000 SF	Miscellaneous Concrete Demolition	3.00	$6,000.00	$5.00	$10,000.00
4	8000 SF	Miscellaneous Excavation	1.50	$12,000.00	$3.00	$24,000.00
5	1500 LF	Type "A" Standard Curb & Gutter	31.00	$46,500.00	$30.00	$45,000.00
6	1000 LF	Type "B" Drop-Lip Curb & Gutter for Inverted Streets	20.00	$20,000.00	$30.00	$30,000.00
7	750 LF	Type "C" Laydown Curb & Gutter	31.00	$23,250.00	$30.00	$22,500.00
8	500 LF	Type "D" Laydown Curb & Gutter for Inverted Streets	22.00	$11,000.00	$30.00	$15,000.00
9	500 LF	Type "E" Mountable Curb & Gutter	30.00	$15,000.00	$35.00	$17,500.00
10	250 LF	Type "F" Saw-Tooth Curb & Gutter	30.00	$7,500.00	$35.00	$8,750.00
11	2500 SY	Concrete Fillet (Streets)	90.00	$225,000.00	$100.00	$250,000.00
12	400 SY	5' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
13	400 SY	10' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
14	400 SY	20' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
15	400 SY	4' Wide Concrete Valley Gutter (Alleys)	90.00	$36,000.00	$95.00	$38,000.00
16	400 SY	4' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
17	400 SY	10' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
18	400 SY	20' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
19	250 SY	Concrete Alley Approach	90.00	$22,500.00	$95.00	$23,750.00
20	350 SY	4" Concrete Sidewalk	90.00	$31,500.00	$90.00	$31,500.00
21	3500 SY	8" Concrete Paving on Streets	99.00	$346,500.00	$95.00	$332,500.00
22	850 SY	6" Concrete Paving on Alleys	90.00	$76,500.00	$95.00	$80,750.00
23	50 EA	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (with COM provided dome tiles)	2,000.00	$100,000.00	$3,250.00	$162,500.00
24	120 EA	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (without COM provided dome tiles)	2,400.00	$288,000.00	$3,250.00	$390,000.00
25	200 SY	8" Stamped and Stained Concrete	200.00	$40,000.00	$180.00	$36,000.00
26	300 LF	Metal Beam Guard Fence in accordance with Item 540 of the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition; furnish, replace, or install metal beam guard fence consisting of metal beam rail elements, hardware, blocks and support posts	50.00	$15,000.00	$100.00	$30,000.00
27	10 EA	Install/Replace Guardrail End Treatments in accordance with TxDOT standards; install, move or replace guard rail end treatments supplied by the City of Midland	1,000.00	$10,000.00	$2,500.00	$25,000.00
28	10 EA	Steel Encased Concrete Bollard installed according to City of Midland Standards and Specifications	$ 750.00	$ 7,500.00	$ 1,500.00	$ 15,000.00
29	50 EA	Adjust Water Valve Cover to Match Pavement and Place Concrete Around Cover	400.00	$20,000.00	$800.00	$40,000.00
30	25 EA	Adjust Manhole Lid to Match Pavement and Place Concrete Around Manhole Lid	500.00	$12,500.00	$2,500.00	$62,500.00
31	15000 SF	Ty. D HMAC Patching	10.00	$150,000.00	$12.00	$180,000.00
32	240 LF	12" slotted drain storm line; including demolition of existing, excavation, bedding and backfill, connection to existing line and all fittings required for connections	150.00	$36,000.00	$500.00	$120,000.00
33	12 EA	Traffic Control at Major Arterials	1,500.00	$18,000.00	$1,500.00	$18,000.00
34	8 EA	Traffic Control at Intersection of two Major Arterials	1,500.00	$12,000.00	$1,500.00	$12,000.00
35	12 EA	Traffic Control at Collector Streets	1,500.00	$18,000.00	$1,500.00	$18,000.00
36	12 EA	Traffic Control at Residential Streets	1,100.00	$13,200.00	$1,500.00	$18,000.00
37	150 SY	Unspecified Concrete Flat Work on Sloped Surface (Drainage Channel, Draw, or Ditch)	90.00	$13,500.00	$100.00	$15,000.00
38	150 SY	Unspecified Concrete Flat Work	90.00	$13,500.00	$100.00	$15,000.00
		COST OF LABOR PER HOUR:				
39	HR	Unskilled Labor	30.00		$100.00	
40	HR	Skilled Labor	50.00		$100.00	
41		Backhoe w/Operator	80.00		$120.00	

	HR					
42		Front End Loader w/ Operator	150.00		$500.00	
	HR					
43		12 Cubic Yard Dump Truck w/ Driver	100.00		$250.00	
	HR					
44		**Material Markup 10%**	10%		80%	
45		All Other Items - to be negotiated separately as necessary				
		TOTAL PROPOSAL		$1,900,450.00		$2,378,750.00

Bidding Summary:

45 **Bid requests were issued.**

2 **Bids listed above**

1 **NO BIDS were received.**

41 **Bidders did not respond.**

THE CITY OF MIDLAND

Contract No. 22000573

THIS CONTRACT, effective the 15th day of December 2021, by and between the City of Midland, hereinafter referred to as "City", and Onyx General Contractors, LLC., hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal Not to Exceed: $1,500,000.00 DOLLARS

2. **Scope of Work:** Company shall perform all work described for FY22 Miscellaneous Concrete Work of this contract in the following documents, attached hereto and incorporated herein by reference for all legal 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. **Term**: The initial term of the contract shall be from the date of award until September 30, 2022. If the Owner and Company agree in writing, the contract may be renewed for up to two additional one-year terms (October 1, 2022 to September 30, 2023; and October 1, 2023 to September 30, 2024). Each annual renewal will be in an amount not to exceed $1,500,000.00. In order to renew this contract, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this contract.

4. **City:** The words "City's Representative" or "representative" shall mean Jose Ortiz 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.

5. **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.

6. **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.

6.1 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.

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

7. **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.

7.1 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.

8. **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.

9. **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.**

9.1 **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.**

9.2 **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.

10. **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 100 calendar days after release to proceed.

11. **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.

12. **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.

13. **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:

13.1 Defective work not remedied; or

13.2Claims filed or reasonable evidence indicating possible filing of claims; or

13.3 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

13.4 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.

14 **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.

15 **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.

15.1 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.

16 **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.

17 **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.

18 **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.

19 **WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE 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 THE 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 OF GOVERNMENTAL IMMUNITY.

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

20 **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.

21 **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.

22 **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.

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

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

25 **Independent Contractor:** It is expressly understood and agreed that Company shall perform all

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

26 **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 original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the 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 Company that Company's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government

Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if 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.

27 **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.

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

29 **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.

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

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

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

31 **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, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to City for the duration of the contract, (2) 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 (3) on completion of the Contract, either (i) provide at no cost to City all contracting information related to the Contract that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

32 **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 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.

33 **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 Exhibit A, 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 Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Onyx General Contractors, LLC., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

CITY OF MIDLAND

PURCHASING DIVISION DATE: 10/18/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000573**

OPENING TIME: 2:00 PM **CLOSING DATE: 11/17/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Loraine, Ste 330, Midland, Texas UNTIL 2:00 P.M. 11/17/2021 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various Locations, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, equipment, material, supervision, and concrete necessary to complete various projects for the City of Midland in accordance with the attached general notes and city and/or state specifications.		
			PLEASE SEE ATTACHED BID FORM	TOTAL	$ 1,900,450.00

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. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. 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.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **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.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

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: Onyx General Contractors LLC
ADDRESS 1010 S FM 1788
CITY Midland ST TX ZIP 79706
PHONE NO. 432-561-8900 FAX NO. 432-561-8644
EMAIL: michael.i@onyxcontractors.com

CASH DISCOUNT: _____ %_____DAYS

DELIVERY CAN BE MADE_____

AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING



On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

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

OR

Physical Address:

The Office of the Purchasing Manager
City of Midland
300 N. Loraine, Suite 220
Midland, TX 79701

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, all bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

USPS Mailing Address:		***Physical Address for mail carriers other than USPS:***
City of Midland, Texas Attn: City Secretary's Office P O Box 1152 Midland, TX 79702	OR	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 City Secretary's office before the bid opening deadline, and social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

The deadline for submitting additional questions is 72 working hours before the bid opening date. Questions submitted before the Noon deadline will be included in the Addendum. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

Midland Citywide Concrete Program

GENERAL NOTES

1. The Contractor will not be required to mobilize until a minimum of $15,000.00 of contracted work is identified by the City of Midland.
2. Unless otherwise specified, the concrete used shall be City of Midland Class "C", 3600 PSI, fiber re-enforced.
3. All barricades, signs and traffic control for this project shall conform to the latest edition of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
4. Proper traffic control is the sole responsibility of the contractor and shall be in accordance with the TMUTCD.
5. The Contractor shall be responsible for the traffic control plan. The Contractor shall plan and layout the work such that no traffic is allowed on new concrete while it is being placed, finished, or curing.
    - Residential streets and minor collectors may be closed during construction; however, access to properties adjacent to the work zone shall be maintained at all times unless otherwise approved by the City. Contractor shall limit the number of consecutive residential and minor collector street closures. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets.
6. All traffic control plans for each project shall be submitted to the City of Midland's Transportation Division (Rick Brown: rbrown@midlandtexas.gov) no less than 48 hours prior to the beginning of construction. It will then be sent to Midland's Traffic Operations Division for final approval before any construction can commence.
7. Payment for traffic control items in this contract shall include the placement of traffic control devices to channelize and or detour motorists around a work zone for multiple days.
8. Payment for traffic control items shall not include the day-time placement of traffic control devices.
9. Payment for traffic control items shall not include the placement of traffic control devices for the installation of sidewalk and for the installation of ADA compliant curb ramps.
10. Contractor shall make an examination of each project site and completely familiarize themselves with the nature and extent of the work to be accomplished. No extra compensation will be allowed for any work made necessary by unusual conditions or obstacles encountered during the progress of the work, which conditions or obstacles are readily apparent upon a visit to the site.
11. All construction operations shall be accomplished in accordance with applicable regulations of the U.S. Occupational Safety and Health Administration. Copies of the OSHA Standards may be purchased from the U.S. Government Printing Office; information and related reference materials may be obtained from OSHA; 903 San Jacinto, Austin, Texas.
12. Contractor shall comply with all applicable local, state, and federal requirements regarding excesses and waste material, including methods of handling and disposal.
13. Care shall be used to create a safe work area, with minimal impact on the flow of traffic.
14. Any existing pavement, curbs, and/or sidewalk damaged or removed by the contractor that are not part of this contract are to be repaired by the by the contractor to at least the preexisting condition at his expense before acceptance of the work.
15. Contractor shall make all due precautions to protect existing facilities from damage. Any damage to existing facilities incurred as a result of these construction operations are to

be repaired immediately by the contractor to at least the pre-existing condition at no additional cost to the owner.

16. It shall be the responsibility of the contractor to protect cast iron features from damage which may occur during construction. The Contractor shall replace or repair, as directed by the City, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged Items.
17. Contractor is responsible for complying with all applicable environmental laws.
18. The project area and surrounding areas that are utilized by the contractor shall be kept in a neat and orderly manner. Project clean up shall be done on a daily basis. Areas that have been chosen by the contractor for storing of material and equipment shall be out of public access and shall not create hazardous conditions for the public. These areas shall be kept in a neat and orderly manner and cleaned on a daily basis. Any revegetation of these areas shall be at the contractor's expense.
19. Any water hauled to the site during the installation shall be paid by the contractor.
20. Whenever a specified project will impede normal business and/or residential ingress and egress, the Contractor shall provide and distribute notice to all impacted residents and property owners at least three (3) days prior to beginning work.
    - Contractor shall indicate application time and when the surface can be used. If necessary, include a map showing closed-off areas.
    - Provide phone numbers of at least two (2) individuals who represent the CONTRACTOR who can be reached at any time during the work.
    - Warn of potential vehicle tow away and other construction issues affecting the neighborhood.
    - Should work not occur on a specified day, contractor shall issue an updated notice.
    - If the City of Midland supplies the Contractor with notices, the Contractor shall distribute the City supplied notices instead of their own three (3) days prior to beginning work.
21. The contractor shall not use any facilities of a private property owner without a written agreement that is furnished to the City of Midland. These facilities shall include but not limited to private properties for storage, water, trash receptacles, etc. All City ordinances must be followed.
22. The contractor shall not place spoils on private property without a written agreement that is furnished to the City of Midland.
23. Control of vehicular and pedestrian traffic is of the utmost importance to the City of Midland. A traffic control plan designed to meet the sequence of construction established by the contractor shall be submitted to the City of Midland's Traffic Operations Division no less than 48 hours prior to the beginning of construction. Construction cannot begin without a traffic control plan approved by the City of Midland's Traffic Operations Division. The plan shall be detailed for the Sequence of work and not generic. The plan shall be followed at all times. The contractor shall place personnel in charge of the traffic control operation who have been trained in flagging procedures and in barricade and signage operations. In the event the traffic control plan or the traffic operation is not being conducted in the correct manner or according to the approved plan, construction activities shall be stopped until the traffic control procedures are corrected.
24. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.

25. The Contractor is responsible for obtaining all necessary permits and coordinating with the Texas Department of Transportation (TxDOT) for work at all intersections with state highways.
26. **JOINTS**—All concrete pavement joints and any concrete joints located in drainage areas shall 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 (COM) approved equal.
    - The cost of sealing joints shall be incidental to the project.

ADDITIONAL NOTES

1. All temporary erosion and sedimentation (e&s) control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. Erosion controls protection shall also be placed at storm drain inlets in the work zone. If inspection indicates a control has been used inappropriately, or incorrectly, the Contractor must replace or modify the control for site situations. The controls must remain in place until disturbed areas are revegetated and the areas have become permanently stabilized.
2. Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (E.G., screening outfalls, picked up daily).

BID SCHEDULE

Midland Citywide Concrete Program Fiscal Year 2022

The proposed Work provides for the furnishing of materials, equipment, labor, tools, power, and transportation necessary for the Miscellaneous Concrete Program, together with other miscellaneous and appurtenant work.

Bids will be received on a unit price basis. The intent of the proposal is to determine the low bidder based on the total of the quantities and unit prices. Once a low bidder is selected, the project will be awarded for an amount not to exceed $1,000,000.00

The initial term of the contract shall be from the date of award until September 30, 2022. If the Owner and Contractor agree in writing, the contract may be renewed for up to two additional one year terms (October 1, 2022 to September 30, 2023; and October 1, 2023 to September 30, 2024). Each annual renewal will be in an amount not to exceed $1,500,000.00 The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

Included in this project will be miscellaneous concrete work and appurtenant work at various locations throughout the City of Midland. The exact scope of work will be determined based on the City's needs throughout the contract period. The extent of work will be based on the available contract amount and the unit prices agreed to upon award. Therefore, there are no maps and/or drawings with this bid request. All equipment, materials, installation, and testing for all items shall be in accordance with the City of Midland Standard Construction Details and Design Standards, unless otherwise noted or approved by the City of Midland or modified by these Special Provisions.

The City of Midland Transportation Division will assign individual tasks for work to be performed under this contract and will coordinate with the Contractor to determine an acceptable schedule for completion of the proposed work. With the assignment of each work task, the City shall provide plans, details, lists, schematics, and/or other documents as necessary for the Contractor to fully understand the proposed scope of the task.

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.

2022 Midland Citywide Concrete Program

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	Remove Existing Asphalt Pavement & Base	SF	15,000	$ 2.00	$ 30,000.00
2	Remove Existing Curb & Gutter	LF	1,000	$ 8.00	$ 8,000.00
3	Miscellaneous Concrete Demolition	SF	2,000	$ 3.00	$ 6,000.00
4	Miscellaneous Excavation	SF	8,000	$ 1.50	$ 12,000.00
5	Type "A" Standard Curb & Gutter	LF	1,500	$ 31.00	$ 46,500.00
6	Type "B" Drop-Lip Curb & Gutter for Inverted Streets	LF	1,000	$ 20.00	$ 20,000.00
7	Type "C" Laydown Curb & Gutter	LF	750	$ 31.00	$ 23,250.00
8	Type "D" Laydown Curb & Gutter for Inverted Streets	LF	500	$ 22.00	$ 11,000.00
9	Type "E" Mountable Curb & Gutter	LF	500	$ 30.00	$ 15,000.00
10	Type "F" Saw-tooth Curb & Gutter	LF	250	$ 30.00	$ 7,500.00
11	Concrete Fillet (Streets)	SY	2,500	$ 90.00	$ 225,000.00
12	5' Wide Concrete Valley Gutter (Streets)	SY	400	$ 90.00	$ 36,000.00
13	10' Wide Concrete Valley Gutter (Streets)	SY	400	$ 90.00	$ 36,000.00
14	20' Wide Concrete Valley Gutter (Streets)	SY	400	$ 90.00	$ 36,000.00
15	4' Wide Concrete Valley Gutter (Alleys)	SY	400	$ 90.00	$ 36,000.00
16	4' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw, or Ditch)	SY	400	$ 90.00	$ 36,000.00
17	10' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw, or Ditch)	SY	400	$ 90.00	$ 36,000.00
18	20' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw, or Ditch)	SY	400	$ 90.00	$ 36,000.00
19	Concrete Alley Approach	SY	250	$ 90.00	$ 22,500.00
20	4" Concrete Sidewalk	SY	350	$ 90.00	$ 31,500.00
21	8" Concrete Paving on Streets	SY	3,500	$ 99.00	$ 346,500.00
22	6" Concrete Paving on Alleys	SY	850	$ 90.00	$ 76,500.00
23	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (with COM provided dome tiles)	EA	50	$ 2,000.00	$ 100,000.00

2022 Midland Citywide Concrete Program Cont'd

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
24	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (without COM provided dome tiles)	EA	120	$ 2,400.00	$ 288,000.00
25	8" Stamped and Stained Concrete	SY	200	$ 200.00	$ 40,000.00
26	Metal Beam Guard Fence in accordance with Item 540 of the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition; furnish, replace, or install metal beam guard fence consisting of metal beam rail elements, hardware, blocks and support posts	LF	300	$ 50.00	$ 15,000.00
27	Install/Replace Guardrail End Treatments in accordance with TxDOT standards; install, move or replace guard rail end treatments supplied by the City of Midland	EA	10	$ 1,000.00	$ 10,000.00
28	Steel Encased Concrete Bollard installed according to City of Midland Standards and Specifications	EA	10	$ 750.00	$ 7,500.00
29	Adjust Water Valve Cover to Match Pavement and Place Concrete Around Cover	EA	50	$ 400.00	$ 20,000.00
30	Adjust Manhole Lid to Match Pavement and Place Concrete Around Manhole Lid	EA	25	$ 500.00	$ 12,500.00
31	Ty. D HMAC Patching	SF	15,000	$ 10.00	$ 150,000.00
32	12" slotted drain storm line; including demolition of existing, excavation, bedding and backfill, connection to existing line and all fittings required for connections	LF	240	$ 150.00	$ 36,000.00
33	Traffic Control at Major Arterial	EA	12	$ 1,500.00	$ 18,000.00
34	Traffic Control at Intersection of two Major Arterials	EA	8	$ 1,500.00	$ 12,000.00
35	Traffic Control at Collector Streets	EA	12	$ 1,500.00	$ 18,000.00
36	Traffic Control at Residential Streets	EA	12	$ 1,100.00	$ 13,200.00
37	Unspecified Concrete Flat Work on Sloped Surface (Drainage Channel, Draw, or Ditch)	SY	150	$ 90.00	$ 13,500.00
38	Unspecified Concrete Flat Work	SY	150	$ 90.00	$ 13,500.00

2022 Midland Citywide Concrete Program Cont'd; Extra Work

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
39*	Unskilled Labor	HR		$ 30.00	
40*	Skilled Labor	HR		$ 50.00	
41*	Backhoe With Operator	HR		$ 100.00	
42*	Front End Loader With Operator	HR		$ 150.00	
43*	12 Cubic Yard Dump Truck With Driver	HR		$ 100.00	
44*	Material Mark-up	%		10	
45*	All Other Items – to be negotiated separately as necessary				

*Work not included under other items in this contract shall be paid on a time and materials basis in accordance with these unit prices. All work must be authorized in advance by the City.

TOTAL BID AMOUNT: **$ 1,900,450.00**

SUBMITTED:

Onyx General Contractors LLC
CONTRACTOR

Onyx General Contractors LLC

Vendor Name

INSTRUCTIONS TO BIDDERS

Bid# 22000573 Midland Citywide Concrete

1. 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 an answer. Verbal responses shall not be considered binding.

2. 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.

3. BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, 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.

B. 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. WAIYER 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).

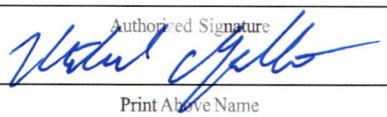
C. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:

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 his legal representative, shall give the City Manager, or any other reasonable official of the Owner. notice in writing (consisting of one original and seven 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 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 Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Contractor that Contractor's notice is insufficient. Owner 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 27 1 . 154 of the Texas Local Government Code and Section 3 1 I .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 3 1 1 .034 of the Texas Government Code, regardless if Owner 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 bidder agrees that this is the intentional relinquishment of the above listed rights.

By Signing 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.

Company Name Onyx General Contractors LLC	Date 11-17-2021
Authorized Signature 	Phone 432-561-8900
Print Above Name Michael Iaquaniello	Fax 432-561-8644

PLEASE SEE ATTACHED BID BOND

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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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: ONYX GENERAL CONTRACTORS, LLC

Local Address (must be within the City limits): 1010 S. FM 1788 Midland, Texas 79706

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? 60+
3. Year your business was established in the City of Midland: 2000
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):

   ONYX GENERAL CONTRACTORS, LLC
   PO Box 60547
   Midland, Texas 79711

5. Does your business have more than one office in the State of Texas? ☐ Yes ☒ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

   _____

   _____

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☒ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☒ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: 11/17/2021

Printed Name and Title: Michael Iaquaniello - Construction Manager

CITY OF MIDLAND

ADDENDUM

BID # 22000573

TO ALL BIDDERS ON THE SUBJECT BID: Citywide Concrete

ADDENDUM # 01

DATE: November 11, 2021

Please see the changes below made to the original Bid Schedule:

Changes include amount not to exceed **$1,500,000.00**.

BID SCHEDULE

Midland Citywide Concrete Program Fiscal Year 2022

The proposed Work provides for the furnishing of materials, equipment, labor, tools, power, and transportation necessary for the Miscellaneous Concrete Program, together with other miscellaneous and appurtenant work.

Bids will be received on a unit price basis. The intent of the proposal is to determine the low bidder based on the total of the quantities and unit prices. Once a low bidder is selected, the project will be awarded for an amount not to exceed **$1,500,000.00**

The initial term of the contract shall be from the date of award until September 30, 2022. If the Owner and Contractor agree in writing, the contract may be renewed for up to two additional one year terms (October 1, 2022 to September 30, 2023; and October 1, 2023 to September 30, 2024). Each annual renewal will be in an amount not to exceed $1,500,000.00 The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

Included in this project will be miscellaneous concrete work and appurtenant work at various locations throughout the City of Midland. The exact scope of work will be determined based on the City's needs throughout the contract period. The extent of work will be based on the available contract amount and the unit prices agreed to upon award. Therefore, there are no maps and/or drawings with this bid request. All equipment, materials, installation, and testing for all items shall be in accordance with the City of Midland Standard Construction Details and Design Standards, unless otherwise noted or approved by the City of Midland or modified by these Special Provisions.

The City of Midland Transportation Division will assign individual tasks for work to be performed under this contract and will coordinate with the Contractor to determine an acceptable schedule for completion of the proposed work. With the assignment of each work

task, the City shall provide plans, details, lists, schematics, and/or other documents as necessary for the Contractor to fully understand the proposed scope of the task.

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.

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

All other terms and conditions shall remain the same.

Onyx General Contractors LLC
Company Name

Bidder Authorized Signature

11/17/2021
Date

Michael Iaquaniello
Please Print Above Name

432-561-8900
Phone

THE AMERICAN INSTITUE OF ARCHITECTS

AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we
Onyx General Contractors, LLC

as Principal, hereinafter called the Principal, and
FCCI Insurance Company
6300 University Parkway, Sarasota, Fl 34240
a corporation duly organized under the State of **Florida**
as Surety, hereinafter called the Surety, are held and firmly bound unto
City of Midland

as Obligee, hereinafter called the Obligee, in the sum of
*****FIVE PERCENT OF BID AMOUNT*** (5%)**

for the payment of which sum well and truly to be made, the said Principal and said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for
2022 Midland Citywide Concrete Program

NOW, THEREFORE, if the Obligee, shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee, in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding of Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee, the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for with the Obligee, may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this **November 17, 2021** .

Onyx General Contractors, LLC

(Seal)

(Witness)

Christie Brown, CFO
(Title)

FCCI Insurance Company

(Seal)

(Witness)

Tina McLelland **Attorney in Fact**

AIA DOCUMENT A310 – BID BOND – AIA® - FEBRUARY 1970 ED – THE AMERICAN INSTITUE OF ARCHITECTS, 1735 N.Y. AVE, N.W., WASHINGTON, D. C. 20006

FCCI INSURANCE GROUP

GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Garland Martin; Robbie Martin; Josh Andrajack; Tina G McLelland; Haevyn Knobloch

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed $20,000,000.00): $20,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest: Christina D. Welch

Christina D. Welch, President
FCCI Insurance Company

FCCI INSURANCE COMPANY CORPORATE SEAL 1994 FLORIDA

Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida
Peggy Snow
My Commission GG 283505
Expires 02/27/2023

Peggy Snow
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christopher Shoucair, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida
Peggy Snow
My Commission GG 283505
Expires 02/27/2023

Peggy Snow
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 17th day of November, 2021

FCCI INSURANCE COMPANY CORPORATE SEAL FLORIDA

Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

1-IONA-3592-NA-04, 7/2021

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

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 _____ _____

Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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.

Consideration of Location of Bidder's Principal Place of Business
For Bids of $50,000 up to $100,000 for Services and $500,000 for Commodities
Affidavit of Eligibility

Pursuant to Texas Local Government Code 271.9051, in purchasing real property, personal property that is not affixed to real property, or services, if the City receives one or more bids from a bidder whose principal place of business is in the City of Midland and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a resident of the City of Midland, the City may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the City of Midland if the City Council determines, in writing, that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City of Midland created by the contract award, including the employment of residents of the City of Midland and increased tax revenues to the City of Midland.

In order to receive consideration, bidders must submit this affidavit to:

Erika Martinez
Purchasing Manager
City of Midland
300 N. Loraine St.,
PO BOX 1152
Midland, TX 79702-1152

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

Local Address (must be within the City limits): _____

1. Is the above address the principal place of business for the business named above? ☐ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? _____
3. Year your business was established in the City of Midland: _____
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: _____

   Company Name and Address (as it appears on permit):

   _____

   _____

   _____

5. Does your business have more than one office in the State of Texas? ☐ Yes ☐ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

   _____

   _____

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☐ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☐ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted through the City of Midland's Vendor Self Service on forms and in format provided.

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."
Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

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

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

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

33. CONSIDERATION - The terms of this agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

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

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MIDLAND CITYWIDE CONCRETE PROGRAM TO ONYX GENERAL CONTRACTORS, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,500,000.00; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager advertised for competitive bids for the Fiscal Year 2022 Midland Citywide Concrete Program (the "Project"); and

WHEREAS, Bid No. 22000573 was opened on November 17, 2021, with the lowest responsible bidder being Onyx General Contractors, LLC of Midland, Texas ("Contractor"), having submitted a bid of $1,900,450.00 to establish unit prices as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the total cost of the work to be completed, according to the previously advertised specifications and the unit prices in Exhibit "A", shall not exceed $1,500,000.00; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Contractor for said Project;

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 Contractor for said Project at a total cost not to exceed $1,500,000.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract in an amount not to exceed $1,500,000.00 from funds available in the FY22 General Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 22000573
Midland Citywide Concrete Program FY2022
Contract not to exceed $1,500,000.00
OPENED: November 17, 2021

ITEM	QTY	DESCRIPTION	Onyx General Contractors LLC 1010 S FM 1788 Midland, TX 79706 Michael Iaquaniello 432-561-8900		Desert Paving, Inc. 900 S. Meadow Odessa, TX 79761 Brent Clayton (432) 332-0939	
			COST EA.	TOTAL	COST EA.	TOTAL
1	15000 SF	Remove Existing Asphalt Pavement & Base	2.00	$30,000.00	$3.50	$52,500.00
2	1000 LF	Remove Existing Curb & Gutter	8.00	$8,000.00	$12.00	$12,000.00
3	2000 SF	Miscellaneous Concrete Demolition	3.00	$6,000.00	$5.00	$10,000.00
4	8000 SF	Miscellaneous Excavation	1.50	$12,000.00	$3.00	$24,000.00
5	1500 LF	Type "A" Standard Curb & Gutter	31.00	$46,500.00	$30.00	$45,000.00
6	1000 LF	Type "B" Drop-Lip Curb & Gutter for Inverted Streets	20.00	$20,000.00	$30.00	$30,000.00
7	750 LF	Type "C" Laydown Curb & Gutter	31.00	$23,250.00	$30.00	$22,500.00
8	500 LF	Type "D" Laydown Curb & Gutter for Inverted Streets	22.00	$11,000.00	$30.00	$15,000.00
9	500 LF	Type "E" Mountable Curb & Gutter	30.00	$15,000.00	$35.00	$17,500.00
10	250 LF	Type "F" Saw-Tooth Curb & Gutter	30.00	$7,500.00	$35.00	$8,750.00
11	2500 SY	Concrete Fillet (Streets)	90.00	$225,000.00	$100.00	$250,000.00
12	400 SY	5' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
13	400 SY	10' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
14	400 SY	20' Wide Concrete Valley Gutter (Streets)	90.00	$36,000.00	$95.00	$38,000.00
15	400 SY	4' Wide Concrete Valley Gutter (Alleys)	90.00	$36,000.00	$95.00	$38,000.00
16	400 SY	4' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
17	400 SY	10' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
18	400 SY	20' Wide; 6" Thick Concrete Valley Gutter (Drainage Channel, Draw or Ditch)	90.00	$36,000.00	$95.00	$38,000.00
19	250 SY	Concrete Alley Approach	90.00	$22,500.00	$95.00	$23,750.00
20	350 SY	4" Concrete Sidewalk	90.00	$31,500.00	$90.00	$31,500.00
21	3500 SY	8" Concrete Paving on Streets	99.00	$346,500.00	$95.00	$332,500.00
22	850 SY	6" Concrete Paving on Alleys	90.00	$76,500.00	$95.00	$80,750.00
23	50 EA	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (with COM provided dome tiles)	2,000.00	$100,000.00	$3,250.00	$162,500.00
24	120 EA	ADA Compliant Curb Ramp in accordance with City of Midland's design standards and specifications, including all incidentals, transitions and tie-ins (without COM provided dome tiles)	2,400.00	$288,000.00	$3,250.00	$390,000.00
25	200 SY	8" Stamped and Stained Concrete	200.00	$40,000.00	$180.00	$36,000.00
26	300 LF	Metal Beam Guard Fence in accordance with Item 540 of the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition; furnish, replace, or install metal beam guard fence consisting of metal beam rail elements, hardware, blocks and support posts	50.00	$15,000.00	$100.00	$30,000.00
27	10 EA	Install/Replace Guardrail End Treatments in accordance with TxDOT standards; install, move or replace guard rail end treatments supplied by the City of Midland	1,000.00	$10,000.00	$2,500.00	$25,000.00
28	10 EA	Steel Encased Concrete Bollard installed according to City of Midland Standards and Specifications	$ 750.00	$ 7,500.00	$ 1,500.00	$ 15,000.00
29	50 EA	Adjust Water Valve Cover to Match Pavement and Place Concrete Around Cover	400.00	$20,000.00	$800.00	$40,000.00
30	25 EA	Adjust Manhole Lid to Match Pavement and Place Concrete Around Manhole Lid	500.00	$12,500.00	$2,500.00	$62,500.00
31	15000 SF	Ty. D HMAC Patching	10.00	$150,000.00	$12.00	$180,000.00
32	240 LF	12" slotted drain storm line; including demolition of existing, excavation, bedding and backfill, connection to existing line and all fittings required for connections	150.00	$36,000.00	$500.00	$120,000.00
33	12 EA	Traffic Control at Major Arterials	1,500.00	$18,000.00	$1,500.00	$18,000.00
34	8 EA	Traffic Control at Intersection of two Major Arterials	1,500.00	$12,000.00	$1,500.00	$12,000.00
35	12 EA	Traffic Control at Collector Streets	1,500.00	$18,000.00	$1,500.00	$18,000.00
36	12 EA	Traffic Control at Residential Streets	1,100.00	$13,200.00	$1,500.00	$18,000.00
37	150 SY	Unspecified Concrete Flat Work on Sloped Surface (Drainage Channel, Draw, or Ditch)	90.00	$13,500.00	$100.00	$15,000.00
38	150 SY	Unspecified Concrete Flat Work	90.00	$13,500.00	$100.00	$15,000.00
		COST OF LABOR PER HOUR:				
39	HR	Unskilled Labor	30.00		$100.00	
40	HR	Skilled Labor	50.00		$100.00	
41		Backhoe w/Operator	100.00		$120.00	

	HR					
42		Front End Loader w/ Operator	150.00		$500.00	
	HR					
43		12 Cubic Yard Dump Truck w/ Driver	100.00		$250.00	
	HR					
44		**Material Markup 10%**	10%		80%	
45		All Other Items - to be negotiated separately as necessary				
		TOTAL PROPOSAL		$1,900,450.00		$2,378,750.00

Bidding Summary:

45 **Bid requests were issued.**

2 **Bids listed above**

1 **NO BIDS were received.**

41 **Bidders did not respond.**

City Council Meeting

Item Number: 14

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR TURF AND LANDSCAPE MAINTENANCE SERVICES WITH ALLDREGE GARDENS, L.P., FOR THE CITY OF MIDLAND PARKS, ATHLETIC FIELDS, AND OTHER CITY PROPERTIES MAINTAINED WITHIN THE PARKS AND RECREATION DIVISION IN THE AMOUNT OF $2,800,000.00 PER YEAR (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution approving a contract with Alldredge Gardens for Turf and Landscape Mainenance Services.

Recommended City Council Action:

Approve

Fiscal Impact:

$1,706,801 is available in the FY22 General Fund Operating Budget, and $159,865 is available in the FY22 Scharbauer Sports Complex Operating Budget.

Discussion:

Motion 131-2021 rejected the sole bid for turf and landscape maintenance services; and authorized the City Manager or the City Manager's designee to: (i) reissue a request for proposals for turf and landscape maintenance services pursuant to the statutes of the State of Texas for accomplishing the work set forth in the request for proposals, and (ii) negotiate a contract for said services. Request for proposals were issued to forty-five (45) vendors. We received four (4) proposals. Alldredge was asked to submit a BAFO, resulting in a proposal of $2,800,000 per year. The initial contract will be prorated for eight months, from February-September 2022 for the amount of $1,866,666.00. Please see the attached memo from Cristina

Burns, Community Services Director, for more information.

Therefore, please consider a resolution awarding a contract to the Alldredge Gardens, LP of Midland, Texas, for turf and landscape maintenance for three (3) years for a total cost of $8,400,000.00.

Tina Daugherty
City Manager's Office

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 1, 2021
To: Morris Williams, Jr., Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Turf and Landscape Maintenance Services - Award Contract

Since the prior turf and landscape maintenance contract expired this year, staff solicited Requests for Proposals to engage a provider of turf and landscape maintenance services for the City of Midland parks, athletic fields, and other city properties maintained within the Parks and Scharbauer Sports Complex Divisions. These services include mowing, trimming, edging, pesticide and herbicide application, fertilization, and plant bed maintenance.

Proposals for a one-year contract were opened in August. Alldredge Gardens submitted the only proposal received at a cost of $3.8 million. Alldredge Gardens has provided turf and landscape maintenance services to the City of Midland for the past fourteen years. The previous cost of the contract was $2.2 million per year, with no increases over the past seven-year contract term. Staff met with Alldredge to examine possible cost savings measures. Alldredge stated that over the past seven years, cost increases in materials, labor, and fuel costs, as well as the need to replace some large pieces of equipment, have resulted in the needed cost increase to the contract. Changes to the specifications have also increased the applications of pre-emergent and mowing cycles. A Best and Final Offer (BAFO) of $3.2 million was submitted.

Since only one proposal had been received, it was decided that the original proposal would be changed to a three-year contract, hoping to attract a larger pool of proposals. When the proposals were turned in for the second time in November, four local companies submitted. A committee was formed to review and rank each of the proposals. The committee determined that Alldredge Gardens would be most capable of providing the staff and equipment to provide the required services at the best value. Alldredge was asked to submit a BAFO, resulting in a proposal of $2,800,000 per year.

Community Services recommends awarding the three-year contract to Alldredge Gardens in the total amount of $8,400,000. Staff also recommends waiving the bond requirement as this is a service contract and not a contract for construction.

The initial contract will be prorated for eight months, from February-September 2022.

$1,706,801 is available in the FY22 General Fund Operating Budget, and $159,865 is available in the FY22 Scharbauer Sports Complex Operating Budget.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR TURF AND LANDSCAPE MAINTENANCE SERVICES WITH ALLDREGE GARDENS, L.P., FOR THE CITY OF MIDLAND PARKS, ATHLETIC FIELDS, AND OTHER CITY PROPERTIES MAINTAINED WITHIN THE PARKS AND RECREATION DIVISION IN THE AMOUNT OF $2,800,000.00 PER YEAR

WHEREAS, Motion 131-2021 rejected the sole proposal for turf and landscape maintenance services for the City of Midland parks, athletic fields, and other City properties maintained within the Parks and Recreation Division and authorized the City Manager to reissue a request for proposals and negotiate a contract for said services; and

WHEREAS, Bid No.22000143 was opened on November 5, 2021, with the most advantageous proposal being submitted from Alldredge Gardens, L.P., as shown on the tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Alldredge Gardens, L.P., for said services to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Alldredge Gardens, L.P., for said services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract for turf and landscape maintenance services for the City of Midland parks, athletic fields, and other City properties maintained within the Parks and Recreation Division, for a total price of $2,800,000.00 per year. Said contract shall 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 Comptroller is hereby authorized and directed to pay Alldredge Gardens, L.P., for the services referenced herein from funds available in the FY22

General Fund Operating Budget and the FY22 Scharbauer Sports Complex Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR TURF AND LANDSCAPE MAINTENANCE SERVICES WITH ALLDREGE GARDENS, L.P., FOR THE CITY OF MIDLAND PARKS, ATHLETIC FIELDS, AND OTHER CITY PROPERTIES MAINTAINED WITHIN THE PARKS AND RECREATION DIVISION IN THE AMOUNT OF $2,800,000.00 PER YEAR

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Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22000143
Turf and Landscape Services
OPENED November 5, 2021
Est. Cost:

ITEM	QTY	DESCRIPTION	Lawn & Tree Tech, LLC. P.O. Box 9641 Midland, Texas Mike Small (432) 934-1104		Alldredge Gardens P.O. Box 50005 Midland, Texas Justin Smith (432) 682-4500		Alldredge Gardens-BAFO P.O. Box 50005 Midland, Texas Justin Smith (432) 682-4500		M3 Landscape Maintenance & Irrigation, LLC. 5001 E. County Road 136 Midland, Texas 79706 Isfrain Morin, Jr. (432) 967-3125		Turf Specialties, Inc. 2427 E Hwy 80 Midland, Texas 79706 Jody Morris (432) 684-7166	
			COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	12 mo	Schedule A - Hogan Park	$30,378.77	$364,545.24	$37,556.92	$450,683.04	$37,556.92	$450,683.04	$42,324.33	$507,891.96	$51,288.63	$615,463.56
2	12 mo	Schedule B - Beal Park	$19,542.25	$234,507.00	$16,790.00	$201,480.00	$16,790.00	$201,480.00	$19,290.01	$231,480.12	$23,116.00	$277,392.00
3	12 mo	Schedule C - Butler Park	$8,951.58	$107,418.96	$10,316.00	$123,792.00	$10,316.00	$123,792.00	$11,499.50	$137,994.00	$13,484.33	$161,811.96
4	12 mo	Schedule D - Windlands Park	$21,063.49	$252,761.88	$15,638.52	$187,662.24	$15,638.52	$187,662.24	$23,735.50	$284,826.00	$28,895.00	$346,740.00
5	12 mo	Schedule E - Scharbauer Sports Complex	$14,246.13	$170,953.56	$19,983.00	$239,796.00	$19,983.00	$239,796.00	$19,635.11	$235,621.32	$23,779.17	$285,350.04
6	12 mo	Schedule F - Parks with Athletic Fields	$34,877.10	$418,525.20	$49,442.00	$593,304.00	$49,442.00	$593,304.00	$54,252.91	$651,034.92	$64,241.58	$770,898.96
7	12 mo	Schedule G - General Parks	$53,304.10	$639,649.20	$65,686.00	$788,232.00	$65,686.00	$788,232.00	$62,409.13	$748,909.56	$83,930.44	$1,007,165.28
8	12 mo	Schedule H - Bi-Monthly Mowing	$33,439.77	$401,277.24	$8,908.00	$106,896.00	$8,908.00	$106,896.00	$6,375.00	$76,500.00	$11,250.00	$135,000.00
9	3 ea	Schedule I - Occasional Mowing	$9,384.48	$28,153.44	$5,812.00	$17,436.00	$5,812.00	$17,436.00	$2,450.00	$7,350.00	$4,666.67	$14,000.00
10	12 mo	Schedule J - No mow Areas (Xeriscape and/or Beds Only)	$337.04	$4,044.45	$3,852.00	$46,224.00	$3,852.00	$46,224.00	$6,452.48	$77,429.70	$5,470.92	$65,651.04
11	12 mo	Schedule K - City Offices	$4,704.90	$56,458.80	$3,708.00	$44,496.00	$3,708.00	$44,496.00	$2,446.72	$29,360.64	$4,645.88	$55,750.56
12	1 ea	Schedule L - Additional Maintenance Services as Required	$124,696.25	$124,696.25	No Bid	No Bid	No Bid	No Bid	$65,498.00	$65,498.00	$158,250.00	$158,250.00
13		The rack price per gallon of gasoline used to prepare this proposal is:	$3.15		No Bid		$2.89		$3.05		No Bid	
14		The rack price per gallon of diesel used to prepare this proposal is:	$3.40		No Bid		$2.95		$3.30		No Bid	
15		Estimated number of gallons of diesel fuel per month:	1750		No Bid		Average		375-450		No Bid	
16		Estimated number of gallons of unleaded gasonline per month:	2250		No Bid		Average		250		No Bid	
		TOTALS:		$2,802,991.22		$2,800,001.28		$2,800,001.28		$3,053,896.22		$3,893,473.40
		TOTAL OF LOW BID ITEMS BY VENDOR:		$1,705,136.61		$389,142.24		$0.00		$178,708.64		$0.00

Bidding Summary:

45 Bid requests were issued.

4 Bids listed above

NO BIDS were received.

Bidders did not respond.

CITY OF MIDLAND
SERVICE CONTRACT
#22000143

THIS CONTRACT, effective this 15th day of December , 2021 , by and between the City of Midland, hereinafter referred to as the "CITY" and Alldredge Gardens , hereinafter referred to as the "COMPANY".

Projected Annual Cost: $2,800,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for four(4) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. Alldredge Gardens
P.O. Box 50005
Midland, Texas 79710

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

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

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

20. **<u>NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES</u>:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The

notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

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

and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

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

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

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

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

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

33. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply

to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Alldredge Gardens, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____

Notary Public, State of _____

Request for Proposals

RFP #22000143

for

Professional Turf and Landscape Maintenance Services for Parks & Recreation

Proposals for this requirement will be accepted until 11:00 A.M. on November 5, 2021

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY PROPOSER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE PROPOSAL. NON-RESPONSIVE PROPOSALS WILL BE REJECTED. PROPOSER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

2. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.

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

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SCHEDULE OF EVENTS

RFP XXXX-21

For

Professional Turf And Landscape Maintenance Services For Parks & Recreation

Event	Date*
RFP Released	September 29, 2021
Cutoff Date for inquiries and clarification	November 3, 2021
Proposal Due Date	November 5, 2021
Notification of Vendor Interviews / Product Demonstrations	To be determined
Present Recommendation to Council for Consideration	December 14, 2021
Intended date for Contract Award	December 15, 2021
Intended date to begin Contract Services	February 1, 2022

*These dates are our intended schedule; however, they may be changed as necessary without further notice.

NOTE:

From the issuance date of this RFP until a Contractor(s) is selected, all verbal communication is not binding. The City will only be bound by written comments submitted by the Purchasing Office.

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.
2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offerors.All copies of the proposal may be delivered in the same box/package.
3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.
4. Late proposals will not be accepted under any circumstances.
5. Proposal should give full firm name and address of Offeror. Failure to manually sign theproposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number 75-1587188_____ or Sole owner should enter SSN_____-___-_____.
6. Purchases made for City use are exemptfrom State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.
7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from Purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for latedelivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Parks and Recreation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Professional Turf and Landscape Maintenance Services for Parks & Recreation as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

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

1.6. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.7. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be

determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

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

1.8. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City of Midland
Office of the Purchasing Agent OR
P.O. Box 115
Midland, TX 79702

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.9. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.10. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.11. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

"(Offeror's Name)", understands and will comply.

1.12. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.13. SUBMITTING A SEALED PROPOSAL

1.13.1. Number of copies and Location:

1.13.1.1. Offerors must submit one original, and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the

face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.13.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.13.2. Each Offeror who submits a proposal represents that:

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

1.13.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.13.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

1.13.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.14. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

a) waive any formality;

b) cancel or terminate this RFP;

c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.15. BONDING REQUIREMENTS

Intentionally Omitted

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the

contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

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

1.21.4. The initial contract(s) term is for a period of three years. Renewals of the contract may be made at one-year intervals, not to exceed a total of (4) four one-year renewals, at the City's option.

1.21.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.21.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all

Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

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

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

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

2.4. **WAIVER:**

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

2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**

2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland is requesting sealed proposals from qualified vendors for the purpose of establishing a contract to provide grounds maintenance, pest and weed control services, tree removal, and tree and shrub planting as specified herein and including all provisions set forth in the accompanying documentation. The contractor will provide professional turf and landscaping services necessary to complete the scope of work indicated as set forth in the following Schedules A through I.

4. GENERAL MAINTENANCE REQUIREMENTS

THE FOLLOWING MINIMUM STANDARDS WILL BE REQUIRED FROM SUCCESSFUL BIDDERS WITH RESPECT TO THE CARE AND MAINTENANCE OF TURF AND LANDSCAPE AREAS. ITEMS OF WORK WILL BE LISTED IN SCHEDULES A-I:

4.1. LITTER AND TRASH PICK-UP

4.1.2. All trash debris shall be picked up and disposed of by the Contractor prior to performing each cycle of work.

4.1.3. Failure to pick up litter and trash prior to mowing will result in a deduction of 25% of the cycle payment for each location.

4.2. MOWING

4.2.1. Mowing shall commence upon written notice by the Assistant Director of the Community Services Department for the City of Midland, Midland, Texas. Contractor will have ten (10) days from receipt of certified letter to commence mowing.

4.2.2. Mowing decks must be in good repair, with leveling wheel in place.

4.2.3. Fenced fields should be mowed with a mower with a 52" deck. Requests to utilize other deck mowers may be approved by the Assistant Community Services Director, pending written request. Mowing height of fields should be 2" after mowing. **DO NOT SCALP FIELDS**! This will result in payment deduction.

4.2.4 Schedule D areas that are mowed 3 cycles per year are to be mowed with a brush hog type mower.

4.2.5. Grass clippings shall not be caught. No grass "ridges" should be left after mowing.

4.2.6. Mowing operations shall not be performed in common areas if grass height does not exceed 3 ¾" (minimum grass height requirement to mow).

4.2.7. **GRASS HEIGHT SHALL BE 3" AFTER MOWING IN COMMON AREAS.** "Mowing Dirt" and/or "scalping" will not be tolerated. Cycle will not be paid if grass does not meet grass height requirement. Unpaid cycles will result in additional funds for tree or shrub planting or other maintenance as required.

4.2.8. All walks shall be swept or blown clear of grass clippings after each mowing. Do not blow clippings into the street unless they are subsequently picked up and properly disposed of by the contractor.

4.2.9. Contractor is responsible for notifying City of Midland Park Superintendent of any damages to structures, fences, gates, trees, or equipment including irrigation that occurs while mowing. Notification shall occur within 48 hours of damage.

4.2.10. Contractor is responsible for replacing or repairing all structures, fences, gates, trees, or equipment (excluding irrigation) that is damaged while mowing. Repair or replacement must occur within 2 weeks of damage. Failure by the contractor to make repairs or rectify damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

4.3. EDGING

All walks shall be edged to a depth of 1 1/2" and to a width of ½" in conjunction with every mowing cycle. This shall be performed by a blade edger in locations of high public traffic. Debris must be swept clear and disposed of by the Contractor. Blowing debris into the street is not acceptable.

4.4. TRIMMING

4.4.1. All trimming will be done in conjunction with every mowing cycle to achieve a uniform height in accordance with the mowing height around trees, signs, park structures and any other obstacles.

4.4.2. Contractor is responsible for repairing or replacing trees, signs, park structures and any other obstacles that are damaged while trimming. DO NOT allow trimmers to come in contact with trees.

4.4.3. Trees damaged by trimmers will be replaced. Tree guards may be placed around trees to prevent damage by mowers. These must be furnished at the contractor's expense. They must be maintained by the contractor. Replacement trees must be equal in size and variety, unless otherwise approved by the Assistant Director of Community Services.

4.4.5. Use of Glyphosate herbicide may be used to "chemically trim" areas around fences, structures, mature trees, sign posts, light posts, and buildings. Herbicide applicators must hold a TDA pesticide applicator license, or be under the direct supervision of a licensed applicator. If damages to surrounding turf or other plant materials is observed, this practice may be discontinued at the discretion of the Assistant Community Services Director.

4.5. FERTILIZATION

4.5.1. Park Common Areas designated to receive fertilization will be fertilized two times a year; once in the spring (April) and once in the fall (September). Sports Fields will be fertilized three times per year in April, June and August.

4.5.2. Fertilizer shall be a 4 to 1 to 2 ratio of nitrogen, phosphorus and potassium (20-5-10 or approved equal). Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) plus minimum 8% Sulphur and 4 % iron plus micronutrients. Apply at a rate of 1 pound of nitrogen per 1000 square feet per application.

4.5.3. Fertilizer must be approved by the Assistant Community Services Director prior to application.

4.6. Pest Control

4.6.1. Control all insects/pests that are detrimental to the maintenance of a healthy park landscape. This would include, but not be limited to, fire ants, harvester ants, tree bores and other insects or pests that are detrimental to health of turfgrass, trees and shrubs.

4.6.2. Broad spectrum pesticide for Ant Control (Talstar P or approved equal) shall be broadcast applied annually to all areas in schedules A, B, C, D Areas I and J, E Area L, .F Areas N, O and P, and G Areas V, Z, E3 and F3.

4.6.3 All other areas requiring pest control should be spot treated as needed.

4.7. Weed Control

□ Note: All control methods will be coordinated with the Park irrigation schedules.

4.7.1. Control all weeds, noxious plants and fungal forms that are detrimental to the maintenance of a healthy park landscape. This would include any weed, noxious plant or fungal form that inhibits the healthy growth of turfgrass, trees and/or shrubs.

4.7.2. Control all weeds and/or noxious plants in the crushed granite paths within the parks.

4.7.3. Control all weeds and/or noxious plants in the parking lots within the maintenance areas and parks as well as those in curbing /streets that directly border a park property.

4.7.4. High quality pre-emergent applications should be made starting in February and again in November for all areas where "Weed Control" is specified. Contractor must notify Park Superintendent when applications will begin. Pre-Emergent shall be Pendulum Aqua Cap or approve equal.

4.7.5. The following schedules DO NOT require pre-emergent applications:

Schedule D Area K, Schedule E Area M, and Schedule H, I and J

4.7.6. Post Emergent Herbicides should be used in all areas where weed control is specified as a work requirement. Depending on the target weed species, Speedzone EW-orange, Speed Zone- Red, Tenacity, and Image (or approved equals) should be used at appropriate times.

4.7.7 Do not use marker dye unless location is specifically approved by Assistant Community Services Director.

4.8. Planter Bed Maintenance

4.8.1 All beds to be turned and weeded once every 30 days during mowing cycles.

4.8.2 Pre-Emergent (Ronstar or approved equal) may be applied in beds.

4.9. SHRUB MAINTENANCE

All shrubs to be trimmed and pruned once every 30 days during mowing cycles, as to maintain a neat, uniform appearance.

4.10. IRRIGATION

4.10.1. Repair and operation of all irrigation systems will be the sole responsibility of the City of Midland Parks' Division.

4.10.2. Contractor must immediately report any damages to the irrigation system caused by maintenance operations to the Park Superintendent. Contractor should mark damages with a green irrigation flag.

4.10.3. Failure to report damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

5. SCHEDULE OF WORK

The following minimum standards will be required from successful bidders with respect to the care and maintenance of Turf and Landscape Areas listed in Schedules A-I:

5.1. SCHEDULE A- HOGAN PARK

5.1.1 General Work Requirements for all Schedule A locations:
Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.1.2. MOWING FREQUENCY

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.1.3

SCHEDULE A – HOGAN PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
A	Hogan Park (Baseball) (Softball) (Soccer)	1201 E. Wadley	 8 AC. 2 AC. 22 ½ AC.	
B	Hogan Park (Dog Parks)	1201 E. Wadley	9 AC.	
C	Hogan Park Common Areas	1201 E. Wadley	65 AC	1064

5.2. SCHEDULE B - BEAL PARK

5.2.1 General Work Requirements for all Schedule B locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, and Shrub Maintenance.

5.2.2. MOWING FREQUENCY

March-October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 30 days.....4 cycles

5.2.3

SCHEDULE B – BEAL PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
D	Beal Park (Baseball) (Cricket) (Soccer)	5200 Wall	 8 AC. ½ AC. 4 ½ AC.	
E	Beal Dog Parks	5200 Wall	5 AC.	
F	Beal Common Areas	5200 Wall	30 AC.	

5.3. SCHEDULE C - BUTLER PARK

5.3.1 General Work Requirements for all Schedule C locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.3.2. MOWING FREQUENCY

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.3.3.

SCHEDULE C – BUTLER PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
G	Butler Park (Baseball) (Soccer)	3801 Bluebird	 7 AC. 8 AC.	
H	Butler Common Areas	3801 Bluebird	13 AC.	1358

5.4. SCHEDULE D - WINDLANDS PARK

5.4.1 General Work Requirements for all Schedule D Areas I and J locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.4.2 General Work Requirements for all Schedule D Area K only:

Litter and Trash Pick-up, Mowing (brush hog allowed), and Trimming

5.4.3. MOWING FREQUENCY – Areas I and J

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.4.4. MOWING FREQUENCY – Area K

February only	1 cycle ..... 1 cycle

5.4.5.

SCHEDULE D – WINDLANDS PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
I	Windlands Park (Baseball) (Soccer)	1000 W. Dengar	 4 AC. 19 AC.	
J	Windlands Park Common Areas	1000 W. Dengar	17 AC	3100
K	Windlands Park Natural Area & Jogging Trail	1000 W. Dengar	20 AC	

5.5. SCHEDULE E – SCHARBAUER SPORTS COMPLEX

5.5.1 General Work Requirements for Schedule E location L:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.5.2 General Work Requirements for Schedule E location M:

Litter and Trash Pick-up, Mowing, and Trimming. Brush hog is allowed.

5.5.3. MOWING FREQUENCY – Area L

March - October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 30 days.....4 cycles

5.5.4. MOWING FREQUENCY – Area M

1 cycle April/ 1 cycle July/ 1 cycle October.....3 cycles

5.5.5.

SCHEDULE E – SCHARBAUER SPORTS COMPLEX				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
L	Scharbauer Sports Complex Common Areas	801 N Loop 250 W	46 AC	26,114
M	Scharbauer Sports Complex Undeveloped Areas	801 N Loop 250 W	4 AC	

5.6. SCHEDULE F - PARKS WITH ATHLETIC FIELDS

5.6.1 General Work Requirements for all Schedule F locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control.

5.6.2. MOWING FREQUENCY

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.6.3

SCHEDULE F – PARKS WITH ATHLETIC FIELDS				
AREA	PARK	LOCATION	EST. TURF	EST. SQ.FT.BEDS
N	CJ Kelly Park (Baseball) (Football) Common Areas	5500 League Drive	 5 AC. 2 AC. 23 AC	 1000
O	Reyes/Mashburn/Nelms (Baseball) (Soccer) Common Areas	2101 E. Cuthbert	 7 AC. 10 AC. 48 AC.	
P	MUGS/Ulmer Park (Softball) Common Areas	2700 W. Kentucky	 8 AC. 17 AC	 200
Q	Dunagan Common Areas (Soccer)	600 E. Gist	 2 AC. 6 AC.	
R	Hidalgo Common Areas (Softball)	1401 Orchard Lane	 8 AC. 1 AC.	

5.7 SCHEDULE G – GENERAL PARKS

5.7.1 General Work Requirements for all Schedule G locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.7.2. MOWING FREQUENCY

March - October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 60 days.....2 cycles

5.7.3.

SCHEDULE G – GENERAL PARKS				
	PARK	LOCATION	EST. TURF	EST. SQ. FT. BEDS
S	Bradford	801 E Pennsylvania	3.5 AC.	NA
T	Cowden	1100 Ward	8 AC	NA
U	Crier Park	"H" at Texas	½ AC	5722
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	NA
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450
X	Elkin	1101 W. Washington	2 AC.	100
Y	Essex	3400 Whittle Way	4 AC.	1000
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA
BB	Grafa	3201 MaMar Ave	6 AC	NA
CC	Grasslands	2501 Crowley	5 AC.	NA
DD	Greathouse	5105 Greathouse	5 AC	400
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA
FF	Halff	100 E. New Jersey	2 AC.	NA
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA
HH	Hill	1301 W. Cuthbert	5 ½ AC	400
II	House	4800 Ric Drive	6 ½ AC	NA
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA
LL	Jacotte	Golf Course intersect. With Jacotte	1 AC.	NA
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA
PP	Lamesa Triangle	Kentucky and Indiana	½ AC	NA
QQ	Lancaster	3501 W. Kansas	7 AC	NA
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA
TT	Pioneer	2001 Lindora Way	5 AC	300
UU	Ratliff	2411 Edwards	5 AC.	NA
VV	Santa Rita	5200 Whitman	5 AC.	NA

SCHEDULE G – GENERAL PARKS				
	PARK	LOCATION	EST. TURF	EST. SQ. FT. BEDS
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA
XX	Sidwell	500 Neely	5 ½ AC.	NA
YY	Sparks	1500 E. Golf Course	5 AC.	NA
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA
A3	Trinity	3900 St. Andrew	4 AC	NA
B3	Tumbleweed	1300 Ventura	8 AC	NA
C3	Unity	600 N. Mineola	1 AC	1244
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000
E3	Wadley Barron	1001 N. A Street	5 AC	450
F3	Washington Park	1803 E. Indiana	16 AC.	1500

5.8 SCHEDULE H – BI-MONTHLY MOWING

5.8.1 General Work Requirements for all Schedule H locations:

Litter and Trash Pick-up, Mowing, Edging and Trimming only

5.8.2. MOWING FREQUENCY

1 cycle Every other week March-October .....18 Cycles

5.8.3.

SCHEDULE H – BI MONTHLY MOWING			
	PARK	LOCATION	EST. TURF
G3	Andrews Hwy ROW	Andrews & Godfrey	½ AC
H3	Fuhrman House	3301 Sinclair	1 ¼ AC
I3	Heritage Blvd	Behind Lowe's	½ AC
J3	HWY 191 Easement	Adj to Grasslands	3 AC
K3	Loop 250 Easement	Adj to Grasslands	4 AC
L3	Marienfeld at Rankin Hwy	Same	½ AC
M3	Orchard & Front	Same	½ AC
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC
O3	Lamesa at Cuthbert	Same	¼ AC
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC

5.9. S
C

SCHEDULE I – OCCASIONAL MOWING

5.9.1 General Work Requirements for all Schedule I locations:

Litter and Trash Pick-up and Mowing only

5.9.2 MOWING FREQUENCY

1 cycle April/ 1 cycle July/ 1 cycle October.....3 Cycles

5.9.3

SCHEDULE I – OCCASIONAL MOWING			
	AREA	LOCATION	EST. AREA
Q3	Heritage Center (back area Linebery House)	802 S. Main	3 AC
R3	Fairgrounds Road Hike/Bike Path	Fairgrounds Road	4 AC
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement	5 AC
T3	Reyes Mashburn Nelms Undeveloped	Fairgrounds at Cuthbert	2 AC

5.10 SCHEDULE J – NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

5.10.1. General Work Requirements for all Schedule J locations:

Litter and Trash Pick-up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance

5.10.2. CYCLE FREQUENCY

October – March 1 cycle per month..... 6 Cycles
April – September 2 cycles per month.....12 Cycles

5.10.3.

NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)			
	AREA	LOCATION	EST. SQ. FT.
U3	Achievement Plaza	W. Wall at W. Front Ave	1000
V3	Broadway Island	At Ohio Ave	22,721
W3	Broadway Median	At Cuthbert	500
X3	Cowden Island	At Big Spring	1950
Y3	Cowden Island	At Colorado	7838
Z3	Main & Baird	Islands	5544
A4	Wall Street	Downtown beds/trees	450
B4	Front Street	Beds near RR tracks	1000
C4	Volunteer Park	Big Spring & Marienfeld	14,348

5.11 SCHEDULE K – CITY OFFICES

5.11.1. General Work Requirements for all Schedule K locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance as required at each site.

5.11.2. CYCLE FREQUENCY

November– February	1 cycle per month..... 4 Cycles
March – October	1 cycle per week..... 35 Cycles

5.11.3

SCHEDULE K – CITY OFFICES				
	AREA	LOCATION	EST. TURF	EST. BED AREA
D4	City Hall	300 N. Loraine		5573
E4	Loraine Center	Loraine & Louisiana	¼ AC	951
F4	MLK Comm Center	2300 Butternut	2 AC	1000
G4	Scarborough/Linebery House	802 S. Main	1 AC	1250
H4	Old Police Station	404 E. Texas	¼ AC	NA
I4	Parks Office	2701 Elizabeth	¼ AC	800
J4	Baldwin Office	300 Baldwin	¼ AC	500
K4	Central Fire Station	1500 W. Wall Street	¼ AC	3500

6.0 ADDITIONAL MAINTENANCE SERVICES AS REQUIRED

□ NOTE: All services below will be paid as "each". Estimated quantities will be shown for purposes of bidding. Work will be performed as requested in writing by the Assistant Community Services Director.

6.1. ORNAMENTAL SHRUB/SEASONAL COLOR PLANTING

6.1.1. Ornamental Shrubs such as Autumn Sage, Lantana, or similar available varieties will be planted as directed by the Assistant Community Services Director. Seasonal Color bed planting may also be requested.

6.1.2. The plants should meet all horticultural standards, be disease and insect free.

6.1.3. Ornamental shrubs should be 1 gallon, container grown specimens.

6.1.4. Shrubs should be planted according to current American Nurseryman Standards.

6.2. ORNAMENTAL SHRUB PLANTING

6.2.1. Ornamental Shrubs such as Purple Sage, Red Yucca, or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.2.2. The shrubs should meet all horticultural standards, be disease and insect free.

6.2.3. Ornamental shrubs should be 5-gallon, container grown specimens.

6.2.4. Shrubs should be planted according to current American Nurseryman Standards.

6.3. ORNAMENTAL TREE PLANTING

6.3.1. Ornamental trees such as Desert Willow, Vitex, or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.3.2. The trees should meet all horticultural standards, be disease and insect free.

6.3.3. Ornamental trees should be 15-gallon, container grown specimens.

6.3.4. Trees should be planted according to current American Nurseryman Standards.

6.4. TREE PLANTING

6.4.1. Trees such as Cedar Elm, Monterrey Oak, Chinese Pistache or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.4.2. The trees should meet all horticultural standards, be disease and insect free.

6.4.3. Trees should be minimum 3" caliper, container grown specimens.

6.4.4. Trees should be planted according to current American Nurseryman Standards.

6.5. TREE REMOVAL

6.5.1. Trees such as Elms, Mulberry or similar varieties will be removed as directed by the Assistant Community Services Director.

6.5.2. The trees shall be tagged for removal by Parks Division personnel.

6.5.3. Trees stumps should be ground to a level below the surrounding ground and filled to maintain a level surface.

6.5.4. All branches and stumps must be completely removed from City Property and disposal is the responsibility of the contractor.

6.5.5. Tree caliper will determine the Type of tree removal. Caliper is measured 18" above the soil line.

6.5.6. Tree removal Type A – Trees under 24" caliper

6.5.7 Tree removal Type B – Trees over 24" caliper

6.6. SCHEDULE L - ESTIMATE OF ADDITIONAL MAINTENANCE SERVICES

6.6.1.

SCHEDULE L - SUMMARY OF QUANTITIES FOR ONE YEAR		
	ITEM OF WORK	ESTIMATED QUANTITY
6.1	ORNAMENTAL SHRUB (1 GAL)	200
6.2	ORNAMENTAL SHRUB (5 GAL)	100
6.3	ORNAMENTAL TREE PLANTING	25
6.4	TREE PLANTING	50
6.5.6.	TREE REMOVAL-TYPE A	20
6.5.7.	TREE REMOVAL-TYPE B	50

7. VENDOR QUALIFICATIONS

7.1 INFORMATION VERIFICATION

The City may make such investigations as deemed necessary to determine the ability of the offeror to supply the products and perform the services specified.

7.2 RIGHT TO REJECT

The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the City that offeror is properly qualified to carry out the obligations of the contract.

7.3. VENDOR CAPABILITIES

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror and will be weighed by the City. (Note: Each item must be thoroughly addressed. Taking exception to any requirements listed in this Section may disqualify the proposal):

7.3.1 References

7.3.1.1 Offeror shall provide a minimum of ___3___ references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

7.3.1.2 These references should include City government and universities where the offeror, preferably within the last __2___ years, has successfully provided this service.

7.3.2 Vendor Stability

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

7.3.2.2 Provide financial statements, preferably audited, for the __2____ consecutive years immediately preceding the issuance of this RFP.

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

7.3.2.4 Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) _____.

8. EVALUATION PROCESS

8.1 EVALUATION PROCEDURE

8.1.1. Committee Actions

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

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

8.1.1.3 Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award.

8.2 EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

8.2.1 Company Service Qualifications

8.2.2 Three references

8.2.3 Years in business

8.2.4 Project Manager

8.2.5 Implementation Plan

8.2.6 Training Requirements

8.2.7 Organization

8.2.8 Technical Abilities

8.2.9 Cost Analysis

9. PROPOSAL CONTENTS

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

9.1 THE RFP

9.2 THE COST SUMMARY OR PROPOSAL FORM

9.3 REQUESTED ATTACHMENTS

9.3.1 References

9.3.2 Resumes

9.3.3 Business Plan

9.3.4 Financial Information

9.3.5 Signed Execution of Offer

10. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through 28.

OFFEROR/COMPANY: ALLDREDGE GARDENS, LP

SIGNATURE (INK) Kristi Alldredge

NAME: (TYPED/PRINTED) KRISTI ALLDREDGE

TITLE: PARTNER

STREET: 3300 N FAIRGROUND

CITY/STATE/ZIP: MIDLAND, TEXAS 79705

TELEPHONE: 432-682-4500 FAX: 432-687-6876

EMAIL: justinsmithag@gmail.com and/or msa.alldredge@yahoo.com

City Of dland

Turf & Landscape Services

Cost Summary

PACKET

Instructions and Information

1. Insert the bid amounts on each schedule according to the requirements coinciding with the specification for that schedule.

2. The last column is to provide the total monthly cost of fuel that is already included in the monthly costs for mowing, trimming, etc. This is for City informational purposes and does not preclude including fuel cost in these costs.

3. The Rack price per gallon of gasoline used to prepare this proposal is: $ 2.89

3. The Rack price per gallon of diesel used to prepare this proposal is: $ 2.95

4. Estimated number of gallons of diesel fuel per month: ..... AVERAGE

5. Estimated number of gallons of unleaded gasoline ..... AVERAGE

14.49

Name of Company submitting this offer: **ALLDREDGE GARDENS, LP**

December 14, 2021

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN PARK

Proposal From:

					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, and Mowing (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
A	Hogan Park	1201 E. Wadley							
	(Baseball)		8 AC		2,304	400	363	3,067	36,804
	(Softball)		2 AC		578	100	100	778	9,336
	(Soccer)		22 1/2 AC		6,512	1,124	999	8,635	103,620
								TOTAL	149,760
B	Hogan Park	1201 E. Wadley							
	(Dog Parks)		9 AC		2,270	400	360	3,030	36,360
C	Hogan Park	1201 E. Wadley							
	(Common areas)		65 AC	1064 SQ FT	16,505.57	2,830	2,540	21,875.57	262,506.81
	Beds								
								171.35	2056.20
	Totals Schedule A							37,556.92	450,683

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE B - BEAL PARK

Proposal From:

ID	Property Name	Location	Mowing Area	Bed Area	Monthly Bids For Specific Services			Composite Bids for All Services	
					Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
D	Beal Park	5200 Wall							
	(Baseball)		8 AC		2,315	286	370	3,071	36,852
	(Cricket)		1/2 AC		139	27.5	25.5	192	2,308
	(Soccer)		4 1/2 AC		1,303	227	198	1,728	20,735
E	Beal Park	5200 Wall							
	(Dog Parks)		5 AC		1,268	224	198	1,691	20,281
F	Beal Park	5200 Wall							
	(Common areas)		30 AC		7,217	1,344	1,218	10,109	121,305
	Totals Schedule B							16,790	201,482

City of Midland

Turf and Landscape Maintenance Services

35 Cost Summary

SCHEDULE C - BUTLER PARK

Proposal From:

ID	Property Name	Location	Mowing Area	Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Monthly Bids For Specific Services: Fertilization (3 times / year)	Monthly Bids For Specific Services: Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
G	Butler Park	3801 Bluebird							
	(Baseball)		7 AC		2,026	336	325	2,687	32,246
	(Soccer)		8 AC		2,315	386	370	3,071	36,852
H	Butler Park	3801 Bluebird							
	(Common areas)		13 AC	1358 SQ FT	3,284	613	496	4,393	52,718
	Beds								
								164	1,973
	Totals Schedule C							10,316	123,790

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE D - WINDLANDS PARK

Proposal From:

ID	Property Name	Location	Mowing Area	Bed Area	Monthly Bids For Specific Services			Composite Bids for All Services	
					Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
I	Windlands Park	1000 W. Dengar							
	(Baseball)		4 AC		1,158	202	176	1,536	18,426
	(Soccer)		19 AC		5,498	983	811	7,292	87,504
J	Windlands Park	1000 W. Dengar							
	(Common areas)		17 AC	3100 SQ FT	4,293	764	687	5,745	68,937
K	Windlands Park	1000 W. Dengar							
	(Natural areas & Trails)		20 AC		400	200	76	676	8,110
	Beds								
								390.35	4,684
	Totals Schedule D							15,639	187,662

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE E - SCHARBAUER SPORTS COMPLEX

Proposal From:

ID	Property Name	Location	Mowing Area	Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Monthly Bids For Specific Services: Fertilization (2 times / year)	Monthly Bids For Specific Services: Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
L	Scharbauer Sports Complex	801 N Loop 250 W							
	(Common Areas)		46 AC	26,114 Sq Ft	11,617	2,293	2,049	15,959	191,510
M	Scharbauer Sports Complex	801 N Loop 250 W							
	(NE Undeveloped Area)		4 AC	4 times a year	539.28	NA	NA	539	6,471
	Beds								
								3,485	41,816
	Totals Schedule E							19,983	239,798

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE F - PARKS WITH ATHLETIC FIELDS

Proposal From:

ID	Property Name	Location	Area	Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Monthly Bids For Specific Services: Fertilization (2 times / year)	Monthly Bids For Specific Services: Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5 AC.		1,723	300	262	2,285	27,420
	(Football)		2 AC.		689	120	105	914	10,968
	(Common Areas)		23 AC	1000 Sq Ft	6,915	1,250	1,088	9,253	111,036
O	Reyes/Mashburn/Nelms Park	2101 E. Cuthbert							
	(Baseball)		7 AC.		2,213	400	386	2,999	35,990
	(Soccer)		10 AC		2,914	473	450	3,837	46,045
	(Common Areas)		48 AC.		11,432	2,600	2,189	16,221	194,654
P	MUGS/Ulmer Park	2700 W. Kentucky							
	(Softball)		8 AC.	200 Sq Ft	2,162	470	438	3,070	36,842
	(Common Areas)		17 AC.		5,111	950	778	6,839	82,068
Q	Dunagan Park	600 E. Gist							
	(Soccer)		6 AC.		2,067	360	314	2,741	32,892
	(Common Areas)		2 AC.		601	114	90	805	9,660
R	Hidalgo Park	1401 Orchard Lane							
	(Softball)		1 AC.		345	62	50	457	5,484
	(Common Areas)		8 AC.						
	Beds								
								20	240
	Totals Schedule F							49,442	593,301

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE G – GENERAL PARKS

PACKET 14:56 December 14, 2021

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services				Composite Bids for All Services	
					Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
S	Bradford	801 E Pennsylvania	3.5 AC.	NA	890	156	144		1,190	14,277
T	Cowden	1100 Ward	8 AC	NA	2,032	383	304		2,719	32,630
U	Crier Park	"H" at Texas	½ AC	5722	135	35	30	746	946	11,357
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	1250	1,456	254	228	169	2,107	25,279
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450	1,270	237	195	59	1,761	21,132
X	Elkin	1101 W. Washington	2 AC.	100	516	90	76	13	694	8,325
Y	Essex	3400 Whittle Way	4 AC.	1000	1,023	178	161	135	1,496	17,948
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA	890	156	144		1,190	14,277
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA	2,290	401	368		3,060	36,717
BB	Grafa	3201 MaMar Ave	6 AC	NA	1,524	287	228		2,040	24,478
CC	Grasslands	2501 Crowley	5 AC.	NA	1,276	234	190		1,700	20,402
DD	Greathouse	5105 Greathouse	5 AC	1500	1,276	234	196	197	1,903	22,835
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA	890	156	144		1,190	14,277
FF	Halff	100 E. New Jersey	2 AC.	NA	516	89	76		680	8,163
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA	890	156	144		1,190	14,277
HH	Hill	1301 W. Cuthbert	5 ½ AC	400	1,399	254	221	51	1,924	23,089
II	House	4800 Ric Drive	6 ½ AC	NA	1,656	296	258		2,210	26,516
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA	389	63	58		510	6,125
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA	515	89	76		680	8,163
LL	Jacotte	Golf Course intersect.	1 AC.	NA	258	44	38		340	4,076
		With Jacotte		NA	258	44	38		340	4,076
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA	258	44	38		340	4,076
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA	890	156	144		1,190	14,277
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA	1,023	185	152		1,360	16,315
PP	Lamesa Triangle	Kentucky and	½ AC	NA	127	24	19		170	2,038
		Indiana		NA	127	24	19		170	2,038
QQ	Lancaster	3501 W. Kansas	7 AC	NA	1,783	330	266		2,380	28,554
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA	642	110	98		850	10,201
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA	1,023	185	152		1,360	16,315
TT	Pioneer	2001 Lindora Way	5 AC	300	1,272	237	195	38	1,741	20,888

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services				Composite Bids for All Services	
					Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
UU	Ratliff	2411 Edwards	5 AC.	NA	1,276	234	190		1,700	20,402
VV	Santa Rita	5200 Whitman	5 AC.	NA	1,276	234	190		1,700	20,402
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA	258	44	38		340	4,077
XX	Sidwell	500 Neely	5 ½ AC.	NA	1,403	256	211		1,870	22,440
YY	Sparks	1500 E. Golf Course	5 AC.	NA	1,276	234	190		1,700	20,402
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA	2,032	383	304		2,719	32,631
A3	Trinity	3900 St. Andrew	4 AC	NA	1,023	185	152		1,360	16,315
B3	Tumbleweed	1300 Ventura	8 AC	NA	2,032	383	304		2,719	32,631
C3	Unity	600 N. Mineola	1 AC	1244	262	49	38	161	510	6,114
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000	727	152	97	3,264	4,240	50,883
E3	Wadley Barron	1001 N. A Street	5 AC	450	1,270	237	195	59	1,761	21,132
F3	Washington Park	1803 E. Indiana	16 AC.	1500	4,065	715	651	209	5,641	67,691
	Totals Schedule G								65,686	788,227

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE H - BI-MONTHLY MOWING

Proposal From:

ID	Property Name	Location	Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging, Trimming, (18 cycles/year)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
G3	Andrews Hwy ROW	Andrews & Godfrey	½ AC	129	129	1,553
H3	Fuhrman House	3301 Sinclair	1 ¼ AC	388	388	4,660
I3	Heritage Blvd	Behind Lowe's	½ AC	129	129	1,553
J3	HWY 191 Easement	Adj to Grasslands	3 AC	776	776	9,308
K3	Loop 250 Easement	Adj to Grasslands	4 AC	1,035	1,035	12,415
L3	Marienfeld at Rankin Hwy	Same	½ AC	129	129	1,553
M3	Orchard & Front	Same	½ AC	129	129	1,553
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC	1,422	1,422	17,069
O3	Lamesa at Cuthbert	Same	¼ AC	115	115	1,383
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC	4,654	4,654	55,852
	Totals Schedule H				8,908	106,900

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE I - OCCASIONAL MOWING

Proposal From:

ID	Property Name	Location	Area	Monthly Bids For Specific Services	Composite Bids for All Services	
				Litter and Trash Pick Up and Mowing (3 cycles/year)	Monthly	Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3 AC	1,243	1,243	3,729
R3	Fairgrounds Road Hike/Bike Wadley to Loop 250	Fairgrounds Road	4 AC	1,657	1,657	4,970
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement West	5 AC	2,084	2,084	6,251
T3	RMN Undeveloped Area	Fairgrounds at Cuthbert	2 AC	828	828	2,484
	Totals Schedule I				5,812	17,434

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE J - NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

Proposal From:

ID	Property Name	Location	Area	Monthly Bids For Specific Services	Composite Bids for All Services	
				Litter and Trash Pick Up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance (18 cycles/year)	Monthly	Annually
U3	Achievement Plaza	W. Wall at Front Ave	7200 SQ. FT.	442	442	5,304
V3	Broadway Island	at Ohio Ave	22,721 SQ. FT.	690	690	8,287
W3	Broadway Median	At Cuthbert	500 SQ. FT.	272	272	3,261
X3	Cowden Island	At Big Spring	1950 SQ. FT.	354	354	4,252
Y3	Cowden Island	At Colorado	7838 SQ. FT.	483	483	5,800
Z3	Main & Baird	Islands	5544 SQ. FT.	437	437	5,243
A4	Wall Street	Downtown beds/trees	450 SQ. FT.	276	276	3,313
B4	Front Street	Beds near RR tracks	1000 SQ. FT.	345	345	4,138
C4	Volunteer Park	Big Spring & Marienfeld	14348 SQ. FT.	553	553	6,625
	Totals Schedule J			3,852	3,852	46,224

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE K – CITY OFFICES

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Mowing, Edging,Trimming (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
D4	City Hall	300 N. Loraine	NA	5573		NA		437	437	5,243
E4	Loraine Center	Loraine & Louisiana	¼ AC	951	132	22	21	343	518	6,213
F4	MLK Comm Center	2300 Butternut	2 AC	1000	525	113	77	322	1,037	12,446
G4	Scarborough/Linebery House	802 S. Main	1 AC	1250	258	47	43	352	700	8,400
H4	Old Police Station	404 E. Texas	1/2 AC	NA	126	NA	25		151	1,806
I4	Parks Office	2701 Elizabeth	¼ AC	800	129	24	20	272	445	5,335
J4	Baldwin Office	300 Baldwin	¼ AC	500	129	NA	22	270	421	5,057
	Totals Schedule K								3,708	44,500

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE L - ADDITIONAL MAINTENANCE SERVICES AS REQUIRED

Proposal From:	Quantities	Composite Bids for All Services	
Items of Work	Estimated Quantity Per Year	Each	Annually
ORNAMENTAL SHRUB (1 GAL)	200		
ORNAMENTAL SHRUB (5 GAL)	100		
ORNAMENTAL TREE PLANTING	25		
TREE PLANTING	50		
TREE REMOVAL-TYPE A	20		
TREE REMOVAL-TYPE B	50		
Totals Schedule L			

CITY OF MIDLAND
SERVICE CONTRACT
#21004234

THIS CONTRACT, effective this____day of_____, 20 21, by and between the City of Midland, hereinafter referred to as the "CITY" and Alldredge, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $ 2,800,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES

ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for four(4) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY.

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR

BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and

services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

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

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

COMPANY certifies that the certificate of insurance provided as required herein complies with the

requirements of Chapter 1811 of the Texas Insurance Code.

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

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

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

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

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

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

34. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached

hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: Kristi Alldredge

Name: KRISTI ALLDREDGE

Title: PARTNER

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this 23 day of Nov, 2021 personally appeared, Kristi Alldredge, an officer of Alldredge Gardens, 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 23 day of November, 2021.

HEDDI A. ORTIZ
My Notary ID # 129132106
Expires September 19, 2024

Heddi A. Ortiz
Notary Public, State of TEXAS

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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 aresident 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: ALLDREDGE GARDENS, LP

Local Address (must be within the City limits): 3300 N FAIRGROUNDS RD, MIDLAND, TX 79705

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? 185
3. Year your business was established in the City of Midland: 1982
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 3-2018039217

   Company Name and Address (as it appears on permit):

   ALLDREDGE GARDENS, LP
   P O BOX 50005
   MIDLAND, TX 79710-0005

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 Alldredge Date: 11-23-21

Printed Name and Title: KRISTI ALLDREDGE PARTNER

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/COMPANY CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

32. ATTORNEY FEES - 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.

REFERENCES

City of Midland
Laurie Williams
300 N Loraine
Midland, TX 79701

Midland County
Barbara Duet or Eddie Melendez
500 N Loraine St, Suite 1102
Midland, TX 79701

Manor Park
Jay Hobbs
2208 N Loop 250
Midland, TX 79707

Midland College
Jeff Floyd
3600 N Garfield
Midland, TX 79705

Alldredge Gardens, located at 3300 North Fairgrounds Road in Midland Texas, is one of the premier Landscape Nursery/ Garden Centers in Texas. Covering over 100 acres of retail and growing operations, Alldredge has exceeded over 14 million in sales and service over the last calendar year. Alldredge proudly employees over 200 local workers in 4 operations: Retail, Landscape, Maintenance and Growing. Alldredge Gardens is locally owned and operated by the Alldredge family since 1982.

The business has developed a reputation for quality and reliability in the commercial maintenance, commercial and residential landscape as well as the retail arena.

Alldredge has long term relations with the City of Midland Council and Parks Department donating trees and supplies to various groups and clubs for planting and education over a 40 year span.

Alldredge is a long-term partner with Keep Midland Beautiful as well as Texas Forest Service, Texas Urban Forestry Council, Texas Chapter International Society of Arboriculture and Texas Nursery and Landscape Association.

Alldredge employs Degreed Horticulturists, Texas Certified Nurserymen, Certified Arborist, degreed Landscape Architect, Licensed Irrigators and Licensed Pest Control as part of its comprehensive management team.

Alldredge intends to provide personalized service and long-term commitments to the Midland community.

Alldredge will handle customer concerns and issues with customer-oriented focus with the intent of providing timely resolution and loss prevention.

Strategy and Implementation

Alldredge intends to provide personalized service and long-term commitments to the Midland community.

Strategy includes:

Train all contract supervisors and workers

* Mowing equipment

* Weeding equipment

*Spray equipment

* Proper pruning and trimming guidelines

*Bond workers in all aspects of contract

3300 North Fairgrounds Road • Midland, Texas 79705 • P.O. Box 50005 Midland, Texas 79710 • (432) 682-4500

Safety Certifications

*Mower Operations

*Spray equipment Operation

* Fertilization/ Weed Eradication

* Pruning and Trimming equipment and use

*Provide Safety Data Sheets on all products applied in public areas

* All workers are Bonded and insured

Alldredge will commit continuing:

*Fuel Cost analysis

*Time analysis

*Education to supervisors and contract workers

*Feedback and Customer relations with City of Midland and its entities.

5300 North Fairgrounds Road • Midland, Texas 79705 • P.O. Box 50005 Midland, Texas 79710 • (432) 682-4500

City Council Meeting

Item Number: 15

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH FIRST SERVICE AIR CONDITIONING CONTRACTORS, INC., FOR HEATING, VENTILATION AND AIR CONDITIONING SERVICES FOR VARIOUS CITY BUILDINGS AT A TOTAL COST OF $1,227,790.20(DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Provide preventive maintenance and repair service to heating, ventilation and air conditioning equipment for various City buildings.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing for one year is available from the FY22 Operating Budget of the following sources: $301,825 from the General Fund, $36,743 from the Hotel Motel Fund, $15,238 from the Garage Fund, $3,478 from the Sanitation Fund, and $51,979 from the Water and Sewer Fund.

Discussion:

Request for proposals for annual Heating, Ventilation and Air Conditioning (HVAC) services were sent out initially to vendors in October but we did not receive any proposals. Twenty-two (22) request for proposals were issued in November and we received two (2) proposals. Subsequently, a best and final offer request was sent to First Service Air Conditioning Contractors, Inc. and they returned the same pricing on the best and final offer as their original proposal. First Service Air Conditioning Contractors, Inc. returned the most cost effective and advantageous proposal and best and final offer. Staff recommends entering into a contract with First Service Air Conditioning Contractors, Inc.

Therefore, please consider a resolution awarding a contract to First Service Air Conditioning Contractors, Inc. of Midland, Texas for a cost of $1,227,790.20 for the initial three (3) years and authorizing the City Manager to extend the contract as stated in Section 7 of the contract.

Tina Daugherty

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH FIRST SERVICE AIR CONDITIONING CONTRACTORS, INC., FOR HEATING, VENTILATION AND AIR CONDITIONING SERVICES FOR VARIOUS CITY BUILDINGS AT A TOTAL COST OF $1,227,790.20

WHEREAS, the City of Midland issued a request for proposals for heating, ventilation and air conditioning (HVAC) services for various City buildings; and

WHEREAS, Bid No. 22000155R was opened on November 10, 2021, with the most advantageous proposal being submitted by First Service Air Conditioning Contractors, Inc., at a total price of $1,227,790.00, as shown on the tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by First Service Air Conditioning Contractors, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with First Service Air Conditioning Contractors, Inc., for said HVAC services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement with First Service Air Conditioning Contractors, Inc., for said heating, ventilation and air conditioning services, at a total cost of $1,227,790.00. Said agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay First Service Air Conditioning Contractors, Inc., pursuant to the terms of the contract from funds available in the Operating Budget of the General Fund, Hotel Motel Fund, Garage Fund, Sanitation Fund, and Water and Sewer Fund upon receipt of proper invoices or statements approved by the City Manager, from available funds.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22000155R **Annual HVAC Maintenance for 3 Years** **OPENED** 11/10/2021			First Service 3009 Garden City Hwy Midland, TX 79701 David Grosse (432) 685-0003		First Service-BAFO 3009 Garden City Hwy Midland, TX 79701 David Grosse (432) 685-0003		Johnson Controls Inc. 1603 Loop 289 West Lubbock, TX 79416 Carlos Lopez (806) 795-8800	
ITEM	QTY	DESCRIPTION						
		HVAC Services for:	Annual Cost	Total Cost 3 Yrs	Annual Cost	Total Cost 3 Yrs	Annual Cost	Total Cost 3 Yrs
1	3	Transportation Building 3	$6,293.74	$18,881.22	$6,293.74	$18,881.22	Not stated	
2	3	Animal Shelter	$9,296.93	$27,890.79	$9,296.93	$27,890.79	Not stated	
3	3	Bush Convention Center	$36,742.97	$110,228.91	$36,742.97	$110,228.91	Not stated	
4	3	Bank of America Motor Bank	$4,553.04	$13,659.12	$4,553.04	$13,659.12	Not stated	
5	3	Central Fire Station	$13,532.80	$40,598.40	$13,532.80	$40,598.40	Not stated	
6	3	City Hall	$54,988.83	$164,966.49	$54,988.83	$164,966.49	Not stated	
7	3	Fire Station #2	$4,684.17	$14,052.51	$4,684.17	$14,052.51	Not stated	
8	3	Fire Station #3	$5,705.92	$17,117.76	$5,705.92	$17,117.76	Not stated	
9	3	Fire Station #4	$4,147.37	$12,442.11	$4,147.37	$12,442.11	Not stated	
10	3	Fire Station #5	$11,858.83	$35,576.49	$11,858.83	$35,576.49	Not stated	
11	3	Fire Station #6	$4,118.20	$12,354.60	$4,118.20	$12,354.60	Not stated	
12	3	Fire Station #8	$4,107.50	$12,322.50	$4,107.50	$12,322.50	Not stated	
13	3	Fire Station #9	$4,004.10	$12,012.30	$4,004.10	$12,012.30	Not stated	
14	3	Fire Station #10	$9,037.04	$27,111.12	$9,037.04	$27,111.12	Not stated	
15	3	Fire Station #11	$12,025.31	$36,075.93	$12,025.31	$36,075.93	Not stated	
16	3	Garage Building #6	$11,665.49	$34,996.47	$11,665.49	$34,996.47	Not stated	
17	3	Harris Field	$3,923.16	$11,769.48	$3,923.16	$11,769.48	Not stated	

18	3	Municipal Court	$17,040.00	$51,120.00	$17,040.00	$51,120.00	Not stated	
19	3	Midland Health & Senior Services	$31,788.73	$95,366.19	$31,788.73	$95,366.19	Not stated	
20	3	Multi-purpose Building	$3,026.24	$9,078.72	$3,026.24	$9,078.72	Not stated	
21	3	City Records Center on Lamesa Rd.	$5,878.94	$17,636.82	$5,878.94	$17,636.82	Not stated	
22	3	Police Barracks Buildings A,B,& C	$4,391.77	$13,175.31	$4,391.77	$13,175.31	Not stated	
23	3	Police Dept./Communications Building	$57,191.04	$171,573.12	$57,191.04	$171,573.12	Not stated	
24	3	Police Dept. Shooting Range	$7,810.14	$23,430.42	$7,810.14	$23,430.42	Not stated	
25	3	Southeast Senior Center	$5,925.21	$17,775.63	$5,925.21	$17,775.63	Not stated	
26	3	Solid Waste Building #5	$3,478.15	$10,434.45	$3,478.15	$10,434.45	Not stated	
27	3	Transportation Building #3	$6,889.18	$20,667.54	$6,889.18	$20,667.54	Not stated	
28	3	Utilities Environmental Compliance Lab	$1,640.19	$4,920.57	$1,640.19	$4,920.57	Not stated	
29	3	Utilities Pioneer Plant	$13,916.72	$41,750.16	$13,916.72	$41,750.16	Not stated	
30	3	Visit Midland Information and Travel Center	$4,051.51	$12,154.53	$4,051.51	$12,154.53	Not stated	
31	3	Vehicle Services Service Center	$3,572.45	$10,717.35	$3,572.45	$10,717.35	Not stated	
32	3	Water & Waste Water Building #2	$4,626.91	$13,880.73	$4,626.91	$13,880.73	Not stated	
33	3	Paul Davis Field Houses	$6,136.54	$18,409.62	$6,136.54	$18,409.62	Not stated	
34	3	Warehouse Building #4	$5,555.28	$16,665.84	$5,555.28	$16,665.84	Not stated	
35	3	Water Pollution Control Plant	$8,300.00	$24,900.00	$8,300.00	$24,900.00	Not stated	
36	3	Water Pollution Control Plant Lab	$4,590.00	$13,770.00	$4,590.00	$13,770.00	Not stated	
37	3	Water Purification Plant & Water Purification Plant Lab	$12,769.00	$38,307.00	$12,769.00	$38,307.00	Not stated	
	3	**TOTALS:**	$409,263.40	$1,227,790.20	$409,263.40	$1,227,790.20	$2,500,000.00	$7,500,000.00

Bidding Summary:

22 **Bid requests were issued.**

2 **Bids listed above**

0 **NO BIDS were received.**

20 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 22000155R **Annual HVAC Maintenance for 3 Years** **OPENED** 11/10/2021			First Service 3009 Garden City Hwy Midland, TX 79701 David Grosse (432) 685-0003		First Service-BAFO 3009 Garden City Hwy Midland, TX 79701 David Grosse (432) 685-0003		Johnson Controls Inc. 1603 Loop 289 West Lubbock, TX 79416 Carlos Lopez (806) 795-8800	
ITEM	QTY	DESCRIPTION						
		HVAC Services for:	Annual Cost	Total Cost 3 Yrs	Annual Cost	Total Cost 3 Yrs	Annual Cost	Total Cost 3 Yrs
1	3	Transportation Building 3	$6,293.74	$18,881.22	$6,293.74	$18,881.22	Not stated	
2	3	Animal Shelter	$9,296.93	$27,890.79	$9,296.93	$27,890.79	Not stated	
3	3	Bush Convention Center	$36,742.97	$110,228.91	$36,742.97	$110,228.91	Not stated	
4	3	Bank of America Motor Bank	$4,553.04	$13,659.12	$4,553.04	$13,659.12	Not stated	
5	3	Central Fire Station	$13,532.80	$40,598.40	$13,532.80	$40,598.40	Not stated	
6	3	City Hall	$54,988.83	$164,966.49	$54,988.83	$164,966.49	Not stated	
7	3	Fire Station #2	$4,684.17	$14,052.51	$4,684.17	$14,052.51	Not stated	
8	3	Fire Station #3	$5,705.92	$17,117.76	$5,705.92	$17,117.76	Not stated	
9	3	Fire Station #4	$4,147.37	$12,442.11	$4,147.37	$12,442.11	Not stated	
10	3	Fire Station #5	$11,858.83	$35,576.49	$11,858.83	$35,576.49	Not stated	
11	3	Fire Station #6	$4,118.20	$12,354.60	$4,118.20	$12,354.60	Not stated	
12	3	Fire Station #8	$4,107.50	$12,322.50	$4,107.50	$12,322.50	Not stated	
13	3	Fire Station #9	$4,004.10	$12,012.30	$4,004.10	$12,012.30	Not stated	
14	3	Fire Station #10	$9,037.04	$27,111.12	$9,037.04	$27,111.12	Not stated	
15	3	Fire Station #11	$12,025.31	$36,075.93	$12,025.31	$36,075.93	Not stated	
16	3	Garage Building #6	$11,665.49	$34,996.47	$11,665.49	$34,996.47	Not stated	
17	3	Harris Field	$3,923.16	$11,769.48	$3,923.16	$11,769.48	Not stated	

18	3	Municipal Court	$17,040.00	$51,120.00	$17,040.00	$51,120.00	Not stated	
19	3	Midland Health & Senior Services	$31,788.73	$95,366.19	$31,788.73	$95,366.19	Not stated	
20	3	Multi-purpose Building	$3,026.24	$9,078.72	$3,026.24	$9,078.72	Not stated	
21	3	City Records Center on Lamesa Rd.	$5,878.94	$17,636.82	$5,878.94	$17,636.82	Not stated	
22	3	Police Barracks Buildings A,B,& C	$4,391.77	$13,175.31	$4,391.77	$13,175.31	Not stated	
23	3	Police Dept./Communications Building	$57,191.04	$171,573.12	$57,191.04	$171,573.12	Not stated	
24	3	Police Dept. Shooting Range	$7,810.14	$23,430.42	$7,810.14	$23,430.42	Not stated	
25	3	Southeast Senior Center	$5,925.21	$17,775.63	$5,925.21	$17,775.63	Not stated	
26	3	Solid Waste Building #5	$3,478.15	$10,434.45	$3,478.15	$10,434.45	Not stated	
27	3	Transportation Building #3	$6,889.18	$20,667.54	$6,889.18	$20,667.54	Not stated	
28	3	Utilities Environmental Compliance Lab	$1,640.19	$4,920.57	$1,640.19	$4,920.57	Not stated	
29	3	Utilities Pioneer Plant	$13,916.72	$41,750.16	$13,916.72	$41,750.16	Not stated	
30	3	Visit Midland Information and Travel Center	$4,051.51	$12,154.53	$4,051.51	$12,154.53	Not stated	
31	3	Vehicle Services Service Center	$3,572.45	$10,717.35	$3,572.45	$10,717.35	Not stated	
32	3	Water & Waste Water Building #2	$4,626.91	$13,880.73	$4,626.91	$13,880.73	Not stated	
33	3	Paul Davis Field Houses	$6,136.54	$18,409.62	$6,136.54	$18,409.62	Not stated	
34	3	Warehouse Building #4	$5,555.28	$16,665.84	$5,555.28	$16,665.84	Not stated	
35	3	Water Pollution Control Plant	$8,300.00	$24,900.00	$8,300.00	$24,900.00	Not stated	
36	3	Water Pollution Control Plant Lab	$4,590.00	$13,770.00	$4,590.00	$13,770.00	Not stated	
37	3	Water Purification Plant & Water Purification Plant Lab	$12,769.00	$38,307.00	$12,769.00	$38,307.00	Not stated	
	3	**TOTALS:**	$409,263.40	$1,227,790.20	$409,263.40	$1,227,790.20	$2,500,000.00	$7,500,000.00

Bidding Summary:

22 **Bid requests were issued.**

2 **Bids listed above**

0 **NO BIDS were received.**

20 **Bidders did not respond.**

CITY OF MIDLAND
SERVICE CONTRACT
#22000155

THIS CONTRACT, effective this 15th day of December, 2021, by and between the City of Midland, hereinafter referred to as the "CITY" and First Service Air Conditioning Contractors, Inc., hereinafter referred to as the "COMPANY".

Projected Annual Cost: $1,227,790.20 for three (3) years

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as Exhibit A and are part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING

ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. First Service Air Conditioning Contractors, Inc.
3009 Garden City Hwy
Midland, TX 79701

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY

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

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of

COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and

the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

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

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

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

29. **INSURANCE**

COMPANY shall at all times during the term of this Contract maintain and keep in full force and effect

insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

The parties agree that, prior to the execution of the Contract, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the

approval of CITY. CITY shall not be required to provide any insurance whatsoever pursuant to this Contract.

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

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

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

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

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

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

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

34. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of

this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of First Service Air Conditioning Contractors, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____
Notary Public, State of _____

EXHIBIT "A"
BAFO

November 22, 2021

First Service Air Conditioning Contractors, Inc.

Midland, TX 79710

Response Due: November 29, 2021
Time: 2:00 PM Local Time
Place: City of Midland, Purchasing Office, 300 N. Loraine, Suite 220, Midland, Texas
Email: emunoz@midlandtexas.gov

Subject: Request for Proposal (RFP) 22000155 HVAC Maintenance

First Service Air Conditioning Contractors, Inc. has been qualified as an offeror to the subject RFP based on evaluation of your response to the RFP being judged reasonably acceptable. Fire Service Air Conditioning Contractors, Inc. is invited to submit its best and final offer (BAFO) for consideration in the award determination.

Your BAFO must be authenticated by an officer of your company who is authorized to bind the company in contract. The signature on your transmittal letter for the BAFO will serve as authentication. Your BAFO shall be valid for 90 days from the due date. Please note specifics concerning this proposal in the attached documents.

Questions concerning this request should be directed to the undersigned in writing at:

purchasing@midlandtexas.gov OR Fax No. 432-685-0523 OR

City of Midland
Attn: Purchasing Division
P. O. Box 1152
Midland, TX 79702

Sincerely,

Erika Martinez

Erika Martinez,
Purchasing Manager

Clarifications:

Please provide First Service Air Conditioning Contractors, Inc.'s best and final offer for pricing for the City's annual HVAC Maintenance Service contract.

The original RFP is attached.

CITY OF MIDLAND

ADDENDUM

BID # 22000155R

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: November 3, 2021

The following questions were raised by one or more of the proposers. The answers are provided as a matter of clarification for all proposers as follows:

Q1. What is the expected start date of the agreement?
A1. December 1, 2021
Q2. Does the City want JCI to fix everything that fails (Premium Agreement) or as we notice a failure, would the City like a proposal to replace (Basic Agreement)?
A2. Everything that fails.
Q3. What preventive maintenance does the City expect on non-maintainable items (air grills, plenums, etc.)?
A3. As needed.
Q4. Does the City have a filter list/Belt sizes?
A4. We do not have a list. Contractor will need to find size.
Q5. On section 18.3.3. What specific Financial information is the City requesting?
A5. Information on the vendors financial stability.

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

All other terms and conditions shall remain the same.

First Service Air Conditioning Contractors INC
Company Name

Brian Grosse
Bidder Authorized Signature

11/29/2021
Date

Brian Grosse
Please Print Above Name

432-685-0003
Phone

Request for Proposals

RFP 22000155R

For Annual HVAC Maintenance Services

Proposals for this requirement will be accepted until 2:00 P.M. on November 10, 2021

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY PROPOSER/CONTRACTOR/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE PROPOSAL. NON-RESPONSIVE PROPOSALS WILL BE REJECTED. PROPOSER/CONTRACTOR/ 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.

2. IF THE SELECTED PROPOSER/CONTRACTOR/COMPANY CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.

3. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/CONTRACTOR/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

4. 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.

5. **PUBLIC INFORMATION.** TO THE EXTENT THAT PROPOSER IS SUBMITTING A PROPOSAL FOR A CONTRACT 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 COMPANY OR VENDOR AGREES THAT THE CONTRACT CAN BE TERMINATED IF THE COMPANY OR VENDOR KNOWINGLY OR INTENTIONALLY FAILS TO COMPLY WITH A REQUIREMENT OF THAT SUBCHAPTER.

THE CITY OF MIDLAND

SPECIFICATION

22000155R

for

HVAC Maintenance Services

1. SCOPE

The City of Midland (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for HVAC Maintenance Services at several City owned facilities, which briefly are: City Hall, Midland Health and Senior Services, Fire Stations, Harris Field, Bush Convention Center, Bank of America Motor Bank, Municipal Court, Water Treatment Plant, Paul Davis Well Field, McMillen Well Field, PD Shooting Range, Facility Buildings, Animal Shelter, Multi-purpose building, City Records Center on Lamesa RD., Police Barracks, Visit Midland Information and Travel Center, and Waste Water Plant, Environmental Compliance Lab and Pioneer Plant. The maintenance contract is intended to be for an initial three-year period, renewable annually thereafter.

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.

2. PURPOSE

The purpose in executing a maintenance contract is to assure smooth operation of the facilities at minimal cost and minimal downtimes.

3. VENDOR CONTACT:

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

The City Of Midland
Office of the Purchasing Manager OR FAX (432)685-0523 OR Email: purchasing@midlandtexas.gov
P.O. Box 1152
Midland, TX 79702

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

4. DEFINITIONS

CITY: Hereinafter the City of Midland shall be referred to as CITY.

COMPANY: Hereinafter COMPANY shall mean the successful proposer.

NOTE: Bid and Proposal terms are interchangeable.

5. DOCUMENTS

5.1. **CONTRACT**

5.2. **INSTRUCTIONS TO PROPOSERS**

5.3. **EQUIPMENT SCHEDULES AS FOLLOWS:**

5.3.1. **EXHIBIT 3OUT – Building #3 Outside**

5.3.2. **EXHIBIT AC – Animal Shelter**

5.3.3. **EXHIBIT BCC – Bush Convention Center**

5.3.4. **EXHIBIT BOA – Bank of America Motor Bank**

5.3.5. **EXHIBIT CF – Central Fire Station**

5.3.6. **EXHIBIT CH – City Hall**

5.3.7. **EXHIBIT FS2 – Fire Station 2**

5.3.8. **EXHIBIT FS3 – Fire Station 3**

5.3.9. **EXHIBIT FS4 – Fire Station 4**

5.3.10. **EXHIBIT FS5 – Fire Station 5**

5.3.11. **EXHIBIT FS6 – Fire Station 6**

5.3.12. **EXHIBIT FS8 – Fire Station 8**

5.3.13. **EXHIBIT FS9 – Fire Station 9**

5.3.14. **EXHIBIT FS10 – Fire Station 10**

5.3.15. **EXHIBIT FS11 – Fire Station 11**

5.3.16. **EXHIBIT GRG – Garage Building #6**

5.3.17. **EXHIBIT HFD – Harris Field**

5.3.18. **EXHIBIT MC – Municipal Court**

5.3.19. **EXHIBIT MHSS – Midland Health & Senior Services**

5.3.20. **EXHIBIT MPB – Multi-purpose building**

5.3.21. **EXHIBIT NGA – City Records Center on Lamesa Rd.**

5.3.22. **EXHIBIT PB_ABC – Police Barracks buildings A, B & C**

5.3.23. **EXHIBIT PD – Police Dept./Communications Building**

5.3.24. **EXHIBIT PDR – PD Shooting Range**

5.3.25. **EXHIBIT SESC – Southeast Senior Center**

5.3.26. **EXHIBIT SLDW – Solid Waste Building #5**

5.3.27. **EXHIBIT TR3 – Transportation Building #3**

5.3.28. **EXHIBIT UEC – Utilities Environmental Compliance Lab**

5.3.29. **EXHIBIT UPP – Utilities Pioneer Plant**

5.3.30. **EXHIBIT VC – Visit Midland Information and Travel Center**

5.3.31. **EXHIBIT VS – Vehicle Services Service Center**

5.3.32. **EXHIBIT W&WW – Water & Waste Water Building 2**

5.3.33. **EXHIBIT WFHPD – Paul Davis Field House**

5.3.34. **EXHIBIT WHS – Warehouse Building #4**

5.3.35. **EXHIBIT WPCP – Water Pollution Control Plant**

5.3.36. **EXHIBIT WPCPLab – Sewer Plant Lab**

5.3.37. **EXHIBIT WPP & WPPLab– Water Purification Plant & Lab**

6. REQUIREMENTS

Vendor shall comment in the right margin as to whether or not his proposal meets or exceeds the minimum specification shown. Please indicate how it exceeds or falls short of the requirement.

Requirement	Vendor Comment
6.1. GENERAL	
6.1.1. **COMPANY** shall be responsible for obtaining any necessary permits, etc.	MEETS
6.1.2. **All work performed** on this project shall comply with applicable Federal, State and Local laws, codes and regulations.	MEETS
6.1.3. **Award:**	
6.1.3.1. Proposers should be submitted based upon an award for each building to separate proposers. A discount should be offered in the event the City elects to award all buildings to s single proposer.	
6.1.3.2. **If the Contract is awarded, it will be awarded to either the lowest responsible proposer, or to the 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.**	MEETS
6.2. EQUIPMENT INCLUDED:	
6.2.1. **The specified quantities,** size, and model numbers of the major pieces of equipment are listed separately on the equipment lists.	MEETS
6.2.2. **The preventive and predictive maintenance** and the responsibility of the Service Company shall not be limited only to these major pieces of equipment as shown on the equipment list, but shall also include all associated devices and systems that are related to the heating, ventilating, and air conditioning system(s), including, but not limited to:	MEETS
6.2.2.1. Heating System:	
Boilers, burners, boiler tubes, furnaces, pumps, heating coils, steam traps, water strainers, unit heaters, electric heat strips, humidifiers, etc	MEETS
6.2.2.2. Cooling System:	
Air conditioning compressor(s), evaporative condensers, air cooled condensers, chiller tubes, cooling towers, cooling tower fans, pumps, water chillers, cooling coils, evaporative coolers, etc.	MEETS
6.2.2.3. Air Handling System:	
Fans, motors, air grills, plenums, reciters, air filters, dampers, induction units, mixing boxes, fan coil units, outside air dampers, and damper motors, VFDs, etc.	MEETS
6.2.2.4. Temperature Control System:	MEETS

MEETS

Thermostats, valves, damper motors, controllers, sensors, pneumatic compressors, time clock, DDC controls and associated sensors and relays, etc. MEETS

6.2.2.5. Miscellaneous Equipment:

Exhaust fans, manual valves, float valves, direct expansion valves, thermometers, gauges, magnetic starters, pump and fan motor drives, bearings, belts, electrical wiring from motor starter to their respective motors, check valves, refrigerant piping and insulation, refrigerant. MEETS

6.2.2.6. All monitoring and calibration of BAS controls are included in maintenance agreement for all applicable sites. MEETS

6.2.3. **This specification covers all equipment** that is used for heating and cooling at all locations in this contract. In the event the system is altered, changed, or if any equipment is added or deleted then that portion shall be added or deleted as required, and shall be in accordance with this specification. MEETS

6.3. **EQUIPMENT NOT INCLUDED:**

6.3.1. **Equipment that is non-maintainable** or non-moving is not included as part of this specification. MEETS

6.3.2. **Excluded items shall include:**

foundation structural supports, domestic water lines, drains, plumbing lines, and gas lines up to boiler control valve, air handling duct work outside of air handling equipment room, boiler shell, unit cabinets, boiler trim and refractory materials. MEETS

6.4. **SERVICES INCLUDED:**

6.4.1. **The general services listed below** shall apply to the systems and equipment as shown on preventive maintenance work shall be provided no less than eight (8) times per year on the heating and cooling system, including start-up and shut-down. Monthly inspections must be performed on all equipment. MEETS

6.4.1.1. Examine each piece of equipment and device to see that it is functioning properly and is in good operating condition. MEETS

6.4.1.2. Clean all components of dust, oil lubricants, etc. to allow the equipment to function as designed. MEETS

6.4.1.3. Paint all equipment as needed to prevent and protect against corrosion and deterioration. MEETS

6.4.1.4. Lubricate all equipment where needed to permit bearings, gears, and all contact wearing points to operate freely and without undue wear. MEETS

6.4.1.5. Adjust all linkages, motors, drives, etc., that have drifted from initial design settings. MEETS

6.4.1.6. Calibrate all sensing, monitoring, output, safety, and read-out devices for proper ranges, settings, and optimum efficiencies. MEETS

6.4.1.7. Test and cycle all equipment as a system after it has been cleaned, lubricated, adjusted, and calibrated, to see that it is in good operational condition and at peak efficiency. MEETS

6.4.1.8. Tear down major pieces of equipment such as compressors, and overhaul MEETS

MEETS

periodically based on accumulated operating hours to prevent breakdowns and to improve operational conditions. MEETS

6.4.1.9. Perform vibration analysis of the equipment maintained above one (1) hp as identified and required by the City. The analysis shall be provided as a written report showing the vibration measured. MEETS

6.4.1.10. As work is scheduled, the Company shall issue to his mechanic on the job the necessary and appropriate recommended maintenance procedures and a listing of any special lubricants, tools, etc., that are required for proper maintenance of the apparatus concerned. MEETS

6.4.1.11. The Company's administration system shall provide for continuous updating of maintenance procedures and frequencies from historical data. Breakdown experience and frequency shall determine the on-site material inventory level and preventive maintenance frequencies. MEETS

6.4.1.12. During the course of the service program, the Company shall advise and assist the City of Midland to conserve energy and minimize utility expenditures. MEETS

6.4.2. **In addition to the general maintenance services** described in Paragraph 6.4.1., above, the Company shall perform the following specific maintenance as applicable, tasks at no less than the frequency described:

6.4.2.1. EVAPORATORS

6.4.2.1.1. Clean finned surface annually or semi-annually if needed. MEETS

6.4.2.1.2. Clean drain pan semi-annually. MEETS

6.4.2.1.3. Clean and paint as necessary annually. MEETS

6.4.2.1.4. Check Delta-T and record quarterly. MEETS

6.4.2.1.5. Visually inspect bi-monthly. MEETS

6.4.2.1.6. Check for leaks semi-annually. MEETS

6.4.2.2. BLOWERS MEETS

6.4.2.2.1. Check blower mounting and tighten if necessary semi-annually.

6.4.2.2.2. Check pulley alignments annually. MEETS

6.4.2.2.3. Check pulley for security to shaft semi-annually. MEETS

6.4.2.2.4. Check belt condition and tension; adjust or replace quarterly. MEETS

6.4.2.2.5. Lubricate all bearings semi-annually or manufacturers recommendations. MEETS

6.4.2.2.6. Check and clean blower scroll annually. MEETS

6.4.2.2.7. Check housing for rust; clean and paint annually. MEETS

6.4.2.2.8. Check condition of bearing quarterly. MEETS

6.4.2.2.9. Check motor bearings quarterly. MEETS

6.4.2.2.10. Check and record motor amperage quarterly MEETS

6.4.2.2.11. Visually inspect for general problems quarterly. MEETS

	MEETS
6.4.2.2.12. Check for security of fan to shaft quarterly.	MEETS
6.4.2.3. CONDENSER – AIR COOLED	
6.4.2.3.1. Check fan for alignment balance and security to shaft quarterly.	MEETS
6.4.2.3.2. Check fan for corrosion and wear semi-annually.	MEETS
6.4.2.3.3. Check and tighten mounting bolts semi-annually	MEETS
6.4.2.3.4. Lubricate bearings as required semi-annually or manufacturer's recommendations.	MEETS
6.4.2.3.5. Check end play and bearing wear quarterly.	MEETS
6.4.2.3.6. Clean finned surfaces annually or semi-annually as needed.	MEETS
6.4.2.3.7. Check for leaks quarterly.	MEETS
6.4.2.3.8. Check for damage quarterly.	MEETS
6.4.2.3.9. Check pipe clamps annually.	MEETS
6.4.2.3.10. Check cabinet for rust and corrosion; paint as required annually.	MEETS
6.4.2.3.11. Check condition of rain shields quarterly	MEETS
6.4.2.3.12. Check and record amperage and voltage quarterly.	MEETS
6.4.2.3.13. Check operation of low ambient controls semi-annually.	MEETS
6.4.2.3.14. Check Delta-T and record quarterly.	MEETS
6.4.2.4. CONDENSER – WATER COOLED – AS APPLICABLE	
6.4.2.4.1. Check Delta-T and record quarterly.	MEETS
6.4.2.4.2. Check water regulating valves quarterly. Check and record sub-cooling quarterly.	MEETS
6.4.2.4.3. Remove head, inspect tubes annually or as approach shows need.	MEETS
6.4.2.4.4. Brush or acid wash as required annually or as needed.	MEETS
6.4.2.4.5. Check for water leaks quarterly.	MEETS
6.4.2.4.6. Clean and paint as necessary annually.	MEETS
6.4.2.4.7. Check water flow semi-annually.	MEETS
6.4.2.4.8. Check Delta-P semi-annually.	MEETS
6.4.2.4.9. Check and record approach quarterly.	MEETS
6.4.2.5. CONTROLS	
6.4.2.5.1. Check and calibrate oil pressure cut-out semi-annually.	MEETS
6.4.2.5.2. Check and calibrate high pressure cut-out semiannually.	MEETS
6.4.2.5.3. Check and calibrate low pressure cut-out semiannually.	MEETS
6.4.2.5.4. Check and calibrate low temperature cut-out semiannually.	MEETS

		MEETS
6.4.2.5.5.	Check and calibrate freeze-state semi-annually.	MEETS
6.4.2.5.6.	Check and calibrate low ambient controls semiannually.	MEETS
6.4.2.5.7.	Check and calibrate all temperature controls semiannually.	MEETS
6.4.2.5.8.	Check operation of all controls semi-annually.	MEETS
6.4.2.5.9.	Disassemble and inspect contactors semi-annually.	MEETS
6.4.2.5.10.	Check all wiring for loose connections semiannually.	MEETS
6.4.2.5.11.	Megg all motors and record readings quarterly.	MEETS
6.4.2.5.12.	Check and set all safeties semi-annually.	MEETS
6.4.2.5.13.	Check overloads annually.	MEETS
6.4.2.6.	COMPRESSOR	MEETS
6.4.2.6.1.	Check surface temperatures quarterly.	MEETS
6.4.2.6.2.	Check oil level quarterly.	MEETS
6.4.2.6.3.	Check oil foaming quarterly.	MEETS
6.4.2.6.4.	Change oil annually.	MEETS
6.4.2.6.5.	Check crankcase heater operation quarterly.	MEETS
6.4.2.6.6.	Take oil sample for analysis semi-annually.	MEETS
6.4.2.6.7.	Acid test oil annually.	MEETS
6.4.2.6.8.	Check terminals for tightness semi-annually	MEETS
6.4.2.6.9.	Leak check terminals semi-annually.	MEETS
6.4.2.6.10.	Check terminal box for water tightness quarterly.	MEETS
6.4.2.6.11.	Check for flooding or carry over quarterly.	MEETS
6.4.2.6.12.	Pump compressor down; check leak rate of valves annually.	MEETS
6.4.2.6.13.	Check overloads annually.	MEETS
6.4.2.6.14.	Check amperage quarterly.	MEETS
6.4.2.6.15.	Check voltage quarterly.	MEETS
6.4.2.6.16.	Megg motor and leads quarterly.	MEETS
6.4.2.6.17.	Check and record suction pressure of each compressor quarterly.	MEETS
6.4.2.6.18.	Check and record discharge pressure of each compressor quarterly.	MEETS
6.4.2.7.	CHILLER	
6.4.2.7.1.	Check Delta-T quarterly.	MEETS
6.4.2.7.2.	Check and adjust water flow semi-annually.	MEETS
6.4.2.7.3.	Check Delta-P semi-annually.	MEETS

		MEETS
6.4.2.7.4.	Check and record approach quarterly.	MEETS
6.4.2.7.5.	Check for proper operation of expansion valve quarterly.	MEETS
6.4.2.7.6.	Check and calibrate super heat semi-annually.	MEETS
6.4.2.8.	BOILER	
6.4.2.8.1.	Check general operation bi-monthly during heating season.	MEETS
6.4.2.8.2.	Check low water cut-off semi-annually.	MEETS
6.4.2.8.3.	Check low water make-up semi-annually.	MEETS
6.4.2.8.4.	Check secondary low water cut-off semi-annually.	MEETS
6.4.2.8.5.	Check ignition system semi-annually.	MEETS
6.4.2.8.6.	Check high pressure switch semi-annually.	MEETS
6.4.2.8.7.	Check secondary high pressure switch semi-annually.	MEETS
6.4.2.8.8.	Check operation of gas valve bi-monthly.	MEETS
6.4.2.8.9.	Check operation of block valve semi-annually.	MEETS
6.4.2.8.10.	Check relief pressure of relief valves annually.	MEETS
6.4.2.8.11.	Check for corrosion bi-monthly.	MEETS
6.4.2.8.12.	Check for leaking pipes bi-monthly.	MEETS
6.4.2.8.13.	Check integrity of flue assembly semi-annually.	MEETS
6.4.2.8.14.	Check operation of condensate return bi-monthly.	MEETS
6.4.2.9.	GENERAL	
6.4.2.9.1.	Check refrigerant charge of each circuit quarterly.	MEETS
6.4.2.9.2.	Check operation of solenoid valve quarterly.	MEETS
6.4.2.9.3.	Check leak rate of solenoid valve annually.	MEETS
6.4.2.9.4.	Change filters bi-monthly.	MEETS
6.4.2.9.5.	Leak check unit annually.	MEETS
6.4.2.10.	HUMIDIFIERS	
6.4.2.10.1.	Check condition of pads or pans; change or clean bi-monthly.	MEETS
6.4.2.10.2.	Check operation of controls bi-monthly.	MEETS
6.4.2.10.3.	Clean and adjust as necessary bi-monthly	MEETS
6.4.2.10.4.	Check solenoid valves bi-monthly.	MEETS
6.4.2.10.5.	Check and clean drain line bi-monthly.	MEETS
6.4.2.11.	PUMPS	
6.4.2.11.1.	Disassemble and inspect starter semi-annually.	MEETS

		MEETS
6.4.2.11.2.	Check all wiring for tightness semi-annually.	MEETS
6.4.2.11.3.	Check voltage quarterly.	MEETS
6.4.2.11.4.	Check amperage quarterly.	MEETS
6.4.2.11.5.	Lubricate as necessary quarterly.	MEETS
6.4.2.11.6.	Leak check seals bi-monthly.	MEETS
6.4.2.11.7.	Clean "WYE" strainers as necessary annually.	MEETS
6.4.2.11.8.	Check and record Delta-P quarterly.	MEETS
6.4.2.11.9.	Check and record voltage quarterly.	MEETS
6.4.2.11.10.	Check and record amperage quarterly.	MEETS
6.4.2.11.11.	Clean and paint as necessary annually.	MEETS
6.4.2.12.	COOLING TOWER	
6.4.2.12.1.	Disassemble and inspect starter semi-annually.	MEETS
6.4.2.12.2.	Check all wiring for tightness semi-annually.	MEETS
6.4.2.12.3.	Check voltage quarterly.	MEETS
6.4.2.12.4.	Check amperage quarterly.	MEETS
6.4.2.12.5.	Lubricate motor bearings quarterly.	MEETS
6.4.2.12.6.	Lubricate fan bearings quarterly.	MEETS
6.4.2.12.7.	Check condition of belts quarterly.	MEETS
6.4.2.12.8.	Change belts as needed, once annually minimum.	MEETS
6.4.2.12.9.	Inspect condition of sheaves and pulleys semi-annually.	MEETS
6.4.2.12.10.	Check condition of fans quarterly.	MEETS
6.4.2.12.11.	Check and paint fans quarterly.	MEETS
6.4.2.12.12.	Check for unusual vibration quarterly.	MEETS
6.4.2.12.13.	Inspect distributor pan semi-annually.	MEETS
6.4.2.12.14.	Balance distributor pan water flow semi-annually.	MEETS
6.4.2.12.15.	Inspect condition of slats or fill for scalping and deterioration quarterly.	MEETS
6.4.2.12.16.	Check basin for sediment and algae bi-monthly.	MEETS
6.4.2.12.17.	Check floats or level controls bi-monthly.	MEETS
6.4.2.12.18.	Adjust floats or level controls bi-monthly.	MEETS
6.4.2.12.19.	Check for leaks bi-monthly.	MEETS
6.4.2.12.20.	Check general condition of tower (rust or dry rot) bi-monthly.	MEETS
6.4.2.12.21.	Clean and paint as necessary annually.	MEETS

MEETS

6.4.2.13. GAS HEATERS

6.4.2.13.1. Check gas valve operation semi-annually. MEETS

6.4.2.13.2. Check and adjust supply gas pressure semi-annually. MEETS

6.4.2.13.3. Check and adjust manifold gas pressure semi-annually. MEETS

6.4.2.13.4. Check limit switch annually. MEETS

6.4.2.13.5. Check fan switch annually. MEETS

6.4.2.13.6. Check roll out safeties annually. MEETS

6.4.2.13.7. Check temperature control semi-annually. MEETS

6.4.2.14. Clean all components not named in preceding checklist. MEETS

6.4.2.15. Calibrate all pneumatic controls including but not limited to thermostats, static pressure controllers, receiver controllers, etc. semi-annually. MEETS

6.4.2.16. Adjust all linkages, motor drives, etc. MEETS

6.4.2.17. Disassemble and inspect major pieces of equipment such as compressors, checking bearing, shaft, cylinder, and other critical tolerances and replacing worn parts. MEETS

6.4.2.18. BACKFLOW PREVENTERS

6.4.2.18.1. Test backflow preventers annually. MEETS

6.4.2.19. WATER HEATERS

6.4.2.19.1. Flush water heaters annually. MEETS

6.5. **PARTS REPLACEMENT:**

6.5.1. **All parts, components, or devices** for the mechanical systems as listed above and on attached equipment summary list that are worn or are not in proper operational condition shall be repaired, and/or replaced with new parts, components, or devices. MEETS

6.5.2. **When equipment or parts are replaced in their entirety,** and a newer design of this device is available and is functionally equivalent and compatible, the device of the newer design shall be used as the replacement. MEETS

6.5.3. **Special attention shall be given to the exterior equipment at the WPCP.** MEETS

6.5.3.1. All outside environmentally exposed metal parts may be subject to exposure to H_2S and require that metal parts be: MEETS

6.5.3.1.1. Manufactured from aluminum; MEETS

6.5.3.1.2. Aluminum Coated; MEETS

6.5.3.1.3. Or some other appropriate protection or materials, which shall be approved by City's Representative. MEETS

MEETS

6.5.4. **All repair and replacement parts,** components, and devices for the mechanical systems shall be supplied by the Company and shall be included in the cost of the service program. MEETS

6.5.5. **The Company shall not be made responsible** for repairs necessitated by reason of negligence or misuse of the equipment by other than the Company. MEETS

6.6. **ADDITIONAL SERVICES:**

6.6.1. **The Company shall perform the following additional services as part of this Contract:**

6.6.1.1. EQUIPMENT INCLUDED

6.6.1.1.1. ENVIRONMENTAL CONTROL SYSTEMS:

6.6.1.1.1.1. Thermostats, pressure controls, relays, limits, valves, valve operators, damper motors, humidity controls, step switches, time clocks, company's controllers, capacity controls, safety controls, control panels, gauges and air compressors. MEETS

6.6.1.1.2. WATER TREATMENT SERVICE:

6.6.1.1.2.1. Hot water system, chilled water system (open and closed), evaporative condensers, cooling towers, and chilled and hot water circulating pumps. MEETS

6.6.1.2. SERVICES INCLUDED

6.6.1.2.1. CHEMICALS

6.6.1.2.1.1. The Company shall provide necessary labor and chemicals to properly maintain all water within the heating and cooling system to control metal corrosion, scale formation, biological fouling or contaminated discharge. MEETS

6.6.1.2.1.2. The chemicals provided must meet OSHA, Environmental Protection Agency, and OEQC requirements for safety to personnel and the environment. MEETS

6.6.1.2.1.3. The Company shall provide all labor to take test samples, adjust feed rater, change settings, drain and flush systems, service automatic feed equipment, manually inject chemicals (for closed systems), provide a detailed water analysis and service report after performing those services as outlined above. MEETS

6.6.1.2.2. AIR FILTER SERVICE:

6.6.1.2.2.1. Frame filters, fan coil filters, and pre-filters. The Company shall provide, install and regularly change all air filters at a frequency dictated by air conditions, but no less than six (6) times per year for frame media. MEETS

6.6.1.2.2.2. Filter frames shall be sized to fill the entire cross section of the units to prevent blow-by and eliminate filter spacers in the units. MEETS

6.6.1.2.2.3. Filter media (frame or roll type) shall be of fiberglass or polyester material, with an average AFI Gravimetric rating of not less than 70% efficiency. MEETS

MEETS

6.7. **PREVENTIVE MAINTENANCE AND EMERGENCY SERVICE CALLS:**

6.7.1. **Preventive Maintenance - Schedule**

6.7.1.1. The Company shall schedule and perform the preventive maintenance service on the cooling systems no less than four (4) times a year and four (4) times a year on the heating systems. MEETS

6.7.1.2. Monthly inspections must be performed on all equipment. MEETS

6.7.1.3. Scheduled preventive maintenance shall be performed during the City's regular business hours unless otherwise authorized. MEETS

6.7.1.3.1. After each service call, service reports shall be furnished to the city. MEETS

6.7.1.3.2. Two (2) of the scheduled service calls shall include the system start-up and the system shut-down for the appropriate season. MEETS

6.7.1.3.3. The Company shall perform the necessary preventive maintenance as recommended by the manufacturer of the equipment and shall incorporate the listed checks and functions into his work schedule. MEETS

6.7.1.3.4. The Company shall provide each location within this specification a monthly schedule in advance of services to be performed by date and time. MEETS

6.7.2. **Emergency Service**

6.7.2.1. The Company shall provide emergency service on an as required basis. MEETS

6.7.2.2. Emergency calls shall be considered as calls in addition to the scheduled preventive maintenance calls, and shall be provided as follows: MEETS

6.7.2.2.1. All labor overtime, travel costs, parts, supplies, and other expenses incurred on such calls shall be provided by the Contractor and shall be included in the cost of the service program. MEETS

6.7.2.2.2. Emergency service shall be provided as often as needed, on a 24-hour basis, weekends and legal holidays included. MEETS

6.7.2.2.3. The Company shall be capable of responding to an emergency situation within two (2) hours. MEETS

6.7.2.2.4. The Company shall be on call on a 24-hour basis and provide a telephone answering service in order to respond to emergency calls. MEETS

6.8. **REPLACEMENT OF MAJOR EQUIPMENT AND COMPONENTS:**

6.8.1. **Without the prior written authorization** of the City's contract representative, Company shall not replace major components or equipment* which on a per item basis exceed $500.00 which fail due to age and normal wear and tear notwithstanding the provision of maintenance pursuant to this Contract. (*A failed item that is not a maintained item or an item the OWNER would be responsible for). MEETS

6.9. **EQUIPMENT LISTS:**

6.9.1. **Attached are the lists of equipment for each City building** to be serviced under this Contract. The City reserves the right to add or delete items from the attached lists during the term of this Contract. MEETS

7. QUALIFICATION OF PROPOSER:

7.1. **INVESTIGATIONS**

7.1.1. **The City may make such investigations** as it deems necessary to determine the ability of the proposer to perform the work, and the proposer shall furnish to the City all such information and data for this purpose as the City may request. MEETS

7.1.2. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the City that offeror is properly qualified to carry out the obligations of the contract. MEETS

7.2. **MINIMUM QUALIFICATIONS**

7.2.1. **The following requirements shall be considered as the minimum** standards for a proposer to be considered as qualified to provide services under this Contract, and shall be a prerequisite to any award:

7.2.1.1. Not less than five (5) years experience in the performance of HVAC maintenance as specified. MEETS

7.2.1.2. The successful proposer shall maintain a field office and/or warehouse that is within one hour travel time of the most distant City building from the office or warehouse (hereafter called the "Local Office"). MEETS

7.2.1.3. The successful proposer shall employ a minimum of four (4) full-time competent servicemen who are residents within one hour's travel time of the job site. MEETS

7.2.1.3.1. The successful proposer must also employ a professional staff educated in mechanical and electrical fields, with electrical, water treatment, refrigeration, boilers, pneumatic and electronic controls and automation computer systems personnel who have a minimum of 5 years experience in the above specialties. MEETS

7.2.1.3.2. Qualified personnel must be employed by the successful proposer during the life of this Contract. MEETS

7.2.1.3.3. A minimum of two (2) of these personnel shall be properly certified, thoroughly trained, and qualified to repair, service, and calibrate the automation systems used to control the heating and cooling in the covered buildings. MEETS

7.2.1.3.4. The proposer must submit the names, addresses, and resumes showing HVAC experience for each technician assigned to the Local Office who might be assigned to perform services under this contract. MEETS

7.2.1.4. The Local Office shall maintain a reasonable inventory of replacement parts as applicable for emergency use that are equal to or better than existing parts for exclusive use on said Contract, including but not limited to, the following:

7.2.1.4.1. Temperature transmitters and sensors MEETS

7.2.1.4.2. Receiver controllers MEETS

7.2.1.4.3. Valve and damper actuators MEETS

7.2.1.4.4. Thermostats MEETS

7.2.1.4.5. Pilot positioners MEETS

		MEETS
7.2.1.4.6.	Relays	MEETS
7.2.1.4.7.	Temperature controller for boiler	MEETS
7.2.1.4.8.	Temperature controller for chiller	MEETS
7.2.1.4.9.	Firing safeties for boilers	MEETS
7.2.1.4.10.	Igniters for boilers and direct-fired systems	MEETS
7.2.1.4.11.	High limits for boilers	MEETS
7.2.1.4.12.	Low water cut off for boilers	MEETS
7.2.1.4.13.	Freezestat for chiller	MEETS
7.2.1.4.14.	Logic panels for D.X	MEETS
7.2.1.4.15.	Freezestats for chiller and air handling units	MEETS
7.2.1.4.16.	Low pressure cut out for D.X. and chiller	MEETS
7.2.1.4.17.	High pressure cut out for D.X. and chiller	MEETS
7.2.1.4.18.	Flow switch for chiller	MEETS
7.2.1.4.19.	Contact kits for compressors, pumps, and air handling units	MEETS
7.2.1.4.20.	Contactor coils for compressors, pumps and air handling units	MEETS
7.2.1.4.21.	Any specialized motor controls and safeties	MEETS
7.2.1.4.22.	Shall keep an air compressor of adequate size and quality for emergency operation of pneumatic temperature control systems	MEETS
7.2.1.4.23.	Shall maintain an adequate supply of spare motors for condenser fans, air handling units and pumps.	MEETS
7.2.1.5.	The Local Office shall maintain a computerized maintenance scheduling system.	MEETS
7.2.1.5.1.	This system shall schedule tasks as determined by the contract documents, manufacturer's recommendations, industry standards, the company's experience and the City's maintenance staff recommendations.	MEETS
7.2.1.5.2.	The system shall record dates maintenance tasks were performed, record special notes and problems, flag tasks that were not performed and have a recall on recorded information during course of Contract not to exceed five (5) years.	MEETS
7.2.1.6.	The successful proposer must be capable of providing quarterly computerized energy audits, be able to monitor the City's energy usage (consumption per location), and be qualified to counsel the city in energy conservation at such time that it is requested	MEETS
7.2.2.	**The Local Office shall have and maintain the following tools** and test equipment and prove knowledgeable thereof as applicable:	
7.2.2.1.	Combustion analyzer	MEETS
7.2.2.2.	Sling psychrometer	MEETS

		MEETS
7.2.2.3.	Magnehelic pressure differential gauge or equal.	MEETS
7.2.2.4.	FSP 1535 HONEYWELL RA 890 Tester	MEETS
7.2.2.5.	Megometer	MEETS
7.2.2.6.	Electronic Halogen leak detector	MEETS
7.2.2.7.	D.C. microampmeter	MEETS
7.2.2.8.	Millivoltmeter	MEETS
7.2.2.9.	Incline Manometer	MEETS
7.2.2.10.	Three foot mercury manometer	MEETS
7.2.2.11.	Receiver-Controller calibration kit	MEETS
7.2.2.12.	Digital multimeter with amp meter	MEETS
7.2.2.13.	Pyrometer	MEETS
7.2.2.14.	Vacuum pump	MEETS
7.2.2.15.	Acid test kit	MEETS
7.2.2.16.	Refrigerant Recovery unit D.A.T. Approved	MEETS
7.2.3.	**The personnel assigned to the Local Office shall be qualified** to perform vibration analysis and Dielectric absorption test as well as be able to maintain and perform emergency service on chillers, boilers, pumps, pneumatic controls, air handlers and direct expansion systems.	MEETS
7.2.4.	**The successful proposer shall be fully licensed** by the State of Texas to perform air conditioning service and installation at the time of proposal and will be required to keep the license in effect for the duration of the contract	MEETS
7.2.5.	**Services that are to be provided shall be performed by qualified** and trained service personnel that are directly employed by the proposer.	MEETS
7.2.5.1.	Subcontracting portions of the systems or services requested in these specifications shall not be allowed without prior written consent of the City of Midland.	MEETS
7.2.6.	**The successful proposer will be able to demonstrate that it currently has in effect, or is able to obtain, the insurance requirements in the contract.**	MEETS
8.	**INVOICING/BILLING**	MEETS
8.1.	**SEPARATE INVOICES**	MEETS
8.1.1.	**Monthly invoices shall be separated into two billings:**	MEETS

MEETS

8.1.1.1. One invoice for the Building #3 Outside, Animal Shelter – New Building, Bush Convention Center, Central Fire Station, City Hall, Garage Building #6, Harris Field, Municipal Court, Midland Health & Senior Services, Multi-purpose building, Police Barracks buildings A, B & C, Police Dept./Communications Building, Shooting Range, Solid Waste Building #5, Southeast Senior Center, Various Fire Stations, Transportation Building #3, and Traffic Signal Building Signal Shop Bay; Attention: Facilities Services. MEETS

8.1.1.2. And the another invoice for the Utilities Environmental Compliance Lab, Utilities Pioneer Plant, Water & Waste Water Building 2, Paul Davis Field House, Warehouse Building #4, Water Pollution Control Plant, Sewer Plant Lab, and Water Purification Plant & Lab; Attention: Utilities. MEETS

9. ALTERNATE PROPOSALS

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

10. SUBMITTING A SEALED PROPOSAL

10.1.1. **Number of copies and Location:**

10.1.1.1. Offerors must submit one original, 2 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

10.1.1.2. 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.

10.1.2. **Each Offeror who submits a proposal represents that:**

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

10.1.2.2. 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.

10.1.2.3. 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.

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

10.1.2.5. 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.**

11. RIGHTS RESERVED

11.1.1. **While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:**

a) waive any formality;
b) cancel or terminate this RFP;
c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

12. REFERENCES

12.1.1. Offeror shall provide a minimum of 3 references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

12.1.2. These references should include private companies, City government and universities where the offeror, preferably within the last 5 years, has successfully completed HVAC maintenance services.

13. VENDOR STABILITY

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

13.1.2. Provide financial statements, preferably audited, for the year immediately preceding the issuance of this RFP.

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

13.1.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) 69 Years.

14. SUBCONTRACTING

14.1.1. **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.

14.1.2. **The company 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 company. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

15. INSURANCE REQUIREMENTS

See Contract or Agreement

16. COMPANY'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.

17. 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.

18. PROPOSAL CONTENTS

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

18.1. THE RFP

18.2. THE COST SUMMARY OR PROPOSAL FORM

18.3. REQUESTED ATTACHMENTS

18.3.1. **References**

18.3.2. **Resumes**

18.3.3. **Financial Information**

18.3.4. **Signed Execution of Offer**

19. CONTRACT PROVISIONS AND TERMS

19.1.1. **Contract Execution**

19.1.1.1. The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

19.1.2. **Terms and Conditions**

Contract that will be executed by the successful offeror and the City is found in Appendix A.

19.1.3. **Exceptions to Contract Terms & Conditions**

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

19.1.4. The initial contract(s) term is for a period of 3 years. Renewals of the contract may be made for one (1) year periods by providing written notice to Company of City's desire to extend contract not later than sixty (60) days prior to the end of the then current term. Extensions of this contract will be based on acceptable performance as long as price does not exceed administrative parameters.

19.1.5. **Contract Extension**

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

19.1.6. **Escalation**

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

20. 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".

21. EVALUATION PROCESS

1.1. **EVALUATION PROCEDURE**

21.1.1. **Committee Actions**

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

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

21.1.1.3. 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.

22. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

22.1.1. **Company Service Qualifications = 30%**

22.1.2. **Three references = 10%**

22.1.3. **Years in business = 10%**

22.1.4. **Organization = 10%**

22.1.5. **Cost Analysis = 40%**

23. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

24. 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.

25. TEXAS PUBLIC INFORMATION ACT

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

26. PROPOSAL WAIVERS:

26.1. **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.

26.2. **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 CONTRACT.**

26.3. **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 CONTRACT.**

26.4. **WAIVER:**

26.5. **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:**

26.6. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**

26.7. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**

26.8. **ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR**

26.9. **AWARD OF THE CONTRACT.**

26.10. **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).**

Brian Grosse / First

26.11. **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.**

First Service A/C Contractors INC	432-685-0003
Company Name	Phone
Brian Grosse	432-685-3629
Authorized Signature	Fax
Brian Grosse	11/29/2021
Print Above Name	Date

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, all bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

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. Social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be in person or shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

The deadline for submitting additional questions is 72 working hours before the bid opening date and time. Questions submitted before the deadline will be included in the Addendum. Questions submitted after the deadline will not receive any additional information and will instead only be directed to the information already provided.

City of Midland

BID NO.: 22000155R
FOR: HVAC Annual Maintenance

CLOSES: 11/10/2021

ITEM	QTY	Exhibit	DESCRIPTION	Annual Cost	Total Cost
			Please see notes following this list.....		
1	3 Yrs	3OUT	Transportation Building 3	$ 6,293.74	$ 18,881.22
2	3 Yrs	AC	Animal Shelter	$ 9,296.93	$ 27,890.79
3	3 Yrs	BCC	Bush Convention Center	$ 36,742.97	$110,228.91
4	3 Yrs	BOA	Bank of America Motor Bank	$ 4,553.04	$ 13,659.12
5	3 Yrs	CF	Central Fire Station	$ 13,532.80	$ 40,598.40
6	3 Yrs	CH	City Hall	$ 54,988.83	$ 164,966.49
7	3 Yrs	FS2	Fire Station 2	$ 4,684.17	$ 14,052.51
8	3 Yrs	FS3	Fire Station 3	$ 5,705.92	$ 17,117.76
9	3 Yrs	FS4	Fire Station 4	$ 4,147.37	$ 12,442.11
10	3 Yrs	FS5	Fire Station 5	$ 11,858.83	$ 35,576.49
11	3 Yrs	FS6	Fire Station 6	$ 4,118.20	$ 12,354.60
12	3 Yrs	FS8	Fire Station 8	$ 4,107.50	$ 12,322.50
13	3 Yrs	FS9	Fire Station 9	$ 4,004.10	$ 12,012.30
14	3 Yrs	FS10	Fire Station 10	$ 9,037.04	$ 27,111.12
15	3 Yrs	FS11	Fire Station 11	$ 12,025.31	$ 36,075.93
16	3 Yrs	GRG	Garage Building #6	$ 11,665.49	$ 34,996.47
17	3 Yrs	HFD	Harris Field	$ 3,923.16	$ 11,769.48
18	3 Yrs	MC	Municipal Court	$ 17,040.00	$ 51,120.00
19	3 Yrs	MHSS	Midland Health & Senior Services	$ 31,788.73	$ 95,366.19
20	3 Yrs	MPB	Multi-purpose building	$ 3,026.24	$ 9,078.72
21	3 Yrs	NGA	City Records Center on Lamesa Rd.	$ 5,878.94	$ 17,636.82
22	3 Yrs	PB ABC	Police Barracks buildings A, B & C	$ 4,391.77	$ 13,175.31
23	3 Yrs	PD	Police Dept./Communications Building	$ 57,191.04	$ 171,573.12

24	3 Yrs	PDR	Police Dept Shooting Range	$ 7,810.14	$ 23,430.42
25	3 Yrs	SESC	Southeast Senior Center	$ 5,925.21	$ 17,775.63
26	3 Yrs	SLDW	Solid Waste Building #5	$ 3,478.15	$ 10,434.45
27	3 Yrs	TR3	Transportation Building #3	$ 6,889.18	$ 20,667.54
28	3 Yrs	UEC	Utilities Environmental Compliance Lab	$ 1,640.19	$ 4,920.57
29	3 Yrs	UPP	Utilities Pioneer Plant	$ 13,916.72	$ 41,750.16
30	3 Yrs	VC	Visit Midland Information and Travel Center	$ 4,051.51	$ 12,154.53
31	3 Yrs	VS	Vehicle Services Service Center	$ 3,572.45	$ 10,717.35
32	3 Yrs	W&WW	Water & Waste Water Building #2	$ 4,626.91	$ 13,880.73
33	3 Yrs	WFHPD	Paul Davis Field Houses	$ 6,136.54	$ 18,409.62
34	3 Yrs	WHS	Warehouse Building #4	$ 5,555.28	$ 16,665.84
35	3Yrs	WPCP	Water Pollution Control Plant	$ 8,300.00	$ 24,900.00
36	3 Yrs	WPCPLab	Water Pollution Control Plant Lab	$ 4,590.00	$ 13,770.00
37	3 Yrs	WPP & WPPLab	Water Purification Plant & Water Purification Plant Lab	$ 12,769.00	$ 38,307.00
			TOTALS:	$ 409,263.40	$ 1,227,790.20

1 **The undersigned bidder hereby declares that he has visited the site.**

First Service A/C Contractors INC
Bidder

11-29-2021
Date

Brian Grosse
Authorized Signature

432-685-0003
Phone

Brian Grosse
Print Above Name

432-685-3629
Fax

briang@firstservice.org
Email Adress

City of Midland: Bush Convention Center

Exhibit BCC

Qty	Type		Manuf.	Model	Serial #
4	Compressors				
4	Condenser Fan Motors				
1	Package Unit		AAON	RN-050-3-0EB09-000	201811-BNCW14
1	Package Unit		AAON	RN-030-3-0-EB09-5C9	201810-BNGT720
1	Package Unit		AAON	RN-020-3-0-EB09-549	201810-BNGP720
1	Package Unit		AAON	RN-090-3-0-LB09-5M9	201812-BVGG010
1	Package Unit		AAON	RN-013-3-0-EB09-5F9	201810-ANGK720
1	Package Unit		AAON	RN-025-3-0-EA09-000	201810-BNCR147
1	Package Unit		Mitsubishi	N/A	N/A
1	Indoor Unit		Mitsubishi	N/A	N/A
1	Indoor Unit		Mitsubishi	N/A	N/A
1	Indoor Unit		Mitsubishi	N/A	N/A
	Spilt System		Mitsubishi	PUY-A18NKA7	N/A
1	Indoor Unit002		Mitsubishi	N/A	
	Spilt System		Mitsubishi	PUY-A18NKA7	N/A
1	Package Unit		AAON	RN-075-3-0-LA09-5M9	201812-BVGF010
1	Package Unit 002		AAON	RN-025-3-0-EA09-000	
1	Package Unit 002		AAON	RN-013-3-0-EB09-5F9	
1	Package Unit 002		AAON	RN-013-3-0-EB09-5F9	
1	Package Unit 002		AAON	RN-025-3-0-EA09-000	
1	Package Unit 003		AAON	RN-025-3-0-EA09-000	

City of Midland: Bank of America- Motor Bank Equipment List

Exhibit BOA

Qty	Type		Manuf.	Model	Serial #
	Package Unit		Carrier	38AUZA08A0M5A0A0A0	1716C90195
	Spilt System		Carrier	24ABB360A520	2020E1906
	Spilt System		Comfortmaker	CAE090GHBA	E041419914
	Spilt System		Liebert	N/A	N/A

City of Midland: Central Fire Building Equipment List

Exhibit CF

Qty	Type	Size	Manuf.	Model	Serial #
1	Unit 1		Lennox	LGH072H4BS1Y	5610G14936
1	Unit 2		Lennox	LGH120H4BM2Y	5610G14450
1	Unit 3		Lennox	LGH048H43S1Y	5610G07874
2	Unit 4		Lennox	LGH120H4BM2Y	5610G14449
1	Unit 5		Lennox	LGH060H4ES1Y	5610G14993
1	Minisplit		Daikin	FTXN18KVJU	E004158
1	RTU		Trane	YSC048G3EMAO1	17351173L
1	RTU		Trane	YSCO72G3EMAO30001	192610427L
1	Infrared		Modine	PDP200AE0130	39011011708-8021
1	Infrared		Modine	PDP200AE0130	39010905091810-0945
1	Infrared		Modine	PDP200AE0130	39011011708-8020
1	Infrared		Modine	PDP200AE0130	39010905091810-0942

City of Midland: Fire Station 2

Exhibit FS2

Qty	Type	Manuf.	Model	Serial #	Location
1	Spilt System	Lennox	TSA060H4N41Y	5810E12876	Station 2 Unit 1
1	Spilt System	Lennox	CH23-65	6009C02150	Station 2 Unit 1
1	Spilt System	Lennox	TSA060H4N1Y	5809J08668	Station 2 Unit 2
1	Spilt System	Lennox	CH23-65	6009K25263	Station 2 Unit 2
1	Infrared	Lennox	LF24-125A-1	6396F64203	
1	Infrared	Lennox	LF24-125A-1	6396F64201	

City of Midland: Fire Station 3

Exhibit FS3

Qty	Type	Manuf.	Model	Serial #	Location
1	Package Unit	Trane	YSCO72H3EMA2500000000000000000C0000000000	210813350L	Station 3 Unit 1
1	Package Unit	Trane	YSCO72F3ELA0200000000000000000C00000000000	142010240L	Station 3 Unit 2
1	Package Unit	American Standard	GBC048A3ELB0400000000000000000000000000	20112295PA	Station 3 Unit 3
1	Infrared	Lennox	LF24-200S-5	6000C70464	
1	Infrared	Lennox	LF24-200S-5	Unavailable	

City of Midland: Fire Station 4

Exhibit FS4

Qty	Type	Manuf.	Model	Serial #	Location
1	Spilt System	Lennox	TSA060H4N41Y	5809J08660	Station 4 Unit 1
1	Spilt System	Lennox	CX34-62C-6F-1	6010G00072	Station 4 Unit 1
1	Spilt System	Lennox	TSA060H4N41Y	5810F10031	Station 4 Unit 2
1	Spilt System	Lennox	CX34-62C-GF-1	6010G00073	Station 4 Unit 2
1	Infrared	Trane	BLH080F936B0	916661Q07	
1	Infrared	Gama	B3AAVV036095	0894A07120	

City of Midland: Fire Station 5

Exhibit FS5

Qty	Type	Manuf.	Model	Serial #
	Spilt System	Lennox	CBA27UHE-036-230-6-05	1620L03527
	Condensing Unit	Lennox	SSB036H4S44Y	5820J06361
	Spilt System	Lennox	CBA27UHE-018-230-6-05	1620K22677
	Condensing Unit	Lennox	ML14XC1S018-230A06	1920J01921
	Spilt System	Lennox	CBA27UHE-018-230-6-05	1620K22686
	Condensing Unit	Lennox	ML14XC1S018-230A06	1920J01923
	Spilt System	Lennox	CBA27UHE-036-230-6-05	1620L03534
	Condensing Unit	Lennox	SSB036H4S44Y	5820A13776
	Spilt System	Lennox	CBA27UHE-060-230-05	1620L05807
	Condensing Unit	Lennox	SSB060H4S44Y	5820E00593
	Spilt System	Lennox	CBA27UHE-036-230-6-05	1620L03529
	Condensing Unit	Lennox	SSB036H4S44Y	5820A13784
	Ceiling Cassette VRF	Daikin	FXZQ07TAVJU	J008668
	Ceiling Cassette VRF	Daikin	FXZQ15TAVJU	J003745
	Ceiling Cassette VRF	Daikin	FXZQ05TAVJU	J004613
	Ceiling Cassette VRF	Daikin	FXZQ05TAVJU	J004490
	Ceiling Cassette VRF	Daikin	FXZQ05TAVJU	J004486
	Ceiling Cassette VRF	Daikin	FXZQ05TAVJU	J004615
	Ceiling Cassette VRF	Daikin	FXZQ05TAVJU	J004614
	Ceiling Cassette VRF	Daikin	-----	------
	Ductless Spilt System	Daikin	FTK12AXVJU	------
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258006
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258007
	Infrared	Space-Ray	PTS/U 150/100-N7A	1250001
	Infrared	Space-Ray	PTS/U 150/100-N7A	1257999

These Systems are covered under a one year warranty

City of Midland: Fire Station 6

Exhibit FS6

Qty	Type	Manuf.	Model	Serial #	Location
1	Spilt System	Lennox	TSA048S4N42Y	5810C11637	Station 6 Unit 1
1	Spilt System	Lennox	CX34-49C-6F-1	6010F20935	Station 6 Unit 1
1	Spilt System	Lennox	TSA048H4N41Y	5809L09567	Station 6 Unit 2
1	Spilt System	Lennox	CX34-49C-6F-1	6010F13924	Station 6 Unit 2
1	Infrared	Space-Ray	CB50-N5A	908654	
1	Infrared	Space-Ray	CB50-N5A	919739	
1	Infrared	Space-Ray	CB50-N5A	919734	
1	Infrared	Space-Ray	CB50-N5A	919732	

City of Midland: Fire Station 8

Exhibit FS8

Qty	Type	Manuf.	Model	Serial #	Location
1	Spilt System	Lennox	CX34-62C-6F-1	6010G00067	Station 8 Unit 1
1	Spilt System	Lennox	TSA0604HN41Y	5810F10033	Station 8 Unit 1
1	Spilt System	Lennox	CX34-62C-6F-1	6010G00066	Station 8 Unit 2
1	Spilt System	Lennox	TSA0604HN41Y	5809M01948	Station 8 Unit 2
1	Infrared	Dayton	3E133E	071026000001B	
1	Infrared	Dayton	3E133E	071026 000001A	

City of Midland: Fire Station 9

Exhibit FS9

Qty	Type	Manuf.	Model	Serial #	Location
1	Spilt System	Lennox	TSA060H4N41Y	5810F10030	Station 9 Unit 1
1	Spilt System	Lennox	CX34-62C-6F-1	6010G00068	Station 9 Unit 2
1	Spilt System	Lennox	TSA050H4N41Y	5809M06108	Station 9 Unit 2
1	Spilt System	Lennox	CX34-62C-6F-1	6010G00069	Station 9 Unit 2
1	Infrared	Renzor Type	UDAP-75	BRK3062083688	
1	Infrared	Renzor Type	UDAP-75	BSG3062046784	

City of Midland: Fire Station 10

Exhibit FS10

Qty	Type	Manuf.	Model	Serial #
1	Air Handler	Carrier	58STA090---16114	
1	Gas Furnance	Carrier	58STA090---16114	
1	Package Unit	Carrier	58STA135---16122	
	Spilt System	Carrier	24ACB760A310	2215E08345
1	CU 3-15	Carrier	58STA090---16114	
	Spilt System	Carrier	24ABC636A300	2616E16527
1	CU 4- 15	Carrier	58STA135---16122	
	Spilt System	Carrier	24ACB760A310	3215E13050
1	CU-1-15	Carrier	38AUZA07A0A5A0A0A0	5115C91545
1	Ductless Mini-Spilt	Mitsubishi	N/A	N/A
	Spilt System	Mitsubishi	PUZ-A24NHA6	
1	Ductless Mini-Spilt	Mitsubishi	MSZ-GL24NA	
	Spilt System	Mitsubishi	MSZ-GL24NA	
	ERV System	Greenheck	ERV-20-15H-A	
	ERV System Exhaust Motor	Greenheck	ERV-20-15H-A	
	ERV System Wheel Motor	Greenheck	ERV-20-15H-A	
	Infrared	Space-Ray	CB50-N5	842203
	Infrared	Space-Ray	CB50-N5	842203
	Infrared	Space-Ray	CB50-N5	842216
	Infrared	Space-Ray	CB50-N5	842204
	Infrared	Space-Ray	CB50-N5	842200

City of Midland: Fire Station 11

Exhibit FS11

Qty	Type	Manuf.	Model	Serial #
5	Split System	Lennox	CBA27UHE-036-230-6-05	1620L03530
5	Condensing Unit	Lennox	SSB036H4S44Y	5820E05892
	Split System	Lennox	CBA27UHE-018-230-6-05	1620L03528
	Condensing Unit	Lennox	SSB036H4S44Y	5820E05896
	Split System	Lennox	CBA24UHE-018-230-6-05	1620K22676
	Condensing Unit	Lennox	ML14XC1S018-230A06	1920J01974
	Split System	Lennox	CBA27UHE-048-230-6-05	1620L02253
	Condensing Unit	Lennox	SSB048HS43Y	5820E05471
	Split System	Lennox	CBA27UHE-036-230-6-05	1620L03532
	Condensing Unit	Lennox	SSB036H4S44Y	5820J06362
8	Ceiling Cassette VRF	Daikin	FXZQ12TAVJU	J006481
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005421
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005529
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005424
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005176
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005292
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005103
	Ceiling Cassette VRF	Daikin	FXZQ09TAVJU	J005546
1	Ductless Spilt System	Daikin	FTK12AXVJU	K002425
2	Electric Unit Heater	TPI	F1F5105CAIN	-
	Electric Unit Heater	TPI	F1F5105CA1N	-
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258010
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258009
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258008
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258005
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258002
	Infrared	Space-Ray	PTS/U 150/100-N7A	1258000

These systems are covered under a one year warranty

City of Midland: Garage Building #6 Equipment List

Exhibit GRG

Qty	Type	Manuf.	Model	Serial #	Location
1	Split System	Lennox	TSA060H4N4N41Y	5810F10023	Unit 1
1	Split System	Lennox	SSB048H4542Y	5810C01422	Unit 2
1	Split System	Lennox	CH33-50160C-2F-3	6010G2339F	Unit 3
1	Evaporative Air Cooler	Frigiking	FS650A	Not available	Parts Room- Outdoor
1	Evaporative Air Cooler	Frigiking	FS650A	Not available	Parts Room- Outdoor
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Parts Room
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Parts Room
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Parts Room
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Parts Room
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop
1	Infrared	Vebar Ray	DR 100 NFS-2	Not available	Main Shop

City of Midland: Health & Senior Services Equipment List

Exhibit MHSS

Qty	Type	Manuf.	Model	Serial #	Location
1	Split System	Lennox	LGH092H4BM1G	5610G14542	RTU 18
1	Split System	Lennox	LGH060S4TS1G	5610G14946	RTU 4
1	Split System	Lennox	LGH060S4TS1G	5610G14947	RTU 16
1	Split System	Lennox	LGH060S4TS1G	5610G14953	RTU 3
1	Split System	Trane	YSC048G4EMA01	172610002L	RTU 12
1	Split System	Lennox	LGH048S4TS1G	5610G14831	RTU 2
1	Split System	Trane	YSC043G4EMA01	161411835L	RTU 10
1	Split System	Lennox	KGA024540S1P	5610G08248	RTU 20
1	Split System	Lennox	LGH036H4ES1P	5610G14879	RTU 19
1	Split System	Lennox	LGH060S4TS1G	5610G14951	RTU 1
1	Split System	Lennox	LGH036S4TS1G	5610G14821	RTU 8
1	Split System	Lennox	LGH060S4TS1G	5610G14950	RTU 9
1	Split System	Lennox	LGH048S4TS1G	5610GG14826	RTU 7
1	Split System	Lennox	LGH060S4TS1G	5610G14952	RTU 11
1	Split System	Lennox	LGH060S4TS1G	5610G14954	RTU 6
1	Split System	Lennox	LGH092H4BH1G	5610H10823	RTU 14
1	Split System	Trane	YSC060G4EMA01	171710792L	RTU 5
1	Split System	Lennox	LGH060S4TS1G	5610G14949	RTU 15
1	Split System	Lennox	LGH048S4TS1G	5610G14827	RTU 13
1	Split System	Lennox	LGH048S4TS1G	5610G14828	RTU 17
1	Package Unit	Trane	YSC060G4EMA01	171110839L	RTU
1	Package Unit	Trane	YSC060G4EMB01	181014365L	RTU
1	Package Unit	Trane	YSC0606G4EMA01	171110302L	RTU
1	Package Unit	Trane	YSC090H4EMA04	203513453L	RTU
1	Split Type A/C	Gree	LIVV24HP230VIAO	0520G506528	
1	Mini-spilt	Sanyo	CH2472	99803	
1	Mini-spilt	Gree	LIVV24HP230V1AH	0820GS01284	
1	Mini-spilt	Sanyo	KHS2472	19502	
1	Package Unit	American Standard			
2	Ductless Mini-Spilt				HD-Vaccine Room

City of Midland: Auxilliary

Exhibit NGA

Qty	Type	Manuf.	Model	Serial #	Location
1	Package Unit	Trane	4WCC4060A1000AA	193011042L	Records Center
1	Spilt System	American Standard	4A7A4042L1000AA	1933536A3F	Main Building
1	Spilt System	American Standard	4A7A4036L1000AA	193344663F	Main Building
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480006	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480070	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480068	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480075	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480089	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480040	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480059	
	Infrared	Re-Verber Ray	DR 60 NSP1-8 25V	7050480087	

City of Midland: Building #3 Equipment List

Exhibit TR3

Qty	Type	Manuf.	Model	Serial #	Location
1	Split System	Lennox	CH33-50160C-2F-3	6011K05786	Unit 1 - Transportation
1	Split System	Lennox	CH33-50160C-2F-3	6010F17320	Unit 1 - Facilities
1	Split System	Lennox	CX34-62C-6F-1	6010F21358	Unit 2 - Facilities
1	Split System	Lennox	CX34-49C-6F-1	6010F20931	Unit 1
1	Split System	Lennox	CX34-49C-6F-1	6010F20932	Unit 2
1	Mini-Spilt	Thermal Zone	MS218A13240EA	6322202299	Survey Office
1	Mini-Spilt	Gree Ductless	DHP18NWB21S	DIHI800180	Server Room
1	Bay Heater		UDAP-150	BQC3062019968	Facilities
1	Bay Heater	Dayton	3E134E	010528000011A	Transportation
1	Bay Heater	Dayton	3E134E	060315000015A	Transportation
4	Bay Heater	Dayton	3E134E	060309000043B	Sign Shop

City of Midland: Visit Midland Information & Travel Center

Exhibit VC

Qty	Type		Manuf.	Model	Serial #
1	Package-RTU		Carrier	50HJQ006---521HQ	0707G10613
1	Package-RTU		Carrier	50TCQA06A2A5A0A0A0A0	3209G50975
1	Package-RTU		Carrier	50FCQA06A2A5A0A0A0A0	1021C78405

City of Midland: Building #1 Vehicle Services Service Center

Exhibit VS

Qty	Type	Manuf.	Model	Serial #
1	Spilt System	Ameican Standard	4A7A4048L1000AA	18013G2F3F
1	Mini-Spilt	Friedrich	MR24Y3J	
	Infrared	Nortek Global	UDAP-200	BRA3062005778
	Infrared	Nortek Global	UDAP-200	BRA3062005776
	Infrared	Nortek Global	UDAP-200	BRA3062005784
	Infrared	Nortek Global	UDAP-200	BQE3062033468

City of Midland: Warehouse/ Meter Shop Equipment List

Exhibit WHS

Qty	Type	Manuf.	Model	Serial #	Location
1	Split System	Lennox	LGH092H4BM1G	5610G14542	Unit 1
1	Split System	Lennox	LGH036H4ES1P	5610G14881	Unit 2
1	Split System	Trane	YSC036E1EMA1800000	105011893L	Unit 3
1	Split System	Lennox	KGA024S4DS1P	5610G05119	Unit 4
	Infrared	Modine	PD 200AE0130	30011014297-1405	Warehouse
	Infrared	Modine	PD 200AE0130	30011014297-1395	Warehouse
	Infrared	Unknown	68-030-7	0570 5	Meter Shop

CITY OF MIDLAND
SERVICE CONTRACT #
22000155R

THIS CONTRACT, effective this _ day of __, 2021 , by and between the City of Midland, hereinafter referred to as the "CITY" and ____, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $____ for three (3) years

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES

RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND,

INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY.

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information

regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

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

vicarious liability.

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence

Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

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

Code Section 176.006, *et seq.*, as amended.

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

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

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

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

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

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

the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: First Servie Air Conditioning Contractors INC

Name: Brian Grosse

Title: Sales Manager

STATE OF Texas §

§

COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this 29 day of November 20 21 personally appeared, Brian Grosse, an officer of First Service AC, 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 29 day of November, 2021.

MARY JANE GUTIERREZ
Notary ID #132363164
My Commission Expires
February 18, 2024

Mary Jane Gutierrez
Notary Public, State of Texas

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____
Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☑ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☑ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____
Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

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: First Service Air Conditioning Contractors INC

Local Address (must be within the City limits): 3009 Garden City Hwy Midland, TX 79701

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? 72
3. Year your business was established in the City of Midland: 1952
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 1-75-1848103-5

   Company Name and Address (as it appears on permit):

   First Service Air Conditioning Contractors INC

   3009 Garden City Hwy

   Midland, TX 79701

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: Brian Grosse Date: 11-29-2021

Printed Name and Title: Brian Grosse / Sales Manager

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/COMPANY CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

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

32. ATTORNEY FEES - 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.

PLUMBING
HEATING
AIR CONDITIONING
FIRST SERVICE

Certificate of Liability Insurance

3009 GARDEN CITY HIGHWAY • MIDLAND, TEXAS 79701 • PH: 432-685-0003 • FAX 432-685-3629

PACKET
15.94
December 14, 2021

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES ELOW. 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 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 Tucker Agency, Ltd. P O Box 2285 Ft. Worth TX 76113	CONTACT NAME: Stormie Partee PHONE (A/C, No, Ext): (817)336-8520 FAX (A/C, No): E-MAIL ADDRESS: stormie@tuckeragency.com
INSURED First Service Air Conditioning Contractors, Inc. 3009 Garden City Highway Midland TX 79701	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: Amerisure Insurance Company — 19488 INSURER B: Amerisure Mutual Insurance Co — 23396 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 21/22 All Lines **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 CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:			CPP 2098637	10/1/2021	10/1/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			CA 2098636	10/1/2021	10/1/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			CU 2098640	10/1/2021	10/1/2022	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N N/A If yes, describe under DESCRIPTION OF OPERATIONS below			WC 2098641	10/1/2021	10/1/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

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

The General Liability, and Auto Liability policies include blanket automatic additional insured endorsements that provide additional insured status on a primary and noncontributory basis to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status subject to policy terms and conditions. The General Liability, Auto Liability, and Workers Compensation policies include a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it subject to policy terms and conditions

CERTIFICATE HOLDER

City of Midland - Permit Office
P O Box 1152
Midland, TX 79702

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

Tracy Tucker/STORMI

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PLUMBING
HEATING
AIR CONDITIONING

FIRST SERVICE

References

3009 GARDEN CITY HIGHWAY • MIDLAND, TEXAS 79701 • PH: 432-685-0003 • FAX 432-685-3629

Contract Review List

For Contract Type : 'SA-FC', All Division, All Department, All Active Contracts, By Contract Type and SM #

SM #	Contract #	Amount	Contact Name	Address	Phone	Expiry Date	Status	Salesman
Contract Type : SA-FC								
10113	4301-2		Apache (Mech rms and roof on	303 Veterans Airpark , Midland,TX 797054561	(432)638-5599	03/31/22	Active	101
10271	3969-2		Salisbury Industries (main offi	2951 E. I H 20 , Odessa,TX 79761	(432)664-5176	03/31/22	Active	178
10621	10621-20		Our Lady Of Guadalupe Churcl	1405 Garden Lane,Saritag13@Gmail.Com, Midland,TX 79702	(432)682-2581	01/31/22	Active	178
10815	3925-2		Citizens Federal Credit Union**	2609 Loop 250 , Midland,TX 79707	(432)868-1200	03/31/22	Active	101
10868	4107-2		Com FS3 Fire Station #3	1717 N Lamesa Rd , Midland,TX 79701	(432)685-7220	03/31/22	Active	101
10951	3926-2		Citizens Federal Credit Union**	2110 W. Wall Street , Midland,TX 79701	(432)686-1208	03/31/22	Active	101
11287	4119-2		Com SLDW Solid Waste Mana	1602 Orchard Lane,Building #5, Midland,TX 79701	(432)685-7275	03/31/22	Active	101
12001	4121-2		Com PDR Police Shooting Ran	4214 Fm 307 , Midland,TX 79707	(432)685-7271	03/31/22	Active	101
12355	4123-2		Com SESC South East Senior	1803 E Indiana , Midland,TX 79701	(432)685-7220	03/31/22	Active	101
12381	4112-2		Com FS9 Fire Station #9	6005 N Midland Dr , Midland,TX 79701	(432)413-5124	03/31/22	Active	101
12421	4114-2		Com W&WW Water And Wast	1602 Orchard Lane,Building #2, Midland,TX 79701	(432)413-5124	03/31/22	Active	101
13304	3953-2		Midland Rape Crisis Center	1700 N Big Spring St , Midland,TX 79701	(432)682-7273	03/31/22	Active	178
13315	4358-3		Oxy Seminole Gas Plant	P.O. Box 1570,Main Gas Plant, Seminole,TX 79360	(432)432-7588	06/02/24	Active	101
13898	4120-2		Com WHS Warehouse Building	1602 Orchard Lane,Building #4, Midland,TX 79701	(432)685-7244	03/31/22	Active	101
13984	4371-2		Com FS6 Fire Station #6	301 Tradewinds Blvd , Midland,TX 79703	(111)111-1111	12/31/21	Active	101
14014	4162-2		Permian Basin Regional Planni	2910 La Force Blvd , Midland,TX 79706	(432)563-1061	03/31/22	Active	178
14048	4108-2		Com FS4 Fire Station #4	5100 N Big Spring St , Midland,TX 79705	(432)413-5124	03/31/22	Active	101
14088	4126-2		Com WPCPLab Water Pollutio	City Of Midland 3600 E I20 , Midland,TX 79701	(432)685-7466	03/31/22	Active	101
14089	4128-2		Com WPP & WPPLab Water P	5000 N. Midland Dr , Midland,TX 79705	(432)681-7606	03/31/22	Active	178
14089	4127-2		Com WPP & WPPLab Water P	5000 N. Midland Dr , Midland,TX 79705	(432)681-7606	03/31/22	Active	178
14104	4129-2		Com 3OUT Traffic Change Roc	600 N Carver,Outside Bldg #3, Midland,TX 79703	(432)413-5124	03/31/22	Active	101
16278	4275-2		Com BOA Bank Of America Mc	405 North Loraine St.,Carolina Jimenez <Cjimenez@Mid, Midland,	(432)413-5124	03/31/22	Active	178
16943	16943-21		Midland Bible Church	5900 Whitman Dr.,Karl@Midlandbible.Org, Midland,TX 79705	(432)553-5054	07/31/22	New	178
17135	4370-21		Chevron Building	15 Smith Road , Midland,TX 79705	(432)553-5058	10/31/22	New	178
20024	20024-21		Brazos Midstream	1939 FM 1450,853R8Q7F+4G, Pecos,TX 79772	(432)770-5722	01/31/22	Active	178
20095	20095-20		Oxy Denver City Bennett Ranc	1190 Co Rd 330 , Denver City,TX 79323	(806)592-6200	06/02/24	Active	178
20096	20096-20		Oxy Denver City Satellite F	2582 Co Rd 355 , Denver City,TX 79323	(806)215-0281	06/02/24	Active	178
20097	20097-21		Oxy Denver City Willard Co2 P	1190 Co Rd 330 , Denver City,TX 79323	(806)215-0281	06/02/24	Active	
20098	20098-20		Oxy Denver City Wasson Co2 I	2582 Co Rd 355 , Denver City,TX 79323	(806)777-8304	06/02/24	Active	178
20102	20102-20		Oxy Denver City GASCAP	4 miles S FM RD 2055 , Denver City,TX 79323	(806)215-0921	02/28/22	Active	178
20103	20113-20		Oxy Denver City MEPUS	2681 St. Hwy 214 , Denver City,TX 79323	(806)215-0921	01/31/22	Active	178
20116	20116-20		Oxy Denver City NORTH Static	2681 St. Hwy 214 , Denver City,TX 79323	(806)215-0921	02/28/22	Active	178
20117	20117-20		Oxy Denver City SOUTH Static	2681 St. Hwy 214 , Denver City,TX 79323	(806)215-0921	02/28/22	Active	178
20118	20118-21		Oxy Denver City WEST Station	2681 St. Hwy 214 , Denver City,TX 79323	(806)215-0921	08/31/22	Active	178
20147	20147-20		Anadarko Cobra CTF/SWD	853RH7XJ+5V,Cost Center 89959588, Pecos,TX 79772	(337)207-3956	12/31/21	Active	178
20150	20150-20		Anadarko Monroe SWD (34-18	GJ2P+78 Barstow, Texas,CR 300 to Private Rd 3026, Orla,TX 797	(337)207-3956	12/31/21	Active	178
20564	20564-21		Energy Transfer Red Bluff	770 County Road 437 , Orla,TX 79770	(432)257-1817	07/06/22	New	178
20573	20573-21		Anixter	10309 West County Road 146 , Midland,TX 79706	(000)000-0000	12/31/21	New	856
20574	20574-21		Anixter	235 Commerce Drive , Andrews,TX 79714	(432)271-8195	12/01/21	New	856

Contract Review List

For Contract Type : 'SA-FC', All Division, All Department, All Active Contracts, By Contract Type and SM #

SM #	Contract #	Amount	Contact Name	Address	Phone	Expiry Date	Status	Salesman
Contract Type : SA-FC								
20972	20972-21		OXY (Kermit office)	Kermit 831 SE Ave , Kermit,TX 79745	(000)000-0000	10/31/22	New	178
3001	3942-2		HL Brown	300 W Louisiana Avenue,Po Box 2237, Midland,TX 79702	(432)688-3721	03/31/22	Active	178
3004	4151-2		Delek (Alon Usa)	200 Refinery Rd. , Big Spring,TX 79720	(432)263-9272	03/31/22	Active	178
3005	3933-2		First United Methodist Church '	208 East St. Anna,Mallout Invoices, Stanton,TX 79782	(432)756-2303	03/31/22	Active	178
3007	3937-2		Great Western Drilling***	700 West Louisiana Ave. P O Bo , Midland,TX 79702	(432)682-5241	03/31/22	Active	178
3030	4102-2		COM PD Police Department	601 North Loraine Street , Midland,TX 79702	(915)685-7271	03/31/22	Active	101
3047	3973-2		St. Stephen'S Catholic Church'	4601 Neely Avenue , Midland,TX 79707	(432)520-7394	03/31/22	Active	178
3081	4022-2		OMP	110 N Marienfeld, STE 200, Midland,TX 79701	(917)573-6427	03/31/22	Active	178
3098	4100-2		COM CH City Hall	300 North Loraine Street , Midland,TX 79701	(432)685-7220	03/31/22	Active	101
3099	4104-2		COM CF Central Fire Station	1500 West Wall Street , Midland,TX 79701	(432)413-5124	03/31/22	Active	101
3101	3957-2		NCNB	303 West Wall Street,23Rd Floor, Midland,TX 79701	(432)413-5124	03/31/22	Active	178
3215	4117-2		COM Traffic Signals Building	1602 Orchard Lane,Building #3, Midland,TX 79701	(432)685-7220	03/31/22	Active	101
3222	4116-2		COM TR3 Transportation Build	1602 Orchard Lane,Building #3, Midland,TX 79701	(000)000-0000	03/31/22	Active	101
3241	3922-2		Citizens Federal Credit Union**	701 E Fm 700 , Big Spring,TX 79720	(432)267-6373	03/31/22	Active	101
3299	4122-2		COM MHSS Midland Health &	3303 W. Illinois Ave. Suite 18 , midland,TX 79703	(432)685-7223	03/31/22	Active	101
3429	4115-2		COM WHFPD Paul Davis Field	From Loop 250 On 349 N. 28.7 M,(4.4 Mi. N Of Hwy 176), Midland,	(432)681-7606	03/31/22	Active	101
3582	4125-2		COM WPCP Water Pollution C	3600 E I20,3600 E I20, Midland,TX 79702	(432)685-7466	03/31/22	Active	178
4104	4124-2		COM AC Animal Control	1200 North Fairgrounds , Midland,TX 79705	(432)685-7420	03/31/22	Active	101
4537	4109-2		COM FS5 Fire Station #5	2210 W. Golf Course , Midland,TX 79701	(915)685-7350	03/31/22	Active	101
4729	4118-2		Com GRG City Garage #6	1701 E. Orchard , Midland,TX 79701	(432)685-7220	03/31/22	Active	101
5398	4113-2		COM HFD Harris Field Firestat	3215 Fm 307 , Midland,TX 79706	(432)685-7346	03/31/22	Active	101
5990	3906-2		All American Chevrolet Store L	4100 W. Wall Street,Shellyjohnson@Lithia.Com, Midland,TX 7970	(432)694-9601	03/31/22	Active	
6078	3965-2		Racquet Club***	3009 Racquet Club Dr.,David@Therc.Org, Midland,TX 79705	(432)683-5596	03/31/22	Active	178
8522	4106-2		Com FS2 Fire Station #2	701 E Florida , Midland,TX 79701	(000)000-0000	03/31/22	Active	101
8668	3917-2		Bcck Engineering	2500 N. Big Spring Ste 230 , Midland,TX 79705	(432)685-6095	03/31/22	Active	101
9957	4111-2		Com FS8 Fire Station #8	3301 Haynes,Haynes & Midkiff, Midland,TX 79703	(432)685-7271	03/31/22	Active	101

Total For Contr Type: SA-FC Number of SA-FC- 66

New: 6 **Active: 60**

PLUMBING
HEATING
AIR CONDITIONING
FIRST SERVICE

Resumes

3009 GARDEN CITY HIGHWAY • MIDLAND, TEXAS 79701 • PH: 432-685-0003 • FAX 432-685-3629

David A. Grosse
3009 Garden City HWY
Midland, TX 79701

Qualifications

Over 45 years of experience in heating, ventilation, air conditioning, plumbing and electrical fields. Owner and President of First Service A/C Contractors, Inc. Certified in all areas of HVAC work. Troubleshoots and solves problems on any type of HVAC equipment, including chillers and boilers.

Certification

Distech Controls, Inc. Certified
N.A.T.E. Certified
Texas Air Conditioning Contractors Association Board of Directors
Railroad Commission of Texas
Company holds license for HVAC and Refrigeration
ACES Dealer
American Standard top sales in Region
Leader in new technology for HVAC in West Texas
Trane Dealer
Owner and President of First Service Plumbing and Air Conditioning
HVAC Tech Schools

Employment

1980-Present	Owner & President, FIRST SERVICE A/C CONTRACTORS, INC. Owns and operates each division of the business: HVAC, plumbing, electrical, and construction. Employs only satisfactory technicians and staff. Excellent work ethic, customers always come first in the business.

CARDHOLDER: Under 16 Texas Administrative Code §9.13, the Railroad Commission of Texas may exempt from Category D LP-gas licensing and examination requirements a licensed master or journeyman plumber or a licensed Class A or Class B air-conditioning and refrigeration contractor who is registered with the Commission.

Your exempt registration card is attached. Please review the information on the card and report any errors in writing to the Railroad Commission. If you do not report an error, you are acknowledging that the information on the card is accurate.

Your registration must be renewed annually by the expiration date shown on the card. If you do not renew by this deadline, your registration will expire, and you must immediately cease to perform activities requiring registration.

16528
FIRST SERVICE AIR CONDITIONING CONTRACTORS
3009 GARDEN CITY HWY
MIDLAND, TX 79701

Remove card along perforation and retain for identification

RAILROAD COMMISSION OF TEXAS

EXEMPT REGISTRATION

GROSSE, DAVID ARTHUR
XXX-XX-5800

A/C ACR CONTRACTOR **LPG**

Expiration date: **May 31, 2013**
Card issued: **May 04, 2012**

Texas Air Conditioning Contractors Association

Board of Directors

David Grosse



President

Executive Director

Arthur Lee Sims
P.O. Box 665
Forsan, TX 79733

Qualifications

Thirty-two years of experience in the heating, ventilation and air conditioning service industry, as well as, sheet metal fabrication.

Certification

EPA Refridgeration Certification
Class II Registration in Refridgerant Recovery
Certified Solidyne Programmer
Certified Solidyne Windows Programmer
N.A.T.E. Certified
Master Electrician
Distech Controls, Lonmark Install 7 Program
InetSupervisor Intermediate Programming Certification

Employment

1998-Present	Service Technician, Manager, Troubleshoot analyst FIRST SERVICE A/C CONTRACTORS, INC. Services all types of air conditioners, chillers and boilers. Skilled in all types of troubleshooting, both electrical and mechanical. Layout and design of projects and installation. Calibration and programming of direct digital and pneumatic controls. Installation and programming of solidyne controls, Windows and Doss. Install and program of Distech Lon controls.
1986-1998	Service Manager, SEARS HOME SERVICE Performing services on all appliances, specializing heating, air conditioning and refrigeration.



Certificate of Achievement

is hereby granted to:

Lee Simms

This 11th day of March, 2005, for successful completion of Distech Controls, Inc., EasyControls System Training hosted by Control Tech Supply.

This award hereby certifies that the individual stated above has satisfactorily completed the entire course as published above and is considered by Control Tech Supply to be a qualified, corporately trained Distech EasyControls contractor and as such is capable of working with the EasyControls System hardware and software.

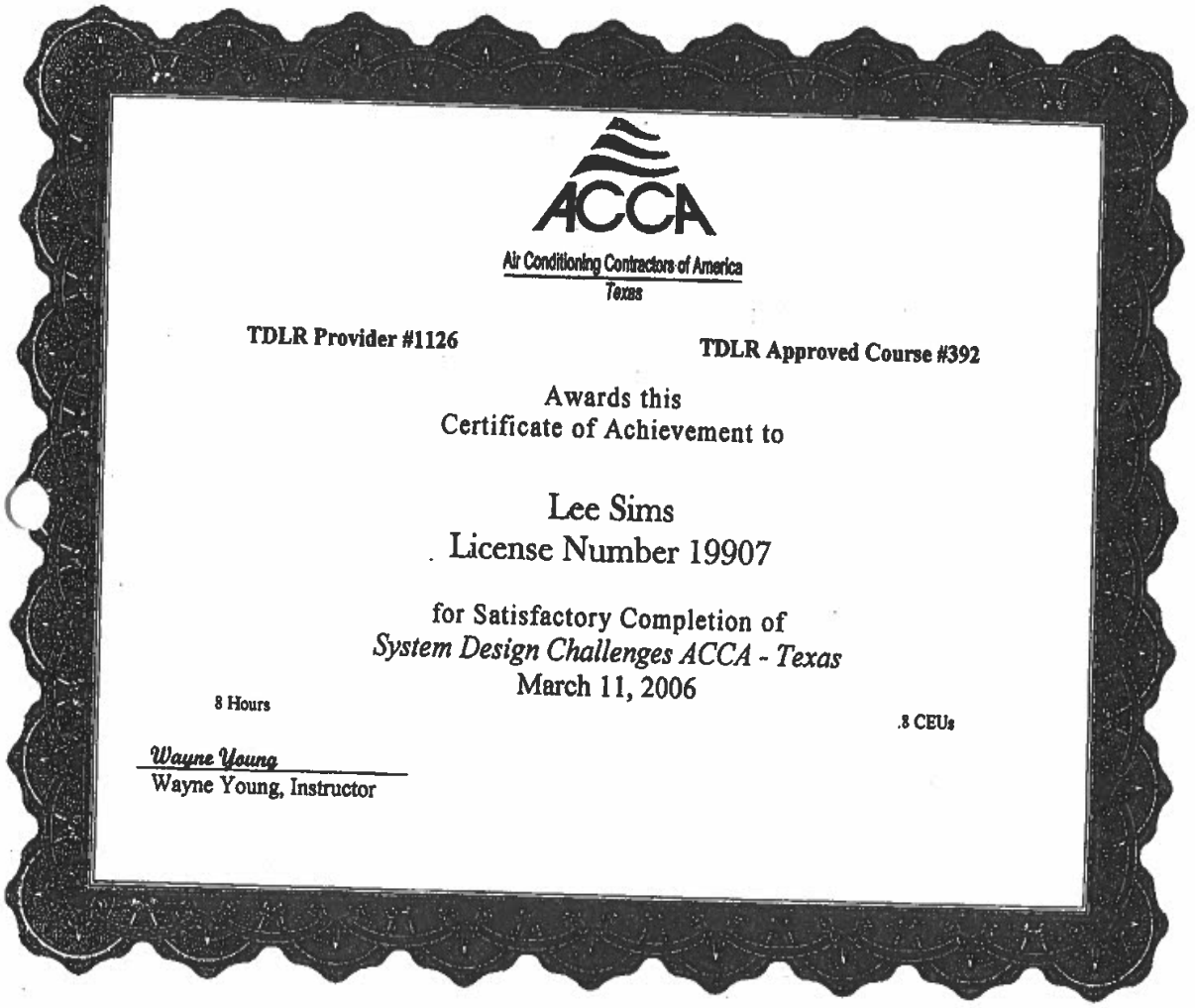
DISTECH

STRUCTURES

Granted: March 11, 2005

Sonny Coleman, Instructor

Paul Staudt, President



ACCA

Air Conditioning Contractors of America
Texas

TDLR Provider #1126

TDLR Approved Course #392

Awards this
Certificate of Achievement to

Lee Sims
License Number 19907

for Satisfactory Completion of
System Design Challenges ACCA - Texas
March 11, 2006

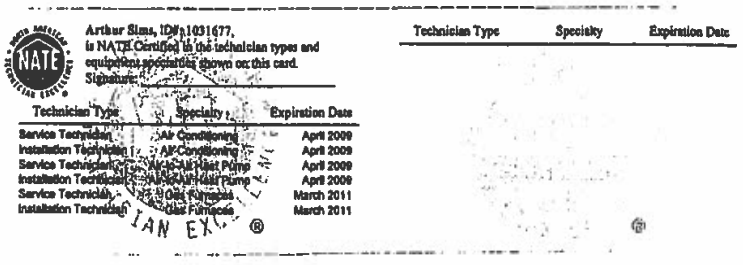
8 Hours

.8 CEUs

Wayne Young
Wayne Young, Instructor



PACKET
15.106
December 14, 2021



Arthur Sims, ID# 1031677,
is NATE Certified in the technician types and
equipment specialties shown on this card.
Signature:

Technician Type	Specialty	Expiration Date
Service Technician	Air Conditioning	April 2009
Installation Technician	Air Conditioning	April 2009
Service Technician	Air-to-Air Heat Pump	April 2009
Installation Technician	Air-to-Air Heat Pump	April 2009
Service Technician	Gas Furnaces	March 2011
Installation Technician	Gas Furnaces	March 2011

Technician Type	Specialty	Expiration Date



Certificate of Achievement

is hereby granted to:

Lee Simms

This 11th day of March, 2005, for successful completion of Distech Controls, Inc., EasyControls System Training hosted by Control Tech Supply.

This award hereby certifies that the individual stated above has satisfactorily completed the entire course as published above and is considered by Control Tech Supply to be a qualified, corporately trained Distech EasyControls contractor and as such is capable of working with the EasyControls System hardware and software.

DISTECH

STRUCTURES

Granted: March 11, 2005

Sonny Coleman, Instructor

Paul Staudt, President



Signed Execution of Offer

3009 GARDEN CITY HIGHWAY • MIDLAND, TEXAS 79701 • PH: 432-685-0003 • FAX 432-685-3629

PACKET
15.109
December 14, 2021

EXECUTION OF OFFER

Date: 11-29-2021

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

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

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

This offer consists of pages number 1 through 69 Years.

Offeror/ COMPANY: Brian Grosse / First Service Air Conditioning Contractors INC

SIGNATURE (INK): 

NAME: (TYPED/PRINTED) Brian Grosse

TITLE: Sales Manager

STREET: 3009 Garden City Hwy Midland, TX 79701

CITY/STATE/ZIP: Midland, TX 79701

TELEPHONE: 432-685-0003 FAX: 432-685-3629

E-MAIL ADDRESS: briang@firstservice.org

City Council Meeting

Item Number: 16

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: **RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES TO RANDALL SCOTT ARCHITECTS, INC., TO DEVELOP A MASTER PLAN FOR THE MIDLAND PUBLIC SAFETY TRAINING FACILITY FOR A COST OF $126,850.00; APPROVING $53,000.00 FOR SITE PLANNING; APPROVING $20,150.00 FOR PROJECT RELATED COSTS; AND TRANSFERRING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)**

Purpose:

Resolution awarding a professional services agreement for architectural and engineering services to Randall Scott Architects to develop a master plan for the Midland Public Safety Training Facility.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds of $200,000 are available in the General Fund Unappropriated Fund Balance and will be transferred and appropriated to a project in fund 005.

Discussion:

Motion 138-2021 authorized the City Manager or the City Manager's designee to advertise a request for qualifications for architectural and engineering services for the Midland Public Safety Training Facility for said services. One hundred sixty-four (164) request for qualifications were issued and we received nine (9) statements of qualifications, and interviews with four (4) firms. After interviewing four (4) architectural firms, staff recommends awarding a professional services agreement for architectural and engineering services to develop a master plan for the Midland

Public Safety Training Facility to Randall Scott Architects. Please see the attached memo from Charles Blumenauer, Fire Chief, and Seth Herman, Chief of Police, for more information.

Therefore, please consider a resolution awarding a professional services agreement for architectural and engineering services to develop a master plan for the Midland Public Safety Training Facility to Randall Scott Architects of Richardson, Texas for $126,850.00; $53,000.00 for site planning and $20,150.00 for project related items for a total cost of $200,000.00; and appropriating funds therefore.

Tina Gaug

City Manager's Office

Interoffice Memorandum

Date: **12/2/2021**

To: **Regina Stephenson**

From: **Fire Chief Charles Blumenauer**
Police Chief Seth Herman

Subject: **Public Safety Training Facilities**

Training, both of new employees and continuing education for current employees, is requirement by the Texas Commission on Law Enforcement (TCOLE), Texas Commission of Fire Protection (TFCP) and Texas Department of State Health Services. Currently, the Midland Police & Fire Department are training in facilities that have outlived their useful life span.

We are writing this memo in support of contracting with Randall Scott Architects to start the master planning of a new Public Safety Training facility. This project will be a joint facility for both the Midland Police and Fire departments. It will help us design a facility that will not only serve our members but it will also complete other goals for our departments. These goals will include better recruitment and becoming a regional asset.

Charles Blumenauer, Fire Chief
Seth Herman, Police Chief

RESOLUTION NO. _____

RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES TO RANDALL SCOTT ARCHITECTS, INC., TO DEVELOP A MASTER PLAN FOR THE MIDLAND PUBLIC SAFETY TRAINING FACILITY FOR A COST OF $126,850.00; APPROVING $53,000.00 FOR SITE PLANNING; APPROVING $20,150.00 FOR PROJECT RELATED COSTS; AND TRANSFERRING FUNDS

WHEREAS, the City Council approved Motion 138-2021, which authorized the issuance of a request for proposals for architectural and engineering services for the Midland Public Safety Training Facility; and

WHEREAS, nine (9) statements of qualifications were received and four (4) interviews were conducted, with the most qualified submittal belonging to Randall Scott Architects, Inc., for a total cost of $126,850.00; and

WHEREAS, the City Council finds the amount proposed by Randall Scott Architects, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a professional services agreement to Randall Scott Architects, Inc., for said professional services; and

WHEREAS, the City Council finds it to be in the public interest to approve $53,000.00 for site planning; and

WHEREAS, the City Council finds it to be in the public interest to approve $20,150.00 for project related costs;

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 professional services agreement with Randall Scott Architects, Inc., for said professinal services. A copy of said agreement is attached hereto as Exhibit "A" and incorporated herein

for all purposes

SECTION TWO. That funds in the amount of $200,000.00 are hereby transferred from the General Fund Unappropriated Fund Balance to a project in fund 005.

SECTION THREE. That the sum of $53,000.00 for site planning is hereby approved for said agreement.

SECTION FOUR. That the sum of $20,150.00 for project related costs is hereby approved for said agreement.

SECTION FIVE. That the City Comptroller is hereby authorized and directed to pay Randall Scott Architects, Inc., pursuant to the terms of said agreement from funds available in the project in fund 005 upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
#22000515

THIS AGREEMENT is made and effective the 15 day of December 2021, by and between the CITY OF MIDLAND, TEXAS ("*CITY*"), and, Randall Scott Architects ("*COMPANY*").

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform a master plan for the architectural and engineering services for the Midland Public Safety Training Facility services for CITY.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in **Exhibit A.**
2. COMPANY shall perform the services described in **Exhibit A** (i) with the professional skill and care ordinarily provided by competent engineers and architects practicing in the same or similar locality and under the same or similar circumstances and professional license and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed $126,850.00 for the professional services described in **Exhibit A**. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** incurred during the previous month that have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from December 15, 2021 until the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit -
	Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and

employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Randall Scott Architects
2140 Lake Park Blvd.. Ste 300
Richardson, TX 75080

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the

giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

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

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

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

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

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

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

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

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

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Randall Scott Architects, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged

to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____,

20____.

_____

Notary Public, State of _____

EXHIBIT "A"

RANDALL SCOTT ARCHITECTS

ARCHITECTURE | INTERIORS | PLANNING

December 1, 2021

Chief Blumenauer
Fire Chief
City of Midland | Fire Department
1500 W. Wall | Midland, TX 7970

RE: FEE PROPOSAL TO PROVIDE NEEDS ASSESSMENT, MASTER PLANNING & COST ESTIMATING SERVICES FOR A NEW PUBLIC SAFETY TRAINING FACILITY FOR THE CITY OF MIDLAND, TEXAS

I. PROJECT SCOPE

This proposal is submitted by Randall Scott Architects, Inc. (hereinafter referred to as RSA or Architect) to the City of Midland (hereinafter referred to as City, Owner or Client) to provide Architectural, Engineering and Specialized Consulting Services for the Needs Assessment, Master Planning and Cost Estimating of a new Public Safety Training Facility for the City of Midland, Texas.

A. PROJECT CRITERIA

The following information about the Project was conveyed to RSA by Chief Blumenauer and Chief Herman over the course of several meetings in November 2021

1. The **Scope of Work** for this project consists of the Needs Assessment, Master Planning & Cost Estimate for a new joint-use Public Safety Training Facility to include:
    - a. Administration Building
    - b. Offices for Training Chiefs, Training Captains and Administrative Assistants
    - c. Multi-purpose rooms
    - d. Small meeting rooms
    - e. Classrooms
        - i. 6 smaller classrooms (30 people)
        - ii. 1 larger, partitionable (200 people – 4-5 smaller rooms)
        - iii. Conference room (20 people)
        - iv. EMS Lab
        - v. Computer lab (20 pc's)
    - f. Support spaces such as bathrooms, break room, kitchen and showers
    - g. Training Field to include the following possible facilities
        - i. an EVOC / Driving Track (which might include a possible pursuit driving track).
        - ii. Class A Burn Building
        - iii. Class B Burn Building/props
        - iv. Training Tower
        - v. Outdoor Classroom – Open air – "dirty" room
        - vi. Simunitions storage and cleaning structure
        - vii. Multiple Buildings (Theatrical smoke and sim-round capable)
        - viii. Single Family
        - ix. Two-story
        - x. Multi-family
        - xi. Movable wall configuration
        - xii. Warehouse/Big Box
        - xiii. ARFF Prop

972.664.9100 (f) 972.664.9122

xiv. Flashover
xv. Swift Water prop
xvi. Confined Space
xvii. Gym
xviii. Locker room (M/F separate)
xix. Showers (M/F separate)
xx. Space large enough for Defensive Tactics
xxi. Laundry room including PPE extractors
xxii. Running track/Obstacle course
xxiii. Engine Bays (2-3)

h. Maintenance/Fleet Shop
   i. Work bays (4-8)
   ii. SCBA room
   iii. Workshop

2. These components will require both indoor and outdoor space. The City's goal is to provide a joint Police and Fire Training Center that would allow for sharing of spaces and components.
3. Two separate properties have been identified for this project which already have some existing fire training and police training facilities on the sites.
4. The purpose of the complex is to provide ongoing training for Police and Fire staff to satisfy their training requirements and maintain certifications. Furthermore, an additional goal of this project is to become a regional magnet facility for public safety training in West Texas that attracts other municipal and county first responder departments.
5. The planning budget for this project is not known at this time, but as part of this master plan, an estimated budget will be identified for the project and any phases identified as part of the process.
6. Phase I Goals: 1) Prepare a Needs Assessment/Facilities Program document in coordination with fire, police and training stakeholders; 2) Develop a Campus Master Plan with preliminary footprints for each of the proposed facilities at the Training Complex; 3) Develop Conceptual Design Cost Estimates for each facility and site improvements; and 4) Develop a Phasing Plan for the proposed improvements.
7. Phase I Project Schedule is likely 3-4 months depending on city staff and stakeholder availability.
8. Discover through the design process, the components to be provided such as the tactical village, EVOC track, burn towers and other scope items listed in section I.A.1 followed by construction phasing options and overall construction durations.
9. Due to the unknown conditions, the city will likely need to engage a civil engineer to perform a title survey to locate and determine active and inactive subsurface infrastructure that might traverse the sites and influence layout of the public safety training facilities.

B. PROJECT MILESTONES

The following Milestones serve as a general outline for this master plan:

1. Milestone 1 – A two-day Benchmarking Tour & Planning Charrette, where RSA, ELM & Kramer One will meet the City of Midland stakeholders outside of midland and tour a relevant training facility (possible facility candidates are located in either Arizona or Tarrant County). This two-day meeting will begin with in-person facility tours and the following day have an initial programming session to determine the draft facilities program and scope to be planned for Midland. This will provide Midland and the design team a collaborative opportunity to discuss the approach seen in other facilities and how Midland might want to incorporate some of the successes observed during the tour.
2. Milestone 2 – Review the draft Program of Requirements which will include the square footages for each facility and serve as a list of components to be planned for the project.
3. Milestone 3 – Development of site layout and individual building footprints by the Design Team

4. Milestone 4 – Present draft site improvements and footprints for each building to Project Stakeholders
5. Milestone 5 – Present draft information to City of Midland project stakeholders
6. Milestone 6 – Finalize site layout and conceptual footprints, introduce phasing options and preliminary costs
7. Milestone 7 – Present final layouts and building footprints to key city staff. Define phasing options based on cost and needs
8. Milestone 8 – Workshop with City Council to present Needs Assessment, Master Plan, Conceptual footprints and costs (this is expected to occur around April or May of 2022)
9. Milestone 9 – Submit final report with all programming, conceptual footprints and cost information along with phasing options

II. PRE-DESIGN PHASE SERVICES

A. FACILITY PROGRAMMING (NEEDS ASSESSMENT) PHASE

1. Facility Programming/Needs Assessment Phase services to be provided by the Design Team shall consist of the following:
   a. Meet with City Staff and other individuals appointed to a Project Committee by the City to introduce the Design Team and gain an overall understanding of the City's scope, needs and goals for the project.
   b. Attend a multi-day benchmarking tour & Planning Charrette with City staff to observe peer facilities.
   c. Hold focus group meetings and interviews with the Project Stakeholders to gain an understanding of the training goals for the public safety training complex.
   d. Prepare a preliminary Program of Requirements (POR) document listing each of the requested components and its master plan requirements.
   e. Prepare Area Summary Spreadsheets as part of the POR delineating the total net and gross square footage requirements for each component of the Training Complex.
   f. Prepare design narratives describing the scope of work for each of the Training Center components
   g. Prepare test fit floor plans for each of the components of the project.
   h. Prepare a Preliminary Phasing Schedule for the components of the Training Complex.
   i. Prepare a Preliminary Cost Estimate for each of the components of the Training Complex based on historical square footage cost data and peer facility cost data provided by the Design Team.
   j. Prepare a Preliminary POR bound document with the above metrics and drawings for review with the Project Stakeholders.
   k. Meet with the Project Stakeholders and Management Staff to review the preliminary Program of Requirements (POR) document.
   l. Make adjustments and issue the final Program of Requirements for the Training Complex.

III. BASIC SERVICES

A. CONCEPTUAL DESIGN PHASE

The Conceptual Design Phase services to be provided by RSA for this project shall consist of the following:

1. Gather any owner provided title surveys, plat, zoning, setbacks and other pertinent information for the site.
2. Perform a preliminary code and zoning review for the new Training Complex and consult with the City on any issues that impact the design.
3. Meet with the Project Stakeholders to discuss conceptual locations for each of the training components on the site and their relationship to the others.

4. Prepare a proposed Training Complex Master Plan for the new Public Safety Training Facility illustrating each of the components with respect to the overall campus and adjacent properties.
5. Design team to sketch preliminary component planning solutions based on the POR metrics and information provided by the City stakeholders in regard to layouts, adjacencies and critical design needs.
6. Prepare Conceptual Design drawings including a 3D fly around model of the Training Complex Master Plan and Floor Plans of the components incorporating the preliminary planning solutions developed with the City stakeholders.
7. Prepare a Conceptual Design Cost Estimate for each of the proposed components and Phases of the Training Complex.
8. Review the Conceptual Design documents and Cost Estimates with the Project stakeholders.
9. Make adjustments to the Conceptual Design documents and Cost Estimate based on review comments received from the Project stakeholders.
10. Prepare a bound report and presentation documenting the POR and Conceptual Design documents. Deliverables will include an Executive Summary, Conceptual Design floor plan drawings, a Conceptual Site Plan for the two sites, Conceptual Design Cost Estimate and Project Phasing Schedule.
11. Assist Staff in presenting the Conceptual Master Plan & Design Floor Plan information to Council at a Council Meeting.

IV. ADDITIONAL SERVICES

A. Additional Services are all services not explicitly listed under Sections II – *Pre-Design Services* and III *Basic Services* of this Proposal. Additional Services shall be provided when requested by the Owner on an hourly or negotiated fee basis in addition to the fees charged for *Pre-Design* and *Basic Services*. Additional Services include, but are not limited to, the following:
   1. Revisions requested by the Owner to the Design Team's Work resulting in changes to the design, scope and/or quality of the Project. Revisions to the Design Team's Work or documents due to changes in the information provided to the Design Team by the Owner.
   2. Final Schematic Design, Design Development, Construction Documents, Bidding and Negotiation and Construction Administration services for the campus and individual buildings/components on the campus.
   3. LEED consulting services.
   4. Rezoning and platting services.
   5. Preparation of field measured drawings or verification of as-built conditions at the site.
   6. Research and design of off-site utilities, sidewalks and paving outside the physical site for each phase of the Public Safety Training Facility.
   7. Coordination and engineering services in connection with Texas Dept. of Transportation requirements.
   8. Surveying services.
   9. Detailed design for flood plain mitigation, adjustments or other services related to the project being located in a flood plain. (Basic Services include preliminary research and discussions with the City regarding the flood plain, which components will need to be raised out of it and the appropriate means of doing so. Preliminary cost estimates for achieving this work will be included in Basic Services as well).

V. PROFESSIONAL FEES

A. PRE-DESIGN AND BASIC SERVICES

1.	Architectural Needs Assessment/Facilities Program, Master Plan, Conceptual Floor Plans, Cost Estimates & Phasing Plan Services for the Proposed Improvements of the Public Safety Training Facility **(RSA)**	**$53,500**
2.	Fire Training & Tactical Village Consulting Services **(EL&M)**	**$41,500**
3.	Police Firing Range Assessment and Simunitions Consulting Services **(Kramer One)**	**$31,850**
4.	Cost Estimating Services **(RSA, ELM, Kramer One)**	**Included in Above**
	Total Basic Services Fees This Phase of Work	**$126,850**

B. ADDITIONAL SERVICES

Additional Services shall be provided at the following hourly rates or negotiated on a lump sum basis at the time they are required:

Principal	$250.00/hr.
Vice President	$225.00/hr.
Studio Leader	$200.00/hr.
Project Architect	$150.00/hr.
Staff Architect	$125.00/hr.
3D Visualization Artist	$125.00/hr.
Administrative Staff	$85.00/hr.

C. REIMBURSABLE EXPENSES

Reimbursable Expenses constitute expenses incurred on the City's behalf by RSA and/or our Consultants. These expenses include, but are not limited to: Travel costs to the Benchmarking Tour, travel to Midland for on-site and in-person meetings, reproduction of preliminary and final documents submitted to the City for review, mounting and laminating of presentation boards, Agency Review fees and other miscellaneous expenses incurred by the Design Team to complete the Project. RSA proposes a **lump sum amount of $13,000** for the duration of the project for reimbursable expenses which shall be billed to the Owner in addition to Basic and Additional Services on a monthly basis per the percentage of completion of the overall Basic Services fees.

VI. PROFESSIONAL REGISTRATION

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, phone: 512.305.9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Article 249A, VTCS.

VII. OTHER CONDITIONS

A. This Proposal is valid for 60 days from the date at the top of the first page of this document unless included as an attachment to a fully executed PO between the RSA and the City prior to expiration of the 60 day period.

B. The City shall provide and the Architect and his subconsultants shall be entitled to rely upon the accuracy of: 1) a Geotechnical Report for each component of the project with shallow and deep borings located as required by the Design Team and prepared specifically for this project; 2) a detailed on-site topographic and boundary survey with contours at 1' intervals, top and bottom of curb spot grades at 5'

intervals, 2 benchmarks, adjacent street grades and ROW's, tree caliper and species, and all above and below ground utilities including flow elevations; 3) a Title Survey identifying any encumbrances, active or inactive pipelines, easements, title or deed restrictions that could impact the layout and design of the public safety training complex.

C. The Owner acknowledges that all projects such as the one being contemplated are required by law to be submitted to the Texas Department of Licensing & Regulation for handicap accessibility review. The Architect will submit plans for the proposed project to TDLR for review. The Owner acknowledges that the construction documents are not complete until TDLR has approved them and any comments they require are incorporated even though construction may have begun and even be completed before comments are received. The Architect and his Consultants shall not be held financially responsible for changes to the project required by TDLR.
D. The Owner acknowledges that RSA has no responsibility for construction means and methods and that these are the sole responsibility of the Contractor.
E. The Owner acknowledges that RSA has no responsibility for construction site safety and safety procedures and that these are the sole responsibility of the Contractor.
F. The Owner acknowledges that RSA has no responsibility for the discovery of nor remediation of hazardous materials including, but not limited to, asbestos, PCP's, lead, etc. and that these are the responsibility of the Owner.

VIII. EXCLUSIONS

The following items are specifically excluded from the Design Team's scope of work and this proposal:

A. Geotechnical engineering services.
B. Environmental engineering services such as Phase I & Phase II environmental surveys of the site.
C. Title Surveys – These will be important and owner provided to determine the locations of any oil pipelines, subsurface infrastructure, title or easement constraints.
D. Site surveying (topographic and boundary with utilities information)
E. Off-site paving, utilities and drainage system design services

Randall Scott Architects appreciates the opportunity to submit the above Proposal and looks forward to working with the City of Midland on this important Project!

Thank you,



Preston Scott, AIA, LEED AP
Principal

RANDALL SCOTT ARCHITECTS, INC.

PROFESSIONAL SERVICES AGREEMENT
#22000515

THIS AGREEMENT is made and effective the 15 day of December 2021, by and between the CITY OF MIDLAND, TEXAS ("*CITY*"), and, Randall Scott Architects ("*COMPANY*").

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform a master plan for the architectural and engineering services for the Midland Public Safety Training Facility services for CITY.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in **Exhibit A.**
2. COMPANY shall perform the services described in **Exhibit A** (i) with the professional skill and care ordinarily provided by competent engineers and architects practicing in the same or similar locality and under the same or similar circumstances and professional license and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed $126,850.00 for the professional services described in **Exhibit A**. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** incurred during the previous month that have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from December 15, 2021 until the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit -
	Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and

employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Randall Scott Architects
2140 Lake Park Blvd.. Ste 300
Richardson, TX 75080

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the

giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

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

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

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

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

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

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

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

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

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Randall Scott Architects, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged

to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____,
20____.

_____

Notary Public, State of _____

EXHIBIT "A"

RANDALL SCOTT ARCHITECTS

ARCHITECTURE | INTERIORS | PLANNING

December 1, 2021

Chief Blumenauer
Fire Chief
City of Midland | Fire Department
1500 W. Wall | Midland, TX 7970

RE: FEE PROPOSAL TO PROVIDE NEEDS ASSESSMENT, MASTER PLANNING & COST ESTIMATING SERVICES FOR A NEW PUBLIC SAFETY TRAINING FACILITY FOR THE CITY OF MIDLAND, TEXAS

I. PROJECT SCOPE

This proposal is submitted by Randall Scott Architects, Inc. (hereinafter referred to as RSA or Architect) to the City of Midland (hereinafter referred to as City, Owner or Client) to provide Architectural, Engineering and Specialized Consulting Services for the Needs Assessment, Master Planning and Cost Estimating of a new Public Safety Training Facility for the City of Midland, Texas.

A. PROJECT CRITERIA

The following information about the Project was conveyed to RSA by Chief Blumenauer and Chief Herman over the course of several meetings in November 2021

1. The **Scope of Work** for this project consists of the Needs Assessment, Master Planning & Cost Estimate for a new joint-use Public Safety Training Facility to include:
    - a. Administration Building
    - b. Offices for Training Chiefs, Training Captains and Administrative Assistants
    - c. Multi-purpose rooms
    - d. Small meeting rooms
    - e. Classrooms
        - i. 6 smaller classrooms (30 people)
        - ii. 1 larger, partitionable (200 people – 4-5 smaller rooms)
        - iii. Conference room (20 people)
        - iv. EMS Lab
        - v. Computer lab (20 pc's)
    - f. Support spaces such as bathrooms, break room, kitchen and showers
    - g. Training Field to include the following possible facilities
        - i. an EVOC / Driving Track (which might include a possible pursuit driving track).
        - ii. Class A Burn Building
        - iii. Class B Burn Building/props
        - iv. Training Tower
        - v. Outdoor Classroom – Open air – "dirty" room
        - vi. Simunitions storage and cleaning structure
        - vii. Multiple Buildings (Theatrical smoke and sim-round capable)
        - viii. Single Family
        - ix. Two-story
        - x. Multi-family
        - xi. Movable wall configuration
        - xii. Warehouse/Big Box
        - xiii. ARFF Prop

972.664.9100 (f) 972.664.9122

xiv. Flashover
xv. Swift Water prop
xvi. Confined Space
xvii. Gym
xviii. Locker room (M/F separate)
xix. Showers (M/F separate)
xx. Space large enough for Defensive Tactics
xxi. Laundry room including PPE extractors
xxii. Running track/Obstacle course
xxiii. Engine Bays (2-3)

h. Maintenance/Fleet Shop
   i. Work bays (4-8)
   ii. SCBA room
   iii. Workshop

2. These components will require both indoor and outdoor space. The City's goal is to provide a joint Police and Fire Training Center that would allow for sharing of spaces and components.
3. Two separate properties have been identified for this project which already have some existing fire training and police training facilities on the sites.
4. The purpose of the complex is to provide ongoing training for Police and Fire staff to satisfy their training requirements and maintain certifications. Furthermore, an additional goal of this project is to become a regional magnet facility for public safety training in West Texas that attracts other municipal and county first responder departments.
5. The planning budget for this project is not known at this time, but as part of this master plan, an estimated budget will be identified for the project and any phases identified as part of the process.
6. Phase I Goals: 1) Prepare a Needs Assessment/Facilities Program document in coordination with fire, police and training stakeholders; 2) Develop a Campus Master Plan with preliminary footprints for each of the proposed facilities at the Training Complex; 3) Develop Conceptual Design Cost Estimates for each facility and site improvements; and 4) Develop a Phasing Plan for the proposed improvements.
7. Phase I Project Schedule is likely 3-4 months depending on city staff and stakeholder availability.
8. Discover through the design process, the components to be provided such as the tactical village, EVOC track, burn towers and other scope items listed in section I.A.1 followed by construction phasing options and overall construction durations.
9. Due to the unknown conditions, the city will likely need to engage a civil engineer to perform a title survey to locate and determine active and inactive subsurface infrastructure that might traverse the sites and influence layout of the public safety training facilities.

B. PROJECT MILESTONES

The following Milestones serve as a general outline for this master plan:

1. Milestone 1 – A two-day Benchmarking Tour & Planning Charrette, where RSA, ELM & Kramer One will meet the City of Midland stakeholders outside of midland and tour a relevant training facility (possible facility candidates are located in either Arizona or Tarrant County). This two-day meeting will begin with in-person facility tours and the following day have an initial programming session to determine the draft facilities program and scope to be planned for Midland. This will provide Midland and the design team a collaborative opportunity to discuss the approach seen in other facilities and how Midland might want to incorporate some of the successes observed during the tour.
2. Milestone 2 – Review the draft Program of Requirements which will include the square footages for each facility and serve as a list of components to be planned for the project.
3. Milestone 3 – Development of site layout and individual building footprints by the Design Team

4. Milestone 4 – Present draft site improvements and footprints for each building to Project Stakeholders
5. Milestone 5 – Present draft information to City of Midland project stakeholders
6. Milestone 6 – Finalize site layout and conceptual footprints, introduce phasing options and preliminary costs
7. Milestone 7 – Present final layouts and building footprints to key city staff. Define phasing options based on cost and needs
8. Milestone 8 – Workshop with City Council to present Needs Assessment, Master Plan, Conceptual footprints and costs (this is expected to occur around April or May of 2022)
9. Milestone 9 – Submit final report with all programming, conceptual footprints and cost information along with phasing options

II. PRE-DESIGN PHASE SERVICES

A. FACILITY PROGRAMMING (NEEDS ASSESSMENT) PHASE

1. Facility Programming/Needs Assessment Phase services to be provided by the Design Team shall consist of the following:
   a. Meet with City Staff and other individuals appointed to a Project Committee by the City to introduce the Design Team and gain an overall understanding of the City's scope, needs and goals for the project.
   b. Attend a multi-day benchmarking tour & Planning Charrette with City staff to observe peer facilities.
   c. Hold focus group meetings and interviews with the Project Stakeholders to gain an understanding of the training goals for the public safety training complex.
   d. Prepare a preliminary Program of Requirements (POR) document listing each of the requested components and its master plan requirements.
   e. Prepare Area Summary Spreadsheets as part of the POR delineating the total net and gross square footage requirements for each component of the Training Complex.
   f. Prepare design narratives describing the scope of work for each of the Training Center components
   g. Prepare test fit floor plans for each of the components of the project.
   h. Prepare a Preliminary Phasing Schedule for the components of the Training Complex.
   i. Prepare a Preliminary Cost Estimate for each of the components of the Training Complex based on historical square footage cost data and peer facility cost data provided by the Design Team.
   j. Prepare a Preliminary POR bound document with the above metrics and drawings for review with the Project Stakeholders.
   k. Meet with the Project Stakeholders and Management Staff to review the preliminary Program of Requirements (POR) document.
   l. Make adjustments and issue the final Program of Requirements for the Training Complex.

III. BASIC SERVICES

A. CONCEPTUAL DESIGN PHASE

The Conceptual Design Phase services to be provided by RSA for this project shall consist of the following:

1. Gather any owner provided title surveys, plat, zoning, setbacks and other pertinent information for the site.
2. Perform a preliminary code and zoning review for the new Training Complex and consult with the City on any issues that impact the design.
3. Meet with the Project Stakeholders to discuss conceptual locations for each of the training components on the site and their relationship to the others.

4. Prepare a proposed Training Complex Master Plan for the new Public Safety Training Facility illustrating each of the components with respect to the overall campus and adjacent properties.
5. Design team to sketch preliminary component planning solutions based on the POR metrics and information provided by the City stakeholders in regard to layouts, adjacencies and critical design needs.
6. Prepare Conceptual Design drawings including a 3D fly around model of the Training Complex Master Plan and Floor Plans of the components incorporating the preliminary planning solutions developed with the City stakeholders.
7. Prepare a Conceptual Design Cost Estimate for each of the proposed components and Phases of the Training Complex.
8. Review the Conceptual Design documents and Cost Estimates with the Project stakeholders.
9. Make adjustments to the Conceptual Design documents and Cost Estimate based on review comments received from the Project stakeholders.
10. Prepare a bound report and presentation documenting the POR and Conceptual Design documents. Deliverables will include an Executive Summary, Conceptual Design floor plan drawings, a Conceptual Site Plan for the two sites, Conceptual Design Cost Estimate and Project Phasing Schedule.
11. Assist Staff in presenting the Conceptual Master Plan & Design Floor Plan information to Council at a Council Meeting.

IV. ADDITIONAL SERVICES

A. Additional Services are all services not explicitly listed under Sections II – *Pre-Design Services* and III *Basic Services* of this Proposal. Additional Services shall be provided when requested by the Owner on an hourly or negotiated fee basis in addition to the fees charged for *Pre-Design* and *Basic Services*. Additional Services include, but are not limited to, the following:
   1. Revisions requested by the Owner to the Design Team's Work resulting in changes to the design, scope and/or quality of the Project. Revisions to the Design Team's Work or documents due to changes in the information provided to the Design Team by the Owner.
   2. Final Schematic Design, Design Development, Construction Documents, Bidding and Negotiation and Construction Administration services for the campus and individual buildings/components on the campus.
   3. LEED consulting services.
   4. Rezoning and platting services.
   5. Preparation of field measured drawings or verification of as-built conditions at the site.
   6. Research and design of off-site utilities, sidewalks and paving outside the physical site for each phase of the Public Safety Training Facility.
   7. Coordination and engineering services in connection with Texas Dept. of Transportation requirements.
   8. Surveying services.
   9. Detailed design for flood plain mitigation, adjustments or other services related to the project being located in a flood plain. (Basic Services include preliminary research and discussions with the City regarding the flood plain, which components will need to be raised out of it and the appropriate means of doing so. Preliminary cost estimates for achieving this work will be included in Basic Services as well).

V. PROFESSIONAL FEES

A. PRE-DESIGN AND BASIC SERVICES

1.	Architectural Needs Assessment/Facilities Program, Master Plan, Conceptual Floor Plans, Cost Estimates & Phasing Plan Services for the Proposed Improvements of the Public Safety Training Facility **(RSA)**	**$53,500**
2.	Fire Training & Tactical Village Consulting Services **(EL&M)**	**$41,500**
3.	Police Firing Range Assessment and Simunitions Consulting Services **(Kramer One)**	**$31,850**
4.	Cost Estimating Services **(RSA, ELM, Kramer One)**	**Included in Above**
	Total Basic Services Fees This Phase of Work	**$126,850**

B. ADDITIONAL SERVICES

Additional Services shall be provided at the following hourly rates or negotiated on a lump sum basis at the time they are required:

Principal	$250.00/hr.
Vice President	$225.00/hr.
Studio Leader	$200.00/hr.
Project Architect	$150.00/hr.
Staff Architect	$125.00/hr.
3D Visualization Artist	$125.00/hr.
Administrative Staff	$85.00/hr.

C. REIMBURSABLE EXPENSES

Reimbursable Expenses constitute expenses incurred on the City's behalf by RSA and/or our Consultants. These expenses include, but are not limited to: Travel costs to the Benchmarking Tour, travel to Midland for on-site and in-person meetings, reproduction of preliminary and final documents submitted to the City for review, mounting and laminating of presentation boards, Agency Review fees and other miscellaneous expenses incurred by the Design Team to complete the Project. RSA proposes a **lump sum amount of $13,000** for the duration of the project for reimbursable expenses which shall be billed to the Owner in addition to Basic and Additional Services on a monthly basis per the percentage of completion of the overall Basic Services fees.

VI. PROFESSIONAL REGISTRATION

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, phone: 512.305.9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Article 249A, VTCS.

VII. OTHER CONDITIONS

A. This Proposal is valid for 60 days from the date at the top of the first page of this document unless included as an attachment to a fully executed PO between the RSA and the City prior to expiration of the 60 day period.

B. The City shall provide and the Architect and his subconsultants shall be entitled to rely upon the accuracy of: 1) a Geotechnical Report for each component of the project with shallow and deep borings located as required by the Design Team and prepared specifically for this project; 2) a detailed on-site topographic and boundary survey with contours at 1' intervals, top and bottom of curb spot grades at 5'

intervals, 2 benchmarks, adjacent street grades and ROW's, tree caliper and species, and all above and below ground utilities including flow elevations; 3) a Title Survey identifying any encumbrances, active or inactive pipelines, easements, title or deed restrictions that could impact the layout and design of the public safety training complex.

C. The Owner acknowledges that all projects such as the one being contemplated are required by law to be submitted to the Texas Department of Licensing & Regulation for handicap accessibility review. The Architect will submit plans for the proposed project to TDLR for review. The Owner acknowledges that the construction documents are not complete until TDLR has approved them and any comments they require are incorporated even though construction may have begun and even be completed before comments are received. The Architect and his Consultants shall not be held financially responsible for changes to the project required by TDLR.
D. The Owner acknowledges that RSA has no responsibility for construction means and methods and that these are the sole responsibility of the Contractor.
E. The Owner acknowledges that RSA has no responsibility for construction site safety and safety procedures and that these are the sole responsibility of the Contractor.
F. The Owner acknowledges that RSA has no responsibility for the discovery of nor remediation of hazardous materials including, but not limited to, asbestos, PCP's, lead, etc. and that these are the responsibility of the Owner.

VIII. EXCLUSIONS

The following items are specifically excluded from the Design Team's scope of work and this proposal:

A. Geotechnical engineering services.
B. Environmental engineering services such as Phase I & Phase II environmental surveys of the site.
C. Title Surveys – These will be important and owner provided to determine the locations of any oil pipelines, subsurface infrastructure, title or easement constraints.
D. Site surveying (topographic and boundary with utilities information)
E. Off-site paving, utilities and drainage system design services

Randall Scott Architects appreciates the opportunity to submit the above Proposal and looks forward to working with the City of Midland on this important Project!

Thank you,

Preston Scott, AIA, LEED AP
Principal

RANDALL SCOTT ARCHITECTS, INC.

City Council Meeting

Item Number: 17

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 DRAINAGE SYSTEM MOWING, MEDIAN MAINTENANCE AND TREE TRIMMING PROJECT TO VAULT MOBILE STORAGE, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,000,000.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for FY 2022 Drainage System Mowing, Median Maintenance and Tree Trimming.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY22 General Fund Operating Budget..

Discussion:

The City Manager approved specifications and authorized advertisement for bids. Thirty (30) bid requests were issued for the FY 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project. We received three (3) bids. Staff recommends awarding to the apparent low bidder, Vault Mobile Storage, LLC. Please see the attached memo from Abe Langston, Transportation Manager, for further information.

Therefore, please consider a resolution awarding a contract to Vault Mobile Storage, LLC of Midland, Texas for the FY 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project for a not to exceed amount of $1,000,000.00.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: Recommend Award; FY 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project; Bid # 22001096

DATE: December 2, 2021

CC: Gabe McClelland, Senior Engineering Manager

The bid tabulation for the Fiscal Year 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project has been reviewed by the Transportation Division. Drainage System Mowing is done to ensure that the various structures control storm water runoff and contribute to the reduction of flooding problems. Drainage structures that are not properly maintained will eventually malfunction. When they fail, very serious hazards can occur, including severe flooding and damage that can be difficult and costly to repair and cleanup.

In-house crews will continue to complete drainage mowing however, outsourcing some of the mowing will allow the Transportation Division to be more responsive to our mowing needs during the spring and summer months.

Median maintenance is necessary to prevent weeds and other undesirable plants from taking root in xeriscaped medians. This maintenance will ensure that medians keep their appealing appearance.

Tree trimming is necessary in order to remove low hanging limbs over city streets which are hazardous to construction crews and equipment that are scheduled to do road maintenance in the area. Having these limbs professionally pruned has proven more desirable by tree owners than having those limbs either torn off by construction equipment or being trimmed by road crews inexperienced with tree maintenance.

Vault Mobile Storage, LLC is the apparent low bidder and does this type of work for other organizations. Also, the unit prices appear to be in line with current pricing and trends. Therefore, I am recommending award of the Fiscal Year 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project to Vault Mobile Storage, LLC for an amount not to exceed $1,000,000.00. Please see the funding source below:

Funding Source:

Contract Amount Not to Exceed: **$1,000,000.00** (00185 54120; Maintenance Storm Sewers)

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 DRAINAGE SYSTEM MOWING, MEDIAN MAINTENANCE AND TREE TRIMMING PROJECT TO VAULT MOBILE STORAGE, LLC OF MIDLAND, TEXAS, AT A TOTAL COST NOT TO EXCEED $1,000,000.00; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager advertised for competitive bids for the Fiscal Year 2022 Drainage System Mowing, Median Maintenance and Tree Trimming Project (the "Project"); and

WHEREAS, Bid No. 22001096 was opened on December 1, 2021, with the lowest responsible bidder being Vault Mobile Storage, LLC of Midland, Texas ("Contractor"), having submitted a bid of $598,390.80 to establish unit prices as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the total cost of the work to be completed, according to the previously advertised specifications and the unit prices in Exhibit "A", shall not exceed $1,000,000.00; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Contractor for said Project;

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 Contractor for said Project at a total cost not to exceed $1,000,000.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract in an amount not to exceed $1,000,000.00 from funds available in the FY22 General Fund Operating Budget upon receipt of proper

invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22001096 **Drainage System Mowing, Median Maintenance and Tree Trimming Project** **OPENED** December 1, 2021			Slateco, INC Po Box 554 Farwell, TX 79325 Kolter Defoot 575-910-0627		M3 Landscape Maintenance & Irrigation LLC PO BOX 80298 Midland, TX 79708 432-967-3125		Vault Mobile Storage LLC 415 W. Wall St. Ste 326 Midland, TX 79701 Nick 432-599-3025	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	540	Mowing (3 cycles)	$350.00000	$189,000.00	$250.0000	$135,000.00	$325.0000	$175,500.00
2	350	Tree Trimming	$185.00	$64,750.00	$225.00	$78,750.00	$300.00	$105,000.00
3	2,651,760	No Mow Areas (Xeriscape and Beds)	$0.17	$450,799.20	$0.17	$450,799.20	$0.08	$212,140.80
4	480	Irrigation Maintenance	$125.00	$60,000.00	$150.00	$72,000.00	$125.00	$60,000.00
5	160	Irrigation Installation/Renovation	$185.00	$29,600.00	$250.00	$40,000.00	$125.00	$20,000.00
6	35	Tree Removal Type A	$750.00	$26,250.00	$850.00	$29,750.00	$550.00	$19,250.00
7	10	Tree Removal Type B	$850.00	$8,500.00	$1,200.00	$12,000.00	$650.00	$6,500.00
		TOTALS:		$828,899.20		$818,299.20		$598,390.80

Bidding Summary:

30 **Bid requests were issued.**

3 **Bids listed above**

0 **NO BIDS were received.**

27 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 22001096 **Drainage System Mowing, Median Maintenance and Tree Trimming Project** **OPENED** December 1, 2021			Slateco, INC Po Box 554 Farwell, TX 79325 Kolter Defoot 575-910-0627		M3 Landscape Maintenance & Irrigation LLC PO BOX 80298 Midland, TX 79708 432-967-3125		Vault Mobile Storage LLC 415 W. Wall St. Ste 326 Midland, TX 79701 Nick 432-599-3025	
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6	35	Tree Removal Type A	$750.00	$26,250.00	$850.00	$29,750.00	$550.00	$19,250.00
7	10	Tree Removal Type B	$850.00	$8,500.00	$1,200.00	$12,000.00	$650.00	$6,500.00
		TOTALS:		$828,899.20		$818,299.20		$598,390.80

Bidding Summary:

30 **Bid requests were issued.**

3 **Bids listed above**

0 **NO BIDS were received.**

27 **Bidders did not respond.**

CITY OF MIDLAND
SERVICE CONTRACT
#22001096

THIS CONTRACT, effective this 15th day of December 15, 2021, by and between the City of Midland, hereinafter referred to as the "CITY" and Vault Mobile Storage, LLC, hereinafter referred to as the "COMPANY".

Projected Annual Cost not to exceed: $1,000,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be from the effective date of this Contract until September 30, 2022. CITY shall have the right to renew this Contract for up to four(4) additional one (1) year terms by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. Vault Mobile Storage, LLC
415 W, Wall Street, Ste 326
Midland, Texas 79701

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY

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

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of

damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely

responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

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

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

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

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

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

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

intentionally fails to comply with a requirement of that subchapter.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of __Vault Mobile Storage, LLC , known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 20____.

_____

Notary Public, State of _____

CITY OF MIDLAND

PURCHASING DIVISION DATE:11/08/2021

BID REQUEST PAGE:01

(THIS IS NOT AN ORDER) **BID NO: 22001096**

OPENING TIME: 2:00 PM **CLOSING DATE: 12/1/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Loraine, Ste 330, Midland, Texas UNTIL 2:00 P.M. 12-1-21 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various Locations Midland, Texas

			DESCRIPTION		
			Labor, material, and supervision necessary to complete the Drainage Mowing, Median Maintenance and Tree Trimming Project in accordance with the attached bid schedule, specifications, and contract.	$598,391	

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. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. 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.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **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.
6. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

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: Vault Mobile Storage LLC
ADDRESS 415 W. Wall St. Ste 326
CITY Midland ST TX ZIP 79701
PHONE NO. 432 599 3025 FAX NO.
EMAIL: Nick@VaultMidland.com

CASH DISCOUNT: _____ %_____DAYS

DELIVERY CAN BE MADE_____

AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

BID SCHEDULE

FY 2022 Drainage System Mowing, Median Maintenance, & Tree Trimming Project

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the various items of the project.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City.

Award of contract shall be determined by the lowest responsible bid based on the total quantities and unit prices of the base bid. Payment shall be based on the unit price for the actual amount of such work completed.

The initial term of the contract shall be from the date of award until September 30, 2022 for an amount not to exceed $1,000,000.00. If the Owner and Contractor agree in writing, the contract may be renewed for up to four additional one year terms: October 1, 2022 to September 30, 2023 for an amount not to exceed $1,250,000.00; October 1, 2023 to September 30, 2024 for an amount not to exceed $1,500,000.00; October 1, 2024 to September 2025 for an amount not to exceed $1,750,000.00; and October 1, 2025 to September 30, 2026 for an amount not to exceed $2,000,000.00. The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

BASE BID – FY 2022 Drainage System Mowing, Median Maintenance, & Tree Trimming Project

Item	Description	Unit	Qty	Unit Price	TOTAL
1	Mowing (3 Cycles)	Acres	540	$325.00	$175,500.00
2	Tree Trimming	Hours	350	$300.00	$105,000
3	No Mow Areas (Xeriscape and Beds)	SQ FT	2,651,760	$0.08	$212,141.00
4	Irrigation Maintenance	Hours	480	$125.00	~~$48,000.00~~ $60,000.00
5	Irrigation Installation/Renovation	Hours	160	$125.00	$20,000.00
6	Tree Removal Type A	EA	35	$550.00	$19250.00
7	Tree Removal Type B	EA	10	$650.00	$6500.00

TOTAL BASE BID: $598,391.00

Submitted: _____
for Vault Mobile Storage LLC Contractor

Drainage System Mowing, Median Maintenance, & Tree Trimming Project

Scope of Work: To provide tree removal, xeriscape maintenance, irrigation system maintenance/installation, and tree and shrub pruning as specified herein and including all provisions set forth in the accompanying documentation. The Contractor shall also provide mowing services in City maintained detention and retention basins, outfalls, channels, medians and other various locations throughout the City including mowing, line trimming, litter and trash disposal, and large obstacle pick up, and other such work as required for the maintenance of designated areas and properties for the City of Midland.

RENEWAL NOTES

The initial term of the contract shall be from the date of award until September 30, 2022 for an amount not to exceed $1,000,000.00. If the Owner and Contractor agree in writing, the contract may be renewed for up to four additional one year terms: October 1, 2022 to September 30, 2023 for an amount not to exceed $1,250,000.00; October 1, 2023 to September 30, 2024 for an amount not to exceed $1,500,000.00; October 1, 2024 to September 2025 for an amount not to exceed $1,750,000.00; and October 1, 2025 to September 30, 2026 for an amount not to exceed $2,000,000.00. The exact value of tasks assigned under the annual contract renewals, if any, shall be determined by the City based on available funds, as authorized by the City Council.

GENERAL NOTES

1. If used, all barricades, signs and traffic control for this project shall conform to the latest edition of the Texas Manual on Uniform Traffic Control Devices (TMUTCD) for Streets and Highways.
2. Proper traffic control is the sole responsibility of the Contractor and shall be in accordance with the TMUTCD.
3. If traffic control is to be used, the Contractor shall be responsible for the traffic control plan and shall submit it to the Project Manager for their approval forty-eight (48) hours prior to the beginning of work.
    - Once a traffic control plan has been submitted, no work may begin before the traffic control plan has been approved and implemented.
4. Contractor shall make an examination of the project site and completely familiarize himself with the nature and extent of the work to be accomplished. No extra compensation will be allowed for any work made necessary by unusual conditions or obstacles encountered during the progress of the work, which conditions or obstacles are readily apparent upon a visit to the site. If there are any questions in this regard or if there are any discrepancies between the plans and the actual site conditions, the Contractor shall notify the Project Manager prior to the submission of bids.
5. All operations shall be accomplished in accordance with applicable regulations of the U.S. Occupational Safety and Health Administration. Copies of the OSHA Standards may be purchased from the U.S. Government Printing Office; information and related reference materials may be obtained from OSHA; 903 San Jacinto, Austin, Texas.
6. The Contractor shall at all times comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect the Contract of the work performed there under, an shall hold harmless, defend, and indemnify the City against

claims arising from the violation of any such laws, ordinances and regulations, whether by the Contractor or its employees.

7. Contractor shall comply with all applicable local, state, and federal requirements regarding excesses and waste material, including methods of handling and disposal.
8. Care shall be used to create a safe work area, with minimal impact on the flow of traffic on nearby streets.
9. Any existing pavement, curbs, and/or sidewalk, or anything else damaged or removed by the contractor that are not part of this contract are to be repaired by the Contractor to at least the preexisting condition at his expense before acceptance of the work.
10. Contractor shall make all due precautions to protect existing facilities from damage. Any damage to existing facilities incurred as a result of these mowing operations are to be repaired immediately by the contractor to at least the pre-existing condition at no additional cost to the owner.
11. Contractor is responsible for complying with all applicable environmental laws.
12. The project area and surrounding areas that are utilized by the Contractor shall be kept in a neat and orderly manner. Project clean up shall be done on a daily basis. Areas that have been chosen by the Contractor for storing of material and equipment shall be out of public access and not create hazardous conditions for the public. These areas shall be kept in a neat and orderly manner and cleaned on a daily basis. Any revegetation of these areas shall be at the Contractor's expense.
13. The Contractor shall not use any facilities of a private property owner without a written agreement that is furnished to the City of Midland. These facilities shall include but not limited to private properties for storage, water, trash receptacles, etc. All City ordinances must be followed.
14. The Contractor shall not place spoils on private property without a written agreement that is furnished to the City of Midland.
15. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.
16. All services herein provided shall be done in a courteous and orderly manner with a minimum of inconvenience to the tenants/residents and Owner's representatives. All maintenance personnel shall be appropriately and neatly dressed at all times while on the job.
17. Contractor and all employees shall wear proper personal protective equipment (PPE) in order to ensure both employee and public safety.
    - Contractor and all employees shall dress and remain dressed in a presentable fashion due to high public visibility. Should problems occur, Contractor will be advised of the circumstances and shall take appropriate action. Dressing problems include but are not limited to bare chest (not shirt), shorts while working, and absence of proper PPE.
18. The personnel performing the services described herein shall be under the sole responsibility and the employ of the Contractor and shall be constantly supervised and shall be competent, experienced, and skilled equipment operators.
19. Subcontracting—The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this contract. The Contractor further agrees that subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the Contractor from his full obligations to the Owner, as provided by the contract documents.

MOWING NOTES

1. Equipment—High production tractors with rotary mowers will normally be used to provide the necessary even cut on outfalls and basins. All mowing equipment shall be equipped with a slow moving vehicle emblem located on the rear of the tractor. An amber flashing light mounted on top of the tractor and operating is preferred but not required.
    - Other equipment such as zero turn mowers and push mowers may be used to supplement the work but shall not be the principle means of mowing. Hand mowing equipment, such as weed trimmers, may be used to mow around culverts, sign posts, delineators, flex beam guardrails, ditch-bottoms, etc., as directed by the Project Manager.
    - Other types of grass-cutting equipment may be used provided they have been approved by the Project Manager prior to use.
    - All rotary mowers must meet or exceed the manufacturer's recommendations with regard to equipment chutes, guards, and other safety apparatuses, etc. In the absence of approved manufacturer's recommended safety appliances, all mowers shall be equipped with safety chains, guards, chutes or the appropriate safety device to prevent damage to property by flying debris from the mower. Chains shall meet or exceed the manufacturer's recommendations and/or be sufficient size and links spaced side by side around the mower's front and sides and long enough to drag the ground at all times. On the rear of the mower, the length of the chains shall meet or exceed the manufacturer's recommendations.
    - All mowers shall be kept in good operating condition and shall be maintained to provide a clean sharp cut of vegetation at all times.
    - All equipment shall be approved by the Project Manager.
2. Travel Time—All costs for travel to and from and between mowing sites will be included in the unit price and shall be incidental to the performance of this contract.
3. Litter and Trash Pick-up—All trash debris shall be picked up and disposed of by the Contractor prior to performing each cycle of work.
    - Failure to pick up litter and trash prior to mowing will result in a deduction of 25% of the cycle payment for each location.
4. Obstructions— Prior to mowing, examine the area to be mowed for objects that may cause damage or be damaged such as washed out holes, pipes, wires, conduits, poles, or sanitary sewer manholes. Special care shall be taken by the contractor to locate all sanitary sewer manholes in the area before mowing operations commence.
    - Special care shall be taken to mow around sanitary sewer manholes without damaging them.
    - Any damage to sanitary sewer manholes incurred as a result of these mowing operations are to be repaired immediately by the Contractor to at least the pre-existing condition at no additional cost to the owner.
    - Any debris that enters a sanitary sewer manhole that has been damaged by the Contractor shall be vacuumed and/or removed at no additional cost to the owner.
    - When obstructions are determined to be such that work cannot be accomplished without danger to personnel or public utilities, the Contractor shall notify the utility involved and the Project Manager at least five (5) days before anticipated work is to begin.
5. Protection of Property—The Contractor shall mow as close as practicable to all fixed objects exercising extreme care not to damage trees, cultivated plants and shrubs,

delineators or other appurtenances, including all street surfaces, sidewalks, curbs, gutters, and fencing.

- Contractor will be responsible for immediate notification of all damage to private or public property; including, but not limited to a sprinkler system, lighting, signs, posts, guardrail, meter boxes and/or covers, windows, fences, gates, vehicles, trees and shrubs of all sites caused by Contractor and/or employees.
- Contractor shall report said damage to the Inspector and/or Project Manager. After reporting any such damage, the Contractor shall be responsible for the cost of repairing any damage caused by Contractor to City property or private property including pavement, sidewalks, sign posts and/or vehicles caused by Contractor's employees or equipment.
- Any such damaged property shall be put in the same condition it was prior to beginning the work.
- All repairs shall be inspected by the Inspector regardless of whether the damage was on City or private property. In no event shall such inspection make any City employee an agent of a private landowner or absolve the Contractor of any liability to a private landowner.

6. Large Item Removal—Prior to mowing, examine the area to be mowed for large objects that may cause damage. If these objects can reasonably be removed, the Contractor shall extract them before mowing begins. If the obstacle is too large, the Contractor shall notify the Inspector and mow around the obstruction.
    - Large items shall be removed and disposed of in an appropriate device or deposited at the landfill.
    - If upon inspection a large amount of trash and/or other such litter is found in the mowing area, the Contractor shall notify the Inspector who may arrange to have the trash picked up prior to mowing operations.
    - All basins shall be kept clean of excess grass clippings, litter, soil and debris. A free flow of water shall be maintained at all times.
    - All liter and debris collection and removal shall be considered incidental to the project.
7. Line Trimming—All sites shall be neatly trimmed; the mowing of sites includes trimming around trees, shrubs, swales, equipment, fencing, asphalt, sign posts, light poles, concrete curbs, guard railing, foot paths, paved areas, rip-rapped culverts, drainage swales, concrete drainage valley gutters, and manholes.
8. Mowing Next to Streets—When mowing within four (4') feet of the travel way (travel lane) with no curb and gutter, the equipment shall be operated in the same direction of the traffic, unless the adjacent lane is closed to traffic with appropriate traffic control devices and signs.
    - Mowers may operate in either direction when mowing four (4') feet or more from the travel way or if they operate behind the back of curb without encroaching into oncoming traffic.
    - If used, traffic control devices may not be left on the street overnight; they must be removed at the end of each workday.
9. Vegetation should be uniformly cut to a height of six (6") inches with a maximum tolerance of one (1") inch plus or minus, unless directed by the Project Manager. Contractor is to ensure that the grass, weeds or other vegetation that exceeds the aforementioned 6-inch maximum height after the initial cutting is re-cut to the desired height.

- Mowing will not be permitted when, in the opinion of the Inspector or Project Manager, soil and weather conditions prohibit access to the basins. Normally, the necessary uniform cut will not be achievable through the use of weed trimmers throughout an entire large area, but the Inspector may make exceptions to the uniformity requirement when required by limited access conditions.
- Contractor shall take care not to scalp—action that results in mowing any vegetation below a six (6") inch height down to and including the soil—any of the areas being mowed.
- No accumulation or piling of cuttings will be allowed as a result of cleaning of the equipment.
- The use of hand tools, such as weed trimmers, when used on slopes or around appurtenances shall comply with the six (6") inch maximum height requirement.

10. Contractor shall ensure that care is taken to prevent discharge of grass clippings onto any paved surface such as streets, parking lots, sidewalks, or driveways and onto any adjacent properties. Any material so discharged shall be removed immediately prior to proceeding with mowing of other areas.
11. Any equipment left on the right-of-way overnight shall be parked outside the clear zone (thirty [30'] feet from the road edge), except in median areas where no equipment will be permitted to be parked overnight.
12. The Contractor shall ensure that the work area is clean and neat and free of all debris at the end of each work day before leaving the jobsite.
13. The City may, at its discretion, select individual sites not to be mowed or to be mowed on a different schedule.
14. The City reserves the right to add additional sections for mowing to the schedule. The Contractor shall provide any additional mowing services at the agreed upon acreage unit price or portion thereof in 1/2 acre increments.
15. Inspections—The Inspector will make daily inspections of the project related to the appearance of the mowed areas and the Contractor's performance. The Contractor shall make repairs and adjustments as required by the Inspector or the Project Manager.
    - In the event that a mowing is considered to be unsatisfactory, Contractor shall re-mow the unsatisfactory area at Contractor's expense within three (3) days after receiving notification.
    - City reserves the right to withhold payment for missed, incomplete or unsatisfactory mowing performance.
16. Steep Slopes—The City of Midland has channels and/or basins that may have steep slopes. If the Contractor does not have the necessary equipment to maintain these areas or if the Contractor feels that mowing these areas presents a serious risk to persons and/or equipment, the Contractor may choose not to mow those areas. Contractor shall make a list of these areas and give it to the Project manager. Contractor **is not required** to mow areas that present an undue risk to persons and/or equipment.

MOWING SCHEDULE

1. This contract shall be for mowing all areas indicated on the table below three (3) times per year: April (1 cycle); June/July (1 cycle); September (1 cycle).
2. Contractor agrees that one cycle of mowing of all areas on the table below shall be completed in no later than three (3) weeks. Contractor further agrees that mowing shall

commence within two (2) weeks of the City's request for mowing operations to commence.

3. The City may add or remove areas to be mowed during each cycle of mowing.
4. It shall be the responsibility of the contractor to provide a project schedule to City staff prior to the onset of operations. The schedule should outline the anticipated start and end dates for each phase of the mowing operations.
5. The Contractor shall notify the Inspector and/or the Project Manager should any unforeseen problems arise or if mowing is not to occur on any given day due to weather or any other reason.
6. It will be the Contractor's responsibility to provide adequate personnel, materials and equipment to meet his participation and commitments to these schedules.

Mowing Areas		
Area	**Location**	**Est. Area**
2 lots at Cuthbert and Garfield	2201 & 2301 Cuthbert	.41
Bandolier Basin	1520 E Mockingbird	9.18
Big Blue Basin	East end of Big Blue Ave.	49.12
Briarwood Basin	Briarwood and Oriole	9.95
Briarwood Channel	Briarwood and Northbrook	4.78
Caldera Basin	Behind 4703 N Midkiff	8.54
Cinergy Basin	BI-20 Srvc & Loop 250 Exit, SWC	2.05
Exeter Basin	East of 3000 Blk of Tealwood	2.21
Frio Basin	Frio and Holiday Hill Rd.	7.22
Greathouse Basin	Oriole and Oak Valley	9.01
Idlewilde Basin	Idlewilde and Preston	6.96
Idlewilde Channel	Between 5323 & 5303 Sinclair	.45
Jal Draw/Northwest Channel	Behind 6000 W. Wadley	25.6
Jal Draw/Northwest Channel	Between 5718 League & 5700 Blk San Saba	6.93
Jal Draw/Northwest Channel	Behind 5320 W Loop 250 N	2.04
Mockingbird Basin	East and south of 4113 Mockingbird	4.85
Northcrest Basin	Northcrest Dr and Northgate Ave	1.68
Princeton Lot	Btwn 1401 Midland & 4406 Princeton	2.83
Ranchero Ditch	2700 Blk Midkiff & I-20 Srvc	.08
Ranchero Ditch	2720 S Midkiff (westside)	.17
Ranchero Ditch	S Midkiff & WCR 113 NWC	.09
Ranchero Ditch	S Midkiff & WCR 113 SWC	.4
Sinclair Lot	4900 Sinclair	2.76
Southridge Basin	Southridge and Eastview	1.31
Stonebridge Basin	1300 E Mockingbird	6.17
Tejas Basins	1200 Tejas	.74
Transportation Stockpile ROW	Cuthbert b/t Tilden & Fairgrounds Rd	.58
Upland Basin (Grafa 2)	South of 7 Ridgmar Ct.	4.41
Veterans Airpark North	Big Spring & Veterans Airpark	.58
Veterans Airpark South	Big Spring & Veterans Airpark	.19
Wood Dr Drainage Ditch	4400-4800 Blk Wood Dr.	1.12
Woodcrest Basin	Woodcrest & Sinclair	.21

Misc. Mowing/Future Basins	Various Locations	7.38
TOTAL		**180**

TREE TRIMMING NOTES (For Road Maintenance Projects)

1. All crews shall be trained to correctly trim trees in accordance with acceptable practices endorsed by the International Society of Arboriculture and Tree Care Industry Association and Publication ANSI A300 Standard.
2. Contractor shall have a current full-time International Society of Arboriculture (ISA) Certified Arborist or ISA Board Certified Master Arborist on staff who will be available to speak with citizens and directly address any concerns that arise concerning trees selected to be trimmed as part of this project.
3. Contractor shall trim all trees in accordance with the current ANSI A300 standards.
4. Contractor shall use commercial grade equipment that is professionally maintained.
5. Contractor shall use extreme care when trimming trees on rights of way or adjacent to private property and/or near public utilities. Any damage done to private property will be remediated to the property owner's satisfaction by the Contractor and at their own expense. Damage to public utilities shall be restored to its original condition and position without compensation from the City.
6. **Utilities:** Contractor shall be responsible at their own cost for any and all work, expense, or special precautions caused or required by the existence or proximity of utilities encountered in performing the work under this contract. The Contractor's on-site supervisor shall be fully conversant in the safety procedures to be followed in case of an accident involving utility lines. The Contractor is to request service by Oncor if the proximity of any power lines does not allow work to proceed safely.
7. The Contractor shall be responsible for disposing of cut branches and any other debris resulting from the work.
    - Wood chips may be disposed of at the municipal landfill (1701 E Garden City Hwy) at the Contractor's expense.
8. The Contractor shall ensure that the work area is clean and neat and free of all debris at the end of each workday before leaving the jobsite.
9. All cuts on oak trees shall be coated with approved tree wound paint immediately after making each cut.
10. Contractor shall cut and/or reduce any branches that are growing lower than fourteen (14) feet above the pavement at the back of the curb or any other portion of the tree or tree limbs that are growing in a manner that interferes with or causes an obstruction to the paving equipment that will access the street for paving operations.
11. Trimming shall be done in such a way as to provide a minimum clearance of fourteen (14) vertical feet above any portion of the surface of the street pavement.

12. Contractor shall not cut any portion of the tree or tree limb that is located on private property; the Contractor may only cut portions that are growing in or over city owned right-of-way.
13. The Contractor does not necessarily have to cut large diameter branches (≥6") that may be lower than the required fourteen (14) vertical feet above the street level if the Paving Contractor can reasonably work around the branch and still complete the paving needed in the vicinity.
14. Contractor shall provide two separate notices to each resident and/or business who has trees that will need to be trimmed:
    - **1st Notice** shall be given one month prior to beginning the actual trimming work.
    - **2nd Notice** shall be given at least seventy-two hours (72) prior to beginning work.
    - Contractor shall indicate the day(s) crews will be present.
    - Provide methods and precautions that will be taken to mitigate stress to the effected trees and the potential spread of disease.
    - Provide phone numbers of at least two (2) individuals who represent the CONTRACTOR who can be reached at any time during the work.
    - Warn of potential vehicle tow away and other construction issues affecting the neighborhood.
    - Should work not occur on a specified day, contractor shall issue an updated notice.
    - If the City of Midland supplies the Contractor with notices, the Contractor shall distribute the City supplied notices instead of their own three (3) days prior to beginning work.

NO MOW AREAS (XERISCAPE and/or BEDS & SHRUBS/TREES) NOTES

1. General work requirements for all no mow areas: litter and trash pick-up, weed control, bed and shrub maintenance, and tree/shrub trimming. Contractor shall spray herbicide and trim weeds that grow along concrete joints on all concrete medians and on all parts of xeriscaped areas where no vegetation is supposed to be growing.
2. Contractor shall trim all trees in accordance with the current ANSI A300 standards.
3. Contractor shall have someone on staff who is a licensed landscape irrigator (through the Texas Commission on Environmental Quality) and can provide a proficient crew who can install, renovate, and repair irrigation/sprinkler systems. This person(s) must be able to respond when requested by Transportation personnel within 36 hours.
4. Irrigation specialist crews shall be available on an as needed basis to adjust, repair, and/or install/renovate irrigation/sprinkler systems.
5. City may add or remove areas to be maintained during each cycle of xeriscape maintenance.
6. Cycle Frequency for Regular Xeriscape Maintenance:
    - 1 cycle per month.....12 Cycles

NO MOW AREAS (XERISCAPE and/or BEDS & SHRUBS/TREES)		
AREA	**LOCATION**	**EST. SQ FT**
Midland Sign (and bricked area)	Hwy 349 and Solomon Ln. (5100 N Big Spring)	15,480
Midland Sign (and bricked area)	Hwy 158 and Lamesa Rd. NEC	5,000
Bluebird Ln Medians	b/t Midland Dr. and Diamond Dr.	13,845
Briarwood Medians	b/t Holiday Hill Rd. and Avalon Dr.	39,741
Corporate Dr Medians	b/t Big Spring St. and Edwards St.	4,970
Garfield St Medians and Circle	Garfield and Cuthbert	21,400
Lamesa Rd Medians	North and south of Front St.	21,760
Midland Dr Medians	b/t Briarwood and Loop 250 (not big triangle island)	4,945
Ranch and Carriage Circle	Ranch Ave. and Carriage Rd.	472
Ranch and Flats Circle	Ranch Ave. and Flats Ct.	455
Riverside concrete channel	b/t Hilltop Dr. and Oak Valley Dr.	8,600
Thomason Medians and Circle	Thomason and Illinois/Beal	21,400
Tradewinds Medians and Circle	b/t Thomason Dr. and Starboard Dr.	61,301
Winchester Ct Island	Next to 8 Winchester Ct.	1,611
TOTAL		**220,980**

TREE REMOVAL NOTES

1. Any trees to be removed shall be tagged for removal by Transportation personnel.
2. Tree stumps should be ground to a level below the surrounding ground and filled to maintain a level surface.
    - For trees growing in the slope of a channel the stumps shall be cut to ground level leaving the rest intact.
3. Contractor shall be responsible for removing all litter from site. The contractor will leave the area with a finished appearance with walks, curbs, and street areas having been swept, and lawn areas raked. All leaves/pine needles, branches, and limbs shall be removed.
4. Tree caliper will determine the type of tree removal. Caliper is measured 18" above the soil line.
5. Tree removal Type A—Trees 24" caliper and under (Estimate 35 removals per year)
6. Tree removal Type B—Trees over 24" caliper (Estimate 10 removals per year)

PAY ITEM NOTES

1. All necessary equipment, labor and materials necessary to mow for one year (3 cycles) all City maintained detention and retention basins, outfalls, channels, properties, and medians at various locations throughout the City including mowing, line trimming, litter and trash disposal, and large obstacle pick up, and other such work as required for the maintenance of designated areas and properties for the City of Midland as well as any other tools or other equipment and incidentals necessary to complete the work in

accordance with attached Bid Item Notes and Specifications. Payment for this item shall be by the acre mowed.

2. All necessary equipment, labor and materials to produce and hang notices to businesses and residences in the area, provide jobsite safety, and jobsite signing/traffic control in accordance with TMUTCD standards, as well as any labor, tools, tree wound paint, or other equipment or incidentals necessary to complete the work, debris removal, and clean-up of the area in accordance with attached Bid Item Notes and Specifications. Payment for this item shall be per hour worked for a standard 3-person manual crew for pruning (not an aerial crew).
3. All necessary equipment, labor and materials necessary to dispose of trash and litter, spray herbicide, do any required shrub and/or bed maintenance, and tree/shrub trimming, and other such work as required for the maintenance of the City of Midland's no mow areas (xeriscape and/or beds & shrubs/trees) for one year (12 cycles) as well as any other tools or other equipment and incidentals necessary to complete the work in accordance with the attached Bid Item Notes and Specifications. Payment for this item shall be by the square foot (SF).
4. All necessary equipment, labor, tools, and incidentals necessary for a licensed Landscape Irrigator/Technician to come and do routine maintenance and/or adjustments on various irrigation and sprinkler systems throughout the City. Payment for this item shall be per hour worked for a standard crew. **NOTE:** this pay item does not include any parts that may be needed. City will pay separately for all necessary parts to complete the work.
5. All necessary equipment, labor, tools, and incidentals necessary for licensed Landscape Irrigator/Technician(s) to come and do irrigation system installation and/or renovation at various locations throughout the City. Payment for this item shall be per hour worked for a standard crew. **NOTE:** this pay item does not include any parts that may be needed. City will pay separately for all necessary parts to complete the work.
6. All necessary equipment, labor and materials necessary to remove Type A trees (24" caliper and under) as well as grind the stumps to a level below the surrounding ground and filled, as well as removal of all branches, stumps and other debris resulting from the work; as well as any other tools or other equipment and incidentals necessary to complete the work in accordance with attached Bid Item Notes and Specifications. Payment for this item shall be for each tree removed.
7. All necessary equipment, labor and materials necessary to remove Type B trees (over 24" caliper) as well as grind the stumps to a level below the surrounding ground and filled, as well as removal of all branches, stumps and other debris resulting from the work; as well as any other tools or other equipment and incidentals necessary to complete the work in accordance with attached Bid Item Notes and Specifications. Payment for this item shall be for each tree removed.

Vault Mobile Storage LLC
Vendor Name

INSTRUCTIONS TO BIDDERS

Bid # 22001096

1. **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 OR FAX: (432) 685-0523
P.O. Box 1152 E-Mail: purchasing@midlandtexas.gov
Midland, TX 79702

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

2. **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.

3. **BID WAIVERS:**

A. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, 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 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 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 THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

B. 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).

C. 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 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 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 the Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company 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 Company that Company's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

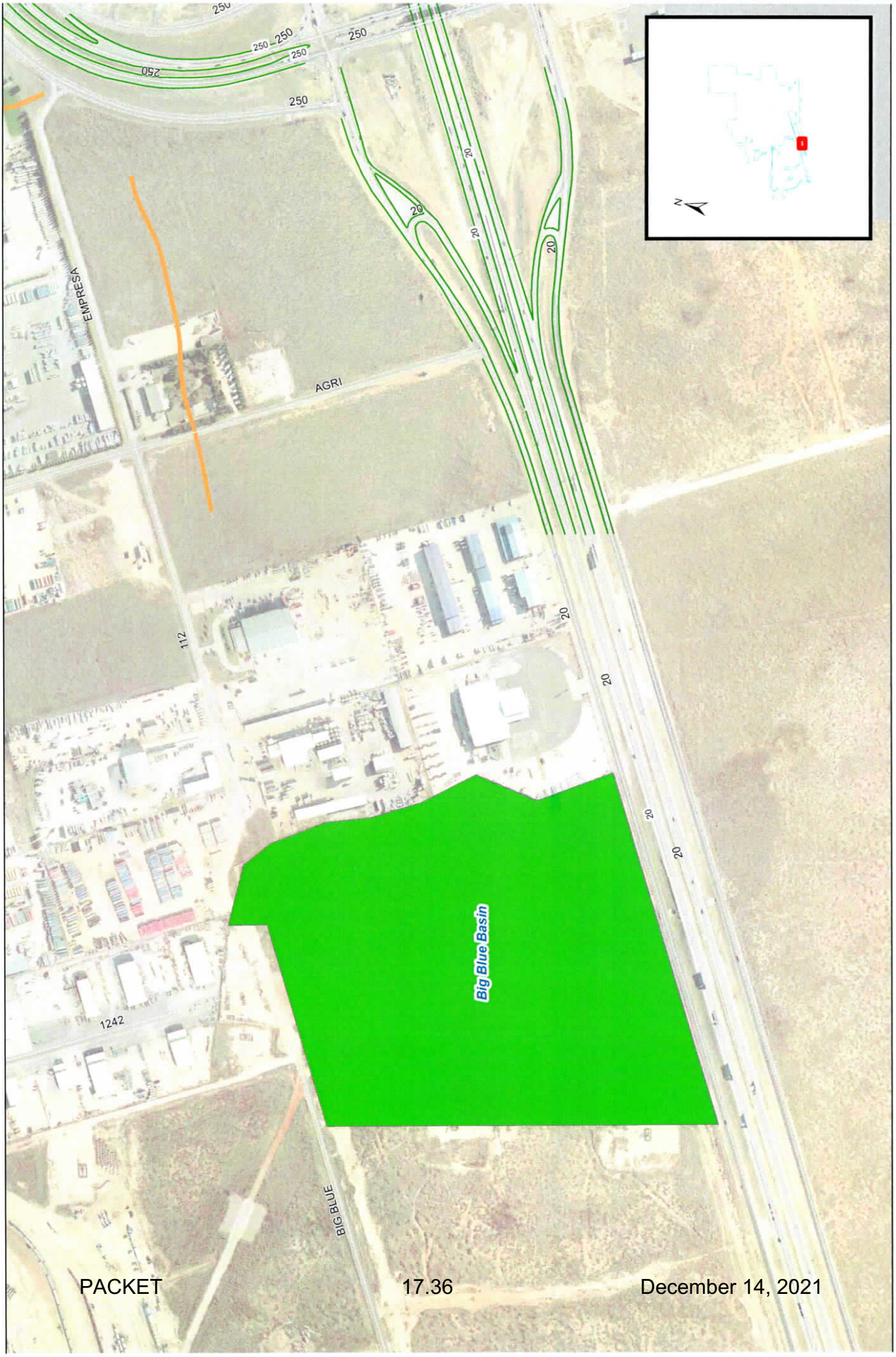
The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually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

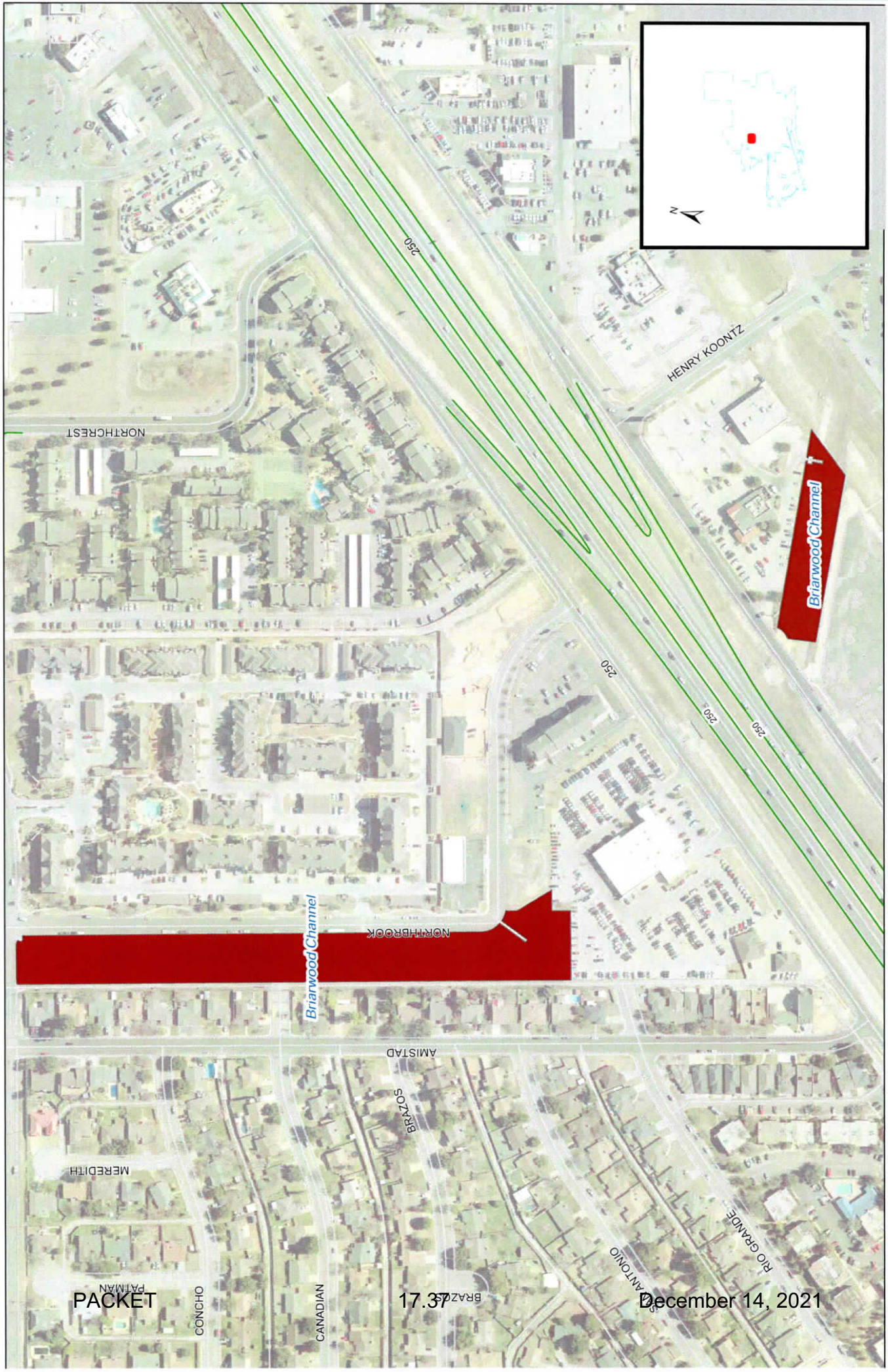
knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Contract are reasonable.

The bidder agrees that this is the intentional relinquishment of the above listed rights.

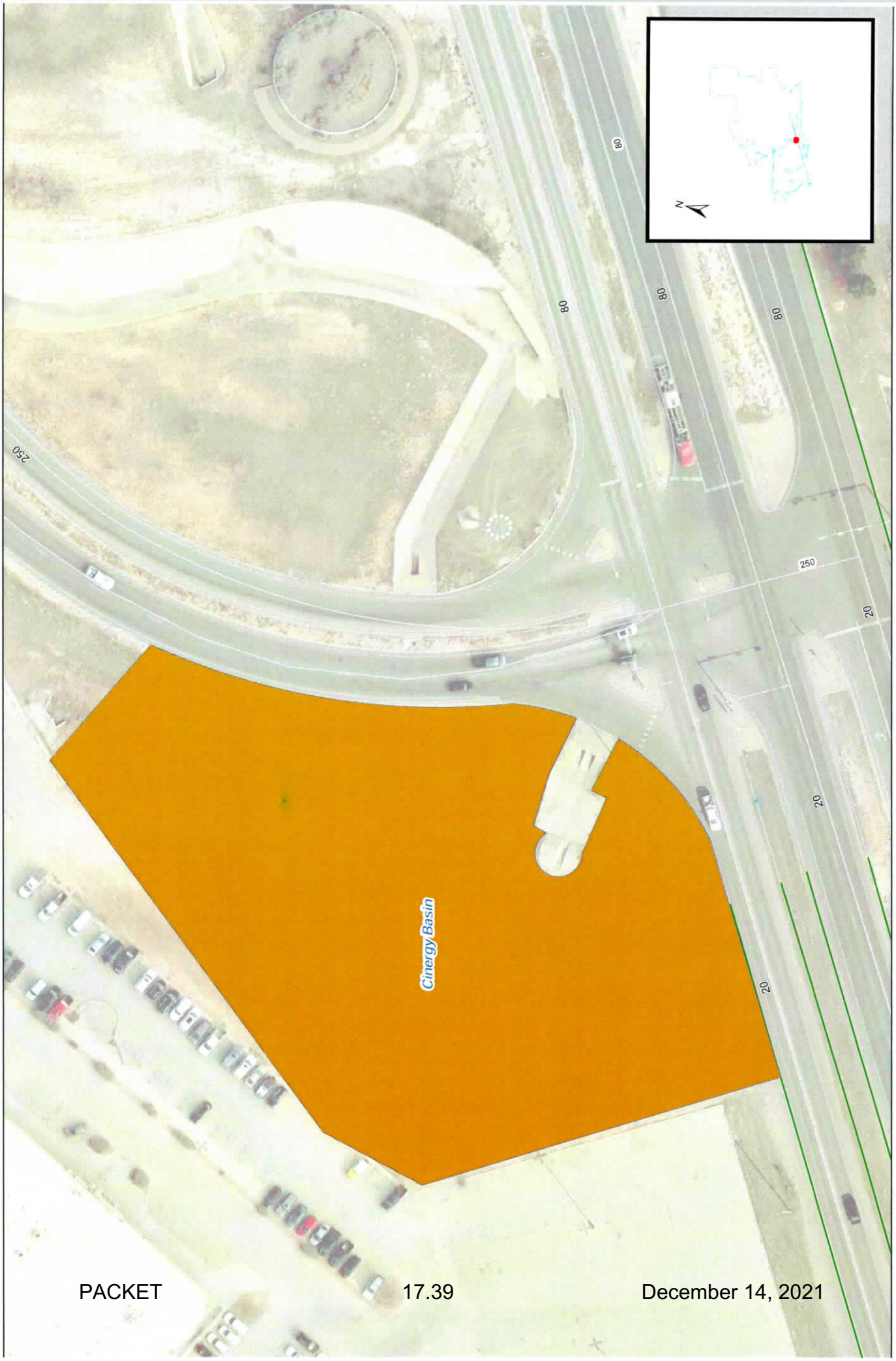
By Signing below, your company agrees to the above waiver(s). If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

Vault Mobile Storage LLC	11/28/2021
Company Name	Date
Authorized Signature	432-599-3025
	Phone
Matt Weatherford	
Print Above Name	Fax


250
250
250
250
250
250
20
20
20
20
20
20
20
20
20
EMPRESA
AGRI
112
1242
BIG BLUE
Big Blue Basin
N


250
HENRY KOONTZ
NORTHCREST
Briarwood Channel
250
250
250
NORTHBROOK
Briarwood Channel
AMISTAD
BRAZOS
MEREDITH
PATMAN
CONCHO
CANADIAN
BRAZOS
SAN ANTONIO
RIO GRANDE

MIDKIFF
MIDKIFF
CALDERA
CRISTA
Caldera Basin
N


N
80
80
80
250
250
20
20
20
Cinergy Basin

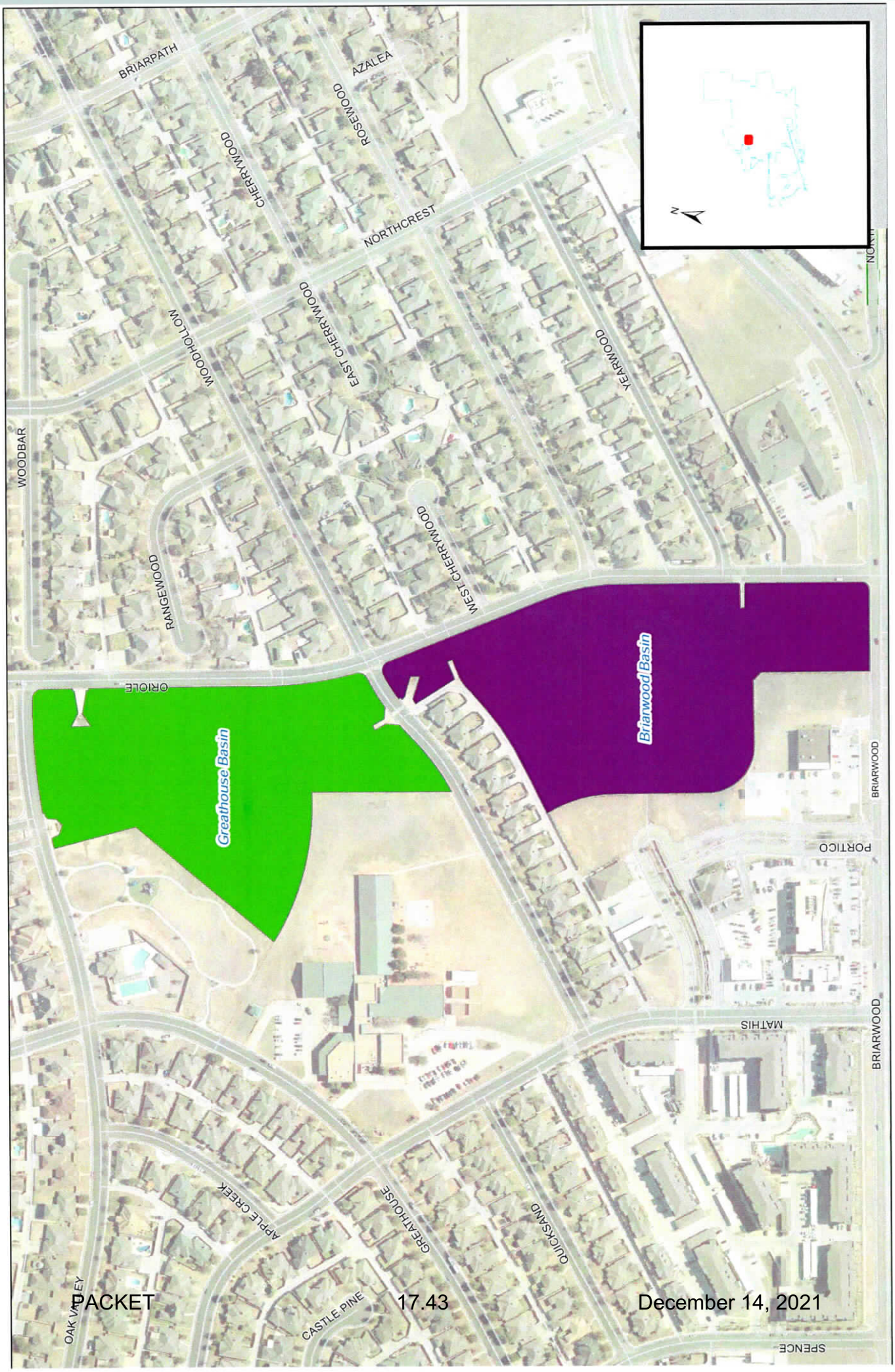
EXETER
ANDOVER
N
Exeter Basin
TEALWOOD
EMERSON
WHITNEY

SPENCE
CONROE
CANADIAN
BRAZOS
HOLIDAY HILL
HOLIDAY HILL
Frio Basin
FRIO
GUADALUPE
GUADALUPE
SAN CLEMENTE
CASA GRANDE
CAMINO REALE
SAN CARLOS



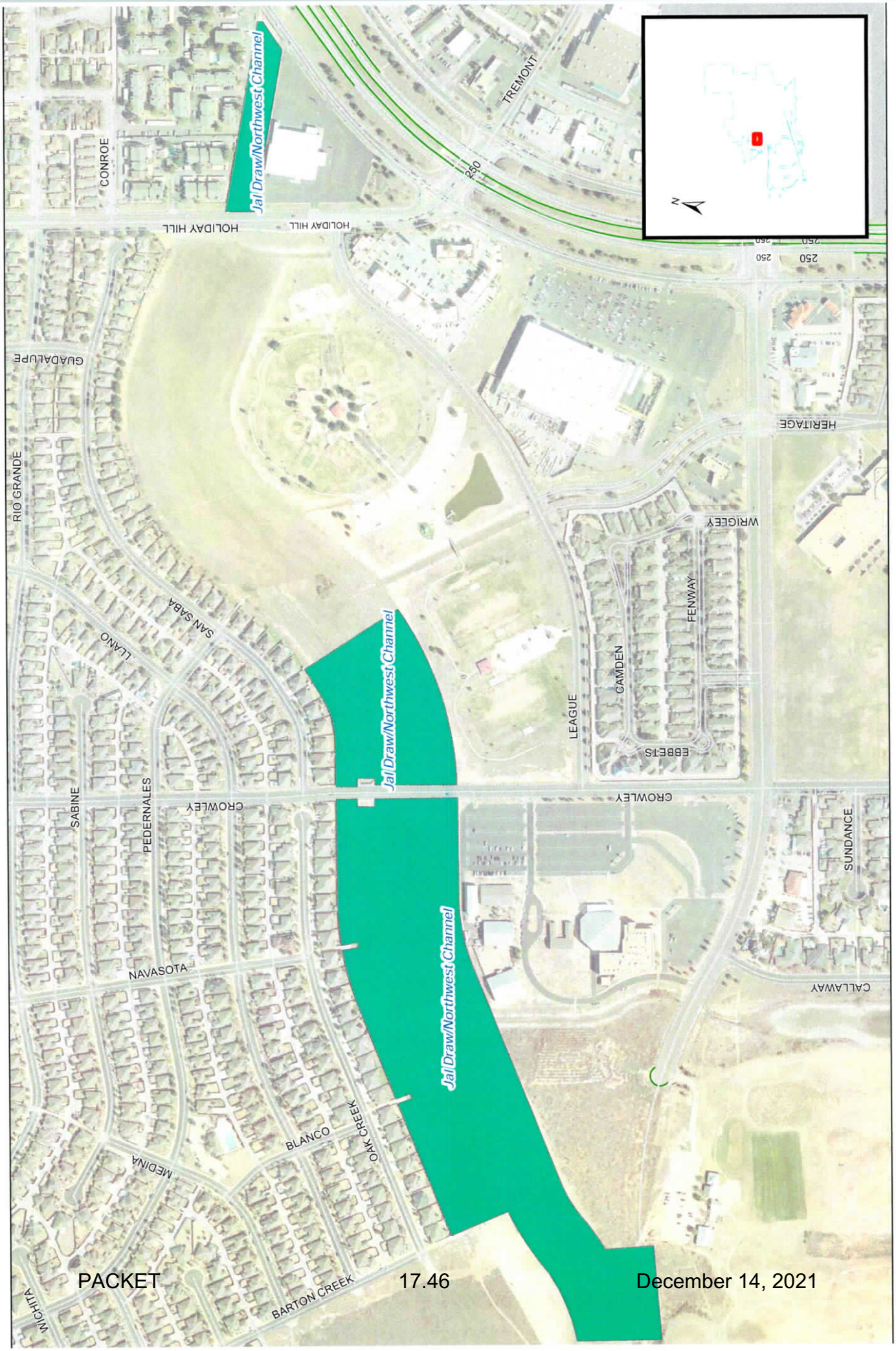
FY2022 Mowing Project
175.17 Acres

2210 Cuthbert	Greathouse Basin	Starboard Basin
2301 Cuthbert	Idlewilde Basin	Stonebridge Basin
Bandolier Basin	Idlewilde Channel	Tejas Basins
Big Blue Basin	Jal Draw/Northwest Channel	Transportation Stockpile ROW
Briarwood Basin	Mockingbird Basin	Upland Basin (Grafa 2)
Briarwood Channel	Northcrest Basin	Veterans Airpark North
Caldera Basin	Princeton Lot	Veterans Airpark South
Cinergy Basin	Ranchero Drainage Ditch	Wood Dr. Drainage Ditch
Exeter Basin	Sinclair Lot	Woodcrest Basin
Frio Basin	Southridge Basin	


BRIARPATH
AZALEA
ROSEWOOD
CHERRYWOOD
NORTHCREST
WOODHOLLOW
EAST CHERRYWOOD
YEARWOOD
WOODBAR
RANGEWOOD
WEST CHERRYWOOD
ORIOLE
Greathouse Basin
Briarwood Basin
BRIARWOOD
PORTICO
MATHIS
BRIARWOOD
APPLE CREEK
GREATHOUSE
QUICKSAND
OAK VALLEY
CASTLE PINE
SPENCE
N

PHILLIP
WHITTLE
PRESTON
Idlewilde Basin
IDLEWILDE
N

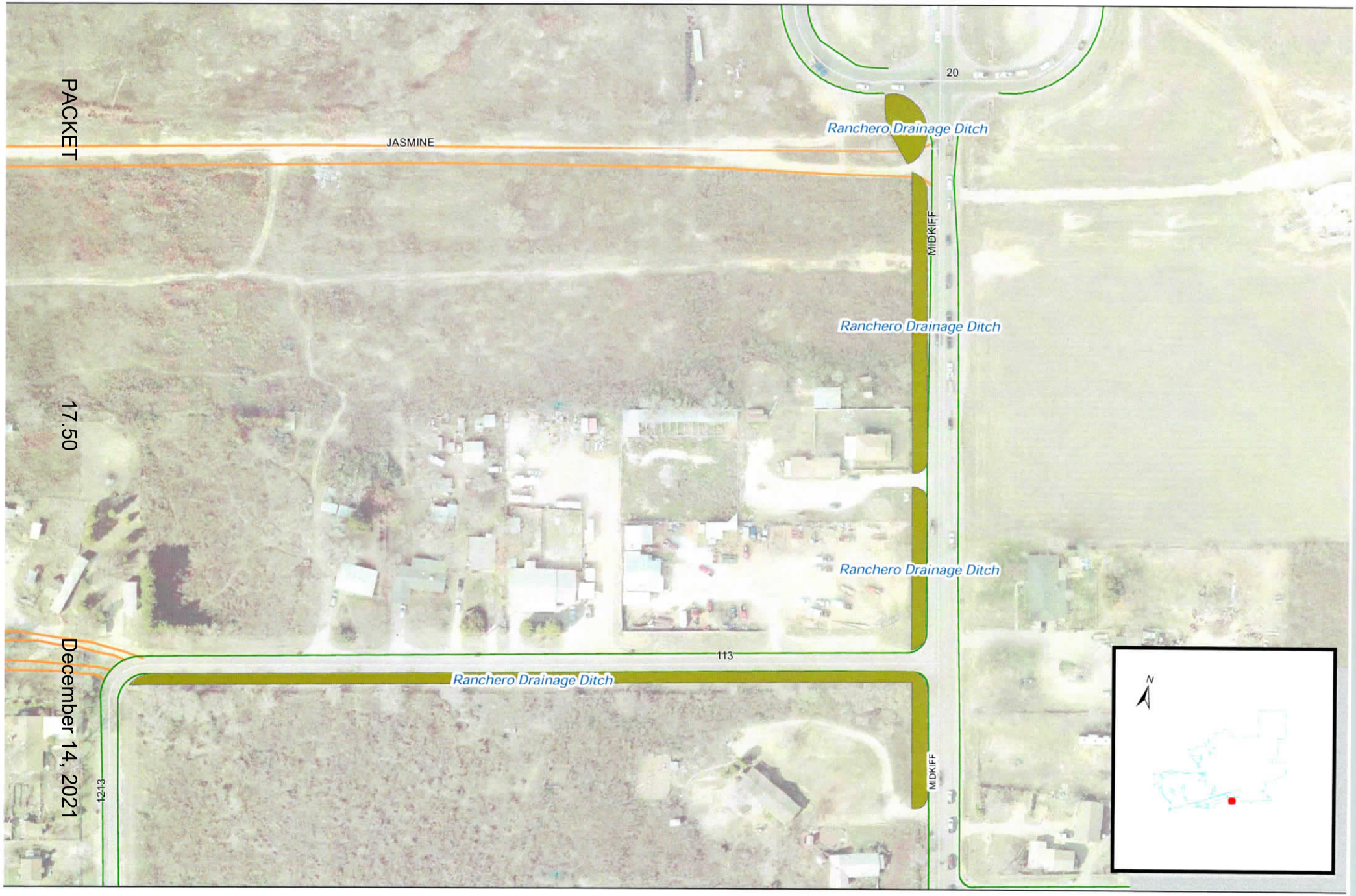
Woodcrest Basin
LINDORA
ADOBE
LAJITAS
ELDORADO
SINCLAIR
PALO DURO
CHISOS
BANDERA
MUSTANG
MCKITTRICK
Sinclair Lot
Idlewilde Channel
RIVERDALE
CHARLOTTE
N


Jal Draw/Northwest Channel
TREMONT
CONROE
HOLIDAY HILL
250
GUADALUPE
RIO GRANDE
HERITAGE
WRIGLEY
FENWAY
CAMDEN
LEAGUE
EBBETTS
SAN SABA
LLANO
CROWLEY
SABINE
PEDERNALES
SUNDANCE
NAVASOTA
CALLAWAY
BLANCO
OAK CREEK
MEDINA
WICHITA
BARTON CREEK

MOCKINGBIRD
MOCKINGBIRD
VALWOOD
Mockingbird Basin
N


NORTHCREST
Northcrest Basin
BRIARWOOD
BRIARWOOD
NORTHGATE
N


DOUGLAS
MIDLAND
MIDLAND
PRINCETON
Princeton Lot
N


20
Ranchero Drainage Ditch
JASMINE
MIDKIFF
Ranchero Drainage Ditch
Ranchero Drainage Ditch
113
Ranchero Drainage Ditch
1213
MIDKIFF
N

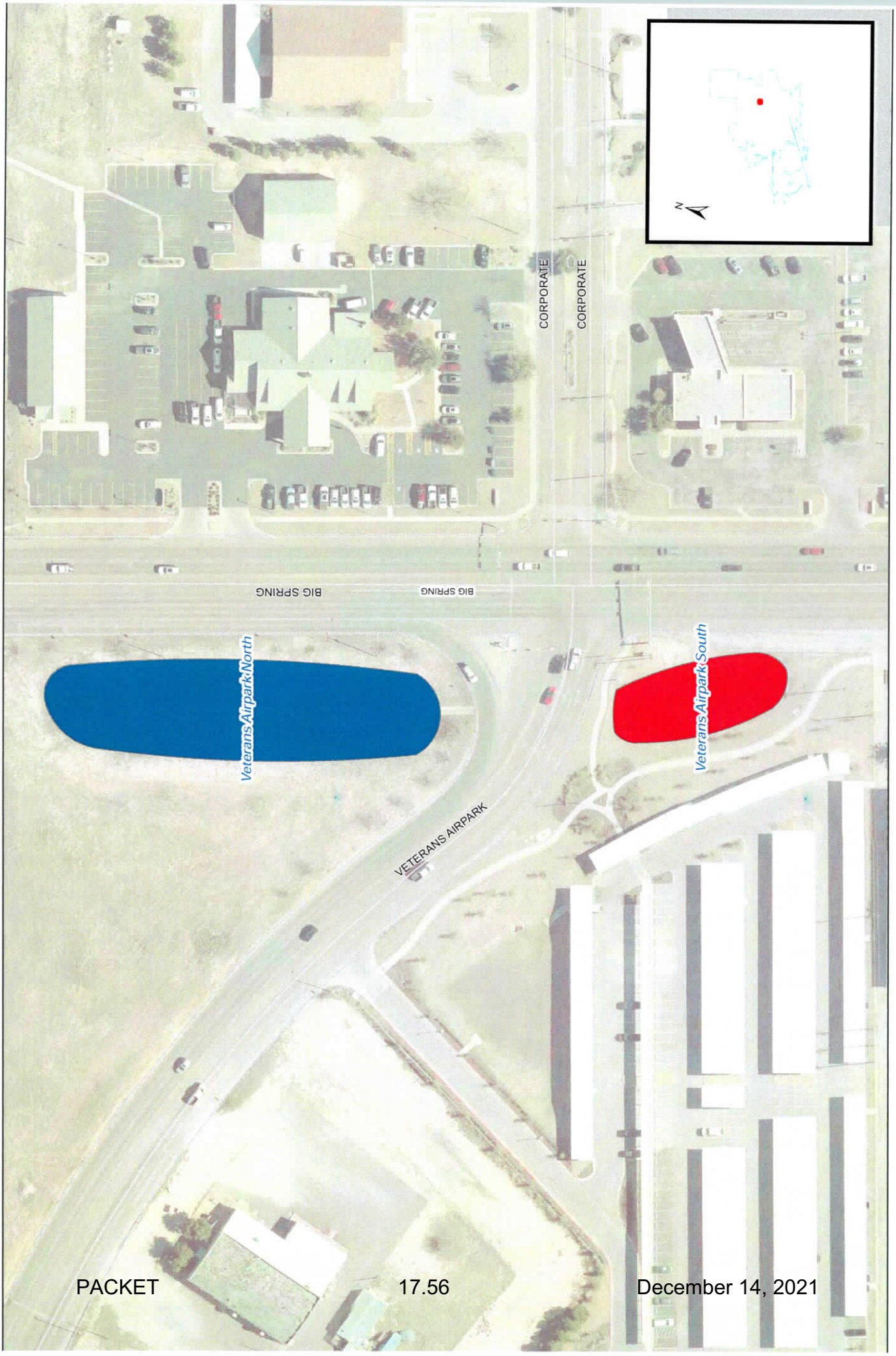
Southridge Basin
EASTVIEW
SOUTHRIDGE

Bandolier Basin
Stonebridge Basin
MOCKINGBIRD
BANDOLIER
LAGUNA MEADOWS
PAVILION
MADRONE
STONEBRIDGE
SANTA CLARA
ACOMA
WESTIN
MAGELLAN
SIERRA
RODEO
BACA
GALLOP
N

Tejas Basins
Tejas Basins
TEJAS
349 ACCESS
N
349
349

FAIRGROUNDS
FAIRGROUNDS
CUTHBERT
WEBSTER
BENTON
CLAY
CHERRY
Transportation Stockpile ROW
N

MIDKIFF
MIDKIFF
Upland Basin (Grafa 2)
UPLAND
HUMBLE
SWELL


CORPORATE
CORPORATE
BIG SPRING
BIG SPRING
Veterans Airpark North
Veterans Airpark South
VETERANS AIRPARK

MIDLAND
MIDLAND
DOGWOOD
DRIFTWOOD
HACKBERRY
TEAKWOOD
Wood Dr. Drainage Ditch
SHADY OAK
FIR
MEADOWVIEW
GREEN HILL
ORIOLE
WOOD
N

CITY OF MIDLAND
SERVICE CONTRACT
#22001096

THIS CONTRACT, effective this _ day of __, 2021 , by and between the City of Midland, hereinafter referred to as the "CITY" and ____, hereinafter referred to as the "COMPANY".

Projected Annual Cost not to exceed: $1,000,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES

RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND,

INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be from the effective date of this Contract until September 30, 2022. CITY shall have the right to renew this Contract for up to four(4) additional one (1) year terms by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (1) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

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

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY.

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

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY

BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and

except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of

CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

-Personal Injury: $1,000,000.00 per person

	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

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

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

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

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

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

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

34. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s)

attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: Matt Weatherford

Title: Managing Member

STATE OF TEXAS §

§

COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this 29 day of November, 2021 personally appeared, Matthew Weatherford, an officer of Vault Mobile Storage LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of November, 2021.

TYLER M. PENDLETON
My Notary ID # 126594666
Expires July 18, 2024

_____
Notary Public, State of TEXAS

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.**

N/A

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.

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

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: Vault Mobile Storage LLC

Local Address (must be within the City limits): 415 W Wall St., Midland, TX 79701

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? 2
3. Year your business was established in the City of Midland: 2019
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 Personal Property tax on Vehicles
   If Yes, did the local business pay any of this tax to the City of Midland? ☑ Yes ☐ No Personal Property tax on Vehicles

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: 11/28/2021

Printed Name and Title: Matt Weatherford, Managing Member

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/COMPANY CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

26. GOVERNING LAW AND VENUE - This agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this agreement or the performance of this agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

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

28. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

32. ATTORNEY FEES - 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.

No-Bid
Response
For
Request #: 22001096

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Manager
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523. IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.

City Council Meeting

Item Number: 18

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: RESOLUTION APPROVING THE TRANSFER FROM CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO SPIRIT O&G OPERATING, LLC ("TRANSFEREE") OF ALL OF OPERATOR'S OIL AND GAS WELL PERMITS AND ROAD REPAIR AGREEMENTS ASSOCIATED WITH OPERATIONS LOCATED IN SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the transfer of the Oil and Gas Well Permits and Road Repair Agreement issued to Callon Petroleum Operating Company (Current Operator) located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

A letter requesting transfer of permit and road repair agreement from Callon Petroleum Operating Company ("Callon") and Spirit O&G Operating, LLC ("Spirit") has been received. Spirit has provided the necessary instruments required for transfer of permits operated by Callon and agrees to be bound by the terms and conditions of the current Oil and Gas Well Permits and Road Repair Agreement.

Attachments: Letter Callon Petroleum Operating Company/ Spirit O&G Request; Well List; Compliance Exhibit; Exhibit Map-Overview Well locations.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE TRANSFER FROM CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO SPIRIT O&G OPERATING, LLC ("TRANSFEREE") OF ALL OF OPERATOR'S OIL AND GAS WELL PERMITS AND ROAD REPAIR AGREEMENTS ASSOCIATED WITH OPERATIONS LOCATED IN SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

WHEREAS, Operator has made a written request to the City of Midland that the transfer to Transferee of all of Operator's oil and gas well permits and road repair agreements associated with operations located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, be approved by the City; and

WHEREAS, the City Council finds it to be in the public interest to approve Operator's transfer to Transferee of said oil and gas well permits and road repair agreements;

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

SECTION ONE. That Operator's transfer to Transferee of all of Operator's oil and gas well permits and road repair agreements associated with operations located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, is hereby approved.

SECTION TWO. That all terms and conditions of said oil and gas well permits and road repair agreements shall remain in full force and effect, and Transferee shall be bound by said terms and conditions.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

CALLON
PETROLEUM

Liam Kelly
Vice President of Corporate Development & Strategy

November 9, 2021

Mr. Ron Jenkins, Oil & Gas Compliance Officer
300 North Loraine, Suite 310
Midland, Texas 79702

Re: Pecan Acres Prospect, Midland County, Texas
Ownership and Operator Revision – Well List Attached as Exhibit "A-1" ("Wells")
Pecan Acres 22 Leases
Sec 22, Block 40, T&P RR Co. Survey

Dear Mr. Jenkins,

Spirit MB I, LLC ("Spirit") and Callon Petroleum Operating Company ("Callon") have entered into a Purchase and Sale Agreement, dated October 6, 2021, effective July 1, 2021, which contemplates Callon's sale to Spirit of Callon's right, title and interest in the Wells (described on Exhibit A-1) and related properties located in the City of Midland (the "Purchase and Sale Agreement").

In connection with the proposed sale, Spirit O&G Operating, LLC ("Spirit O&G"), an affiliate of Spirit will become the operator of the Wells effective July 1, 2021. Callon and Spirit respectively request that the Midland City Council approve the proposed transfer of operatorship and permits for the Wells and other easements described on Exhibit "A-1" (the "Permits") from Callon to Spirit O&G.

Callon has agreed to transfer all operations and Permits to Spirit (subject to the Purchase and Sale Agreement and Council approval), and Spirit O&G has agreed to assume (subject to Council approval) such operations and Permits and all related obligations, as evidenced by Spirit O&G's joinder in the execution and delivery of this letter. Spirit O&G will submit a separate letter to provide (1) copies of the required insurance or bonds, (2) designate its new contacts and representatives for the Permits and future operations, and (3) the required transfer fees payable to the City of Midland.

Please place this request on the agenda for approval at the next City Council Meeting.

If you have any questions or need additional information, please do not hesitate to contact me at the above telephone number.

Sincerely,

Liam Kelly
Vice President – Corporate Development

1401 ENCLAVE PARKWAY, SUITE 600 HOUSTON, TEXAS 77077 (281) 589-5200 CALLON.COM

The undersigned hereby agrees to assume operating rights for the Wells listed on Exhibit A-1, under City of Midland resolutions and city Code 6-1-2, and all obligations thereunder, for the associated Permits, all subject to consummation of Spirit O&G, LLC's acquisition of the Wells under the Purchase and Sale Agreement.

SPIRIT O&G Operating, LLC

By: L. Todd Guest
Name: L. Todd Guest
Title: CEO/CFO
Date: November 9, 2021

EXHIBIT "A-1"

Attached to that certain

REQUEST FOR CHANGE OF OPERATOR LETTER

Dated November 9, 2021

from **Callon Petroleum Operating Company to Spirit O&G Operating, LLC**

PERMITS

Prospect	Permit Date	Grantor	Original Grantee	Wells & Locations	Resolution No. & API #
Pecan Acres	9/25/2012	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 C Well No. 1 Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-81260
Pecan Acres	5/14/2013	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 C Well No. 2 Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-38399
Pecan Acres	01/26/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A2 Well No. 9SH Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40513
Pecan Acres	2/23/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A3 Well No. 5H Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40559
Pecan acres	1/26/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A3 Well No. 10SH Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40516

December 14, 2021
18.7
PACKET

Pecan Acres	2/23/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A4 Well No. 6H Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40560
Pecan Acres	1/26/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A4 Well No. 11SH Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40515
Pecan Acres	10/25/2016	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A4 Well No. 12UL Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-40980
Pecan Acres	8/13/2013	City of Midland	Callon Petroleum Operating Company	Pecan Acres 22 A3 Well No. 3 Section 22, Block 40 T1S T&P RR Co. Survey Midland County, Texas	API #: 42-329-38640

December 14, 2021
18.8
PACKET

Exhibit "A"

ACKNOWLEDGEMENT OF DESIGNATED COMPLIANCE REPRESENTATIVES
FOR
SPIRIT O&G OPERATING, LLC

1. My name is L. Todd Guest and I serve as the Chief Executive Officer for Spirit O&G Operating, LLC ("Operator"), whose corporate office is currently located at 151 Plantation Rd., Houston, Texas 77024, and whose local field office is currently located at 5408 La Jolla Cv., Midland, TX 79707.

2. I understand and agree that I am responsible for ensuring compliance with all conditions of the Oil and Gas Well Permits for which Operator has herein applied, along with any applicable laws, regulations and ordinances by any and all employees, contractors or subcontractors of Operator at the oil and gas operations site.

3. I further understand that is my sole obligation in the event I am relieved of these responsibilities, that the name, local address, and local telephone number of my replacement will be provided to the City's secretary.

4. The direct contact number for L. Todd Guest is (713) 446-3001, and the 24 Hour Emergency Answering Service number is (866) 502-3921.

L. Todd Guest

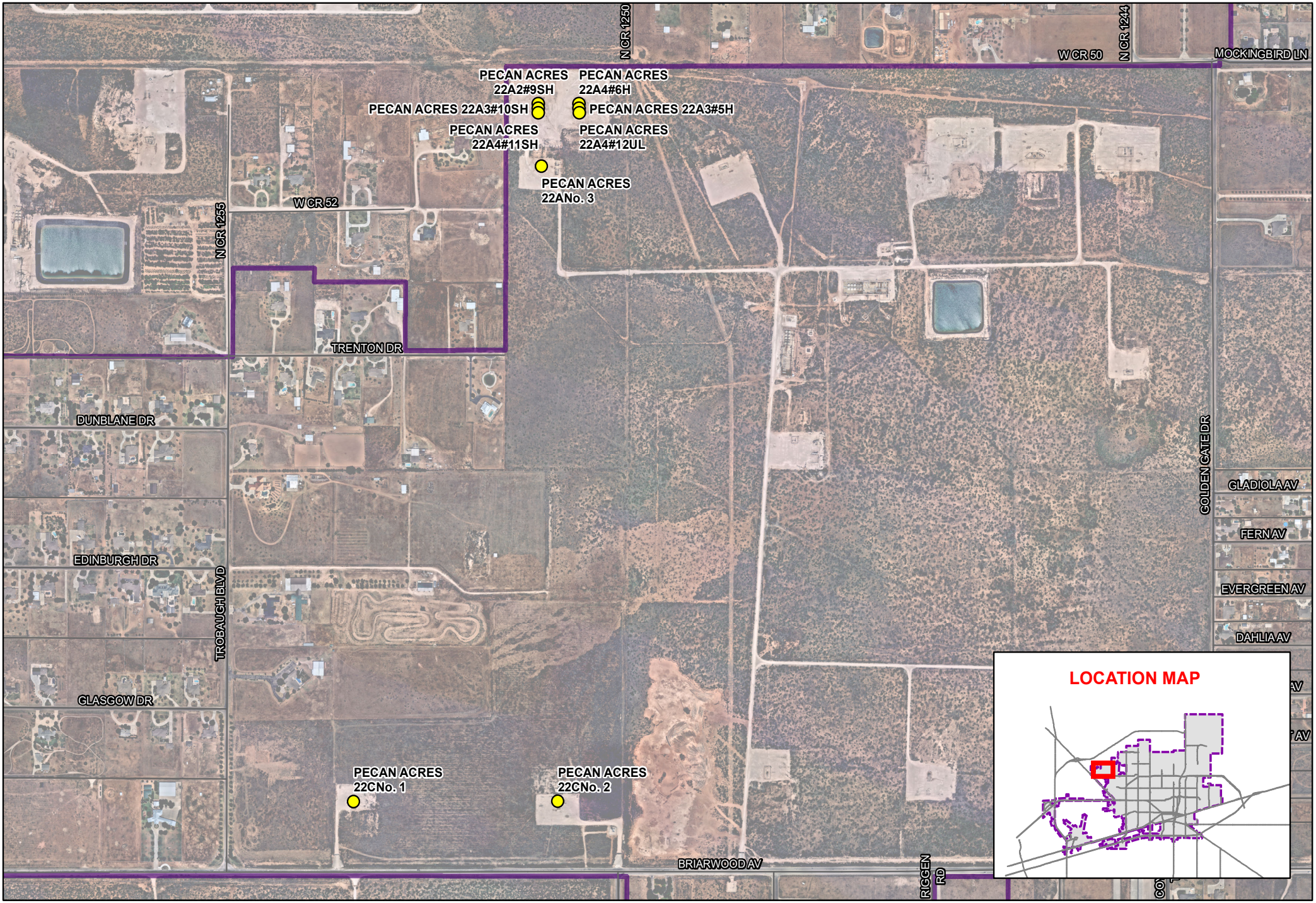
STATE OF TEXAS

CITY OF MIDLAND

THE FOREGOING INSTRUMENT was acknowledged before me on the 19th day of November, 2021, by L. Todd Guest, known to me to be the person whose signature is subscribed above.

ORMONDE GORDON
Notary ID #133362868
My Commission Expires
September 29, 2025

Notary Public, State of Texas



Date: 11/22/2021

Legend

- Callon Well
- Street
- City Limits

PACKET 18.10 December 14, 2021

Callon Petroleum Operating Company Transferred Well Locations

0 250 500 Feet

©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: **19**

Meeting Date: **December 14, 2021**

To: **City Council / City Manager**

From: **Erika Martinez, Manager, Purchasing**

Subject: MOTION REJECTING THE SOLE BID RECEIVED FOR THE PURCHASE OF CERTAIN AUTOMOBILES AND LIGHT TRUCKS FOR THE GENERAL SERVICES DEPARTMENT; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO REISSUE AN ADVERTISEMENT FOR COMPETITIVE BIDS FOR THE PURCHASE OF SAID AUTOMOBILES AND LIGHT TRUCKS PURSUANT TO THE STATUTES OF THE STATE OF TEXAS (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Motion rejecting the single bid received for the purchase of automobiles and light trucks.

Recommended City Council Action:

Approve

Fiscal Impact:

No funding at this time.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for the purchase of eleven (11) administrative vehicles, four (4) full size ½ ton regular cab pickup trucks, five (5) full size ½ ton extended cab pickup trucks, one (1) full size ½ ton crew cab 2x4 pickup truck, one (1) full size ¾ ton crew cab 4x4 pickup truck, one (1) full size ¾ ton extended cab 4x4 pickup truck, two (2) full size 1 ton cab and chassis, one (1) full size ¾ ton cab and chassis and one (1) full size 1 ½ ton 4x4 cab and chassis. We sent bid requests to thirty-seven (37) dealerships and we received a single bid for four (4) of the nine (9) requested vehicles from Grapevine DCJ, LLC. Staff recommends rejecting the single bid from Grapevine DCJ, LLC and

requests authorization to re-advertise at a later date with the expectation of receiving additional bids.

Therefore, please consider a motion rejecting the single bid received for the purchase of automobiles and light trucks from Grapevine DCJ, LLC of Grapevine, Texas and authorizing re-advertisement for bids.

Tina Dauz

City Manager's Office

City of Midland - Bid Tabulation

BID # 22000603 **Cars, Light Trucks & SUVs** **OPENED** December 1, 2021			Grapevine, DCJ, LLC 2601 William Tate Grapevine. TX 76501 Dennis Thomas 979-567-1500	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	11	Administrative Cars	$34,460.00	$379,060.00
		Mileage/Make:	19-30	Chrysler/ 300 Touring
		Warranty/ Extended Warranty	3 Years/36,000 Mies	5 Years/ 100,000 Miles
		Delivery:	180-210 Days	
2	4	Full Size 1/2 Ton Regular Cab Pickup	$31,090.00	$124,360.00
		Mileage/Make:	17-25	Dodge Ram 1500 Classic
		Warranty:	3 Years/36,000 Mies	5 Years/ 100,000 Miles
		Delivery:	180-210 Days	
3	5	Full Size 1/2 Ton Extended Cab Pickup	$33,184.00	$165,920.00
		Mileage/Make:	17-25	Dodge Ram 1500 Classic Quad
		Warranty/ Extended Warranty	3 Years/36,000 Mies	5 Years/ 100,000 Miles
		Delivery:	180-210 Days	
4	1	Full Size 1/2 Ton Crew Cab Pickup	$36,560.00	$36,560.00
		Mileage/Make:	17-25	Dodge Ram 1500 Classic Crew
		Warranty/ Extended Warranty	3 Years/36,000 Mies	5 Years/ 100,000 Miles
		Delivery:	180-210 Days	
		Delivery:		
5	1	Full Size 3/4 Ton Crew Cab 4x4	NO BID	$0.00
		Mileage/Make:		
		Warranty/ Extended Warranty		
		Delivery:		
6	1	Full Size 3/4 ton	NO BID	$0.00
		Mileage/Make:		
		Warranty/ Extended Warranty		
		Delivery:		
7	2	Full size 1 ton extended cab and chassis 4x4	NO BID	$0.00
		Mileage/Make:		
		Warranty/ Extended Warranty		
		Delivery:		
8	1	Full Size 3/4 Ton Crew Cab and Chassis	NO BID	$0.00
		Mileage/Make:		
		Warranty/ Extended Warranty		
		Delivery:		
9	1	Full Size 1 1/2 ton Cab and C hassis	NO BID	$0.00
		Mileage/Make:		
		Warranty/ Extended Warranty		
		Delivery:		
		TOTALS:		$705,900.00

Bidding Summary:

37 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

36 Bidders did not respond.

City Council Meeting

Item Number: **20**

Meeting Date: **December 14, 2021**

To: **City Council / City Manager**

From: **Tina Jauz, Assistant City Manager**

Subject: MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN SPONSORSHIP LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX WITH AMERICAN MOMENTUM BANK (DISTRICT 4) (CITY MANAGER)

Purpose:

Motion amending the sponsorship license agreement with American Momentum Bank for the baseball stadium at the Scharbauer Sports Complex.

Recommended City Council Action:

Approve

Fiscal Impact:

$59,000 reduction in revenue over five years.

Discussion:

Following the temporary closure of the Scharbauer Sports Complex in 2020, due to COVID-19, Momentum Bank officials contacted the city in regards to their naming rights agreement. The sponsor asked for a reduction in payment due to the loss of advertising opportunities, particularly during the RockHounds Baseball season which was cancelled. City staff and Momentum Bank officials negotiated an agreed value of the loss. It is recommended, over the next five years, a reduction in annual sponsorship agreement payments for a total of $59,000. The reduction affects years 2022-2026.

Year	*Original Amount*	*Amended Amount*	*Difference*
2022	$128,625	$116,825	($11,800)
2023	$131,850	$120,050	($11,800)
2024	$135,150	$123,350	($11,800)

2025	$138,500	$126,700	($11,800)
2026	$141,950	$130,150	($11,800)

Morris Williams Jr.

City Manager's Office

SECOND AMENDMENT TO THE SPONSORSHIP LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX

RECITALS

This Second Amendment ("*Second Amendment*") is effective as of the _____ day of _____, 2021, by and between the City of Midland ("*City*"), a home-rule municipal corporation, and American Momentum Bank, a Texas banking association (successor in interest to Security Bank, a Texas state-chartered bank) ("*Sponsor*").

WHEREAS, City and Sponsor entered into that certain Sponsorship License Agreement (the "*Agreement*") dated August 28, 2013; and

WHEREAS, City and Sponsor executed an amendment (the "*First Amendment*") to the Agreement on March 25, 2020; and

WHEREAS, the Agreement, inclusive of the First Amendment, has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, City and Sponsor desire to make certain amendments to the Agreement as set forth below;

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

1. Section 1.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

   1.02 Sponsor shall have the right to have the name of the Stadium ("*Momentum Bank Ballpark*") placed in all advertisements promoting the Stadium. As used herein, the term "advertising" shall include outdoor, electronic and printed media, and other promotional efforts for all Stadium events sponsored by City. City agrees to timely provide prior-written notice to Sponsor of Stadium related advertising prior to its use by tenants and event promoters. With the prior-written approval of Sponsor, City shall require Stadium tenants and event promoters to use the designated Stadium name in all advertising

2. Article V of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE V
LICENSE FEE

Payments of said License Fee shall be made by Sponsor to City according to the following schedule.

The first-year License Fee shall be due as follows:

$120,000.00 shall be due on or before January 15, 2014;

Payments for years 2015 through 2038 shall be made by Sponsor to City in the indicated amounts according to the following schedule:

$120,000.00 January 1, 2015	$145,500.00 January 1, 2027
$120,000.00 January 1, 2016	$149,150.00 January 1, 2028
$120,000.00 January 1, 2017	$152,900.00 January 1, 2029
$120,000.00 January 1, 2018	$156,700.00 January 1, 2030
$120,000.00 January 1, 2019	$160,650.00 January 1, 2031
$120,000.00 January 1, 2020	$164,650.00 January 1, 2032
$125,500.00 January 1, 2021	$168,775.00 January 1, 2033
$116,825.00 January 1, 2022	$173,000.00 January 1, 2034
$120,050.00 January 1, 2023	$177,300.00 January 1, 2035
$123,350.00 January 1, 2024	$181,750.00 January 1, 2036
$126,700.00 January 1, 2025	$186,300.00 January 1, 2037
$130,150.00 January 1, 2026	$191,000.00 January 1, 2038

3. Section 7.28 of the Agreement is hereby amended to replace Sponsor's contact information with the following:

American Momentum Bank
One Momentum Boulevard, Suite 1000
College Station, Texas 77845

4. The Agreement as amended, inclusive of this Second Amendment, is hereby ratified and affirmed by the parties and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above. The Agreement, as amended, is presently in full force and effect and Sponsor is not in default

thereunder. There exist no facts that would constitute a basis for any such default upon the lapse of time or the giving of notice or both.

5. This Second Amendment may be executed by the parties hereto individually or in combination by one or more counterparts, each of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the Effective Date by their duly authorized representatives.

CITY OF MIDLAND

_____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

[Signature Page Follows]

AMERICAN MOMENTUM BANK

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

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

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

_____
Notary Public, State of Texas

City Council Meeting

Item Number: 21

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: **Motion approving with staff's recommended conditions a proposed Preliminary Plat of MDC Business Park, Section 2, being a plat of a 58.18-acre tract of land out of Section 11, Block 40, T-2-S, T&P Co. Survey, City and County of Midland, Texas. (Generally located on the north side of Interstate 20, approximately 2,972-feet east of South County Road 1250. (DISTRICT 2) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Parkhill, is requesting to plat the property located on a 58.18-acre tract of land out of Section 11, Block 40, T-2-S, T&P Co. Survey, City and County of Midland, Texas for future development. Since this property is greater than 25 acres, approval by the City Council is required.

Recommended City Council Action:

Approve

Current Zoning:

BP, Business Park District.

Discussion:

This request has been routed to all respective departments for internal review. The comments are below.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Okay as shown.

ROW: Big Blue Avenue okay as is.

PAVING: Big Blue Avenue roadway is not built to City Standards, construct to City standards for entire platted frontage. [Reference City Code Sect. 11-2-4(A) 2(a)]
Interstate 20 Frontage road is TxDOT facility, built and maintained by TxDOT, no improvements required.

WATER: The 12" water main that runs down the middle of the property needs to be relocated due to the proposed building being constructed on top of the water main. Extend the 12" water main that runs parallel with TxDOT's ROW to the east edge of the property and looping it back in with the water main in Big Blue. [Reference City Code Sect. 11-2-4(A) 2(a)]

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 the Applicant's information only.]

PRO RATA: None.

SEWER: 12" sewer exists in middle of parcel, okay as is. 12" sewer exists in Big Blue Avenue, okay as is. No public wastewater improvements required.

DRAINAGE: Show compliance with the MDC David Mims Business Park Drainage Study, prepared by PSC and approved by City on 12/20/2017. [Reference City Code Sect. 11-2-3(D)8]

EASEMENTS: Show existing and proposed. The horizontal portion of the proposed 20' Public Utility Easement is not needed. [For the Applicant's information only.]

SIDEWALKS: Required at building permit.

DIMENSION: * * *

OTHER: TxDOT comments, "Any access request to the frontage road will be required to be coordinated and approved by TxDOT. Access should be in accordance with current Access Management Standards. Post development drainage/runoff should not be changed or increased from pre-development 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. The TxDOT Driveway Permit Coordinator is Rachael Ramirez (Rachael.Ramirez@txdot.gov, 432-498-4789). [For the Applicant's information only.]

TRANSPORTATION: (Approved)

TxDOT comments, "Any access request to the frontage road will be required to be coordinated

and approved by TxDOT. Access should be in accordance with current Access Management Standards. Post development drainage/runoff should not be changed or increased from pre-development conditions." [For the Applicant's information only.]

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. The TxDOT Driveway Permit Coordinator is Rachael Ramirez (Rachael.Ramirez@txdot.gov, 432-498-4789). [For the Applicant's information only.]

No objections to plat. [For the Applicant's information only.]

FIRE: (Approved)

Future development must meet the requirements of IFC 2015ed. and local amendments.

CODE COMPLIANCE: (Approved with Conditions)

No Oil & Gas Issues. Non-permitted wells are identified with 135 ft radius. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

BUILDING CODE: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

SURVEYOR: (Approved)

No comments

PLANNING: (Approved with Conditions)

According to MCAD the acreage is 58.624. Verify Acreage [Informational]

Add the square footage or acreage of the proposed lot. "Provide the layout, numbers and approximate dimensions of lots and block." Midland City Code 11-2-3(D)4(h)

Under the Certificate of Approval, add the names of the chairman, Lucy Sisniega and secretary, Elizabeth Shaughnessy. Midland City Code 11-2-3(H)m(3)

Under the Surveyor's Certificate, add the signature line. Midland City Code 11-2-3(H)m(2).

All department's comments must be addressed as a condition of preliminary plat approval. Staff recommends approval of the preliminary plat of MDC Business Park, Section 2, subject to conditions A through E.

Conditions:

A. Approval of this preliminary plat is subject to the final plat containing the layout, numbers and approximate dimensions of lots and blocks. Midland City Code 11-2-3(D)4(h).

B. Approval of this preliminary plat is subject to the final plat containing a complete certificate of approval. Midland City Code 11-2-3(H)m(3).

C. Approval of this preliminary plat is subject to the final plat containing a complete surveyor's certificate. Midland City Code 11-2-3(H)m(2).

D. Approval by the City Council shall be required prior to consideration of a final plat by the commission on which any preliminary plat which: 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; Midland City Code 11-2-3(D)11(a)6.

E. Approval of this preliminary plat is subject to all public improvements are adequately met. [Reference City Code Sect. 11-2-4(A) 2(a)]

Attachments:

Proposed Preliminary Plat
Application
Map

Morris Williams Jr.

City Manager's Office

MIDLAND Planning Division

Preliminary Plat Application

Project Number: SUB-21-0466

Case Number: P-21-1237

Proposed Subdivision Plat Name: MDC BUSINESS PARK ADDITION SECTION 2

Legal Description (attached sealed Metes and Bounds):
BEING A PLAT OF 58.18 ACRES, OUT OF SECTION 11, BLOCK 40, T-2-S, T&P RAILROAD CO SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Property Owner Printed Name: MIDLAND DEVELOPMENT CORPORATION		Phone (432) 253-8018 Email sharris@midlandtexasdc.com	
Address 200 N Loraine St	City Midland	State TX	Zip 79701

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: Joshua Wallender		Phone (432) 697-1447 Email jwallender@parkhill.com	
Address 1700 W Wall St, Ste 500	City Midland	State TX	Zip 79701

Current Zoning: BP - BUSINESS PARK

Reason for Platting: TO PREPARE FOR DEVELOPMENT

Plat Information	Total Acreage:	58.18

Type: ☐ Single-Family Residential ☐ Multi-Family Residential
■ Commercial ☐ Extraterritorial Jurisdiction (ETJ)

Number of Lots: 1 | Number of Multi-family Dwelling Units: 0

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): Sara M. Harris | Date: 11-10-2021

Property Owner (printed) : SARA HARRIS

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 Joshua Wallender who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by Midland Development Corporation 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 10 day of November, 2021, to certify which witness my hand and seal of office.

MIRNA A. GRANADOS
Notary Public, State of Texas
Comm. Expires 04-07-2024
Notary ID 130610784

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☒ Property Owner Authorization
- ☒ Application Fee
  Check # 001529
- ☒ 1 Copy of Dimensioned Plat
- ☒ 1 Copy of Plat (11x17)
- ☒ Plat in Digital Format (PDF/JPEG)

Received By: KM | Date:

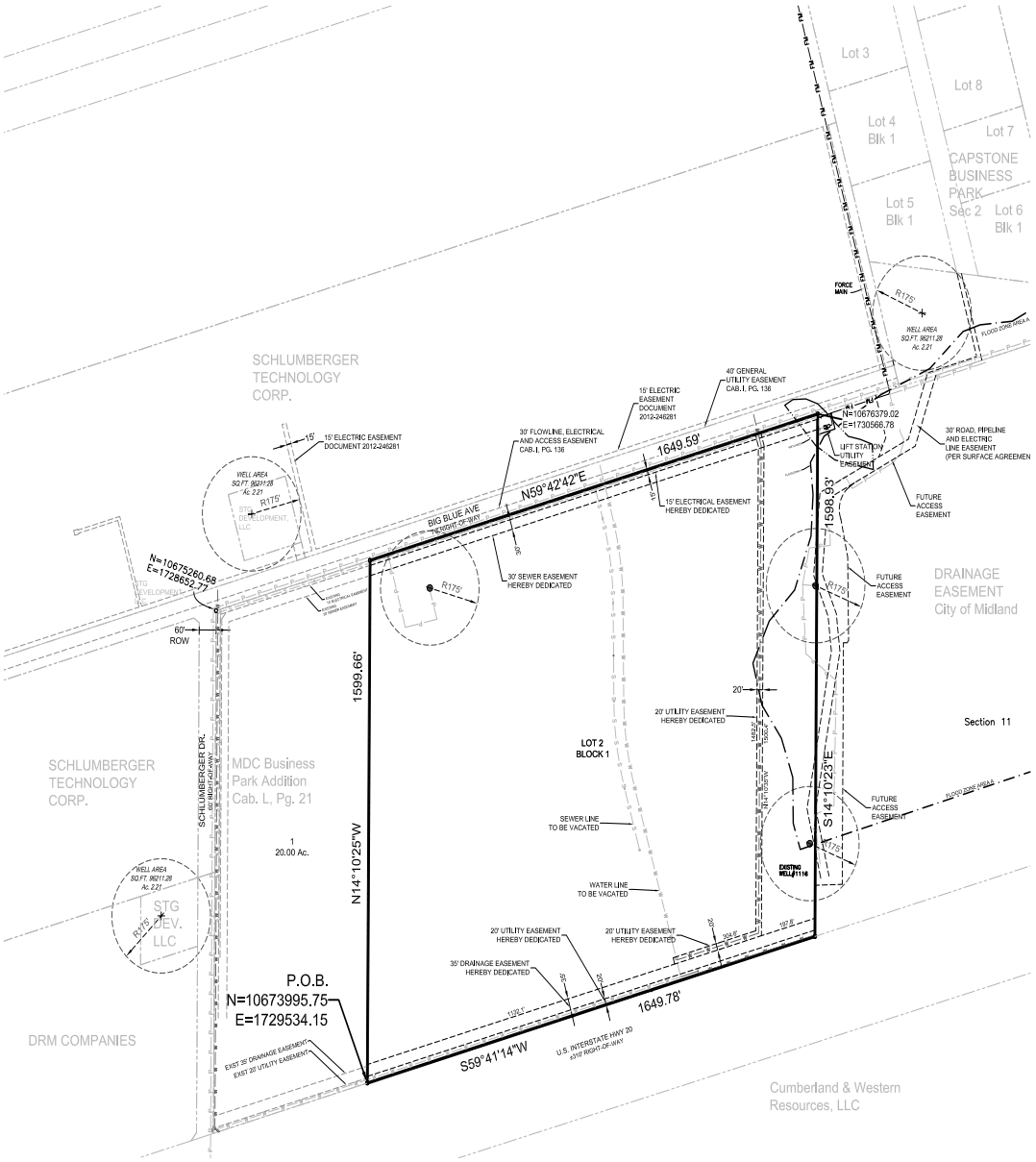
RECEIVED
NOV 10 2021
BY:

****Application will not be considered for scheduling until reviewed by a planner.****

PRELIMINARY PLAT

MDC BUSINESS PARK ADDITION SECTION 2

Being a Plat of a 58.18 ± Ac. Tract of land
out of Section 11 Block 40
T-2-S
T&P RR Co. Survey
City and County of Midland, Texas



STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, MIDLAND DEVELOPMENT CORP is the record owner of a 58.15-8 ac tract of land out of Section 11, Block 40, T-2-S T&P RR, Co. Survey, City and County of Midland, and more particularly described, shown on the plat hereon.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS :

That we, MIDLAND DEVELOPMENT CORP do hereby adopt this plat designating the herein above described property as MDC BUSINESS PARK ADDITION, SECTION 2, City and County of Midland, Texas, and we do hereby dedicate to the public use forever the streets, and easements shown thereon.

WITNESS our hands at Houston, Texas, this the_____ day of_____2021.

By:_____
SARA HARRIS EXECUTIVE DIRECTOR

STATE OF TEXAS :
COUNTY OF MIDLAND:

This instrument was acknowledged before me on _____, 2021 by SARA HARRIS on behalf of MIDLAND DEVELOPMENT CORP.

_____
Notary Public Signature

Original Scale: 1"=200'

LEGEND

- PLAT LIMITS
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE
- EXISTING ELEVATION CONTOURS
- CITY LIMITS
- PROPOSED WATER LINE
- PROPOSED SEWER LINE

NOTES

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. A BLANKET EASEMENT OF INGRESS AND EGRESS IS HEREBY GRANTED FOR MDC BUSINESS PARK ADDITION, SECTION 2 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.
4. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.
5. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE MAINTENANCE OF ANY STORMWATER FACILITY IN THIS EASEMENT IS THE RESPONSIBILITY OF THE PROPERTY OWNER. PROPERTY OWNER AGREES TO MAINTAIN THE FACILITY IN WORKING ORDER, WITH INSPECTIONS AND CORRECTIVE ACTION MADE AT LEAST ANNUALLY. REPORTS OF SUCH INSPECTIONS AND MAINTENANCE SHALL BE KEPT FOR INSPECTION BY THE CITY OF MIDLAND STORMWATER ADMINISTRATOR ON REQUEST, OR MAY BE FORWARDED TO THE CITY ENGINEER'S OFFICE.
6. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE CITY OF MIDLAND SHALL HAVE THE RIGHT TO MITIGATE DEFICIENCIES IN THE FUNCTION OF THE STORMWATER FACILITY, AND TO BE REIMBURSED BY THE PROPERTY OWNER, IF THE CITY FINDS IT NECESSARY FOR PUBLIC HEALTH AND SAFETY.
7. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE CITY OF MIDLAND AND ITS EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS, SHALL HAVE THE FREE AND UNINTERRUPTED RIGHT OF PASSAGE IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF ESTABLISHING, LAYING, CONSTRUCTING, RECONSTRUCTING, INSTALLING, REALIGNING, MODIFYING, REPLACING, IMPROVING, ALTERING, OPERATING, MAINTAINING, ACCESSING, INSPECTING, REPAIRING, RELOCATING AND REMOVING SAID FACILITIES, INCLUDING BUT NOT LIMITED TO, THE RIGHT TO CUT AND TRIM BUSHES AND TREES, TOGETHER WITH THE RIGHT OF INGRESS, EGRESS AND REGRESS FOR SUCH PURPOSES IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN.
8. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: DEVELOPER MAY NOT USE ANY PART OF THE PROPERTY DESCRIBED HEREIN IF SUCH USE WILL DAMAGE, DESTROY, INJURE, AND/OR UNDULY INTERFERE WITH THE CITY OF MIDLAND'S USE OF THE PROPERTY. DEVELOPER EXPRESSLY COVENANTS AND AGREES FOR ITSELF, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNS, THAT NO BUILDING, ROADWAYS, OR CURBS AND GUTTERS OF ANY KIND WILL BE PLACED ON THE PROPERTY DESCRIBED HEREIN. WRITTEN PERMISSION FOR ABOVE GROUND APPURTENANCES MUST BE OBTAINED FROM THE CITY OF MIDLAND, PRIOR TO INSTALLATION.
9. BASED ON THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP, COMMUNITY NUMBER 480477, SHEET NUMBER 48329C0200F, REVISED SEPTEMBER 16, 2005, THE SURVEYED PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO THE MAP, THE CURRENT FLOOD ZONE CLASSIFICATION FOR THE SURVEYED PROPERTY IS ZONE X.

UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

_____ Oncor Electric Delivery Service (PLEASE PRINT)

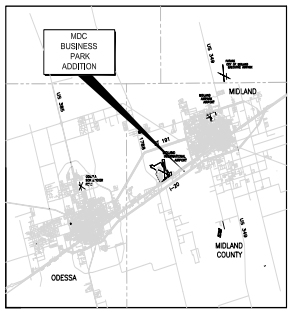
_____ AT&T Texas (PLEASE PRINT)

_____ Atmos Energy (PLEASE PRINT)

_____ SuddenLink Communications (PLEASE PRINT)

_____ Grande Communications (PLEASE PRINT)

LOCATION MAP



SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS

That I, Samuel Wyatt, 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.

Samuel Wyatt, R.P.L.S. #6453

SPECIAL STATE PLANE COORDINATE NOTE:

Bearings, distances and coordinates are relative to the Texas State Plane Coordinate System (Central Zone1983 NAD) , with a combined grid factor of 0.99987577836413 for mean project datum. The theta angle is equal to -00°58'11" at a 1/2" iron rod with a plastic cap marked "PSC CONTROL", with values of N=10,664,910.96 and E=1,712,415.89 in U.S. Survey Feet.

This is to certify that the above and foregoing plat of MDC BUSINESS PARK, SECTION 2 was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas, on this the_____ day of_____2021.

_____ Chairman - PRINT NAME

_____ Secretary - PRINT NAME

OWNERS:

MIDLAND DEVELOPMENT CORPORATION
109 North Main
Midland, TX 79701
Contact:
Pam Welch
(432) 686.3579

ENGINEER:

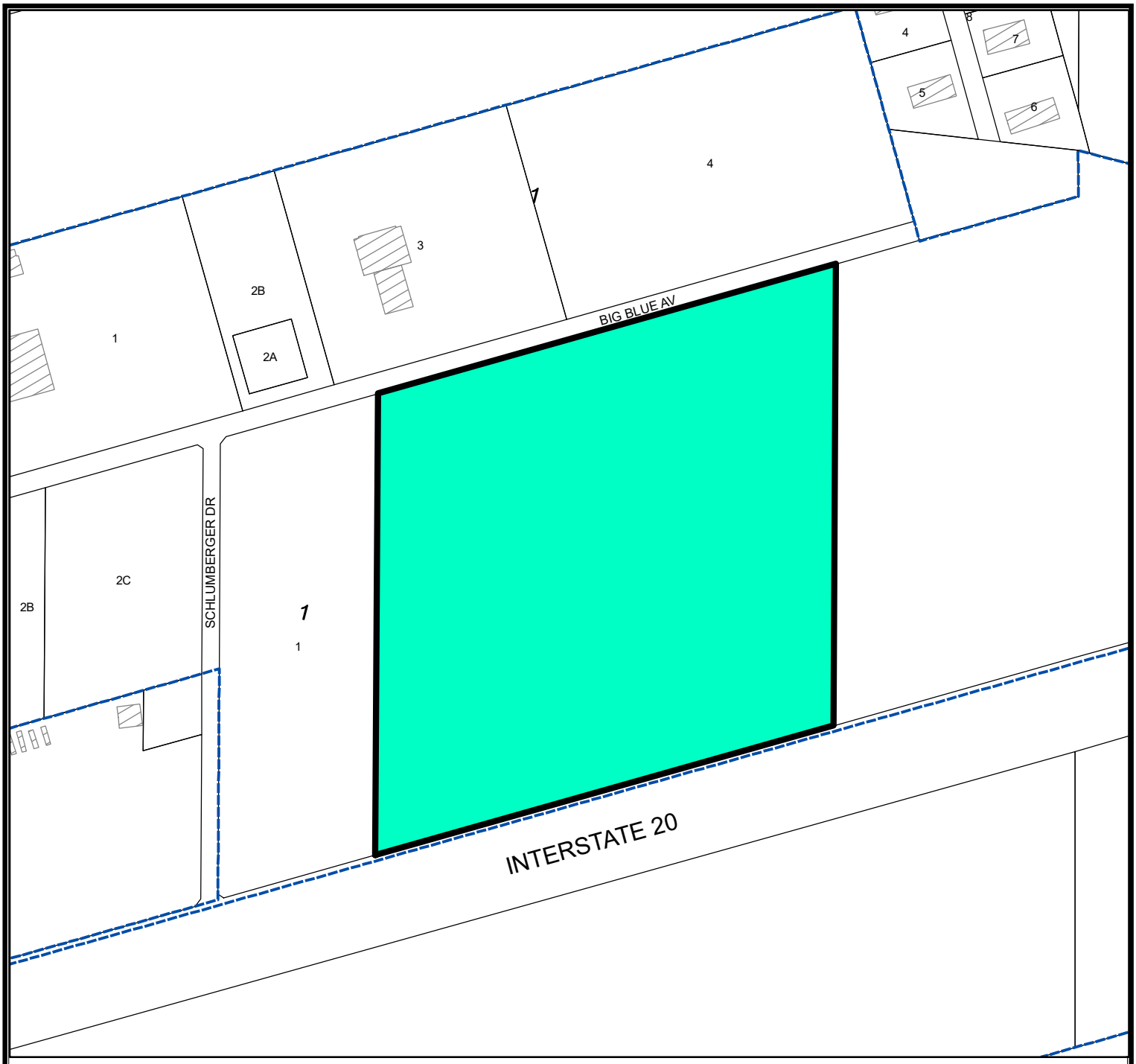
PARKHILL, SMITH & COOPER, INC.
1700 W. WALL STREET
MIDLAND, TEXAS 79701
Contact: Nick Ivey
(432) 697-1447

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

NO. _____ CABINET _____

DATE _____ PAGE _____

Parkhill
Parkhill.com
TBPELS FIRM REGISTRATION NO. 10194091



LOCATION MAP

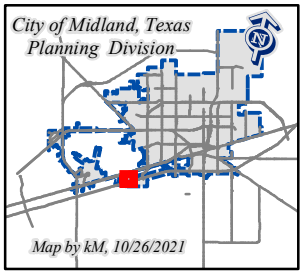
sub-21-0466 **Scale: 1" = 200'**

Proposed plat of MDC Business Park Addition, Section 2, being a plat of a 58.18-acre tract of land out of Section 11, Block 40, T-2-S, T&P Co. Survey, City and County of Midland, Texas.

Generally located on the north side of Interstate 20, approximately 2,972-feet east of South County Road 1250. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



PACKET 21.9 December 14, 2021

Map By KM, 10/26/2021

sub-21-0466

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 22

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: **Motion approving with staff's recommended conditions a proposed Preliminary Plat of Westridge Park Addition, Section 49, being a plat of a 30.80-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of State Highway 191 and Avalon Drive.) (DISTRICT 4) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Newton Engineering, PC is requesting to plat a 30.80-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas to develop a car dealership. This property is greater than 25 acres; therefore, approval by City Council is required.

Recommended City Council Action:

Approve

Current Zoning:

RR, Regional Retail District

Discussion:

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015

International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Impact Fee statement okay as shown

ROW: TxDOT review requested

PAVING: Deauville Blvd. okay as is. State Highway 191 frontage road is TxDOT facility, built and maintained by TxDOT, no improvements required. Extend pavement of Arlington Rd north to City standards along entire platted frontage.

WATER: 16” water main exists in Deauville Blvd. south of tract, okay as is. Extend 12” water main north within Arlington Rd to City standards along entire platted frontage, serving all lots with looped system.

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.

PRO RATA: None

SEWER: 12” sewer main exists in Deauville Blvd. south of tract, okay as is. Extend 12” sewer main north within Arlington Rd. to City standards along entire platted frontage.

DRAINAGE: Preliminary drainage study has been submitted and is currently being reviewed by TxDOT.

EASEMENTS: The proposed 15’ Public Water Utility Easement that runs through the platted property needs to be revised to state that this is a Private Easement rather than a Public Easement. The City will not maintain the water line within the platted lots.

SIDEWALKS: Required with building permit.

OTHER: TxDOT comments, “Any additional access to SH 191 south frontage road will need to be coordinated and permitted with TxDOT and should current Access Management Standards. Minimum spacing between access points for one-way frontage roads is 425’, and any access points should not interfere with the current exit ramp location and operation in accordance with the Roadway Design Manual (RDW). From the RDW, the minimum distance from the

intersection of the ramp and frontage road should be a minimum of 460' and is dependent upon the total volume of the frontage road/ramp and driveway volume. There is an existing drainage easement the flows north across SH 191. Any work in the drainage easement will require a hydraulic analysis to show no negative impacts to the operation of the drainage easements or impacts to the State System. Post-development drainage/runoff should not exceed pre-existing 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. The TxDOT Driveway Permit Coordinator is Rachael Ramirez (Rachael.Ramirez@txdot.gov, 432-498-4789). [For the Applicant's information only.]

TRANSPORTATION: (Approved)

TxDOT comments, "Any additional access to SH 191 south frontage road will need to be coordinated and permitted with TxDOT and should current Access Management Standards. Minimum spacing between access points for one-way frontage roads is 425', and any access points should not interfere with the current exit ramp location and operation in accordance with the Roadway Design Manual (RDW). From the RDW, the minimum distance from the intersection of the ramp and frontage road should be a minimum of 460' and is dependent upon the total volume of the frontage road/ramp and driveway volume. There is an existing drainage easement the flows north across SH 191. Any work in the drainage easement will require a hydraulic analysis to show no negative impacts to the operation of the drainage easements or impacts to the State System. Post-development drainage/runoff should not exceed pre-existing 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. The TxDOT Driveway Permit Coordinator is Rachael Ramirez (Rachael.Ramirez@txdot.gov, 432-498-4789). [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.

FIRE: (Approved)

Future development must meet the requirements of IFC 2015 ed.

CODE COMPLIANCE: (Approved)

Not in the City limits- no oil or gas jurisdiction. If being annexed Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures.

PLANNING:

The legal description should be “being a plat of a 30.80-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.”

Under the Certificate of Approval, add the new chairperson name, Lucy Sisniega. [Informational]

Identify the Railroad Commission Oil &Gas Pipelines (2017) and Railroad Commission Well Laterals 92015) that run vertically and horizontally across the property. Midland City Code 11-2-3(D)4(e).

This plat is greater than 25 acres, approval by the City Council shall be required prior to consideration of a final plat by the commission on which any preliminary plat which: 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; Midland City Code 11-2-3(D)11(a)6.

The planning department supports approval of the preliminary plat of Westridge Park, Section 49 subject to conditions A through D.

Conditions:

A. Approval of this preliminary plat is subject to the final plat containing a complete certificate of approval. Midland City Code 11-2-3(1)a.

B. Approval of this preliminary plat is conditioned upon a hearing from City Council. Approval by the City Council shall be required prior to consideration of a final plat by the commission on which any preliminary plat which: 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; See Midland City Code 11-2-3(D)11(a)6.

C. Approval of this preliminary plat is conditional upon public improvements being completed prior to the approval of a final plat by the City or with an exemption when waived or deferred by the council. See Midland City Code 11-2-4(A)2(a).

D. Approval of this preliminary plat is conditioned upon the final plat identifying the Railroad Commission Oil +Gas Pipelines (2017) and Railroad Commission Well Laterals (2015). See Midland City Code 11-2-3(D)4(e).

Attachments:

Proposed Preliminary Plat (Exhibit A)
Maps
Application

Morris Williams Jr.

City Manager's Office

MIDLAND
Planning Division

Preliminary Plat Application

Project Number: SUB-21-0053
Case Number: P-21-1234

Proposed Subdivision Plat Name: Westridge Park Addition, Section 49

Legal Description (attached sealed Metes and Bounds): See attached.

Property Owner Printed Name: Lusso Real Estate, LLC		Phone (432) 247-8198 Email	
Address 4400 Parks Legado Rd.	City Odessa	State Texas	Zip 79765

Developer *(if different than Owner)* Printed Name: Same as Owner		Phone ( ) Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)* Firm: Newton Engineering, PC Printed Name: John M. Newton		Phone (432) 770-0499 Email	
Address 4501-A Santa Rosa Dr.	City Midland	State Texas	Zip 79707

Current Zoning: RR SUD Sale of Motor vehicles

Reason for Platting: To construct a dealership

Plat Information	Total Acreage:	30.80 Acres
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ■ Commercial ☐ Extraterritorial Jurisdiction (ETJ)		
Number of Lots: 3	Number of Multi-family Dwelling Units: 0	

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): [signature] Date: 10/29/2021

Property Owner (printed) : Collin Sewell

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_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or is authorized by_____ the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20 _, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization ☒ 1 Copy of Dimensioned Plat ☒ Plat in Digital Format (PDF/JPEG)

☐ Application Fee Credit Card ☒ 1 Copy of Plat (11x17)

Check #_____

Received By: KM Date: 11/10/21 KM

NOV 10 2021

****Application will not be considered for scheduling until reviewed by a planner.****

PRELIMINARY PLAT

WESTRIDGE PARK ADDITION, SECTION 49

A PLAT OF A 30.80 ACRE TRACT OF LAND SITUATED IN SECTIONS 37 AND 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILROAD COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING 29.96 ACRES OUT OF A CALLED 634.887 ACRE TRACT AS DESCRIBED IN DEED TO CUMBERLAND WESTERN RESOURCES, LLC, IN DOCUMENT NUMBER 2008-26873, OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS AND 0.84 ACRES OUR OF A CALLED 8.84 ACRE TRACT DESCRIBED IN DOCUMENT 2012-25587, OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS

LEGEND

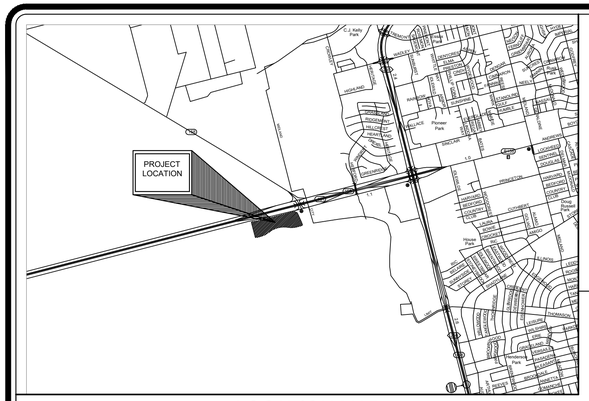
○ = SET 1/2" IRON ROD WITH PLASTIC CAP MARKED "PLS 1974" UNLESS NOTED OTHERWISE

◎ = FOUND 1/2" IRON ROD WITH PLASTIC CAP MARKED "RPLS 1977" UNLESS NOTED OTHERWISE

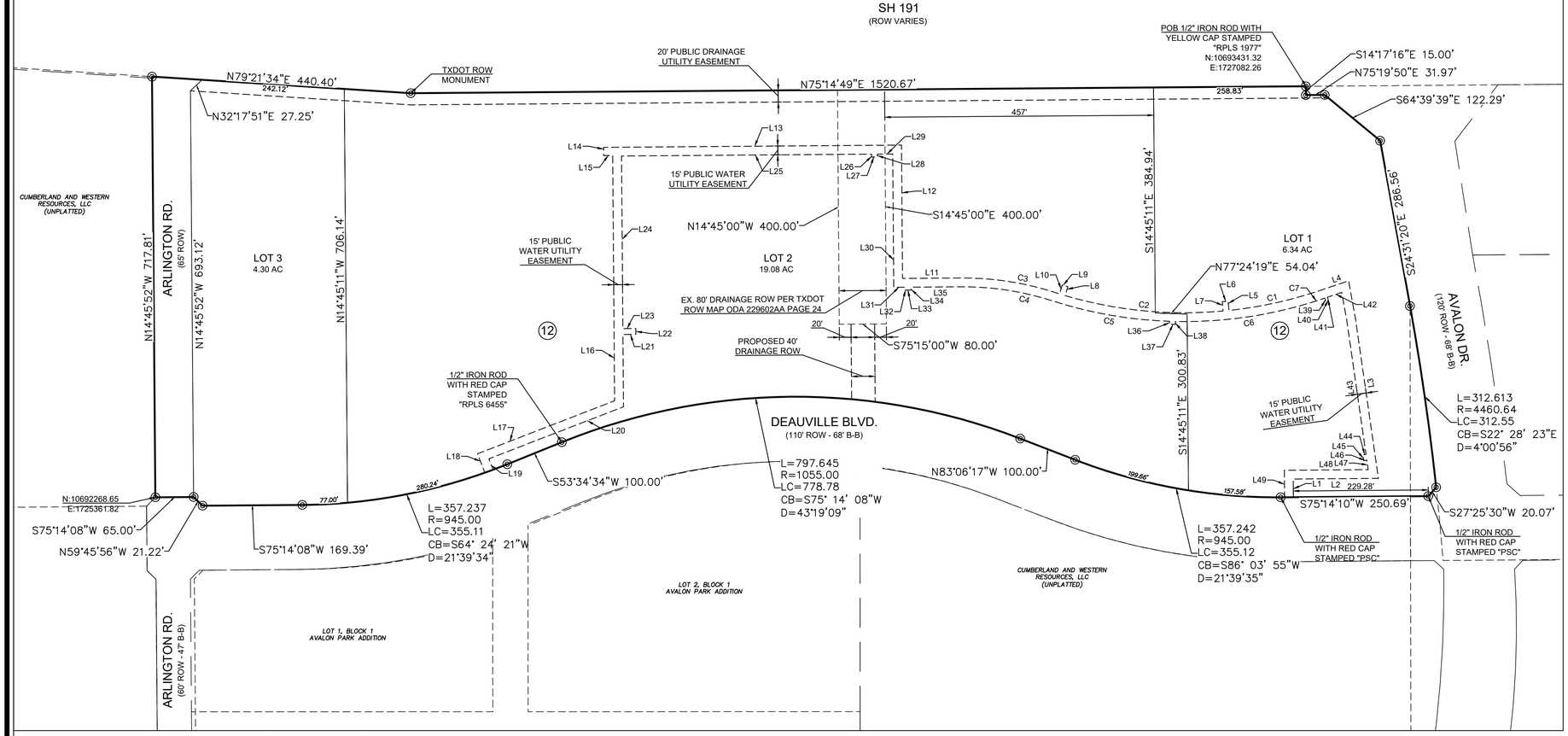
GRAPHIC SCALE

100 0 100 200

(IN FEET)
1 INCH = 100 FT.



LOCATION MAP
N.T.S.



Parcel Line Table			Parcel Line Table			Parcel Line Table		
Line #	Length	Direction	Line #	Length	Direction	Line #	Length	Direction
L1	31.01	N14° 45' 32.77"W	L21	21.99	S75° 14' 49.00"W	L41	5.11	S33° 00' 32.54"E
L2	144.71	N75° 14' 27.23"E	L22	10.00	S14° 45' 11.00"E	L42	25.73	S56° 59' 27.46"W
L3	229.18	N22° 28' 24.10"W	L23	21.99	N75° 14' 49.00"E	L43	233.91	N22° 28' 24.10"W
L4	58.58	S56° 59' 27.46"W	L24	294.42	S14° 45' 11.00"E	L44	5.46	N67° 31' 35.90"E
L5	15.96	N19° 47' 07.96"W	L25	424.69	S75° 14' 49.00"W	L45	10.00	N22° 28' 24.10"W
L6	10.00	S70° 12' 52.04"W	L26	5.00	N14° 45' 11.00"W	L46	5.46	S67° 31' 35.90"W
L7	16.00	S19° 47' 07.96"E	L27	10.00	S75° 14' 49.00"W	L47	16.35	N22° 28' 24.10"W
L8	15.89	N2° 45' 34.28"E	L28	5.00	S14° 45' 11.00"E	L48	142.55	N75° 14' 27.23"E
L9	10.00	N87° 14' 25.72"W	L29	26.00	S75° 14' 49.00"W	L49	46.01	N14° 45' 32.77"W
L10	15.92	S2° 45' 34.28"W	L30	227.50	N14° 45' 11.00"W			
L11	99.08	S75° 14' 49.00"W	L31	19.78	S75° 14' 49.00"W			
L12	227.50	N14° 45' 11.00"W	L32	5.00	N14° 45' 11.00"W			
L13	506.19	S75° 14' 49.00"W	L33	10.00	S75° 14' 49.00"W			
L14	14.00	S14° 45' 11.00"E	L34	5.00	S14° 45' 11.00"E			
L15	15.50	N75° 14' 49.00"E	L35	84.30	S75° 14' 49.00"W			
L16	418.46	S14° 45' 11.00"E	L36	5.00	N12° 31' 22.73"W			
L17	249.86	S54° 27' 55.08"W	L37	10.00	S77° 28' 37.27"W			
L18	34.74	S35° 32' 04.92"E	L38	5.04	S12° 31' 22.73"E			
L19	20.03	S35° 32' 04.92"E	L39	5.11	N33° 00' 32.54"W			
L20	245.21	S54° 27' 55.08"W	L40	5.00	S56° 59' 27.46"W			

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	151.36'	715.00'	12.13°	S63° 32' 57"W	151.07'
C2	271.34'	715.00'	21.74°	S81° 17' 12"W	269.72'
C3	162.09'	505.00'	18.39°	S84° 26' 31"W	161.39'
C4	157.27'	490.00'	18.39°	S84° 26' 31"W	156.60'
C5	203.39'	730.00'	15.96°	S85° 39' 18"W	202.73'
C6	247.29'	730.00'	19.41°	S67° 11' 02"W	246.11'
C7	247.29'	730.00'	19.41°	S67° 11' 02"W	246.11'

OWNER'S CERTIFICATE

STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, LUSSO REAL ESTATE, LLC, is the record owner of 30.80 acre tract of land situated in Sections 37 and 38, Block 40, Township 1 South, Texas and Pacific Railroad Company Survey, Midland County, Texas and being 29.96 acres out of a called 634.887 acre tract as described in deed to Cumberland Western Resources, LLC, in Document Number 2008–26873, Official Public Records of Midland County, Texas and 0.84 acres out of a called 8.84 acre tract described in Document 2012–25587, Official Public Records of Midland County, Texas *and being more particularly shown hereon:*

Now, therefore, know all men by these present:

That I, Collin Sewell, do hereby adopt this plat designating the herein above described property as WESTRIDGE PARK ADDITION, SECTION 49, an addition to the City of Midland, Texas, and hereby dedicate to the public use forever of the streets and easements shown hereon.

WITNESS our hands at Midland, Texas, this the _____day of _____, 2021

_____
LUSSO REAL ESTATE, LLC
COLLIN SEWELL, MANAGING MEMBER

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

This plat was acknowledged before me on _____, 2021 by Collin Sewell.

_____
Notary Public, State of Texas

OWNER:

LUSSO REAL ESTATE, LLC
4400 PARKS LEGADO RD.
ODESSA, TEXAS 79765

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

NO. _____ *CABINET* _____

DATE _____ *PAGE* _____

UTILITY COMPANY CERTIFICATE:
This plat has been checked for accessibility of utilities.

Signed: _____ *Oncor Electric Delivery Company*

Signed: _____ *Suddenlink*

Signed: _____ *A. T. & T.*

Signed: _____ *Grande Communications*

Signed: _____ *Atmos Energy*

CTLS
Cross Texas Land Services, Inc

2938 WESTLAKE COVE – AUSTIN, TEXAS 78746
512–965–2878

TX. FIRM REG. #100248–00
www.crosstexaslandservices.com

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Thais Watson Ahlstrand, 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.

_____
Thais Watson Ahlstrand, TX RPLS #6359
Cross Texas Land Services Inc
2938 Westlake Cove, Austin, TX 78746
432–661–2202
Tx Firm Reg. #100248–00

CERTIFICATE OF APPROVAL:
For approval by the Commission:

This is to certify that the above and foregoing plat of WESTRIDGE PARK ADDITION, SECTION 49 was approved by proper action of the Planning and Zoning Commission of the City of Midland, Texas. on this _____ day of _____, 2021.

Signed: _____ *Reggie Lawrence, Chairman*

Signed: _____ *Elizabeth Shaughnessy, Secretary*

NOTES:
1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.

2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.

3. BEARINGS/DISTANCES/COORDINATES REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

4. THE AREA SHOWN ON THIS PLAT IS IN FLOOD ZONE X ACCORDING TO FIRM MAP NUMBER 48329C0200F DATED SEPTEMBER 16, 2005.

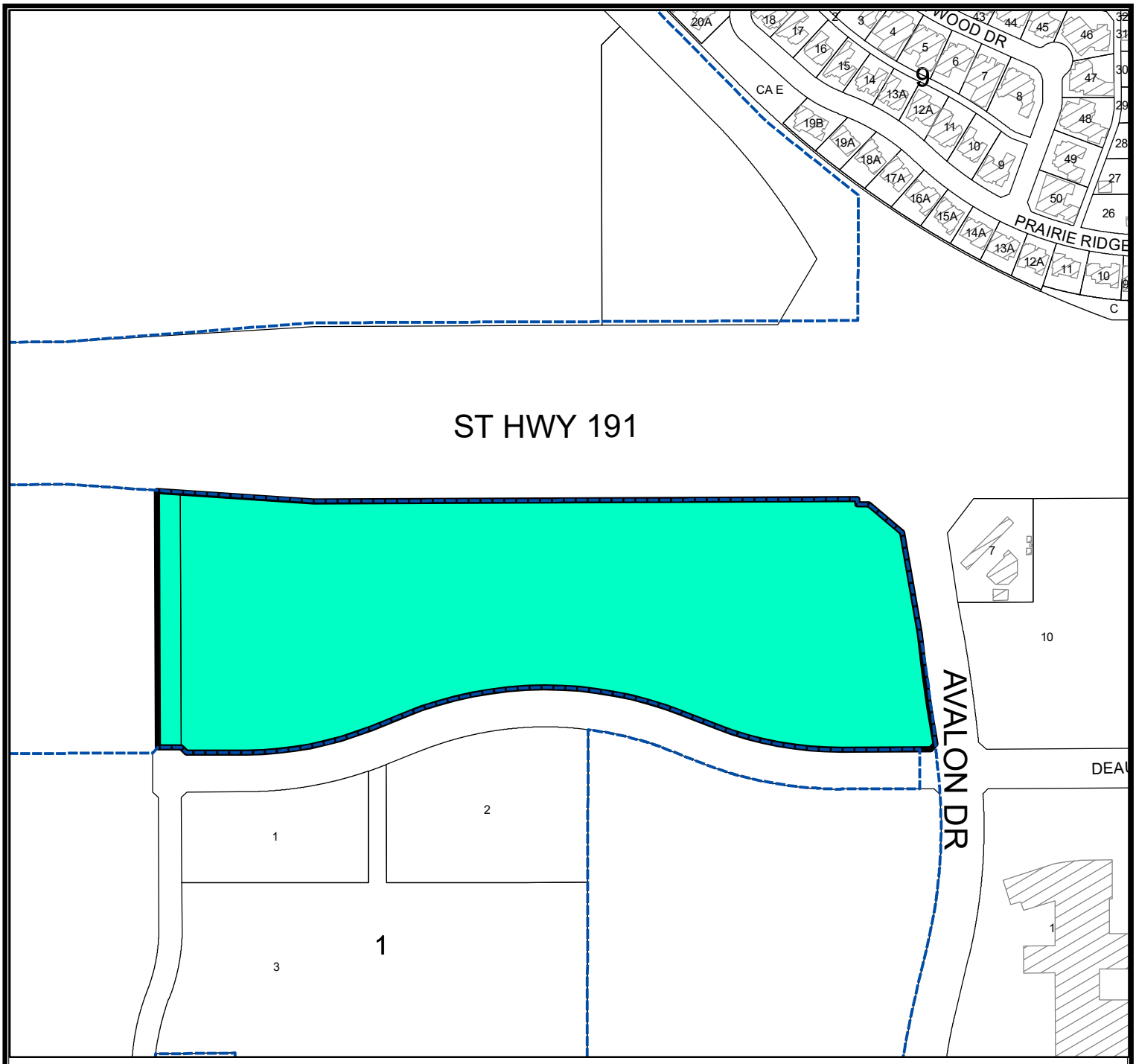
5. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.

WESTRIDGE PARK ADDITION, SECTION 49

SCALE: 1" = 100'	*DRAWN BY:* CBD
DATE: AUG 2021	*FILE NAME:*

NEWTON ENGINEERING, PC
F-13856
4501-A Santa Rosa Dr.
Midland, Texas 79707
(432)770-0499

PRELIMINARY PLAT | *PROJECT NUMBER* 21–ME04301



LOCATION MAP

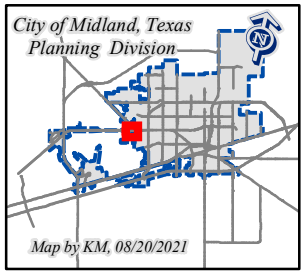
SUB-21-0453 **Scale: 1" = 400'**

Proposed plat of Westridge Park Addition, Section 49 being a 30.80-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

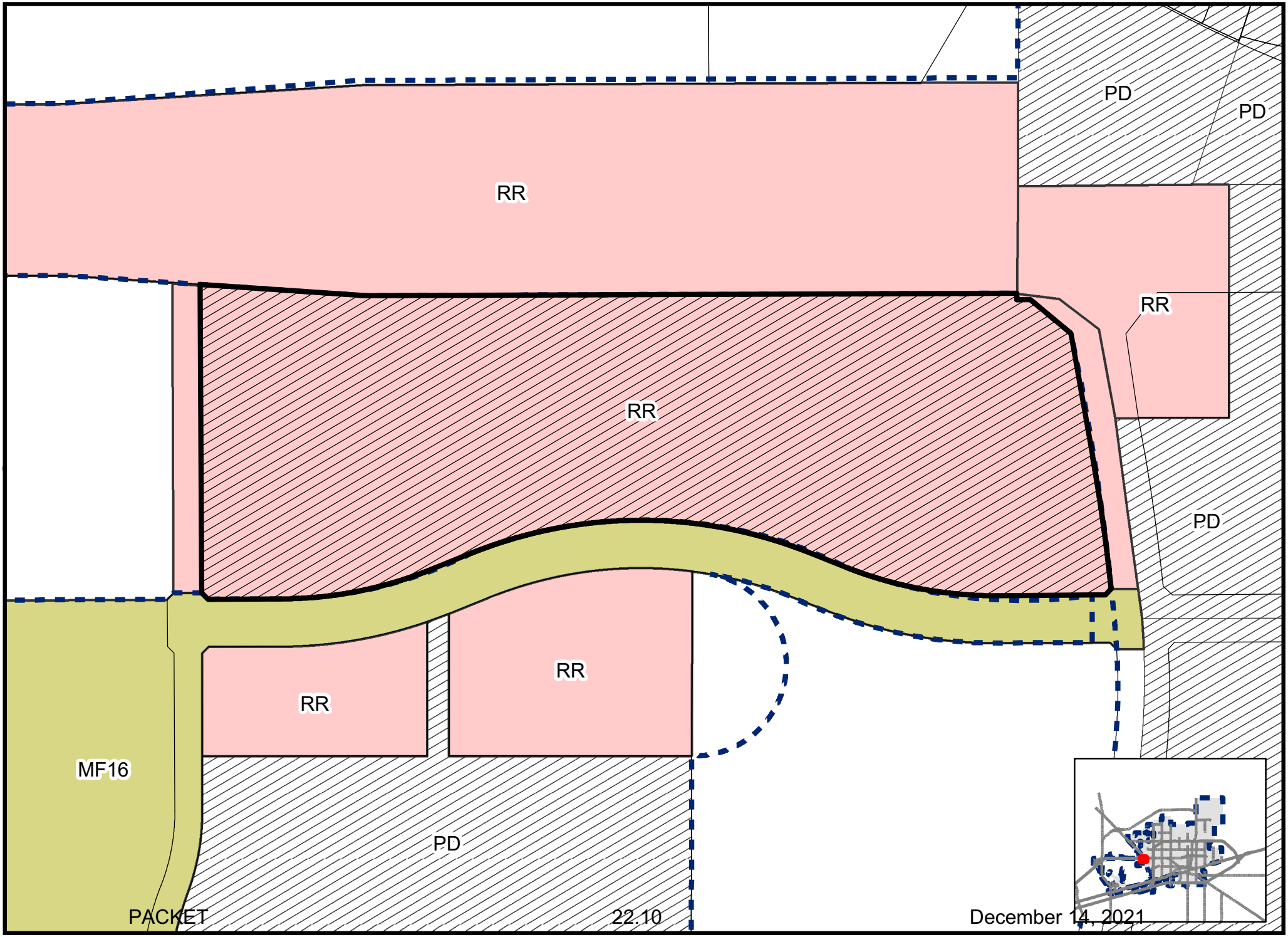
Generally located on the southwest corner of the intersection of State Highway 191 and Avalon Drive. (RR, Regional Retail District)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 11/23/2021

SUB-21-0453, Zoning Map

Scale 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 23

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: **Motion approving with staff's recommended conditions a proposed Preliminary Plat of Lone Star Trails II, Section 13, being a plat of a 25.20-acre tract of land located in Section 7, Block 38, T-1-S, T&P, R.R. Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Occidental Parkway, approximately 1, 335 - feet east of Carriage Road. Council District 1) (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Betenbough Homes, requesting to plat a 22.22-acre tract of land located in Section 7, Block 38, T-1-S, T&P R.R. Co. Survey, City and County of Midland, Texas, into one hundred and one (101) residential lots and two (2) common areas. This property is greater than 25 acres; therefore, approval by City Council is required

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

Current Zoning:

SF-3, Single Family Dwelling District

This request has been routed to all respective departments for internal review. The comments are below.

Surrounding Zoning and Land Use:

The properties to the north, and east are zoned AE, Agricultural Estate District, and the location of vacant land. The property to the west is zoned PD, Planned Development District for a Housing Development and the property to the south is zoned SF-3, Single Family Dwelling District, and both are the location of vacant land.

BUILDING CODE: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

ROW: The way the plat boundaries are currently laid out, the plat is longer dedicating the required ROW along the southwest corner for the future extension of Todd Rd. This is not what was agreed upon in the July 2nd meeting with the City.

PAVING: Paving improvements have been submitted but not approved or accepted. Construct roads shown to City Standards for entire platted frontage.

WATER: None existing. Water improvements have been submitted but not approved or accepted. Construct to City standards along entire platted frontage, serving all lots with looped system.

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.

PRO RATA: None.

SEWER: None existing. Wastewater improvements have been submitted but not approved or accepted. Construct to City standards along entire platted frontage, serving all lots within the subdivision and to adjacent lot lines along exterior roadways.

DRAINAGE: Drainage study has been submitted and approved.

EASEMENTS: Show existing and proposed. Drainage easements needed for several basins

throughout Lone Star Trails II per Midland City Code Sect. 11-2-5(D)2(d).

SIDEWALKS: Sidewalks required on collector/arterial roadways, along common areas and ADA ramps required at corners before public infrastructure is accepted.

DIMENSION: * * *

OTHER: There are several basins throughout Lone Star Trails II that sit on non-platted land. This will need to be resolved before the recording of the final section of Lone Star Trails II per Midland City Code Sect. 11-2-5(D)2(d)

TRANSPORTATION: (Approved with Conditions)

For Final Plat, correct street name to "Todd Drive" to match existing road on this alignment.

STREET NAME AND TRAFFIC CONTROL SIGN FEE – Estimated fee due at Final Plat submittal = 6 new intersections created at $500/intersection = $3,000. Fee shall be adjusted based on number of intersections if Final Plat is phased. [Reference City Code Section 11-2-5(C)3(t).]

Street lighting is required along public street frontages.

FIRE: (Approved)

No comments.

CODE COMPLIANCE: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius. The Pioneer Lease Stimson Burley A #1 is identified on the plat as a plugged well at corner of Battle Avenue and Lonesome Dove Ave. in front of 54 #1. No building permits are allowed over plugged and abandoned well bores. There is a non permitted tank battery to the South at Todd Rd. Ext. off the plat and appears to be maintaining the 135 ft. radius concerning building permits and roads. Non-permitted tank battery is 135 ft same as a non-permitted well.

PLANNING: (Approved with Conditions)

This proposed plat is greater than 25 acres, which qualifies it to be approved by City Council. “Approval by the Council shall be required prior to consideration of a final plat by the commission for any preliminary plat which…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.;” Midland City Code § 11-2-3(D)11(a)6

Double check metes and bounds as the loop of the boundary of the proposed plat does not close. In addition to one of the curve call directions is incorrect. See Midland City Code 11-2-3(D)4

This plat was approved with staff recommended comments at the Planning and Zoning Commission meeting of November 1st 2021.
Staff recommends approval of the Preliminary Plat of Lone Star Trails II, Section 13, subject to conditions A and B.

Conditions:

A. The Preliminary plat does not meet the condition upon including a drawing of the boundary described which has been prepared by a registered surveyor and shall bear his seal, signature and date on each sheet and statement and a statement that the boundary description shown thoron accurately describes the survey of the tract boundary conducted by the said surveyor. See Midland code 11-2-3(D)4.

B. Approval of this preliminary plat is conditioned upon showing existing and proposed easements. Drainage easements needed for several basins throughout Lone Star Trails II per Midland City Code Sect. 11-2-5(D)2(d).

Attachments:

Proposed Preliminary Plat
Application
Maps

Robert Patrick

Morris Williams Jr.

City Manager's Office

MIDLAND
Planning Division

Preliminary Plat Application

Project Number: SUB-21-0410
Case Number: P-21-1058

Proposed Subdivision Plat Name: Preliminary Plat, Lone Star Trails II, Section 13

Legal Description (attached sealed Metes and Bounds): Being a 23.62 Acre Tract of Land In Section 7, Block 38, T-I-S, T. & P. RR Co. Survey, City and County of Midland, Texas

Property Owner Printed Name: Betenbough Homes		Phone (806) 412 - 6611 Email Ronniew@betenbough.com	
Address 6305 82nd Street	City Lubbock	State Texas	Zip 79424

Developer *(if different than Owner)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Current Zoning: 1F-3 One-Family Dwelling District

Reason for Platting: New Development for Single Family Homes

Plat Information	Total Acreage: 23.62
Type: ☒ Single-Family Residential	☐ Multi-Family Residential
☐ Commercial	☐ Extraterritorial Jurisdiction (ETJ)
Number of Residential Lots: 94	Number of Multi-Family Dwelling Units: N/A

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'

RECEIVED
JUN 22 2021
BY: .....

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):	Date: 4 / 22 / 2021

Property Owner (printed) : Ronnie Wallace

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 _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ 1 Copy of Dimensioned Plat	☑ Plat in Digital Format (PDF/JPEG)
☑ Application Fee	☑ 1 Copy of Plat (11x17)	

Check # Past payment.

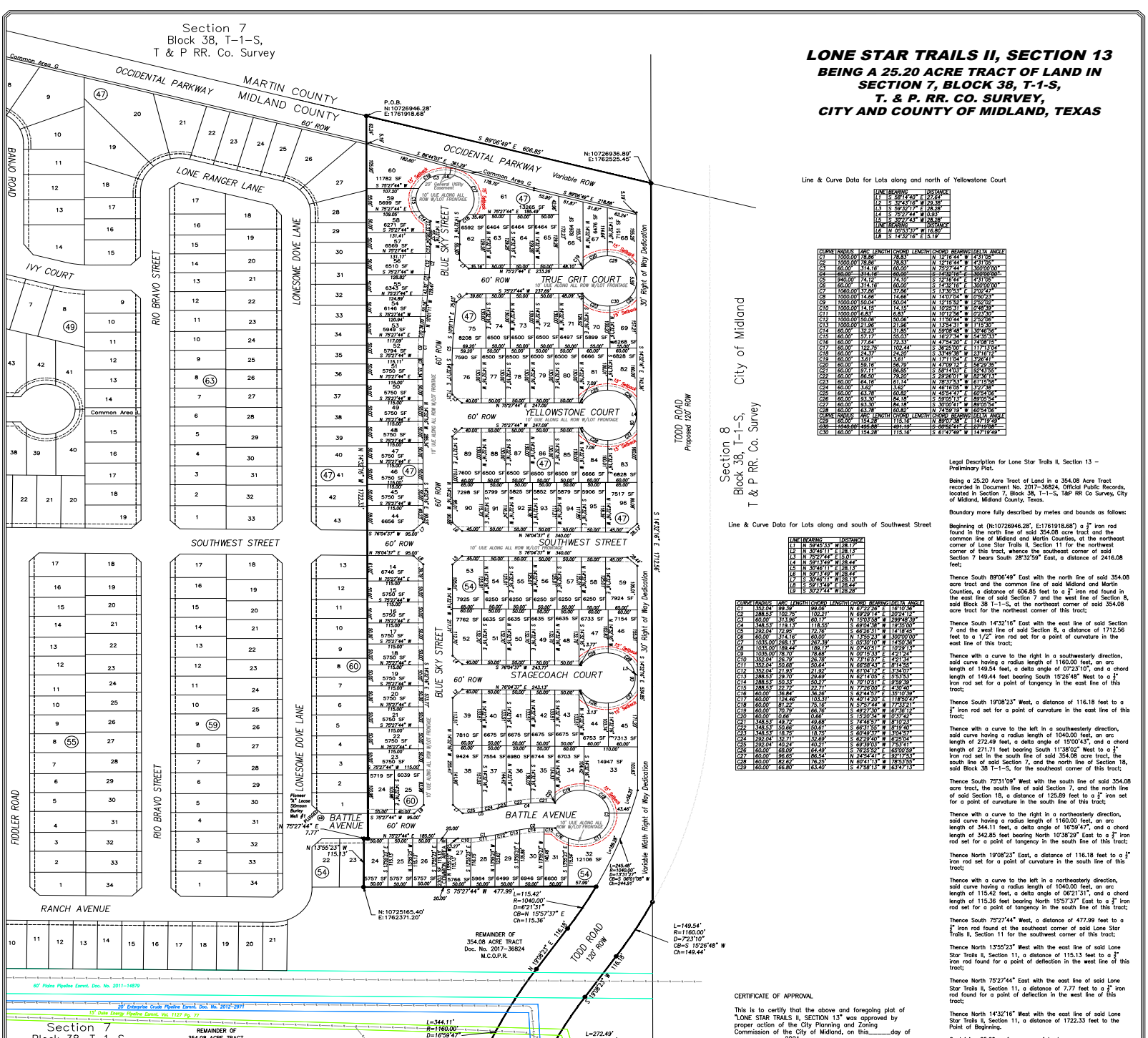
Received By: ES

Date: RECEIVED JUN 2 2 2021 BY

****Application will not be considered for scheduling until reviewed by a planner.****

LONE STAR TRAILS II, SECTION 13

BEING A 25.20 ACRE TRACT OF LAND IN SECTION 7, BLOCK 38, T-1-S, T. & P. RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS



Line & Curve Data for Lots along and north of Yellowstone Court

LINE	BEARING	DISTANCE
L1	S 58°14'40" E	127.64'
L2	S 32°43'16" W	29.38'
L3	S 59°30'17" E	28.28'
L4	S 75°27'44" W	0.93'
L5	S 30°27'43" W	28.28'
LINE	BEARING	DISTANCE
L6	N 05°53'29" W	116.80'
L8	S 14°32'16" E	15.19'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1000.00'	78.86'	78.83'	N 12°16'44" W	4°31'05"
C2	1000.00'	78.86'	78.83'	N 16°46'44" W	4°31'05"
C3	60.00'	314.16'	60.00'	S 29°27'16" E	300°00'00"
C4	60.00'	314.16'	60.00'	S 14°32'16" E	300°00'00"
C5	940.00'	74.10'	74.08'	S 12°16'44" E	4°31'05"
C6	60.00'	314.16'	60.00'	S 14°32'16" E	300°00'00"
C7	1060.00'	37.86'	37.86'	S 13°30'54" E	2°02'30"
C8	1000.00'	14.66'	14.66'	N 14°07'04" W	0°50'21"
C9	1000.00'	50.04'	50.04'	N 12°15'50" W	2°52'05"
C10	1000.00'	14.15'	14.15'	N 10°25'51" W	0°48'39"
C11	1000.00'	6.83'	6.83'	N 10°12'56" W	0°23'30"
C12	1000.00'	50.06'	50.06'	N 11°50'44" W	2°52'08"
C13	1000.00'	21.96'	21.96'	N 13°54'51" W	1°15'30"
C14	60.00'	32.73'	31.80'	N 59°08'48" W	30°46'56"
C15	60.00'	57.17'	55.03'	N 15°27'54" W	54°35'45"
C16	60.00'	17.69'	17.63'	N 47°54'20" E	14°48'16"
C17	60.00'	122.75'	102.44'	S 36°05'00" E	117°13'04"
C18	60.00'	24.37'	24.20'	S 33°49'38" W	23°16'12"
C19	60.00'	3.61'	3.61'	N 71°11'04" E	3°26'41"
C20	60.00'	59.76'	56.79'	N 47°09'12" E	56°59'56"
C21	60.00'	49.71'	48.26'	S 59°18'39" E	47°28'15"
C22	60.00'	86.50'	79.20'	S 29°26'01" W	82°36'13"
C23	60.00'	64.16'	61.14'	N 78°37'53" W	61°16'58"
C24	60.00'	3.62'	3.62'	N 46°16'09" W	3°27'38"
C25	60.00'	63.78'	60.82'	N 45°54'47" E	60°54'06"
C26	60.00'	93.30'	84.18'	S 59°05'13" E	89°05'54"
C27	60.00'	93.30'	84.18'	S 30°00'41" W	89°05'54"
C28	60.00'	63.78'	60.82'	N 74°59'49" W	60°54'06"
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C29	60.00'	154.28'	115.16'	N 80°07'58" E	147°19'49"
C30	1040.00'	495.58'	491.10'	S 76°31'16" E	27°18'27"
C30	60.00'	154.28'	115.16'	S 61°47'49" W	147°19'49"

Line & Curve Data for Lots along and south of Southwest Street

LINE	BEARING	DISTANCE
L1	N 59°45'33" W	28.17'
L2	N 30°14'11" E	28.13'
L4	N 59°13'49" W	28.44'
L5	N 30°46'11" E	28.44'
L6	N 59°13'49" W	28.44'
L7	S 30°46'11" W	28.13'
L8	S 59°13'49" E	28.44'
L9	S 30°27'44" W	28.28'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1060.00'	99.59'	99.55'	N 67°22'28" E	5°22'50"
C2	288.53'	102.75'	102.21'	N 69°29'14" E	20°24'12"
C3	60.00'	313.96'	60.17'	N 15°03'58" W	299°48'39"
C4	348.53'	119.13'	118.55'	S 69°04'38" W	19°35'00"
C5	260.00'	77.80'	77.52'	S 66°26'23" W	17°08'30"
C6	60.00'	94.18'	60.00'	S 65°53'49" W	90°00'00"
C7	1035.00'	285.14'	284.29'	S 05°30'10" W	15°47'06"
C8	1035.00'	189.44'	189.17'	N 07°40'51" E	10°29'13"
C9	1035.00'	78.70'	78.68'	N 00°15'33" E	4°21'24"
C10	352.04'	26.79'	26.79'	N 73°16'21" W	4°21'24"
C11	352.04'	50.68'	50.64'	N 66°58'43" E	8°14'59"
C12	352.04'	21.93'	21.93'	N 61°04'13" E	3°34'03"
C13	288.53'	29.70'	29.69'	N 62°14'05" E	5°53'53"
C14	288.53'	50.33'	50.27'	N 70°10'51" E	9°59'39"
C15	288.53'	22.72'	22.71'	N 77°26'06" E	4°30'40"
C16	60.00'	36.84'	36.26'	S 60°44'57" E	35°10'39"
C17	60.00'	124.46'	103.31'	N 40°14'20" E	118°50'47"
C18	60.00'	81.22'	75.16'	N 57°57'44" W	77°33'21"
C19	60.00'	60.79'	58.25'	S 49°27'56" W	58°03'42"
C20	60.00'	0.68'	0.68'	S 19°05'34" W	0°39'42"
C21	348.53'	49.22'	49.18'	S 74°15'39" W	8°05'40"
C22	348.53'	50.66'	50.61'	S 66°41'52" W	8°19'40"
C23	348.53'	19.25'	19.25'	S 60°49'17" W	3°09'57"
C24	292.04'	50.71'	50.65'	S 62°29'40" W	9°57'04"
C25	292.04'	40.24'	40.21'	S 69°39'03" W	7°53'41"
C26	60.00'	68.09'	64.49'	N 76°25'52" E	65°00'59"
C27	60.00'	96.60'	86.54'	N 24°54'41" E	92°17'51"
C28	60.00'	82.60'	76.25'	N 60°41'13" W	78°53'00"
C29	60.00'	66.80'	63.40'	S 47°58'13" W	63°47'13"

Legal Description for Lone Star Trails II, Section 13 – Preliminary Plat:

Being a 25.20 Acre Tract of Land in a 354.08 Acre Tract recorded in Document No. 2017-36824, Official Public Records, located in Section 7, Block 38, T-1-S, T&P RR Co Survey, City of Midland, Midland County, Texas.

Boundary more fully described by metes and bounds as follows:

Beginning at (N:10726946.28', E:1761918.68') a ½" iron rod found in the north line of said 354.08 acre tract and the common line of Midland and Martin Counties, at the northeast corner of Lone Star Trails II, Section 11 for the northwest corner of this tract, whence the southeast corner of said Section 7 bears South 28°32'09" East, a distance of 2416.08 feet;

Thence South 89°06'49" East with the north line of said 354.08 acre tract and the common line of said Midland and Martin Counties, a distance of 606.85 feet to a ½" iron rod found in the east line of said Section 7 and the west line of Section 8, said Block 38 T-1-S, at the northeast corner of said 354.08 acre tract for the northeast corner of this tract;

Thence South 14°32'16" East with the east line of said Section 7 and the west line of said Section 8, a distance of 1712.56 feet to a 1/2" iron rod set for a point of curvature in the east line of this tract;

Thence with a curve to the right in a southwesterly direction, said curve having a radius length of 1160.00 feet, an arc length of 149.54 feet, a delta angle of 07°23'10", and a chord length of 149.44 feet bearing South 15°26'48" West to a ½" iron rod set for a point of tangency in the east line of this tract;

Thence South 19°08'23" West, a distance of 116.18 feet to a ½" iron rod set for a point of curvature in the east line of this tract;

Thence with a curve to the left in a southwesterly direction, said curve having a radius length of 1040.00 feet, an arc length of 272.49 feet, a delta angle of 15°00'43", and a chord length of 271.71 feet bearing South 11°38'02" West to a ½" iron rod set in the south line of said 354.08 acre tract, the south line of said Section 7, and the north line of Section 18, said Block 1-T-1-S, for the southeast corner of this tract;

Thence South 75°31'09" West with the south line of said 354.08 acre tract, the south line of said Section 7, and the north line of said Section 18, a distance of 125.89 feet to a ½" iron set for a point of curvature in the south line of this tract;

Thence with a curve to the right in a northeasterly direction, said curve having a radius length of 1160.00 feet, an arc length of 344.11 feet, a delta angle of 16°59'47", and a chord length of 342.85 feet bearing North 10°38'29" East to a ½" iron rod set for a point of tangency in the south line of this tract;

Thence North 19°08'23" East, a distance of 116.18 feet to a ½" iron rod set for a point of curvature in the south line of this tract;

Thence with a curve to the left in a northeasterly direction, said curve having a radius length of 1040.00 feet, an arc length of 115.42 feet, a delta angle of 06°21'31", and a chord length of 115.36 feet bearing North 15°57'37" East to a ½" iron rod set for a point of tangency in the south line of this tract;

Thence South 75°27'44" West, a distance of 477.99 feet to a ½" iron rod found at the southeast corner of said Lone Star Trails II, Section 11 for the southwest corner of this tract;

Thence North 13°55'23" West with the east line of said Lone Star Trails II, Section 11, a distance of 115.13 feet to a ½" iron rod found for a point of deflection in the west line of this tract;

Thence North 75°27'44" East with the east line of said Lone Star Trails II, Section 11, a distance of 7.77 feet to a ½" iron rod found for a point of deflection in the west line of this tract;

Thence North 14°32'16" West with the east line of said Lone Star Trails II, Section 11, a distance of 1722.33 feet to the Point of Beginning.

Containing 25.20 surface acres of land.

Bearings, distances, and coordinates are based on the Texas Coordinate System, NAD 1983, Central Zone (CORS).

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "LONE STAR TRAILS II, SECTION 13" was approved by proper action of the City Planning and Zoning Commission of the City of Midland, on this_____day of _____, 2021.

SIGNED:_____

PRINT:_____
Chairman

ATTEST:_____

PRINT:_____
Secretary

THAT I, AARON S. BURRELL, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, 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

15 October 2021
DATE

AARON SCOTT BURRELL TX RPLS 5689

OWNER:
BETENBOUGH HOMES INC.
6305 82nd STREET
LUBBOCK, TEXAS 79424
806-797-9494

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.

2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.

FLOOD NOTE:
Special Flood Hazard Areas as graphically scaled from FEMA Map No. 48329C0100F, Dated September 16, 2005, Prepared for Midland County, Texas are shown hereon.

PLANNING NOTE:
Initial Impact Fees will be assessed during the final platting process. Implementation and collection of impact fees will take place during the building permit process. Additional impact fees or increases in fees may not be assessed against the tract unless the number of service units to be developed on the tract increases.

Bearings shown on this survey are relative to the Texas Coordinate System, NAD 1983, Central Zone (CORS).

UTILITY COMPANY'S CERTIFICATE

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

SIGNED: _____ ATMOS ENERGY PRINT NAME

SIGNED: _____ ONCOR ELECTRIC DELIVERY PRINT NAME

SIGNED: _____ AT&T TEXAS PRINT NAME

SIGNED: _____ SUDDENLINK COMMUNICATIONS PRINT NAME

SIGNED: _____ GRANDE COMMUNICATIONS PRINT NAME

OWNERS' CERTIFICATE:

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, I, _____, Agent of Betenbough Homes Inc. as the recorded owner of a 25.20 Acre Tract of Land, out of a 354.08 Acre Tract of Land, as recorded in Instrument No. 2017-36824, Official Public Records, Midland County, Texas, located in Section 7, Block 38, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, and more particularly shown and described hereon:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, I, _____, Agent of Betenbough Homes Inc., do hereby adopt this plat designating the herein above described property as "LONE STAR TRAILS II, SECTION 13" an Addition to the City of Midland, Midland County, Texas, and do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon.

WITNESS our hands at Midland, Texas, this the_____day of_____, 2021.

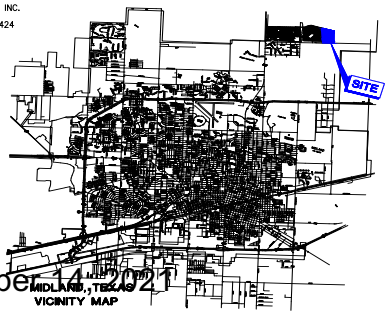
By: _____
Agent of Betenbough Homes Inc.

ACKNOWLEDGMENT
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 _____, Agent of Betenbough Homes Inc., 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 as owner, and that he executed the same as the act for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this _____day of _____, 2021.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO._____CABINET_____
DATE_____PAGE_____

PACKET 23.7

December 14, 2021

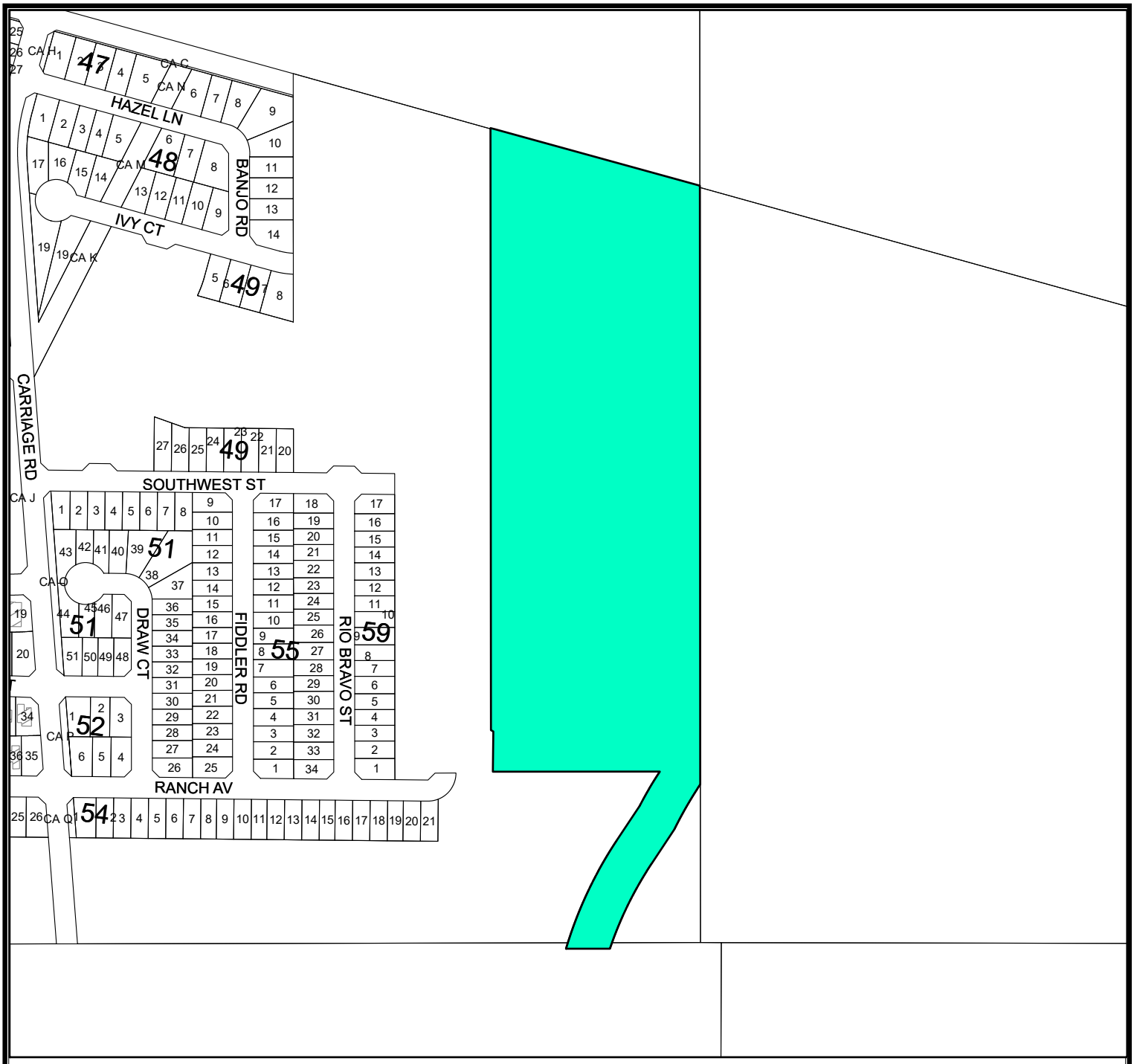
PRELIMINARY PLAT
LONE STAR TRAILS II, SECTION 13

Professional Land Surveying & Mapping
Aaron Burrell Land Surveyors, LLC
415 W. Wall St., Suite 204
Midland, Texas 79701
432-848-4439
P.O. Box 51041 ablsurveyors.com
Midland, Texas 79708
TBPLS Firm No. 10194217

Page 1 of 1
LSTII-13 Prelim

Scale 1" = 100'

LEGEND
● Fd ½" Iron Rod
○ Set ½" Iron Rod
------ Utility Easement



LOCATION MAP

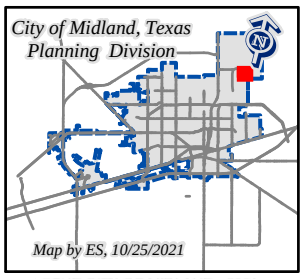
SUB-21-0410 **Scale: 1" = 200'**

Motion approving with staff's recommended conditions a proposed Preliminary Plat of Lone Star Trails II, Section 13, being a plat of a 25.20-acre tract of land located in Section 7, Block 38, T-1-S, T&P, R.R. Co. Survey, City and County of Midland, Texas.

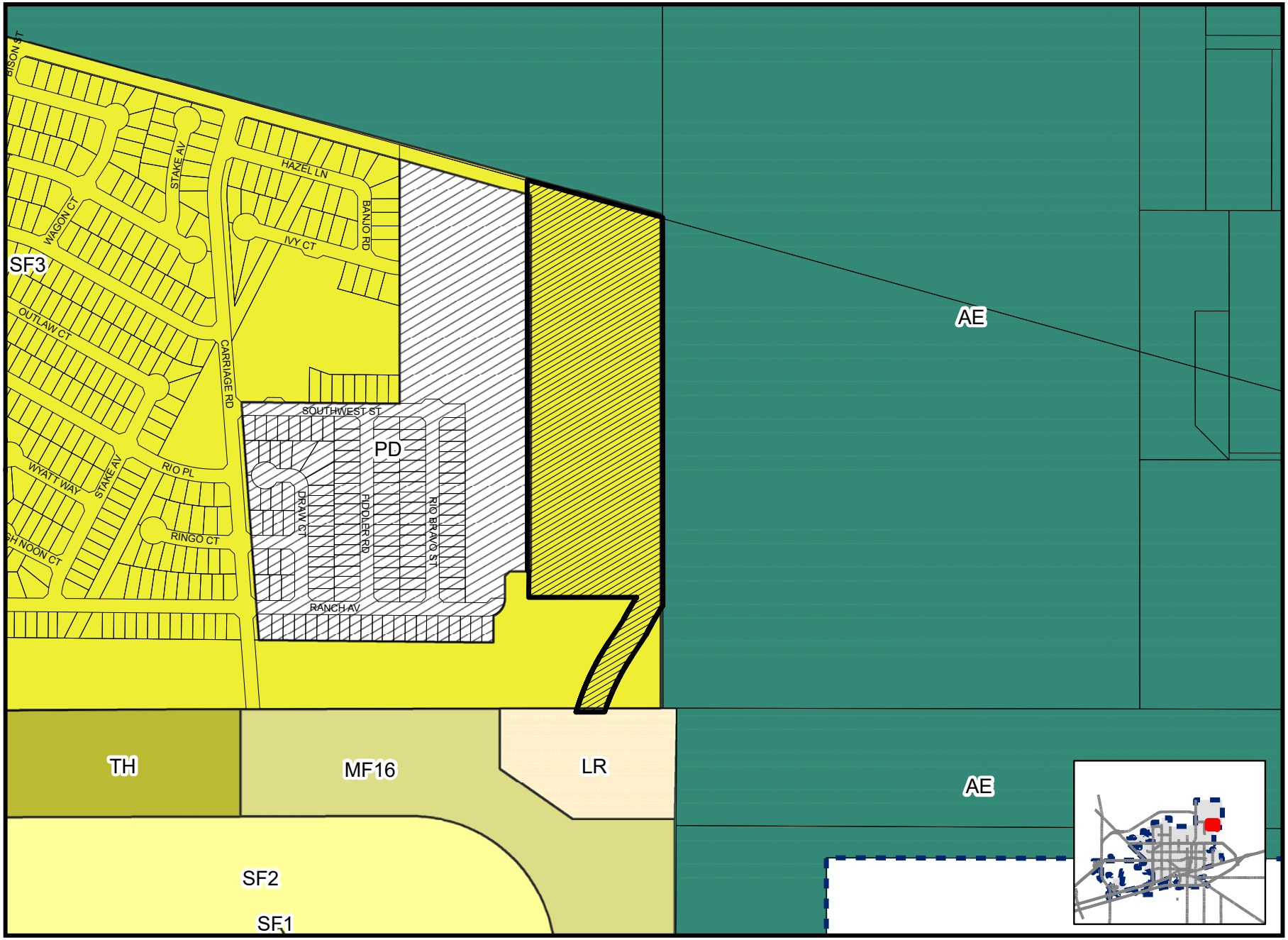
Generally located on the south side of Occidental Parkway, approximately 1, 335 - feet east of Carriage Road. Council District 1

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



December 14, 2021



Map By ES, 10/25/2021

SUB-21-0410

Scale: 1" = 200'

ZONING MAP

...ICT, NOR IS IT DESIGNED ... INFORMATION CONTAINED ... THE USE OF THIS DATA.

City Council Meeting

Item Number: 24

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Isaac Garnett, Manager, Community Development

Subject: Motion approving the receipt and filing of the Consolidated Annual Performance and Evaluation Report for the Community Development Block Grant Program Year 2020/2021. (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

Motion approving the receipt and filing of the Consolidated Annual Performance and Evaluation Report for the Community Development Block Grant Program Year 2020/2021.

Recommended City Council Action:

Approve

Fiscal Impact:

No impact on the budget.

Discussion:

The CAPER is a document that describes the past year's performance related to the City's Consolidated Plan for Community Development and Housing Funds. The U.S. Department of Housing and Urban Development (HUD) requires the report due to the city being a Community Development Block Grant recipient.

Morris Williams Jr.

City Manager's Office

CITY OF MIDLAND, TEXAS

Consolidated Annual Performance and Evaluation Report (CAPER) First Year Action Plan
Program Year 2020
October 1, 2020 – September 30, 2021



September 30, 2021

CITY OF MIDLAND
Consolidated Annual Performance and Evaluation Report (CAPER) First Year Action Plan
Program Year 2020
October 1, 2020 – September 30, 2021

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Affordable Homebuyers Housing Assistance	Affordable Housing	CDBG: $	Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	0	7		0	7	

Affordable Homebuyers Housing Assistance	Affordable Housing	CDBG: $	Direct Financial Assistance to Homebuyers	Households Assisted	80	7	8.75%	13	7	53.85%
Affordable Housing Development	Affordable Housing	CDBG: $	Homeowner Housing Rehabilitated	Household Housing Unit	50	12	24.00%	30	39	130.00%
Bunche Elementary Crossing Safety Light	Safe routes to school	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	200	200	100.00%			
Casa De Amigos Senior Grab-N-Go Meals	Senior Services	CDBG: $	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	440	600	136.36%			
City of Midland Health Department COVID -19	COVID-19 related health needs	CDBG: $	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	0	0		10000	10000	100.00%
City of Midland Health Department COVID -19	COVID-19 related health needs	CDBG: $	Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	5000	5000	100.00%			
City of Midland Health Department COVID -19	COVID-19 related health needs	CDBG: $	Jobs created/retained	Jobs	10	10	100.00%			

Clearance and Demolition	Removal of delapidated housing from neighborhoods	CDBG: $	Buildings Demolished	Buildings	10	0	0.00%			
Economic Development	Non-Housing Community Development	CDBG: $	Jobs created/retained	Jobs	15	2	13.33%			
Economic Development	Non-Housing Community Development	CDBG: $	Other	Other	0	0		2	2	100.00%
Emergency Homeless Shelter COVID boarding recovery	Homeless	CDBG: $	Overnight/Emergency Shelter/Transitional Housing Beds added	Beds	20	20	100.00%	100	20	20.00%
Essential Services	Non-Housing Community Development	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	0	0		600	600	100.00%
Essential Services	Non-Housing Community Development	CDBG: $	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	460	600	130.43%			
Homeless Meals Program	Homeless	CDBG: $	Homeless Person Overnight Shelter	Persons Assisted	1571	6460	411.20%	1571	6460	411.20%

Infrastructure Improvements	Non-Housing Community Development	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	4300	0	0.00%			
Infrastructure Improvements	Non-Housing Community Development	CDBG: $	Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit	Households Assisted	0	0		1700	0	0.00%
Public Services	Non-Housing Community Development	CDBG: $	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	0	0		0	0	
Public Services	Non-Housing Community Development	CDBG: $	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	1910	10461	547.70%	430	10461	2,432.79%
Rental Housing Subsidies	Affordable Housing	CDBG: $	Homelessness Prevention	Persons Assisted	100	855	855.00%			

TABLE 1 - ACCOMPLISHMENTS – PROGRAM YEAR & STRATEGIC PLAN TO DATE

Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

The CDBG office used CDBG funds to mitigate the public health crisis effects on citizens by funding programs that helped keep people in their home and food to eat. Agencies struggled to maintian their program objectives and keep staff safe over this time period. Most goals were completed at an

accepteable level given the extrodinary events our community experienced. The CDBG office focused on food, homeless care, COVID emergancy homless housing, rental, and utility assistance as our primary goals to prevent community devistation. The City of Midland identified seven priorities in its Consolidated Plan. These priorities are: Housing Rehabilitation, Essential Services (Public Services), Homeless/Special Populations, Economic Development, Public Facilities and Infrastructure Improvements, Housing Subsidies/Assistance. All activities tie to one of HUD's specific performance objectives of Creating Suitable Living Environments, and Providing Decent Housing, or Creating Economic Opportunities.

DRAFT

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted). 91.520(a)

	CDBG
White	858
Black or African American	171
Asian	0
American Indian or American Native	1
Native Hawaiian or Other Pacific Islander	0
Total	**1,030**
Hispanic	317
Not Hispanic	713

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The table of assistance needs describes the characteristics of households/persons assisted by estimates and hard data due to limited demographics as a result of the of public health crisis. It provides an assessment of the relationship of the use of CDBG funds and CDB-CV funds to assist in the priorities and specific objectives outlined in the Consolidated Plan. By broad category; the City expended 93% of CDBG funds on public service and public healh programs.

CR-10 data does not include all race types reported in IDIS and therefore does not represent the total families served. Also, the tables do not include the number of people served with CDBG funds through the installation of new school traffic lights. According to PR 23 Reports (see Section 3) a total of 11,465 persons were served in CDBG.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	3,072,277	1,332,517

TABLE 3 - RESOURCES MADE AVAILABLE

Narrative

The City of Midland CDBG office made program adjustments to fund distributions and made adjustments program goals due to the public health crisis.

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
BRADFORD PARK/2004 TARGET AREA			
City of Midland			City-wide
Greenwood Addition	10	10	
Low and Moderate Income Census Tracts	60	60	Low/Moderate Income
MLK	10	10	
MULBERRY DRAW			
Ratliff Park 2017			
SAN JUAN CHURCH/2006 TARGET AREA			
Southern Addtion	20	20	
SPARKS PARK			
WASHINGTON PARK/2005 TARGET AREA			

TABLE 4 – IDENTIFY THE GEOGRAPHIC DISTRIBUTION AND LOCATION OF INVESTMENTS

Narrative

Previously the majority of low and moderate income (LMI) census tracts had been located in the southern quadrant of the city and this area was targeted during the last Consolidated Plan. New census data, gathered during the development of the Consolidated Plan, showed a potential rise in the number of LMI census tracts throughout the city as a whole and this is the basis for targeting specific geographical locations within the jurisdiction. In the development of the Consolidated Plan, two target areas were defined. There is a high level of poverty and unemployment, but also areas available where new investments and revitalization can occur.

HUD funds expended during this program year, approximately 80%, were spent on activities that were identified to serve beneficiaries located within the designated target areas. This figure includes CDBG Public Service activities, emergency shelter and crisis management services.

DRAFT

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The federal, state, and local resources available to address the needs identified in the plan included federal formula grant funds under CDBG. Public service projects concentrated efforts to address the needs of families, children, and youth in high risk populations, consistent with the identified priority needs. Use of CDBG and city funds leveraged with other nonprofit resources funds were of great benefit to assist low-income persons and communities. Physical expansion and/or improvement projects used a combination of funds including, but not limited to, CDBG, city general funds to enhance selected projects. Since matching funds are not required for CDBG, the City Council considered projects that included leveraged funds to support CDBG dollars.

DRAFT

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

	One-Year Goal	Actual
Number of Homeless households to be provided affordable housing units	30	20
Number of Non-Homeless households to be provided affordable housing units	22	22
Number of Special-Needs households to be provided affordable housing units	0	0
Total	**52**	**42**

Table 5 – Number of Households

	One-Year Goal	Actual
Number of households supported through Rental Assistance	378	684
Number of households supported through The Production of New Units	7	0
Number of households supported through Rehab of Existing Units	20	39
Number of households supported through Acquisition of Existing Units	0	0
Total	**405**	**723**

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City also allocated the PY2020 funding to projects that got underway in October 2020 and significant progress has been made during the program year. Completion of program services was anticipated in the last quarter of 2021 for supportive services, general contracting, and coronavirus pandemic issues have stalled and pushed forward to PY2021.

Discuss how these outcomes will impact future annual action plans.

Those projects currently under construction will certainly be completed and will add more incentive to affordable housing development in the Midland area. One of the biggest delays for major projects is caused by the time it takes to secure all the necessary contracting requirements before the projects can get underway. Additionally, minor rehabilitation projects have resulted in an increased cost per home which has affected the number of households the program can assist; also exacerbating the effort is the shortage of available qualified contractors willing to work for the CDBG office. The CDBG office will continues to try and find ways to help increase the availability of quality affordable housing contractors as we endeavor to create an economically thriving, inclusive community with quality housing opportunities for all residents.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	459	0
Low-income	114	0
Moderate-income	150	0
Total	**723**	**0**

TABLE 7 – NUMBER OF HOUSEHOLDS SERVED

Narrative Information

The City still see a increased need for decent, affordable housing; therefore, our activities will continue to address this need with funded during PY21.

DRAFT

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

Outreach programs for unsheltered persons are not currently funded by the City of Midland, but there are outreach programs organized locally by faith-based and non-profit organizations that reach out to unsheltered individuals. Midland's Homeless Network outreach program operates using a Housing First approach with an emphasis on services that support self-sufficiency, such as obtaining vital documents, and find creative solutions to connect them to housing resources. The network provides a variety of services and assess people needs. In addition, the outreach come together each year to perform the Point-in-Time count survey of the unsheltered population. One survey question asks each person what services are currently needed. The top three answers are housing, transportation and food which is reflective past surveys.

Addressing the emergency shelter and transitional housing needs of homeless persons

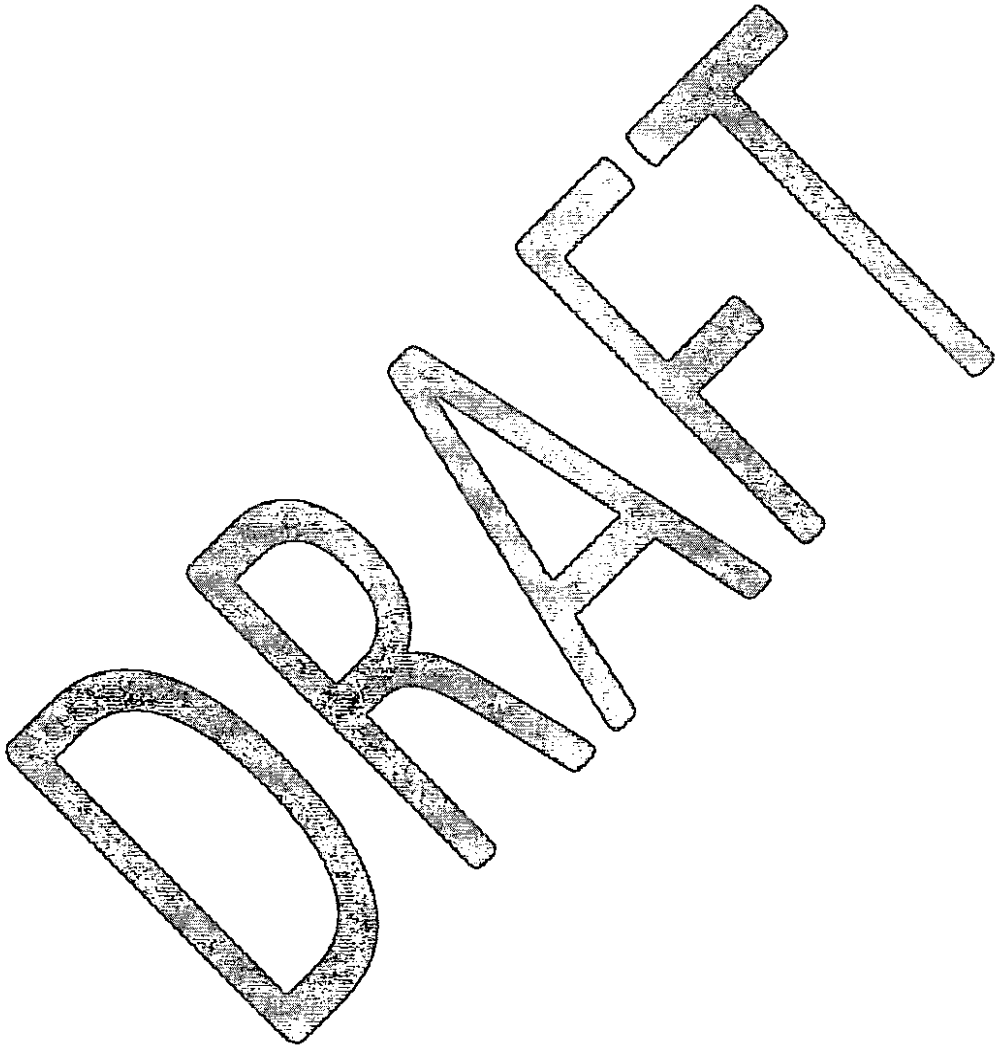
CDBG office does not provided shelter and essential services to homeless persons.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

In an effort to prevent homelessness, the City of Midland focused on three primary preventative services offered by various provider organizations including:

- Mortgage /Rental assistance;
- Utility assistance;
- Eviction prevention; and
- COVID-19 homeless intervention



CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

CDBG office does not provide PY 2020 funds to projects directly relating to addressing public housing needs. The CDG office serves as the City of Midland Housing Authority Liaison to plan and coordinate housing stratagies.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

The CDBG office usually conducts a needs assessment periodically to help determine the residents' personal needs, educational, and employment aspirations; needs assessments are conducted on a case-by-case bases to address basic needs during the pandemic. Personal barriers that prevent self-sufficiency may include a lack of life and parenting skills, clothing, transportation, childcare and chronic health conditions. Once those barriers are addressed, the CDBG office assists residents in connecting with partner agencies and organizations to obtain a high school/higher education or whatever may be necessary to help the citizens become self-sufficient. Monthly meetings are held to assess progress Midland Affordable Housing Association (MAHA), and assist with any barriers in reaching the participant's stated goals.

Actions taken to provide assistance to troubled PHAs

The Housing Authority of the City of Midland is not designated as troubled.

DRAFT

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

The City of Midland continues to implement the Zoning Codes, which encourage supporting diverse, affordable housing opportunities including various lot size options for single-family homes and the introduction of new housing types such as mixed-use buildings, cottage homes, patio homes and multi-unit houses. These housing types are allowed in certain districts and can introduce density and affordability, while remaining compatible with nearby single-family neighborhoods.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City of Midland Affordable Housing Strategy are being incorporated and combined with input from the general public and subject matter experts about how Midland can build and maintain strong neighborhoods. The recommendations will set the stage for modifications to regulatory documents associated with development activities in the city, such as the Zoning Code, Subdivision Regulations, and Building Codes. Further insight into potential regulatory limitations will be gathered through a series of roundtable discussions with organizations that work through the permitting processes of the City as they develop properties. These insights will inform recommendations to make the permitting process more consistent, transparent, and predictable.

CDBG/CDBG-CV funds were used to provide public service activities to 10,641 persons. These activities served youth, battered persons, and abused and neglected children. The funds also assisted people with transportation needs, employment and training services, health services and referrals to a variety of much needed services.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

Grants administration includes additional measures to ensure specific grant-funded activities comply with LBP regulations. Additional language is included in subrecipient agreements for projects where rehabilitation work occurs, requiring subrecipients to produce documentation of LBP testing prior to any work commencing. Additionally, Grants administration's *Construction Checklist* used for grant-funded construction and housing projects includes a check for LBP compliance.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The City of Midland funded educational programs and provide after school programs with the Boys & Girls Club of Midland. In addition, other programs offered mentoring to people and assistance to victims of abuse. Services to help homeless individuals on a path to self-sufficiency were also conducted during the program year. The City received CARES Act funding from various sources which were used in a variety of ways to help address the needs of citizens and businesses as a result of the coronavirus pandemic. The mayor formed a Coronavirus Relief Working Group to ensure the various sources of funds were allocated to address critical needs.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

Program year 2020 goals and priorities were set with input from the public, non-profit organizations and the city's community development prioritization committee. In February of each year grant applicants were informed of the city's goals, priorities and target areas. Once funding was awarded, the CDBG office continued to review the performance of projects and programs during the year. The utilization of city departments as well as non-profit organizations, community and faith-based organizations, developers, and social service agencies to carry out projects for the first year of the Five-Year Consolidated Plan. Multiple philanthropic organizations throughout the City also provide funding to the projects/programs not funded with HUD grant dollars. These leveraged dollars allowed our grant recipients to continue or expand their programs during the year.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

A local hotelier partnered with the city using CDBG-CV funds to create an insolation/quarantine facility operated between two local social service agencies and dedicated for people experiencing homelessness and COVID-19. We assisted our community providers with resources on how to stay safe during the pandemic and provided them with hygiene and personal protective supplies to allow for isolation in-place.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

Due to the coronavirus pandemic the normal planning and implementation of local fair housing events sponsored in conjunction with Midland Affordable Housing Alliance (MAHA) did not take place was scrapped. One of the areas focus throughout the program year was the Eviction Moratorium and efforts were made to address misconceptions and confusion renters and property owners faced. This office served as an information hub for Landlord/Tenant information for the community during these challenging times. This office attempted to educate landlords and tenants about the eviction moratorium rules. Outreach through live virtual training on fair housing and tenant's rights, as well as visual aids outlining how to access information and services, continued into PY20. Various funding streams including local philanthropy, worked with local nonprofits to aid tenants facing eviction and incentivizing assistance to tenants who reside in properties where the owner agreed to resolve cases through mediation.

DRAFT

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

Projects and agencies were assigned a risk factor rating to identify which projects were to be monitored on-site during the year. This assessment rates risk based upon the type of project, compliance issues, complexity of the project, and known capacity of the agency. Grantee's with a high-risk rating were selected for formal onsite monitoring as well as those programs not monitored recently. The CDBG office utilizes the HUD CPD Monitoring Handbook as its standard and guideline for each formal monitoring visit. Desk monitoring of some HUD-funded programs and projects were conducted throughout the year to ensure compliance with regulations and agreement requirements. Physical projects are inspected on a periodic basis until completion to confirm construction/rehabilitation projects are progressing and funds are being spent as planned. It is the policy of the City of Midland to encourage the use of minority or woman owned businesses in contracting opportunities. As part of HUD's grant requirements and written agreements, agencies performing construction and rehabilitation projects are encouraged to hire Section 3 residents and/or utilize Section 3 businesses and WMBE businesses when contracting or subcontracting.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

The City of Midland made substantial changes to the CDBG program objectives and goals during the year due to public health considerations. The City monitored the expenditure of CDBG funds throughout the year to ensure that projects funds, either during this year or from prior years, were completed and dollars expended. As per Ordinance 23362, agencies that did not expend all awarded funds were asked to provide certain documentation in order to carryover funds into the next program year. Instances where enough documentation was not provided resulted in funds being recaptured. City of Midland posted notices in the Midland Reporter Telegram at least 14 days in advance of public hearings. In addition, notice was posted on the City's website and social media sites.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City of Midland made substantial changes to the CDBG program objectives and goals during the year due to public health considerations. The City monitored the expenditure of CDBG funds throughout the year to ensure that projects funds, either during this year or from prior years, were completed and dollars expended.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

DRAFT

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City of Midland made substantial changes to the CDBG program objectives and goals during the year due to public health considerations. The City monitored the expenditure of CDBG funds throughout the year to ensure that projects funds, either during this year or from prior years, were completed and dollars expended.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

DRAFT

Midland
Reporter-Telegram
Delivering life...every day.

15 Smith Rd., Ste 1004
Midland, Texas 79705

City Of Midland Community Development
PO Box 1152
Midland, TX 79702

Account Number: 10002495
Order Number: 0000375592

Before Me, the undersigned authority, on this day personally appeared

Sheri Rycerz of the Midland Reporter-Telegram, a newspaper of general circulation published in Midland, Ector, Howard, Crane, Glasscock, Martin, Upton, and Andrews Counties, Texas, who stated on oath that the attached instrument was published in said newspaper on each of the following dates to wit:

11-30-2021

A.D.

Sheri Rycerz

Sworn and Subscribed to before me, this Tuesday, November 30, 2021

Notary Public

PACKET 24.23

LISA PEREZ MOLINAR
My Notary ID # 132369550
Expires February 21, 2024

December 14, 2021

Order Confirmation

Ad Order Number
0000375592

Customer
City Of Midland Community Development

Payor Customer
City Of Midland Community

PO Number

Sales Rep.
mrtrmm

Customer Account
10002495

Payor Account
10002495

Ordered By
Issac G

Order Taker
mrtrmm

Customer Address
PO Box 1152
Midland TX 79702 USA

Payor Address
PO Box 1152
Midland TX 79702 USA

Customer Fax

Order Source
Electronic

Customer Phone
432-685-7408

Payor Phone
432-685-7408

Customer EMail
igarnett@midlandtexas.gov

Special Pricing
None

Tear Sheets	Proofs	Affidavits	Blind Box	Promo Type	Materials
0	0	1			

Invoice Text
Caper B20 MRT legal Notice

Ad Order Notes
Caper B20 MRT legal Notice

Net Amount	Tax Amount	Total Amount	Payment Method	Payment Amount	Amount Due
$237.99	$0.00	$237.99		$0.00	$237.99

Ad Number	Ad Type	Ad Size	Color	Production Method	Production Notes
0000375592-0'	MR-CLS Liner	: 5.0 X 25 Li	<NONE>	AdBooker	

External Ad Number

Ad Attributes

Ad Released
No

Pick Up

Product Information / Run Schedule Invoice Text	Placement/Classification / Sort Text	Run Dates	# Inserts	Cost
Midland Reporter-Telegram::	Events and Notices - 726	11/30/2021	1	$187.99
Caper B20 MRT Legal Notice	CAPER B20 MRT LEGAL NOTICE			
mywesttexas.com-Online::	Events and Notices - 726	11/30/2021	1	$20.00
Caper B20 MRT Legal Notice	CAPER B20 MRT LEGAL NOTICE			

Order Confirmation

Proof of Ad **Ad Order Number** 0000375592

Notice

The City of Midland has prepared the Consolidated Annual Performance and Evaluation Report (CAPER) for the October 1, 2020 to September 30, 2021 program year. The CAPER describes the progress towards addressing needs identified in the City's Consolidated Plan for Community Development and Housing funds.

The CAPER may be examined at the following locations:

City Secretary's Office -- Room 330, City Hall, 300 N. Loraine
Casa de Amigos -- 1101 E. Garden Lane
City Housing Authority -- 700 W Scharbauer Drive
Martin Luther King Jr. Community Center -- 2300 Buttemut
Midland County Branch Library -- 2503 W Loop 250 N
Midland County Housing Authority -- 1710 Edwards
Midland County Public Library -- 301 W. Missouri
Midland Senior Center -- 3303 W Illinois Space #18
SE Community Senior Center -- 1803 E. Indiana

A summary of the CAPER may be viewed at www.midlandtexas.gov. Please direct any written comments to Community Development Office, PO Box 1152, Midland, Texas, 79702, by December 14, 2021. The final report will be submitted to the U.S. Department of Housing and Urban Development by December 30, 2021 and will be available at the City Secretary's Office.

FAIR HOUSING is the Law. To report housing discrimination, call 1-800-669-9777 or visit the web at www.hud.gov.

Ad Number:	375592-01	Advertiser:	City of Midland Community Develop...
Insertion Number:	N/A	Agency:	N/A
Size:	5 Col x 25 ag	Section-Page-Zone(s):	B-9-All
Color Type:	N/A	Description:	Caper B20 MRT Legal Notice

Midland Reporter-Telegram

Tuesday, November 30, 2021

mrt classifieds

432.682.6999 | 432.682.6222 | mrtclassifieds@mrt.com

Legal and Public Notices

Notice

The City of Midland has prepared the Consolidated Annual Performance and Evaluation Report (CAPER) for the October 1, 2020 to September 30, 2021 program year. The CAPER describes the progress towards addressing needs identified in the City's Consolidated Plan for Community Development and Housing Needs.

The CAPER may be examined at the following locations:

City Secretary's Office – Room 330, City Hall, 300 N. Loraine
Casa de Amigos – 1921 E. Garden Lane
City Housing Authority – 702 W Schwalbear Drive
Martin Luther King Jr. Community Center – 2300 Bullmoose
Midland County Branch Library – 4901 W Loop 250 N
Midland County Housing Authority – 1718 Edwards
Midland County Public Library – 301 W. Missouri
Midland Senior Center – 3300 W Illinois Space #18
ISD Community Senior Center – 1902 E. Indiana

A summary of the CAPER may be viewed at www.midlandtexas.gov. Persons desiring any written comments on Community Development Office, PO Box 1152, Midland, Texas, 79702, by December 14, 2021. The final report will be submitted to the U.S. Department of Housing and Urban Development by December 30, 2021 and will be available at the City Secretary's Office.

FAIR HOUSING is the Law. To report housing discrimination, call 1-800-669-9777 or visit the web at www.hud.gov.

NOTICE TO CREDITORS

Notice is hereby given that original Letters Testamentary for the Estate of Ann Shapiro Sorrel, Deceased, were issued on November 29, 2021 in Cause No. P12846, pending in the County Court of Midland County, Texas, to: John Chase.

All persons having claims against this Estate which is currently being administered are required to present them to the undersigned within the time and in the manner prescribed by law.

DATED the 29th day of November, 2021.

L. Emma Donos
Attorney for John Chase
State Bar No.: 19273500
300 North Marienfeld, Suite 700
Midland, TX 79701
Telephone: (432) 863-3201
Facsimile: (432) 888-1280
E-mail: ldonos@bdlaw.com

RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION

DISTRICT 08
DATE OF ISSUANCE: Nov 29, 2021
NOTICE OF PROTEST DEADLINE: 5:00 PM, Dec 20, 2021
Address: Railroad Commission of Texas ATTN: Drilling Permit Unit
P. O. Box 12967
Austin, Texas 78711-2967
Fax: (512) 463-6780
Email: DWPT@RRC.TEXAS.GOV

Rule 37 Case No. 0320460
Status/Permit No. 874392

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the ENDEAVOR ENERGY RESOURCES L.P., (RRC Operator No. 251732) has made application for a spacing exception permit under the provisions of Railroad Commission Statewide Rule 37 (16 Tex. Admin. Code section 3.37) for an exception to the lease line distance requirement because the Applicant is less than the required Rule 37 lease line distance to an unleased or non-pooled interest within the subject well for the NEW DRILL permit in Sec. 17, Blk. 39 T2S, T&P RR CO Survey, A-314, SPRABERRY (TREND AREA) Field, MIDLAND County, being 3.71 miles SW direction from MIDLAND, Texas.

PURSUANT TO THE TEXAS of Railroad Commissions rules and regulations, the application may be granted WITHOUT A HEARING if no protest to the application is received within the deadline. An affected person is entitled to protest this application. All said persons include owners of record and the operator or lessee of record of adjacent tracts and tracts nearer to the proposed well than the minimum lease line spacing distance. If you have questions which are specific to the Application or the information set forth in this Notice, please contact the Commission's Drilling Permit Unit at (512)463-6751. If a hearing is called, the applicant has the burden to prove the need for an exception. A Protestant should be prepared to establish standing as an affected person, and to appear at the hearing either in person or by duly authorized representative and present the application with all the information or presentation of a closed case. The rules of evidence are applicable in the hearing. If you have any questions regarding the hearing procedure, please contact the Commission's Docket Services Department at (512)463-6848.

IF YOU WISH TO REQUEST A HEARING ON THIS APPLICATION, AN INTENT TO APPEAR IN PROTEST MUST BE RECEIVED BY THE RAILROAD COMMISSION'S AUSTIN OFFICE AT THE ADDRESS, FAX NUMBER, OR E-MAIL ADDRESS SET OUT ABOVE BY Dec 20, 2021 AT 5:00 p.m. IF NO PROTEST IS RECEIVED WITHIN SUCH TIME, YOU WILL LOSE YOUR RIGHT TO PROTEST AND THE REQUESTED PERMIT MAY BE GRANTED ADMINISTRATIVELY.

THIS NOTICE OF APPLICATION REQUIRES PUBLICATION

The location and identity of the well is as shown below:

FIELD: SPRABERRY (TREND AREA)

Lease/Unit Name : INTERSTATE 9-6 UNIT I
Lease/Unit Well No. : 231
Lease/Unit Acres : 640.67 Nearest Lease Line (ft) : Null Nearest Well on Lease (ft) : 36.0

Lease Lines: 452.0 FNL, 1677.0 FEL
Survey Lines: 452.0 FNL, 1677.0 FEL

Wellbore Profile(s) : Horizontal

Lateral 1 to 1
Perforation Point Location
Lease Lines: 1.0 FEL, 1259.0 FWL
Terminus Location
RH County: MIDLAND
Section: 17 Block: 39 T1S Abstract: 314 Survey: T&P RR CO
Lease Lines: 50.0 FNL, 1179.0 FWL
Survey Lines: 50.0 FNL, 1460.0 FEL

Field Rules for ALL fields on the permit application are as follows: SPRABERRY (TREND AREA):

Special Rules: 330-6, 80.0 acres.

The well is to be drilled to an approximate depth of 11000 feet.

If you have questions regarding the application, please contact the Applicant's representative, Mary Cook, at (432)253-1126.

Notice of Application for Surface Commingling

Pioneer Natural Resources U.S.A. Inc. is applying to the Railroad Commission to amend previously approved commingle permit #5360.

This applies to the following: Watkins-Burkitt 1204E alt, Watkins-Burkitt 1204G alt, Watkins-Burkitt 1204F alt, Watkins-Wanda 1204B 2H, Watkins-Wanda 1204A 1H, Watkins-Wanda 1204C 3H, Wanda-Burkitt 1205A 1H, Wanda-Burkitt 1205B 2H, Wanda-Burkitt 1205C 3H, Wanda-Burkitt 1205D 4H & Wanda-Burkitt 1205E 5H.

Statewide rules 26 & 27 of the Railroad Commission of Texas require notice to working interest and royalty interest owners of commingled leases under specific circumstances.

Should you have any questions or concerns about this application please contact Pioneer Natural Resources U.S.A. Inc. at 432-571-3113 or email commingle_permits@pxd.com. To protest please contact the Railroad Commission of Texas, P-17 Department, P.O. Box 12967, Austin, TX 78711 or 512-463-6873 within 21 days from initial date of publication.

Notice of Application for Surface Commingling

Pioneer Natural Resources U.S.A. Inc. is applying to the Railroad Commission to amend previously approved commingle permit #9335.

This applies to the following: Turner EC43D 204H, Turner EC43E 205H, Turner EC43F 206H, Turner EC43G 207H, Turner EC43H 208H, Turner EC43I 209H & Turner H43 AB.

Statewide rules 26 & 27 of the Railroad Commission of Texas require notice to working interest and royalty interest owners of commingled leases under specific circumstances.

Should you have any questions or concerns about this application please contact Pioneer Natural Resources U.S.A. Inc. at 432-571-3113 or email commingle_permits@pxd.com. To protest please contact the Railroad Commission of Texas, P-17 Department, P.O. Box 12967, Austin, TX 78711 or 512-463-6873 within 21 days from initial date of publication.

Extra Space Storage will hold a public auction to satisfy Extra Space's lien by selling personal property described below belonging to those individuals listed below at the location indicated. All spaces contain household furniture unless otherwise noted.

Facility #: 2111 Cotton Blvd Midland, TX 79705. December 10, 2021, 10:30AM. Cynthia Dowlen. Cynthia Dowlen.

Facility #: 2009 Andrews Hwy Midland, TX 79703. December 10, 2021, 11:00AM. Rodney Phillip, Marvens Lopez Anthony Chandler, Orlando Hernandez, James Mackey

Facility #: 2304 W Loop 250 W Midland, TX 79703. December 10, 2021, 11:30AM. Sydney Stevenson, Laura Lawson.

The auction will be listed and advertised on www.storagetreasures.com. Purchase must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.

LIQUIDATION SALE
Auction– 500 pair FR wool blue coveralls. Sizes 36-44, 48-70. Reg $125, Now $25. Take all @ $15.00 a pair. Call or Fax for more information. Ph. 800-253-7412. Fax: 800-256-4331

FOR SALE
Real Estate Rental-Sale
Fax L 682-6222

Commercial
Store for rent 3400 Thompson Dr. $500/month. Call 210-841-9803

Lots and Land
901.5 acres Foreland For Sale NE of San Angelo, Texas. The property will be sold by online auction. Go to RchardsonFarm.com. Owner reserves the right to reject any and all bids. Bids will be accepted through December 1, 2021. FAS will Charles Hopkins (325) 656-5639 or (325) 944-6441.

Classified CAN 682-6222

FAX YOUR AD 24/7 682-6999

Who's Who For Service Call 682-6222 for details

Painting
WE HAUL IT – any load from your yard or garage. Call Carl @ 432-238-8040

Concrete
ALPHA MASONRY and Concrete work, Free Estimates, Small Jobs Welcome 432-813-8652.

Fences
ALPHA WELDING Carports, iron works & fencing. Small jobs welcome. Call 432-813-8652.

Home Services & Repair
Dirk & Sons Plumbing & Air Conditioning Sales & Service, Service all brands. 682-2678, TACL0005482.

Dirk & Sons Plumbing & Air Conditioning Sales & Service, Service all brands. 682-2678, TACL0005482.

Remodeling Repair
ALPHA GENERAL Construction, residential, new construction, remodeling & additions. Small jobs welcome. Call 432-813-8652.

Miscellaneous
ANDY'S CONCRETE FINISHING. Driveways, Patios, house foundations, sidewalks. Sand leveling. 432-556-8497.

Any type of job, maintenance, remodel, repair or rebuild. 24 HR Handyman. Call 432-676-9980.

Painting-Sandpaper
DOUBLE TT PAINTING
Interior and Exterior Texture, Spot & Seal Low Prices, Work guaranteed. References Available, Christmas! New Years Special! 432-238-7848 or 362-4633.

Handyman, construction with small or small, Need a new carport, fence, a paint job, roof or framing, remodeling inside? You can call or text Chris Morgan @ 432-349-8700

Landscape And Tree Maintenance
Lawn and Garden
AAA Lawn Service: Free Estimates, tree pruning & removal, flower beds, shrub trimming, & property clean up. Call 432-685-3216

Sprinkler & Drip System Repair Small lines & Lawn Service. We've served Bell BES on service 432-813-0347

David's Tree & Lawn Service
Tree & shrub trimming, Leaf clean up, mulch and landscaping
call 432-212-1062 or 432-349-0634
www.facebook.com/davidstreeandlawnservice

Musical Instruments
Piano and Voice lessons. Public and private school experience. University degree. Will visit MIDI and PRO source capable, computerized. Call 432-894-4347. Learn at a location low is reasonable. Reasonable. Midland Music Teachers Assn.

Janitorial Services
PAM'S UPHOLSTERY & DRAPERY. 20 yrs exp. 432-352-4633.

Find it fast in the Midland Reporter-Telegram CLASSIFIEDS

MIDLAND

Count of CDBG Activities with Disbursements by Activity Group & Matrix Code

Activity Group	Activity Category	Open Count	Open Activities Disbursed	Completed Count	Completed Activities Disbursed	Program Year Count	Total Activities Disbursed
Housing	Rehab; Single-Unit Residential (14A)	0	$0.00	1	$28,445.00	1	$28,445.00
	Total Housing	**0**	**$0.00**	**1**	**$28,445.00**	**1**	**$28,445.00**
Public Facilities and Improvements	Homeless Facilities (not operating costs) (03C)	1	$22,560.00	0	$0.00	1	$22,560.00
	Youth Centers (03D)	0	$0.00	1	$20,000.00	1	$20,000.00
	Parks, Recreational Facilities (03F)	1	$0.00	0	$0.00	1	$0.00
	Water/Sewer Improvements (03J)	0	$0.00	1	$103,619.81	1	$103,619.81
	Street Improvements (03K)	2	$0.00	1	$15,860.00	3	$15,860.00
	Other Public Improvements Not Listed in 03A-03S (03Z)	1	$0.00	0	$0.00	1	$0.00
	Total Public Facilities and Improvements	**5**	**$22,560.00**	**3**	**$139,479.81**	**8**	**$162,039.81**
Public Services	Senior Services (05A)	1	$0.00	7	$214,879.86	8	$214,879.86
	Services for Persons with Disabilities (05B)	0	$0.00	1	$0.00	1	$0.00
	Health Services (05M)	2	$424,789.69	0	$0.00	2	$424,789.69
	Subsistence Payment (05Q)	0	$0.00	1	$114,861.00	1	$114,861.00
	Homebuyer Downpayment Assistance-Excluding Housing Counseling, under 24 CFR 5.100 (05R)	0	$0.00	2	$180,739.57	2	$180,739.57
	Food Banks (05W)	0	$0.00	1	$82,999.99	1	$82,999.99
	Housing Information and Referral Services (05X)	0	$0.00	1	$4,482.07	1	$4,482.07
	Total Public Services	**3**	**$424,789.69**	**13**	**$597,962.49**	**16**	**$1,022,752.18**
General Administration and Planning	General Program Administration (21A)	0	$0.00	1	$119,279.90	1	$119,279.90
	Total General Administration and Planning	**0**	**$0.00**	**1**	**$119,279.90**	**1**	**$119,279.90**
Grand Total		**8**	**$447,349.69**	**18**	**$885,167.20**	**26**	**$1,332,516.89**

MIDLAND

CDBG Sum of Actual Accomplishments by Activity Group and Accomplishment Type

Activity Group	Matrix Code	Accomplishment Type	Open Count	Completed Count	Program Year Totals
Housing	Rehab; Single-Unit Residential (14A)	Housing Units	0	12	12
	Total Housing		**0**	**12**	**12**
Public Facilities and Improvements	Homeless Facilities (not operating costs) (03C)	Public Facilities	5	0	5
	Youth Centers (03D)	Jobs	0	5	5
	Water/Sewer Improvements (03J)	Housing Units	0	4	4
	Street Improvements (03K)	Persons	0	16,575	16,575
	Total Public Facilities and Improvements		**5**	**16,584**	**16,589**
Public Services	Senior Services (05A)	Persons	0	14,570	14,570
	Services for Persons with Disabilities (05B)	Persons	0	21,813	21,813
	Health Services (05M)	Persons	0	0	0
	Subsistence Payment (05Q)	Persons	0	360	360
	Homebuyer Downpayment Assistance-Excluding Housing Counseling, under 24 CFR 5.100 (05R)	Households	0	14	14
	Food Banks (05W)	Persons	0	2,631	2,631
	Housing Information and Referral Services (05X)	Persons	0	3	3
	Total Public Services		**0**	**39,391**	**39,391**
Grand Total			**5**	**55,987**	**55,992**

MIDLAND

CDBG Beneficiaries by Racial / Ethnic Category

Housing-Non Housing	Race	Total Persons	Total Hispanic Persons	Total Households	Total Hispanic Households
Housing	White	0	0	7	5
	Black/African American	0	0	5	0
	Total Housing	**0**	**0**	**12**	**5**
Non Housing	White	1,476	790	15	15
		978	419	0	0
	Black/African American	514	0	1	0
		218	0	0	0
	Asian	16	0	2	0
		16	0	0	0
	American Indian/Alaskan Native	1	0	0	0
	Native Hawaiian/Other Pacific Islander	1	0	0	0
	Other multi-racial	12	0	0	0
		2	0	0	0
	Total Non Housing	**3,234**	**1,209**	**18**	**15**
Grand Total	White	1,476	790	22	20
		978	419	0	0
	Black/African American	514	0	6	0
		218	0	0	0
	Asian	16	0	2	0
		16	0	0	0
	American Indian/Alaskan Native	1	0	0	0
	Native Hawaiian/Other Pacific Islander	1	0	0	0
	Other multi-racial	12	0	0	0
		2	0	0	0
	Total Grand Total	**3,234**	**1,209**	**30**	**20**

MIDLAND

CDBG Beneficiaries by Income Category

	Income Levels	Owner Occupied	Renter Occupied	Persons
Housing	Extremely Low (<=30%)	2	0	0
	Low (>30% and <=50%)	10	0	0
	Mod (>50% and <=80%)	0	0	0
	Total Low-Mod	12	0	0
	Non Low-Mod (>80%)	0	0	0
	Total Beneficiaries	12	0	0
Non Housing	Extremely Low (<=30%)	0	0	387
		0	0	215
	Low (>30% and <=50%)	4	0	592
		0	0	577
	Mod (>50% and <=80%)	3	0	58
		0	0	54
	Total Low-Mod	7	0	1,037
		0	0	846
	Non Low-Mod (>80%)	0	0	0
		0	0	0
	Total Beneficiaries	7	0	1,037
		0	0	846

City Council Meeting

Item Number: 25

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Gabe McClelland,

Subject: **RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SUMMIT CENTER, LLC FOR DEVELOPMENT OF MAYFIELD PLACE ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF BROMLEY PLACE AND MAYFIELD PLACE); APPROPRIATING FUNDS IN THE AMOUNT OF $62,882.64; AND AUTHORIZING PAYMENT; SAID AGREEMENT BEING AUTHORIZED BY CHAPTER 212, SUBCHAPTER C OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT 1) (ENGINEERING SERVICES)**

Purpose:

To execute a Development Agreement between the City of Midland and Summit Center, LLC for the construction of a storm drain detention pond at Mayfield Place Addition Section 8 located at the southwest corner of Bromley Place and Mayfield Place.

Recommended City Council Action:

Approve

Fiscal Impact:

An amount not to exceed $62,882.64 is available in the Drainage Utility Fund (Fund 400)

Discussion:

The project will consist of the construction of a detention pond to address regional and local drainage needs. The detention pond is also needed to address drainage needs associated with the proposed development of the Summit Center. The detention pond will be located at Lot 2, Block 3; Mayfield Place Addition located at the southwest corner of Bromley Place and

Mayfield Place. The developer will construct the detention pond in accordance with the plans and specifications provided by Dunaway Associates, LP and the City of Midland's Design Standards and Specifications. Dunaway Associates, LP has prepared an Opinion of Probable Construction Costs (OPCC), and the total estimated cost for the construction of the detention pond is $209,608.83. Upon completion of the construction of the detention pond, the City of Midland agrees to pay Summit Center in accordance with the Cost Allocation and Reimbursement Agreement prepared by Dunaway Associates, LP.

Morris Williams Jr.

City Manager's Office

PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN SUMMIT CENTER, LLC
AND THE CITY OF MIDLAND, TEXAS

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT ("Agreement") is made and effective this 15th day of December, 2021, by and between **SUMMIT CENTER, LLC** ("Developer") and the **CITY OF MIDLAND, TEXAS** (the "City"), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities as described in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Improvements");

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the property described as Mayfield Place Addition, Section 8 (the "Property"). Pursuant thereto, the Developer agrees to construct the Improvements as set forth below. The Improvements are more particularly described in specifications and contract documents related to the construction of the Improvements prepared by Dunaway Associates, LP (hereafter collectively called "the Specifications"). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work

pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The Improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit "A".

3. Developer shall submit any bids it receives for the proposed Improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If the City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from Developer of the bid tabulations and written notification of whom Developer intends to award the contract, the bid which Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the Improvements called for in Paragraph 2, Developer shall notify the City's Director of Engineering Services for inspection. Project inspection for the Improvements will be done by the City during the construction phase. The City's Director of Engineering Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to the placement of the

biodegradable grass seeding mat and the installation of the fencing around the detention pond area as referenced in Exhibit "A". If the Director of Engineering Services determines that all work has been completed in conformance with the Specifications, then the Director of Engineering Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, Developer shall furnish to the City an affidavit of all bills paid with respect to the completed work and any other records requested by the City Manager documenting Developer's costs incurred in constructing the Improvements.

6. In consideration of the obligations incurred by Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the Improvements, said amount to be no more than $62,882.64. In no case shall the City's contribution to the Improvements exceed 30 percent of the actual cost of the Improvements without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for the Improvements exceeds 30 percent of the total cost of the Improvements and such Improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this Agreement shall not exceed 30 percent of the actual cost of the Improvements.

Provided, however, that Developer shall not have to comply with said applicable competitive sealed bid procedures where the City's contribution exceeds 30 percent of the total cost of the Improvements if the City's participation is for the oversizing of such

Improvements in accordance with Section 212.072 of the Texas Local Government Code.

7. Developer will indemnify and hold harmless and defend the City and all of the City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including 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 Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement, and Developer will be required to pay any judgment with costs which may be obtained against the City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY, THE 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. Developer agrees to indemnify and save the 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 contract. When the City so desires, Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the Improvements, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the

project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of Developer providing services on the project, for the duration of the project.

C. Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on Developer's current certificate of coverage ends during the duration of the project, Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to Developer, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom whey are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, Developer is representing to the governmental entity that all employees of Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. Developer's failure to comply with any of these provisions is a breach of contract by Developer which entitles the governmental entity to declare the contract void if Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of $250,000.00 per individual, $1,000,000.00 per occurrence and $100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by Developer or its employees in amounts of not less than $1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additonal insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing the City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against the City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE 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 (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this

Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Summit Center, LLC
550 W. Texas Ave., Ste. 700
Midland, Texas 79701
Attn: Matt Johnson

If to the City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. 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 been performed in Midland County, Texas. This Agreement shall be construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties 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.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER 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 AGREEMENT, OR THE

CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. DEVELOPER SPECIFICALLY AGREES THAT IF DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

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

DEVELOPER AND THE CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS

AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS,

RELINQUISHES AND FOREVER DISCHARGES THE CITY, THE CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR THE CITY'S NEGLIGENCE.

20. By executing this Agreement 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.

21. **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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Developer will settle, the physical and mailing addresses of Developer at the time and date the claim

was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Developer 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 Developer that Developer's notice is insufficient. The 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, Developer's failure to comply with the requirements herein shall perpetually bar Developer's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Developer agrees that the requirements of this entire agreement are reasonable.

22. This agreement is made under the authority of Chapter 212, Subchapter C, Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the

improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

24. Developer agrees that it shall comply with Texas Government Code Section 2252.908, as amended. Developer agrees that it shall comply with Texas Local Government Code Section 176.006, 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.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By:_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

SUMMIT CENTER, LLC

By: _____
Matt Johnson, President & Chief
Operating Officer

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **MATT JOHNSON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **SUMMIT CENTER, LLC**, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day of December, 2021.

JEFFREY M LANG
Notary Public, State of Texas
Notary ID 12830939-2
My Commission Exp. 06-24-2022

Notary Public, State of Texas

EXHIBIT A

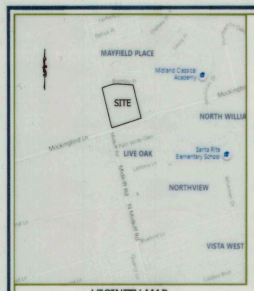
Summit Center Development Agreement
Southwest Corner of Mayfield and Bromley
Storm Drainage - Detention Improvements

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST
	Detention Pond Construction				
1	Unclassified Excavation	15489	CY	$ 6.57	$ 101,762.73
2	Biodegradable Grass Seeding Mat (Seeding)	7130	SY	$ 0.67	$ 4,777.10
3	Erosion Control for the Pond Area	1	LS	$ 4,800.00	$ 4,800.00
4	Temporary Irrigation of the Pond Area	1	LS	$ 35,294.00	$ 35,294.00
5	Fencing of the Detention Pond Area	1,145	LF	$ 55.00	$ 62,975.00
	SUBTOTAL				**$ 209,608.83**

Detention Pond Construction Total	$ 209,608.83
Summit Center Detention Expenses	**$ 209,608.83**
Developer Share (70%)	$ 146,726.19
City of Midland Share (30%)	$ 62,882.64

Grand Total City of Midland Costs:

Construction:	$62,882.64
Grand Total:	$62,882.64



VICINITY MAP
NOT TO SCALE

D.R.M.C.T. = DEED RECORDS MIDLAND COUNTY TEXAS
P.R.M.C.T. = PLAT RECORDS MIDLAND COUNTY, TEXAS
O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS MIDLAND COUNTY, TEXAS

ENGINEER/SURVEYOR

DUNAWAY ASSOCIATES, L.L.C.
4000 N. Big Spring Street
Suite 101
Midland, Texas 79705
(210) 241-6939
Contact: Tim Hair

Owner

SUMMIT WEST RESOURCES, LP
550 W TEXAS AVE STE 700
Midland, Texas 79701
(432) 682-9600
Contact: Matt Johnson

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of Mayfield Place Addition was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas, on this the 22 day of February 2021.

~~KEVIN WILTON~~, CHAIRMAN Reggie Lawrence

~~ROBERT BARONTI, JR., AICP~~ SECRETARY Cynthia O Byrne

UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

Mark Lieb	ATMOS ENERGY	MARK LIEB Print Name:
	ONCOR ELECTRIC DELIVERY	Jeffry R Hudson Print Name:
Luis Montez	SUDDENLINK	Luis Montez Print Name:
Tommy Pate	GRANDE COMMUNICATIONS	Tommy Pate Print Name:
Kenneth P. Spencer	AT&T-TEXAS	KENNETH P. SPENCER Print Name:
Robert Patrick	CITY OF MIDLAND	Robert Patrick Print Name:

OWNER'S CERTIFICATE

STATE OF TEXAS, COUNTY OF MIDLAND:

WHEREAS Summit West Resources LP, is the record owner of Lots 3 & 4, Block 3, Mayfield Place Addition, situated in Section 9, Block X, H.P. Hilliard Survey, County of Midland, and more particularly described hereon.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That we, Summit West Resources LP, do hereby adopt this plat designating the herein above described property as Lot 3A, Block 3, Mayfield Place Addition, Section 8, to the City of Midland, Texas, and we do hereby dedicate to the public use forever the streets, alleys, and easements shown hereon.

WITNESS our hands at Midland, Texas, this the 27th day of January 2021.

Representative of: Summit West Resources LP

STATE OF TEXAS, COUNTY OF MIDLAND:

This instrument was acknowledged before me on January 27th, 2021, by Matt Johnson on behalf of Summit West Resources LP.

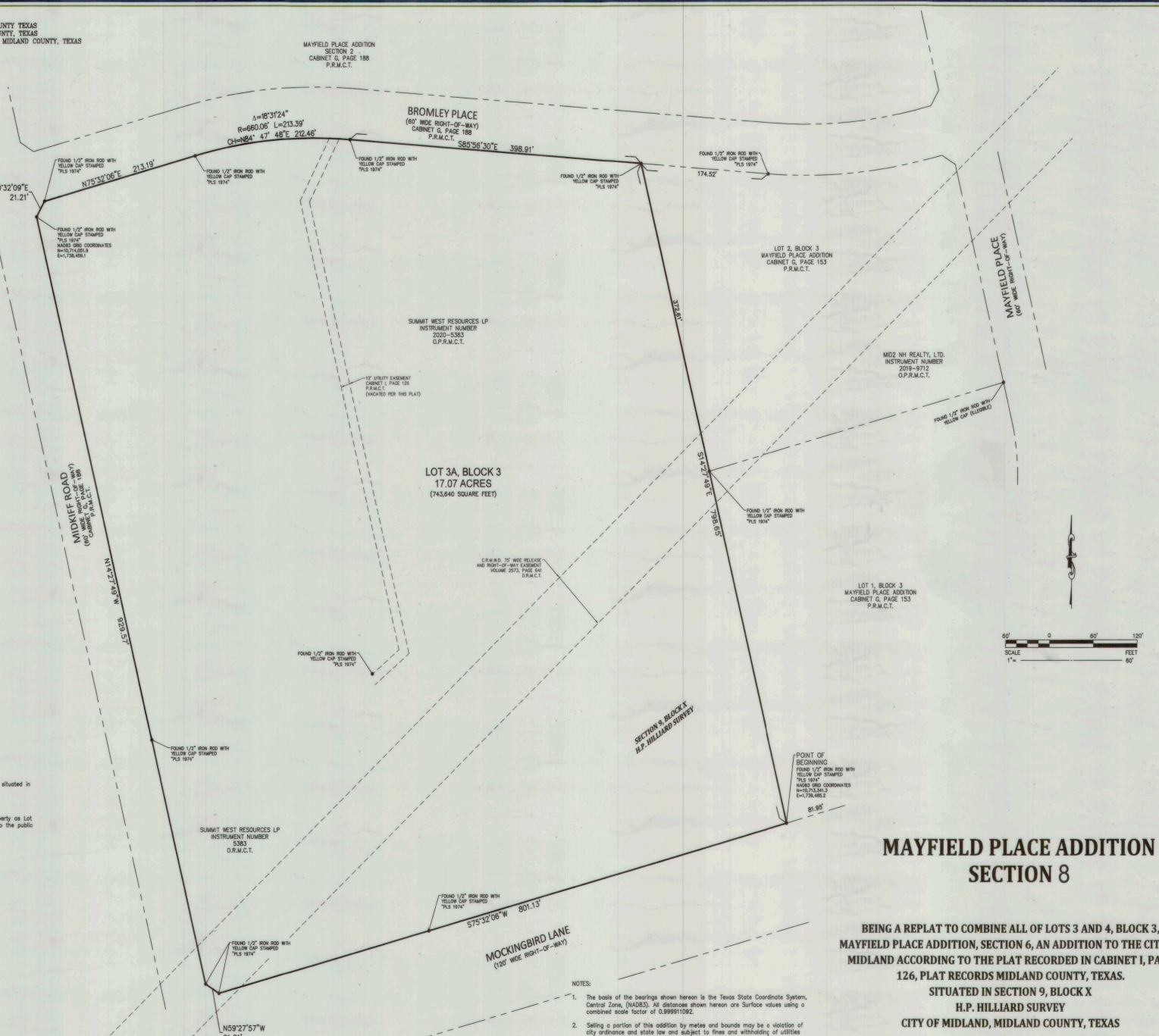
Notary Public Signature

JEFFREY M LANG
Notary Public, State of Texas
Notary ID 126936020-2
My Commission Exp. 08-04-2021

SURVEYOR'S CERTIFICATE

I, Hal Mollenkopf, 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 hereon were placed under my personal supervision in accordance with the Subdivision Regulations of the City of Midland.

Hal Mollenkopf 01/25/21
Hal Mollenkopf
Registered Professional Land Surveyor
Texas Registration No. 5439



MAYFIELD PLACE ADDITION
SECTION 8

BEING A REPLAT TO COMBINE ALL OF LOTS 3 AND 4, BLOCK 3, MAYFIELD PLACE ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND ACCORDING TO THE PLAT RECORDED IN CABINET I, PAGE 126, PLAT RECORDS MIDLAND COUNTY, TEXAS. SITUATED IN SECTION 9, BLOCK X H.P. HILLIARD SURVEY CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

NOTES:

1. The basis of the bearings shown hereon is the Texas State Coordinate System, Central Zone, (NAD83). All distances shown hereon are Surface values using a combined scale factor of 0.999911092.
2. 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.
3. Any utility company, developer or other entity installing, repairing, maintaining or relocating a utility line or permanent improvement within utility easements must restore the premises as nearly as possible to its original condition following any such work at its sole expense.
4. Approval of a site plan by the City of Midland may be required before the development of any lot and before a building permit may be obtained.
5. A blanket refuse easement of ingress and egress for garbage and trash collection purposes is hereby granted.
6. All property corners are set 5/8-inch iron rod with yellow cap stamped "DUNAWAY ASSOCIATES LP" unless otherwise noted.
7. Reference the Drainage Report for Mayfield Place Addition – Phase I, prepared October 2006 by PSC.

DUNAWAY
550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107
Tel: 817.335.1121
FIRM REGISTRATION 10098100

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. 4642 CABINET M
DATE 2/23/21 PAGE 29

PACKET 25.22 December 14, 2021

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SUMMIT CENTER, LLC FOR DEVELOPMENT OF MAYFIELD PLACE ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF BROMLEY PLACE AND MAYFIELD PLACE); APPROPRIATING FUNDS IN THE AMOUNT OF $62,882.64; AND AUTHORIZING PAYMENT; SAID AGREEMENT BEING AUTHORIZED BY CHAPTER 212, SUBCHAPTER C OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Mayfield Place Addition, Section 8, City and County of Midland, Texas (the "Property"), Summit Center, LLC (the "Developer"), has requested City participation in the construction of public improvements related to the development of the Property; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with the Developer that sets forth the extent of the City's participation in the construction of public improvements related to the development of the Property, and to authorize payment therefor, said agreement being authorized by Chapter 212, Subchapter C of the Texas Local Government Code;

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, a Public Improvement Development Agreement with the Developer. Said agreement shall be in a form substantially similar to that attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION TWO. That the sum of $62,882.64 shall be appropriated from the Drainage Fund unappropriated fund balance for the purpose of paying for said agreement.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay for said agreement, in an amount not to exceed $62,882.64, out of funds appropriated herein upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

_____
Christy Weakland, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN SUMMIT CENTER, LLC
AND THE CITY OF MIDLAND, TEXAS

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT ("Agreement") is made and effective this 15th day of December, 2021, by and between **SUMMIT CENTER, LLC** ("Developer") and the **CITY OF MIDLAND, TEXAS** (the "City"), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities as described in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Improvements");

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the property described as Mayfield Place Addition, Section 8 (the "Property"). Pursuant thereto, the Developer agrees to construct the Improvements as set forth below. The Improvements are more particularly described in specifications and contract documents related to the construction of the Improvements prepared by Dunaway Associates, LP (hereafter collectively called "the Specifications"). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work

EXHIBIT "A"

pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The Improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit "A".

3. Developer shall submit any bids it receives for the proposed Improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If the City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from Developer of the bid tabulations and written notification of whom Developer intends to award the contract, the bid which Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the Improvements called for in Paragraph 2, Developer shall notify the City's Director of Engineering Services for inspection. Project inspection for the Improvements will be done by the City during the construction phase. The City's Director of Engineering Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to the placement of the

biodegradable grass seeding mat and the installation of the fencing around the detention pond area as referenced in Exhibit "A". If the Director of Engineering Services determines that all work has been completed in conformance with the Specifications, then the Director of Engineering Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, Developer shall furnish to the City an affidavit of all bills paid with respect to the completed work and any other records requested by the City Manager documenting Developer's costs incurred in constructing the Improvements.

6. In consideration of the obligations incurred by Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the Improvements, said amount to be no more than $62,882.64. In no case shall the City's contribution to the Improvements exceed 30 percent of the actual cost of the Improvements without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for the Improvements exceeds 30 percent of the total cost of the Improvements and such Improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this Agreement shall not exceed 30 percent of the actual cost of the Improvements.

Provided, however, that Developer shall not have to comply with said applicable competitive sealed bid procedures where the City's contribution exceeds 30 percent of the total cost of the Improvements if the City's participation is for the oversizing of such

Improvements in accordance with Section 212.072 of the Texas Local Government Code.

7. Developer will indemnify and hold harmless and defend the City and all of the City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including 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 Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement, and Developer will be required to pay any judgment with costs which may be obtained against the City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY, THE 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. Developer agrees to indemnify and save the 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 contract. When the City so desires, Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the Improvements, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the

project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of Developer providing services on the project, for the duration of the project.

C. Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on Developer's current certificate of coverage ends during the duration of the project, Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to Developer, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom whey are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, Developer is representing to the governmental entity that all employees of Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. Developer's failure to comply with any of these provisions is a breach of contract by Developer which entitles the governmental entity to declare the contract void if Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of $250,000.00 per individual, $1,000,000.00 per occurrence and $100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by Developer or its employees in amounts of not less than $1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additonal insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing the City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against the City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE 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 (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this

Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Summit Center, LLC
550 W. Texas Ave., Ste. 700
Midland, Texas 79701
Attn: Matt Johnson

If to the City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. 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 been performed in Midland County, Texas. This Agreement shall be construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties 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.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER 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 AGREEMENT, OR THE

CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. DEVELOPER SPECIFICALLY AGREES THAT IF DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

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

DEVELOPER AND THE CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS

AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS,

RELINQUISHES AND FOREVER DISCHARGES THE CITY, THE CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR THE CITY'S NEGLIGENCE.

20. By executing this Agreement 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.

21. **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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Developer will settle, the physical and mailing addresses of Developer at the time and date the claim

was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Developer 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 Developer that Developer's notice is insufficient. The 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, Developer's failure to comply with the requirements herein shall perpetually bar Developer's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Developer agrees that the requirements of this entire agreement are reasonable.

22. This agreement is made under the authority of Chapter 212, Subchapter C, Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the

improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

24. Developer agrees that it shall comply with Texas Government Code Section 2252.908, as amended. Developer agrees that it shall comply with Texas Local Government Code Section 176.006, 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.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By:_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

SUMMIT CENTER, LLC

By: _____
Matt Johnson, President & Chief
Operating Officer

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **MATT JOHNSON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **SUMMIT CENTER, LLC**, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day of December, 2021.

JEFFREY M LANG
Notary Public, State of Texas
Notary ID 12830939-2
My Commission Exp. 06-24-2022

Notary Public, State of Texas

EXHIBIT A

Summit Center Development Agreement
Southwest Corner of Mayfield and Bromley
Storm Drainage - Detention Improvements

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST
	Detention Pond Construction				
1	Unclassified Excavation	15489	CY	$ 6.57	$ 101,762.73
2	Biodegradable Grass Seeding Mat (Seeding)	7130	SY	$ 0.67	$ 4,777.10
3	Erosion Control for the Pond Area	1	LS	$ 4,800.00	$ 4,800.00
4	Temporary Irrigation of the Pond Area	1	LS	$ 35,294.00	$ 35,294.00
5	Fencing of the Detention Pond Area	1,145	LF	$ 55.00	$ 62,975.00
	SUBTOTAL				**$ 209,608.83**

Detention Pond Construction Total	$ 209,608.83
Summit Center Detention Expenses	**$ 209,608.83**
Developer Share (70%)	$ 146,726.19
City of Midland Share (30%)	$ 62,882.64

Grand Total City of Midland Costs:

Construction:	$62,882.64
Grand Total:	$62,882.64

City Council Meeting

Item Number: 26

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Jose Ortiz, Director

Subject: RESOLUTION AUTHORIZING MIDLAND COUNTY, TEXAS TO PERFORM PAVING SERVICES ON INDUSTRIAL AVENUE, FROM LOOP 250 TO MIDKIFF ROAD, IN ACCORDANCE WITH THE CITY - COUNTY INTERLOCAL COOPERATION CONTRACT AUTHORIZED BY RESOLUTION NO. 2013-401; ALLOCATING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $1,340,662.00 OR FIFTY PERCENT OF THE TOTAL COST OF SAID PAVING SERVICES, WHICHEVER IS LESS (DISTRICT 2) (ENGINEERING SERVICES)

Purpose:

Consider a resolution authorizing the City Manager to allocate funds in an amount not to exceed $1,340,662.00 to Midland County for reconstruction of Industrial Avenue in accordance with the City – County Interlocal Cooperation Contract, dated November 12, 2013. The limits are from Loop 250 to Midkiff Road.

Recommended City Council Action:

Approve

Fiscal Impact:

A sum not to exceed $1,340,662.00 shall be allocated from the City's American Rescue Plan Act funds to a project account for the said paving work.

Discussion:

Midland County is currently in construction to rebuild Industrial Avenue from Loop 250 to Midkiff Road. The project limits fall within the City Limits, but serves Midland County properties; therefore the County Commissioners have agreed to manage the reconstruction of the roadway with the City reimbursing the County for fifty percent of the construction cost. The

County has awarded the construction contract to Reece Alberts Inc. in the amount of $2,681,324 of which the City will reimburse the County $1,340,662 when the project is completed.

The reconstruction of Industrial Avenue is in the City's 3-Year Capital Plan as depicted in the attached document. City staff supports this item.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING MIDLAND COUNTY, TEXAS TO PERFORM PAVING SERVICES ON INDUSTRIAL AVENUE, FROM LOOP 250 TO MIDKIFF ROAD, IN ACCORDANCE WITH THE CITY - COUNTY INTERLOCAL COOPERATION CONTRACT AUTHORIZED BY RESOLUTION NO. 2013-401; ALLOCATING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $1,340,662.00 OR FIFTY PERCENT OF THE TOTAL COST OF SAID PAVING SERVICES, WHICHEVER IS LESS

WHEREAS, on the 12th day of November, 2013, the City Council adopted Resolution No. 2013-401, authorizing the execution of an Interlocal Cooperation Contract (the "Contract") with Midland County, Texas (the "County"); and

WHEREAS, in accordance with the Contract, the County proposes to perform paving services on Industrial Avenue, from Loop 250 to Midkiff Road (the "Paving Work"), at a total cost to the City not to exceed $1,340,662.00 or fifty percent of the total cost of the Paving Work, whichever is less; and

WHEREAS, the City Council finds it to be in the public interest to authorize the County to perform the Paving Work and to allocate funds and authorize payment therefor;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

SECTION TWO. That the County is hereby authorized to perform the Paving Work.

SECTION THREE. That a sum not to exceed $1,340,662.00 shall be allocated from the City's American Rescue Plan Act funds to a project account for said Paving Work.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to make payment to Midland County for the City's share of the cost of the Paving Work, pursuant to the terms of the Contract, in an amount not to exceed $1,340,662.00 or fifty percent of the total cost of the Paving Work, whichever is less, from funds available in the

aforementioned project account upon receipt of proper invoice or statement or other documentation approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

ENGINEERING SERVICES
FUTURE PROJECTS

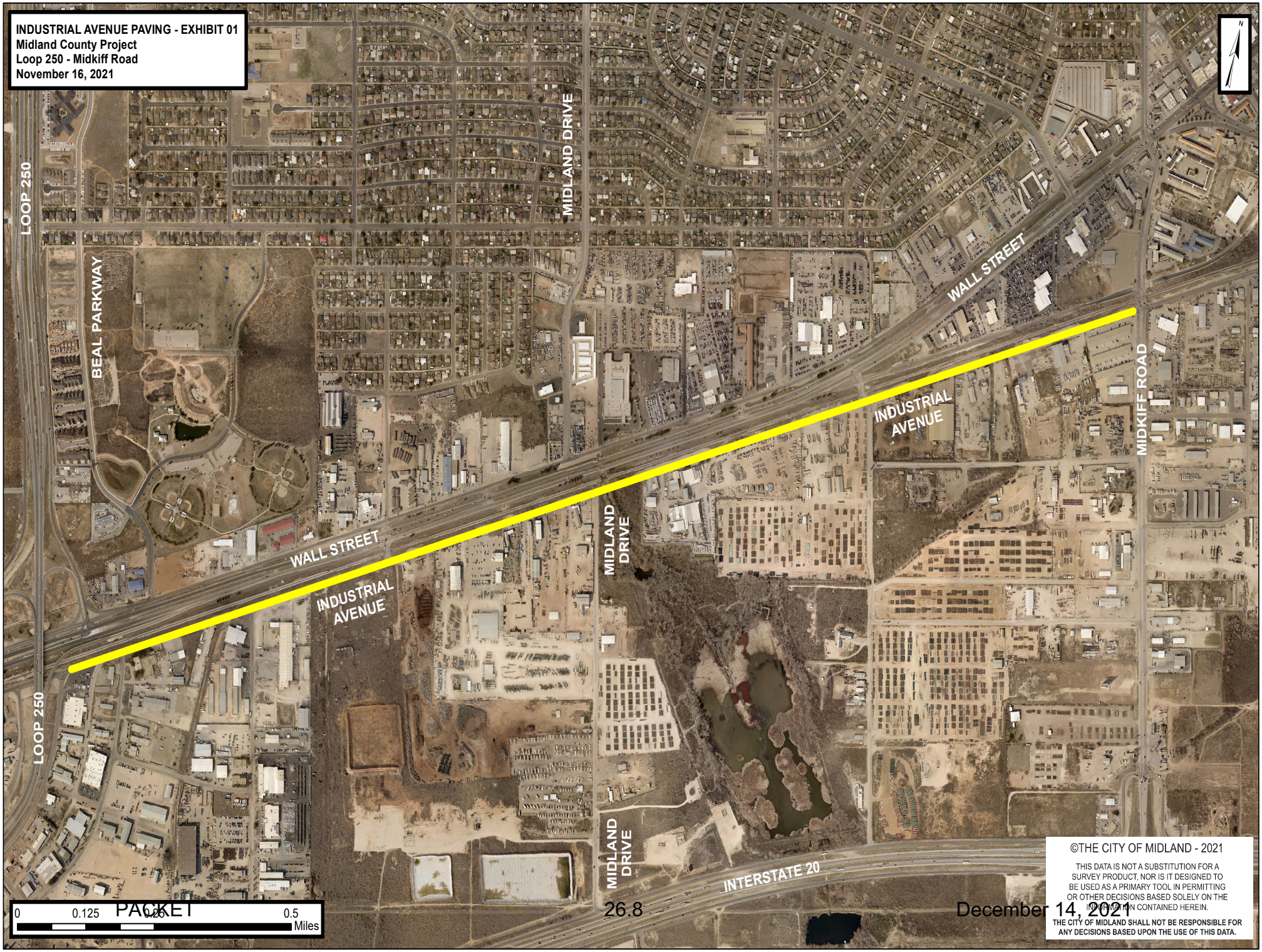
1. **2017 ROAD/UTILITY BOND UPDATES**
2. **COMPASS – City of Midland - Paving, Alley, Streets, and Sidewalks**
3. **WADLEY AND GOLF COURSE**
4. **TODD DRIVE**
5. **FUNDING OPPORTUNITIES**



FUNDING

ROADWAY 3-YEAR CAPITAL FUNDING PLAN

UNFUNDED (suggested funding)	ARPA	Gen Fund	MDC	Existing & Future Bonds	Impact Fees	Drainage Fees	CDBG		
COMPASS	$ 6,000,000						$ 1,000,000		$ 7,000,000
•Park Avenue Heights Subdivision									
•Potential – Nobles Ave, Hicks Ave, Missouri Ave, Spruce Ave, Marlin Ave, Etc…									
Industrial Avenue (Loop 250 to Midkiff Road)	$ 2,000,000								$ 2,000,000
Wadley Extension (Callaway Dr to SH 158)	$ 8,000,000								$ 8,000,000
Wadley Reconstruction (Garfield St to I St)	$ 4,000,000			$ 10,000,000					$ 14,000,000
Golf Course Road (Midkiff Rd to K St)				$ 15,000,000					$ 15,000,000
Todd Drive (BI-20 to Golf Course Rd)			$ 3,000,000	$ 3,000,000	$ 500,000	$ 1,000,000			$ 7,500,000
Briarwood Avenue (SH 158 to Avalon)		$ 6,000,000	$ 3,500,000		$ 500,000				$ 10,000,000
	$ 20,000,000	$ 6,000,000	$ 6,500,000	$ 28,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000		$ 63,500,000


INDUSTRIAL AVENUE PAVING - EXHIBIT 01
Midland County Project
Loop 250 - Midkiff Road
November 16, 2021
LOOP 250
BEAL PARKWAY
MIDLAND DRIVE
WALL STREET
INDUSTRIAL AVENUE
MIDKIFF ROAD
INTERSTATE 20
0
0.125
0.25
0.5
Miles
©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City of Midland
Office Memorandum

DATE: December 9, 2021

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney

SUBJECT: Resolution authorizing the City Manager to negotiate a Development Agreement and Lease Agreement with the Permian Basin Quality of Place Conservancy for the design, construction, maintenance, and operation of certain proposed improvements to Hogan Park; providing that said Development Agreement and Lease Agreement shall have concurrent terms; and providing that said Development Agreement and Lease Agreement shall not become effective until approved by the City Council.

Council members Lori Blong and Jack Ladd requested that the item be placed on your agenda for consideration.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO NEGOTIATE A DEVELOPMENT AGREEMENT AND LEASE AGREEMENT WITH THE PERMIAN BASIN QUALITY OF PLACE CONSERVANCY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, AND OPERATION OF CERTAIN PROPOSED IMPROVEMENTS TO HOGAN PARK; PROVIDING THAT SAID DEVELOPMENT AGREEMENT AND LEASE AGREEMENT SHALL HAVE CONCURRENT TERMS; AND PROVIDING THAT SAID DEVELOPMENT AGREEMENT AND LEASE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, the City of Midland (the "City") is the owner of a certain 600-acre tract of real property commonly known as Hogan Park ("Hogan Park"); and

WHEREAS, the City and the Permian Basin Quality of Place Conservancy (the "Conservancy") desire to cause certain improvements and enhancements to be made to Hogan Park (the "Project") that will attract persons and organized sports tournaments from around the West Texas region and contribute to the use and enjoyment of residents and visitors of the City for recreational purposes; and

WHEREAS, the City and the Conservancy desire for the Project to be developed, operated and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the City and the Conservancy propose that private and public funds and resources be used to provide for the Project; and

WHEREAS, the City Council finds and determines that the agreements referenced in Section Two hereof (the "Agreements") constitute a program for making a grant of public funds to promote local economic development; and

WHEREAS, the City Council finds and determines that the City expenditures provided for under the Agreements will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve and promote Hogan Park and the

City; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of the Agreements for the purposes stated herein;

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

SECTION ONE. That the above recitals are hereby approved and adopted for all purposes.

SECTION TWO. That the City Manager is hereby authorized and directed to negotiate, on behalf of the City of Midland, a development agreement and a lease agreement for the Project between the City of Midland and the Permian Basin Quality of Place Conservancy. Said Agreements shall have concurrent terms.

SECTION THREE. That the Agreements shall not become effective until approved by the City Council.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 28

Meeting Date: December 14, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License with Environmental Disposal Systems, LLC, regarding City-owned property described as Section 44, Block 38, T-1-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way a for a 6", SDR-11 type produced water pipeline, in section 44. This right of way will allow Environmental Disposal Systems to move produced water in support of parent company, Endeavor Energy's production operations under the current SUA. This pipeline is located at the northeastern edge of the Plant Farm and north of the Fire Training Center.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Produced Water Pipeline ($20/rod * 98.47): $ 1,969.40 per year / paid 5 years in advance $9,847.00

Surface Damages: one time

Pipeline (98.47.26 rods x $10/rod): $984.70

Total Collected: $11,831.70

Discussion:

Environmental Disposal Systems, LLC is a wholly owned subsidiary of Endeavor Energy, this pipeline will support mineral recovery operations on this property and adjacent privately owned property. This right of way will include an additional 50’ wide temporary construction area. Pipeline will be buried a minimum 48” deep.

Current Certificate of Insurance is on file.

City Secretary will record all documents.

Morris William Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	December 15, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Environmental Disposal Systems, LLC
Licensee's Representative:	**Robert Booth, Vice President – Energy Services**
Licensee's Mailing Address:	110 N. Marienfeld Suite 200 Midland, Texas 79701
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	21-329-046

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of NINE THOUSAND EIGHT HUNDRED FORTY-SEVEN and No/100 Dollars ($9,847.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Licensee shall pay a one-time surface damage fee to Licensor in the amount of NINE HUNDRED EIGHTY-FOUR and 70/100 Dollars ($984.70), payable on or prior to the Commencement Date.

C. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon certain property of Licensor, being fifty (50) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline location, a SDR-11 pipeline, not to exceed six (6) inches in diameter, for the transportation of produced water and to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to thirty (30) feet after the pipeline is laid. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-eight (48) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all

City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not (except to the extent of Licensor's gross negligence or willful misconduct) be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans

and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed

necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Excess Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES, BUT ONLY TO THE EXTENT LICENSEE OWES LICENSOR AN INDEMNITY UNDER THIS PARAGRAPH.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR

COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE

PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, IN NO EVENT SHALL LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, DAMAGES, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT TO THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF LICENSOR OR ANY OF LICENSOR'S OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS OR EMPLOYEES.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF REASONABLE ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE OR THE CONSTRUCTION OR INTERPRETATION OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS

AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF REASONABLE ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LICENSE, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE WITH REGARDS TO THIS LICENSE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, LICENSOR'S NEGLIGENCE OR CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS; PROVIDED, HOWEVER, THAT SAID RELEASE SHALL NOT EXTEND TO ANY DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION RELATING TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF LICENSOR.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party

beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Morris Williams, Assistant City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
ENVIRONMENTAL DISPOSAL SYSTEMS, LLC

By: _____

Printed Name: ROBERT BOOTH

Title: VICE PRESIDENT - ENERGY SERVICES

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

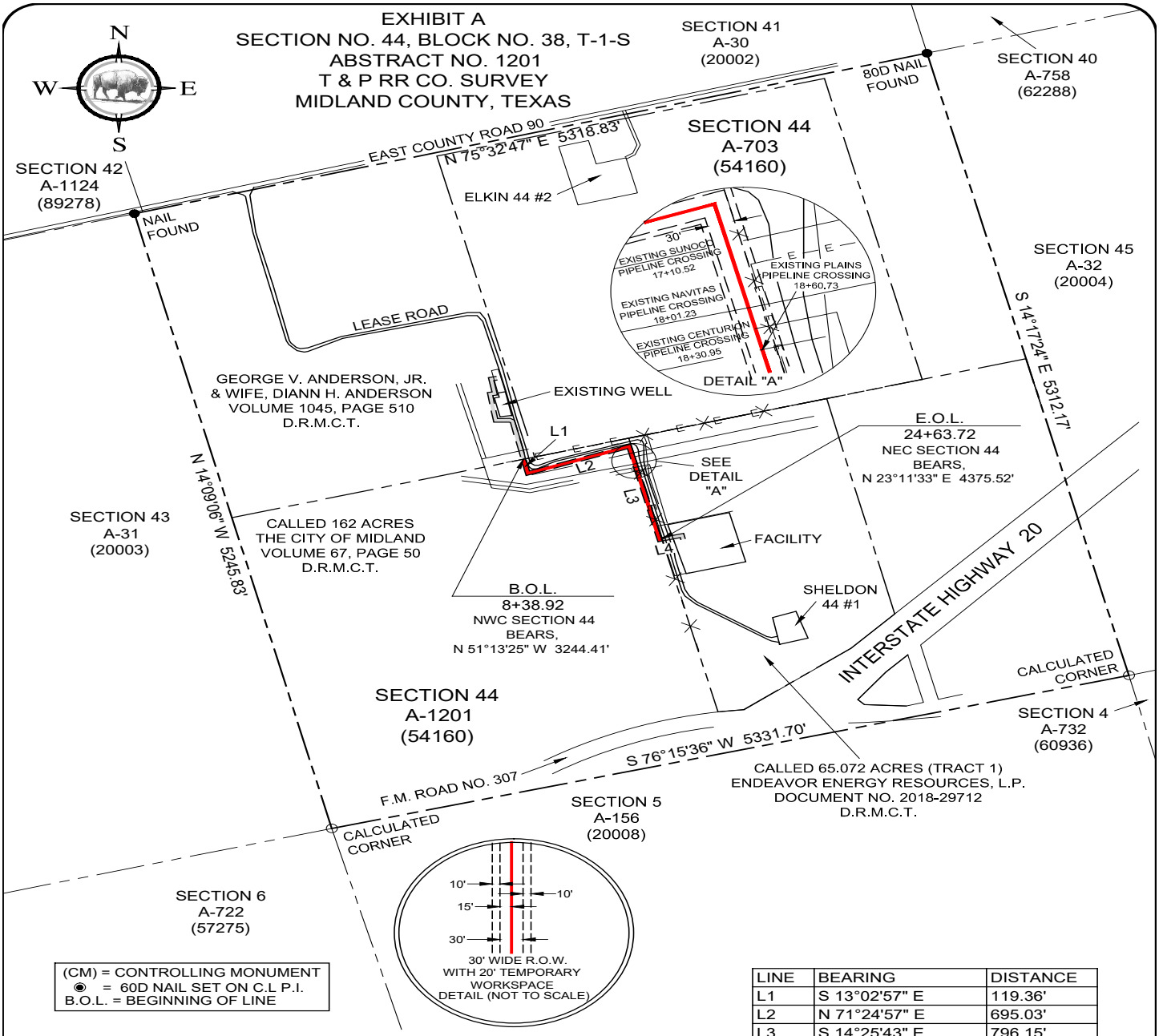
BEFORE ME, the undersigned authority, on this 30TH day of November 2021 personally appeared ROBERT BOOTH an officer of Environmental Disposal Systems, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30TH day of November 2021.

_____
Notary Public, State of TEXAS

LEW MATTHEW ETHEREDGE
Notary Public, State of Texas
Comm. Expires 12-11-2023
Notary ID 130340692

EXHIBIT A
SECTION NO. 44, BLOCK NO. 38, T-1-S
ABSTRACT NO. 1201
T & P RR CO. SURVEY
MIDLAND COUNTY, TEXAS



(CM) = CONTROLLING MONUMENT
◉ = 60D NAIL SET ON C.L P.I.
B.O.L. = BEGINNING OF LINE

LINE	BEARING	DISTANCE
L1	S 13°02'57" E	119.36'
L2	N 71°24'57" E	695.03'
L3	S 14°25'43" E	796.15'
L4	N 76°23'32" E	14.26'

CENTERLINE PIPELINE TRAVERSE	
FEET (GRID)	RODS (GRID)
1,624.80'	98.47

CENTERLINE COORDINATES		
	NAD 83 COORDINATE	NAD 83 GEODETIC
B.O.L.	X:1772233.02	N:32°00'19.330"
	Y:10697116.76	W:102°01'29.286"
E.O.L.	X:1773131.00	N:32°00'12.910"
	Y:10696454.30	W:102°01'18.743"

I, James P. Keene, Registered Professional Land Surveyor No. 5100, do hereby state that the survey map hereon, depicts and describes the results of an actual on the ground survey made on the 26th day of October 2021, Under my direction and supervision. This survey substantially conforms to the Minimum Standards of Practice as approved by the Texas Board of Professional Land Surveyors. This statement is not a representation of warranty of title or guarantee of ownership.
This survey was conducted without the benefit of a current title commitment, other easements and restrictions may apply.
Coordinates: NAD 83 Texas Central Zone.
Basis of Bearing is the Texas State Plane Coordinate System Central Zone, NAD 83.
-Distances must be multiplied by a combined scale factor of 1.0001320 to obtain surface distances.
ANY USE OF THIS SURVEY FOR ANY OTHER PURPOSE OR BY OTHER PARTIES SHALL BE AT THEIR RISK AND THE UNDERSIGNED IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREOF.

STATE OF TEXAS
REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL
LAND SURVEYOR

SCALE: 1" = 1000'
1000 500 0 1000 2000
GRAPHIC SCALE

1-800-245-4545
WWW.TEXASONECALL.COM
TEXAS ONE CALL SYSTEM
CONSTRUCTION NOTE: UNDER GROUND UTILITIES MUST BE VERIFIED BY CONTRACTOR PRIOR TO EXCAVATING.

FIELD DATE: 09/29/21
SCALE: 1"= 1000' | DATE: 10/26/21
DRWN: JH | APPVD: JPK | CREW: DH
PROJ. NO. 16-0[illegible]
ELKIN 44 SWD-PIPELINE (TR-2)
PACKET 28.16

ENDEAVOR ENERGY RESOURCES, L.P.
(ELKIN 44)
PROPOSED 30' WIDE PIPELINE RIGHT-OF-WAY
LOCATED IN
SECTION 44, BLOCK 38, T-1-S,
T & P RR. CO. SURVEY
MIDLAND COUNTY, TEXAS

BISON CREEK
LAND SERVICES, LLC
WWW.BISON-CREEK.COM
COPYRIGHT 2021
FIRM LICENSE NO. 10193880
December 14, 2021

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McGriff Insurance Services, Inc.
10100 Katy Freeway, #400
Houston, TX 77043

CONTACT NAME:
PHONE (A/C, No, Ext): 713-877-8975 **FAX (A/C, No):** 713-877-8974
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : The First Liberty Insurance Corporation	33588
INSURER B : Liberty Insurance Corporation	42404
INSURER C : Starr Indemnity & Liability Company	38318
INSURER D : Westchester Fire Insurance Company	10030
INSURER E :	
INSURER F :	

INSURED
Endeavor Energy Resources, L.P.
and Per Attached Named Insureds
110 N Marienfeld, Suite 200
Midland, TX 79701

COVERAGES **CERTIFICATE NUMBER:** DWRGLP65 **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** CLAIMS-MADE X OCCUR X Self-Insured Retention $250,000 X Time Element Poll - Incl GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			EB6-641-443771-111	11/01/2021	11/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ $ $ $ $ $ $	2,000,000 2,000,000 4,000,000 4,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO X OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			AS6-641-443771-101	11/01/2021	11/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ $ $ $ $	2,000,000
C	UMBRELLA LIAB X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			1000095483211	11/01/2021	11/01/2022	EACH OCCURRENCE AGGREGATE 	$ $ $	5,000,000 5,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WA7-64D-443771-091	11/01/2021	11/01/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $	 1,000,000 1,000,000 1,000,000
D	Excess Liability $5m xs $5m			G27918748007	11/01/2021	11/01/2022	Each Occurrence Aggregate	$ $	5,000,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder is included as Additional Insured as respects to General Liability and Automobile Liability as required by written contract subject to policy terms, conditions and exclusions. A Waiver of Subrogation is provided as respects to General Liability, Automobile Liability, Excess Liability and Workers' Compensation as required by written contract subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland, TX 79701 PACKET 28.17

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 December 14, 2021

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

PRODUCER McGriff Insurance Services, Inc.	**INSURED** Endeavor Energy Resources, L.P. and Per Attached Named Insureds
POLICY NUMBER	
CARRIER / **NAIC CODE**	**ISSUE DATE:** 10/29/2021

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ **FORM TITLE:** _____

ENDEAVOR ENERGY RESOURCES, L.P.
Named Insured List:
Endeavor Energy Resources L.P. dba EER Energy Services
Endeavor Energy Resources L.P. dba Energy Services Well Servicing Division fka Endeavor Energy Resources, L.P. dba J & L Well Service
Endeavor Energy Resources L.P. dba Energy Services Roustabout Division fka Endeavor Energy Resources, L.P. dba Compadre Roustabout Service
Endeavor Energy Resources L.P. dba Energy Services Trucking Division fka Endeavor Energy Resources, L.P. dba C & W Transports
Endeavor Energy Resources L.P. dba Energy Services Wireline Division fka Endeavor Energy Resources, L.P. dba Jones Wireline Service
Endeavor Energy Resources, L.P. dba Electrical Maintenance and Construction
Endeavor Energy Resources, L.P. dba ACS Pump & Supply
Endeavor Energy Resources L.P. dba Energy Services Construction Division fka Endeavor Energy Resources, L.P. dba Red Dog Construction
Endeavor Petroleum, LLC
Endeavor Energy Resources L.P. dba Energy Services Vehicle Maintenence Division fka Endeavor Energy Resources, L.P. dba Vehicle Service Company
Environmental Disposal Systems, LLC

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CERTIFICATE NUMBER: DWRGLP65

City Council Meeting

Item Number: 29

Meeting Date: December 14, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-044) with Endeavor Energy Resources, L.P., regarding City-owned property described as Sections 13 and 24, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way for Endeavor Energy to build a single pole, overhead 25 KV power distribution line on Sprayberry Farm property. Utility poles will be spaced at 250' intervals.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate / power lines (371.7 rods x $20/rod): $7,434.00 per year – first 5 years paid in advance: $37,170.00

Surface Damages: one time (371.7 rods x $10/ per rod): $3,717.00

Total Collected: $41,887.00

Discussion:

This is a privately-owned, overhead electric distribution line, overall right of way width will be 30’ with two additional temporary workspaces of 20’ each. As noted, all poles and overhead lines are away from existing COM water monitoring wells. Power is in support of Endeavor's ongoing production under the existing Surface Use Agreement.

Certificates of Insurance are on file

City Secretary to record all documents

Morris Williams Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	December 15, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Endeavor Energy Resources, L.P.
Licensee's Representative:	**R. Ben Carter**
Licensee's Mailing Address:	110 N. Marienfeld St. Midland, Texas 79701
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	21-329-044

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of THIRTY SEVEN THOUSAND ONE HUNDRED SEVENTY and No/100 Dollars ($37,170.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Intentionally omitted.

C. Application Fee. At the same time the License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall

negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon certain property of Licensor, being fifty (50) feet in width of the location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described location, a single pole, overhead 25 KV power distribution line ("power distribution line"), said construction width shall revert to thirty (30) feet after construction is completed. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the power distribution line described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the power distribution line described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Intentionally omitted.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or

cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not (except to the extent of Licensor's gross negligence or willful misconduct) be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S POWER DISTRIBUTION LINE, ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any power distribution line built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate Licensee's power distribution line, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full

force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Excess Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance

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

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S POWER DISTRIBUTION LINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES, BUT ONLY TO THE EXTENT LICENSEE OWES LICENSOR AN INDEMNITY UNDER THIS PARAGRAPH.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE POWER DISTRIBUTION LINE AND DESCRIBED HEREIN.

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

PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S POWER DISTRIBUTION LINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, IN NO EVENT SHALL LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, DAMAGES, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT TO THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF LICENSOR OR ANY OF LICENSOR'S OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS OR EMPLOYEES.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL

COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LICENSE, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE WITH REGARDS TO THIS LICENSE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, LICENSOR'S NEGLIGENCE OR CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS; PROVIDED, HOWEVER, THAT SAID RELEASE SHALL NOT EXTEND TO ANY DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION RELATING TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF LICENSOR.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and

mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent

that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Morris Williams, Assistant City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
ENDEAVOR ENERGY RESOURCES, L.P.

By: _____

Printed Name: R. Ben Carter

Title: VP - Land

THE STATE OF TEXAS §
§
COUNTY OF Midland §

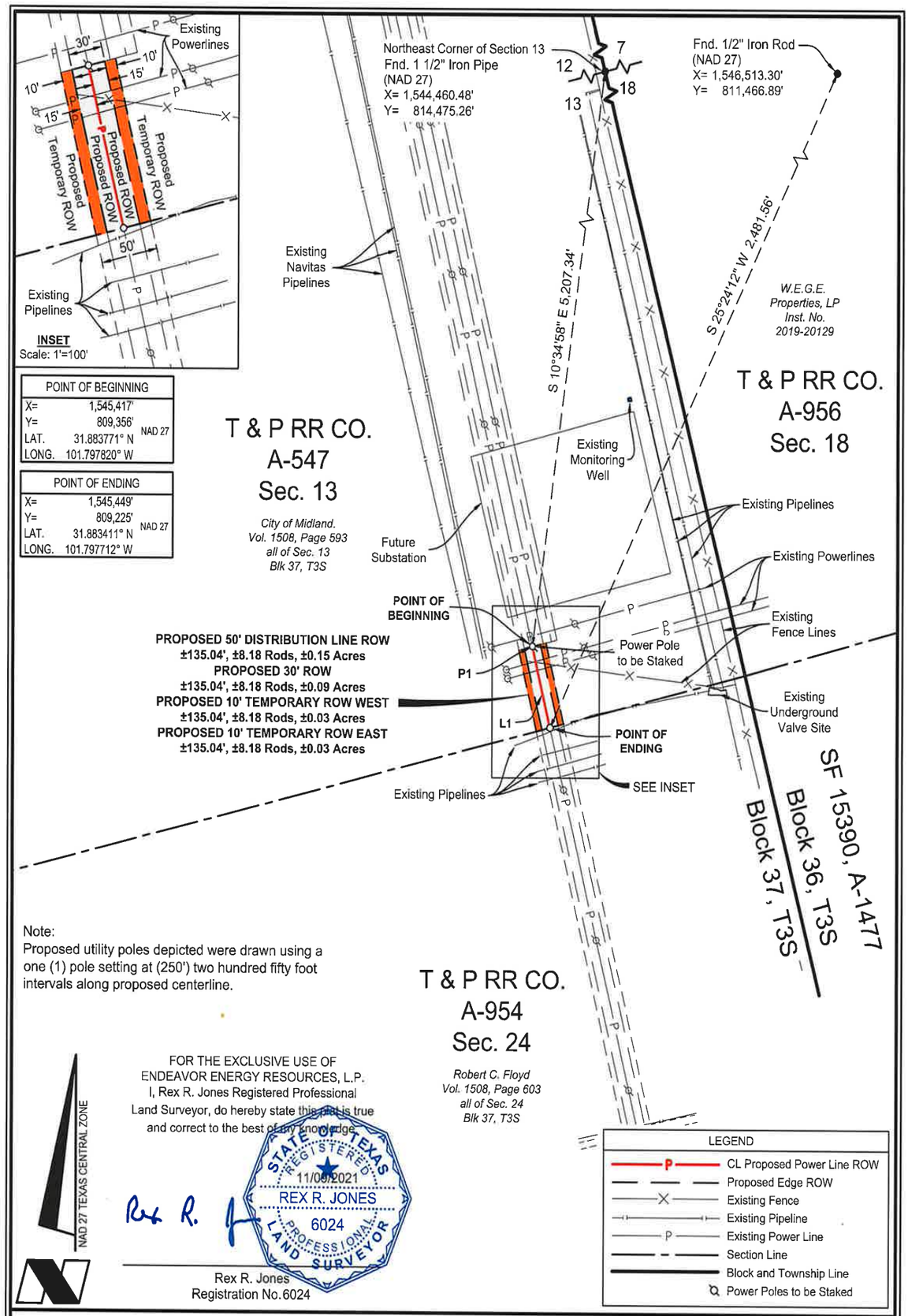
BEFORE ME, the undersigned authority, on this 1 day of December, 2021 personally appeared R. BEN CARTER an officer of Endeavor Energy Resources, L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1ST day of December, 2021.

_____
Notary Public, State of TEXAS

GARY A FORD
Notary ID #131546585
My Commission Expires
April 27, 2022

Exhibit A



ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED 30' DISTRIBUTION ROW & (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, A-547
SECTION 13, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

	REVISIONS			
DRAWN BY: PBH	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG	1	PBH	10/04/2021	ROW width and number of utility line
DATE: 09/15/2021				
FILENAME: T:\2021\2213326\DWG\Battle- Tex Transmission Line Sec 13.dwg				

Exhibit A

PROPOSED POWER POLE (P1)		
X=	1,545,417'	NAD 27
Y=	809,356'	
LAT.	31.883771° N	
LONG.	101.797820° W	
X=	1,841,884'	NAD83/86
Y=	10,651,933'	
LAT.	31.883901° N	
LONG.	101.798227° W	

PROPOSED DISTRIBUTION POWERLINE		
COURSE	BEARING	DISTANCE
L1	S 13° 39' 37" E	135.04'
TOTAL		135.04'

METES AND BOUNDS DESCRIPTION OF A PROPOSED DISTRIBUTION LINE RIGHT OF WAY LOCATED IN T & P RR CO. SURVEY, ABSTRACT NO. 547, SECTION 13, BLOCK 37, T3S MIDLAND COUNTY, TEXAS

PROPOSED DISTRIBUTION RIGHT OF WAY

Survey of a proposed distribution right of way, centerline to be 135.04 feet or 8.18 rods, more or less, located within T&P RR CO. Survey, Abstract No. 547, Section 13, Block 37, Township 3 South, Midland County, Texas.

Commencing at a Found 1 1/2" Iron Pipe at the Northeast corner of said Section 13, **Thence** South 10 degrees 34 minutes 58 seconds East 5,207.34 feet to the **Point of Beginning,** having the following coordinates: X = 1,545,416.85' and Y = 809,356.49' (Texas State Plane Coordinate System, Central Zone, NAD 27).

Thence South 13 degrees 39 minutes 37 seconds East 135.04 feet to the **Point of Ending**, having the following coordinates X= 1,545,448.74' and Y= 809,225.27' (Texas State Plane Coordinate System, Central Zone, NAD 27).

The bearings recited hereon are oriented to Texas State Plane Coordinate System, Central Zone, NAD 27.

This description represents a survey made on the ground for an distribution right of way and intended solely for that purpose. This description does not represent a boundary survey.

DIRECTIONS TO LOCATION:
From the intersection of I-20 and East State Hwy. 158, head Southeast along East State Hwy. 158 approximately 16.38 miles. Turn right on an existing lease road and head South approximately 1.09 miles. Turn right on an existing lease road and head West approximately 1.68 miles to the proposed site on the West side of the road.

DISCLAIMER: At this time, C. H. Fenstermaker & Associates, L.L.C. has not performed nor was asked to perform any type of engineering, hydrological modeling, flood plain, or "No Rise" certification analyses, including but not limited to determining whether the project will impact flood hazards in connection with federal/FEMA, state, and/or local laws, ordinances and regulations. Accordingly, Fenstermaker makes no warranty or representation of any kind as to the foregoing issues, and persons or entities using this information shall do so at their own risk.

NOTE:
Please be advised, that while reasonable efforts are made to locate and verify pipelines and anomalies using our standard pipeline locating equipment, it is impossible to be 100 % effective. As such, we advise using caution when performing work as there is a possibility that pipelines and other hazards, such as fiber optic cables, PVC pipelines, etc. may exist undetected on site.

NOTE:
Many states maintain information centers that establish links between those who dig (excavators) and those who own and operate underground facilities (operators). It is advisable and in most states, law, for the contractor to contact the center for assistance in locating and marking underground utilities. For guidance, a few states with such programs are listed below: Texas One Call - www.texas811.org.

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.

STATE OF TEXAS
REGISTERED
11/09/2021
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR

Rex R. Jones
Registration No. 6024

Page 2 of 2

DETAIL PLAT

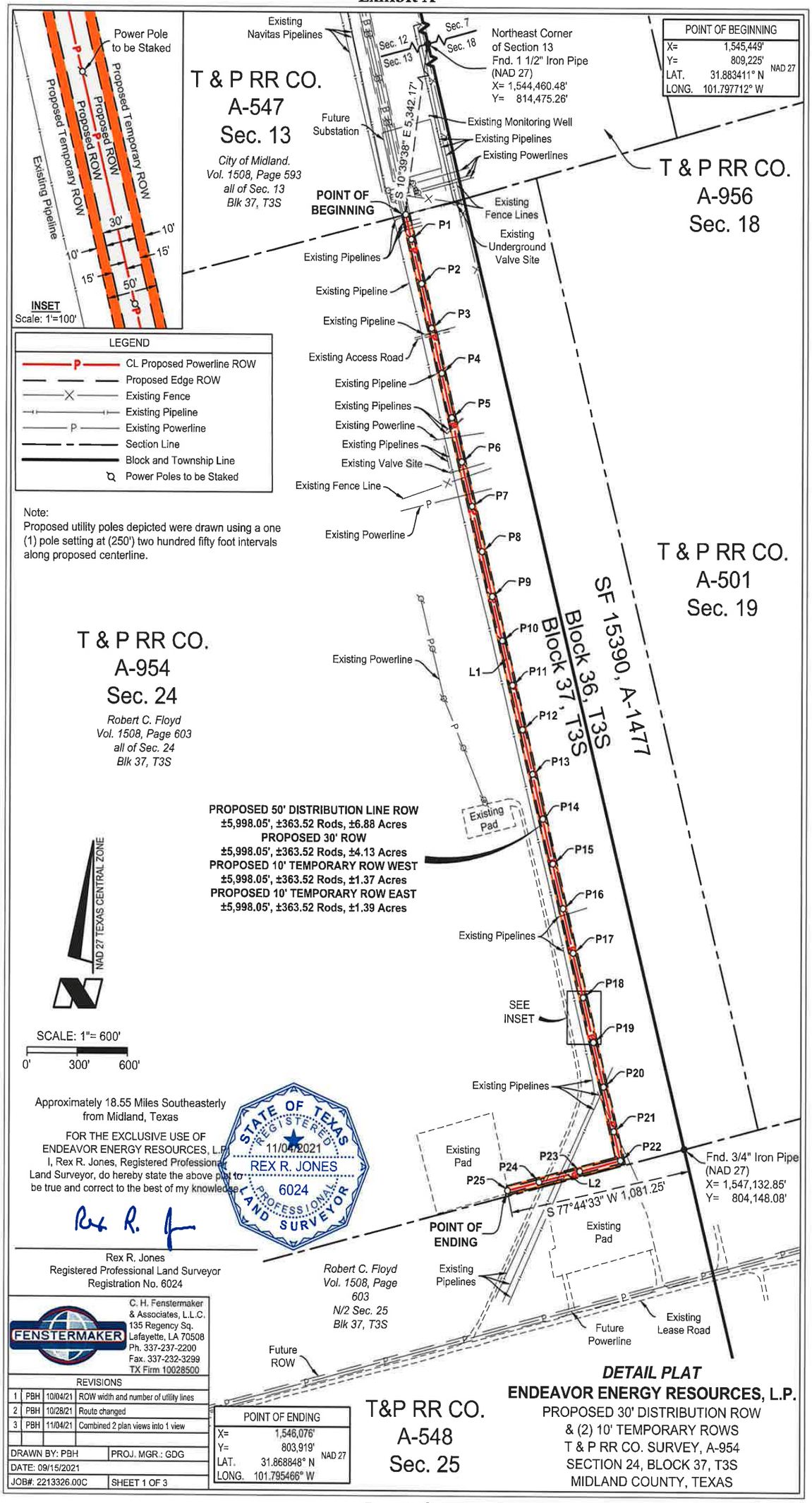
ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED 30' DISTRIBUTION ROW & (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, A-547
SECTION 13, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

		REVISIONS		
DRAWN BY: PBH	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG	1	PBH	10/04/2021	ROW width and number of utility lines
DATE: 09/15/2021				
FILENAME: T:\2021\2213326\DWG\Battle- Tex Transmission Line Sec 13.dwg				

Exhibit A


Power Pole to be Staked
Proposed Temporary ROW
Proposed ROW
Proposed ROW
Proposed Temporary ROW
Existing Pipeline
30'
10'
10'
15'
15'
50'
INSET
Scale: 1"=100'
LEGEND
CL Proposed Powerline ROW
Proposed Edge ROW
Existing Fence
Existing Pipeline
Existing Powerline
Section Line
Block and Township Line
Power Poles to be Staked
Note:
Proposed utility poles depicted were drawn using a one (1) pole setting at (250') two hundred fifty foot intervals along proposed centerline.
T & P RR CO.
A-547
Sec. 13
City of Midland.
Vol. 1508, Page 593
all of Sec. 13
Blk 37, T3S
T & P RR CO.
A-954
Sec. 24
Robert C. Floyd
Vol. 1508, Page 603
all of Sec. 24
Blk 37, T3S
Existing Navitas Pipelines
Sec. 7
Sec. 12
Sec. 13
Sec. 18
Northeast Corner of Section 13
Fnd. 1 1/2" Iron Pipe
(NAD 27)
X= 1,544,460.48'
Y= 814,475.26'
POINT OF BEGINNING
X= 1,545,449'
Y= 809,225'
LAT. 31.883411° N NAD 27
LONG. 101.797712° W
Future Substation
Existing Monitoring Well
Existing Pipelines
Existing Powerlines
S 10°39'38" E 5,342.17'
POINT OF BEGINNING
Existing Fence Lines
Existing Underground Valve Site
T & P RR CO.
A-956
Sec. 18
Existing Pipelines
Existing Pipeline
Existing Pipeline
Existing Access Road
Existing Pipeline
Existing Pipelines
Existing Powerline
Existing Pipelines
Existing Valve Site
Existing Fence Line
Existing Powerline
P1
P2
P3
P4
P5
P6
P7
P8
P9
P10
P11
P12
P13
P14
P15
P16
P17
P18
P19
P20
P21
P22
P23
P24
P25
L1
L2
SF 15390, A-1477
Block 36, T3S
Block 37, T3S
T & P RR CO.
A-501
Sec. 19
Existing Powerline
Existing Pad
PROPOSED 50' DISTRIBUTION LINE ROW
±5,998.05', ±363.52 Rods, ±6.88 Acres
PROPOSED 30' ROW
±5,998.05', ±363.52 Rods, ±4.13 Acres
PROPOSED 10' TEMPORARY ROW WEST
±5,998.05', ±363.52 Rods, ±1.37 Acres
PROPOSED 10' TEMPORARY ROW EAST
±5,998.05', ±363.52 Rods, ±1.39 Acres
NAD 27 TEXAS CENTRAL ZONE
SCALE: 1"= 600'
0' 300' 600'
SEE INSET
Existing Pipelines
Existing Pad
Existing Pad
Existing Pad
Fnd. 3/4" Iron Pipe
(NAD 27)
X= 1,547,132.85'
Y= 804,148.08'
S 77°44'33" W 1,081.25'
POINT OF ENDING
Existing Pipelines
Future Powerline
Existing Lease Road
Future ROW
Approximately 18.55 Miles Southeasterly from Midland, Texas
FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones, Registered Professional Land Surveyor, do hereby state the above plat to be true and correct to the best of my knowledge.
STATE OF TEXAS
REGISTERED
11/04/2021
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR
Rex R. Jones
Registered Professional Land Surveyor
Registration No. 6024
Robert C. Floyd
Vol. 1508, Page 603
N/2 Sec. 25
Blk 37, T3S
T&P RR CO.
A-548
Sec. 25
POINT OF ENDING
X= 1,546,076'
Y= 803,919'
LAT. 31.868848° N NAD 27
LONG. 101.795466° W
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq.
Lafayette, LA 70508
Ph. 337-237-2200
Fax. 337-232-3299
TX Firm 10028500
REVISIONS
1 PBH 10/04/21 ROW width and number of utility lines
2 PBH 10/28/21 Route changed
3 PBH 11/04/21 Combined 2 plan views into 1 view
DRAWN BY: PBH
PROJ. MGR.: GDG
DATE: 09/15/2021
JOB#: 2213326.00C
SHEET 1 OF 3
DETAIL PLAT
ENDEAVOR ENERGY RESOURCES, L.P.
PROPOSED 30' DISTRIBUTION ROW
& (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, A-954
SECTION 24, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

PROPOSED POWER POLE (P1)		
X=	1,545,483'	NAD 27
Y=	809,090'	
LAT.	31.883040° N	
LONG.	101.797596° W	
X=	1,841,951'	NAD83/86
Y=	10,651,667'	
LAT.	31.883171° N	
LONG.	101.798002° W	

PROPOSED POWER POLE (P2)		
X=	1,545,544'	NAD 27
Y=	808,848'	
LAT.	31.882376° N	
LONG.	101.797388° W	
X=	1,842,012'	NAD83/86
Y=	10,651,424'	
LAT.	31.882507° N	
LONG.	101.797794° W	

PROPOSED POWER POLE (P3)		
X=	1,545,606'	NAD 27
Y=	808,605'	
LAT.	31.881713° N	
LONG.	101.797180° W	
X=	1,842,073'	NAD83/86
Y=	10,651,182'	
LAT.	31.881843° N	
LONG.	101.797586° W	

PROPOSED POWER POLE (P4)		
X=	1,545,667'	NAD 27
Y=	808,363'	
LAT.	31.881049° N	
LONG.	101.796972° W	
X=	1,842,135'	NAD83/86
Y=	10,650,940'	
LAT.	31.881179° N	
LONG.	101.797378° W	

PROPOSED POWER POLE (P5)		
X=	1,545,729'	NAD 27
Y=	808,120'	
LAT.	31.880385° N	
LONG.	101.796763° W	
X=	1,842,196'	NAD83/86
Y=	10,650,697'	
LAT.	31.880515° N	
LONG.	101.797170° W	

PROPOSED POWER POLE (P6)		
X=	1,545,790'	NAD 27
Y=	807,878'	
LAT.	31.879721° N	
LONG.	101.796555° W	
X=	1,842,258'	NAD83/86
Y=	10,650,455'	
LAT.	31.879851° N	
LONG.	101.796961° W	

PROPOSED POWER POLE (P7)		
X=	1,545,852'	NAD 27
Y=	807,636'	
LAT.	31.879057° N	
LONG.	101.796347° W	
X=	1,842,319'	NAD83/86
Y=	10,650,213'	
LAT.	31.879187° N	
LONG.	101.796753° W	

PROPOSED POWER POLE (P8)		
X=	1,545,913'	NAD 27
Y=	807,393'	
LAT.	31.878393° N	
LONG.	101.796139° W	
X=	1,842,380'	NAD83/86
Y=	10,649,970'	
LAT.	31.878524° N	
LONG.	101.796545° W	

PROPOSED POWER POLE (P9)		
X=	1,545,974'	NAD 27
Y=	807,151'	
LAT.	31.877729° N	
LONG.	101.795931° W	
X=	1,842,442'	NAD83/86
Y=	10,649,728'	
LAT.	31.877860° N	
LONG.	101.796337° W	

PROPOSED POWER POLE (P10)		
X=	1,546,036'	NAD 27
Y=	806,909'	
LAT.	31.877065° N	
LONG.	101.795723° W	
X=	1,842,503'	NAD83/86
Y=	10,649,486'	
LAT.	31.877196° N	
LONG.	101.796129° W	

PROPOSED POWER POLE (P11)		
X=	1,546,097'	NAD 27
Y=	806,666'	
LAT.	31.876401° N	
LONG.	101.795515° W	
X=	1,842,565'	NAD83/86
Y=	10,649,243'	
LAT.	31.876532° N	
LONG.	101.795921° W	

PROPOSED POWER POLE (P12)		
X=	1,546,159'	NAD 27
Y=	806,424'	
LAT.	31.875738° N	
LONG.	101.795307° W	
X=	1,842,626'	NAD83/86
Y=	10,649,001'	
LAT.	31.875868° N	
LONG.	101.795713° W	

PROPOSED POWER POLE (P13)		
X=	1,546,220'	NAD 27
Y=	806,182'	
LAT.	31.875074° N	
LONG.	101.795099° W	
X=	1,842,688'	NAD83/86
Y=	10,648,759'	
LAT.	31.875204° N	
LONG.	101.795505° W	

PROPOSED POWER POLE (P14)		
X=	1,546,281'	NAD 27
Y=	805,939'	
LAT.	31.874410° N	
LONG.	101.794891° W	
X=	1,842,749'	NAD83/86
Y=	10,648,516'	
LAT.	31.874540° N	
LONG.	101.795297° W	

PROPOSED POWER POLE (P15)		
X=	1,546,343'	NAD 27
Y=	805,697'	
LAT.	31.873746° N	
LONG.	101.794683° W	
X=	1,842,810'	NAD83/86
Y=	10,648,274'	
LAT.	31.873876° N	
LONG.	101.795089° W	

PROPOSED POWER POLE (P16)		
X=	1,546,404'	NAD 27
Y=	805,455'	
LAT.	31.873082° N	
LONG.	101.794475° W	
X=	1,842,872'	NAD83/86
Y=	10,648,032'	
LAT.	31.873213° N	
LONG.	101.794881° W	

PROPOSED POWER POLE (P17)		
X=	1,546,466'	NAD 27
Y=	805,212'	
LAT.	31.872418° N	
LONG.	101.794267° W	
X=	1,842,933'	NAD83/86
Y=	10,647,789'	
LAT.	31.872549° N	
LONG.	101.794673° W	

PROPOSED POWER POLE (P18)		
X=	1,546,527'	NAD 27
Y=	804,970'	
LAT.	31.871754° N	
LONG.	101.794059° W	
X=	1,842,995'	NAD83/86
Y=	10,647,547'	
LAT.	31.871885° N	
LONG.	101.794465° W	

PROPOSED POWER POLE (P19)		
X=	1,546,588'	NAD 27
Y=	804,728'	
LAT.	31.871090° N	
LONG.	101.793851° W	
X=	1,843,056'	NAD83/86
Y=	10,647,305'	
LAT.	31.871221° N	
LONG.	101.794257° W	

PROPOSED POWER POLE (P20)		
X=	1,546,650'	NAD 27
Y=	804,485'	
LAT.	31.870426° N	
LONG.	101.793643° W	
X=	1,843,117'	NAD83/86
Y=	10,647,062'	
LAT.	31.870557° N	
LONG.	101.794049° W	

PROPOSED POWER POLE (P21)		
X=	1,546,711'	NAD 27
Y=	804,243'	
LAT.	31.869762° N	
LONG.	101.793435° W	
X=	1,843,179'	NAD83/86
Y=	10,646,820'	
LAT.	31.869893° N	
LONG.	101.793841° W	

PROPOSED POWER POLE (P22)		
X=	1,546,751'	NAD 27
Y=	804,085'	
LAT.	31.869329° N	
LONG.	101.793299° W	
X=	1,843,219'	NAD83/86
Y=	10,646,662'	
LAT.	31.869460° N	
LONG.	101.793705° W	

PROPOSED POWER POLE (P23)		
X=	1,546,509'	NAD 27
Y=	804,025'	
LAT.	31.869156° N	
LONG.	101.794078° W	
X=	1,842,976'	NAD83/86
Y=	10,646,602'	
LAT.	31.869287° N	
LONG.	101.794484° W	

PROPOSED POWER POLE (P24)		
X=	1,546,266'	NAD 27
Y=	803,965'	
LAT.	31.868983° N	
LONG.	101.794857° W	
X=	1,842,733'	NAD83/86
Y=	10,646,542'	
LAT.	31.869114° N	
LONG.	101.795263° W	

PROPOSED POWER POLE (P25)		
X=	1,546,076'	NAD 27
Y=	803,919'	
LAT.	31.868848° N	
LONG.	101.795466° W	
X=	1,842,544'	NAD83/86
Y=	10,646,495'	
LAT.	31.868978° N	
LONG.	101.795872° W	

C. H. Fenstermaker
& Associates, L.L.C.
135 Regency Sq.
Lafayette, LA 70508
Ph. 337-237-2200
Fax. 337-232-3299
TX Firm 10028500

REVISIONS			
1	PBH	10/04/21	ROW width and number of utility lines
2	PBH	10/28/21	Route changed
3	PBH	11/04/21	Combined 2 plan views into 1 view

DRAWN BY: PBH	PROJ. MGR.: GDG
DATE: 09/15/2021	
JOB#: 2213326.00C	SHEET 2 OF 3

STATE OF TEXAS
REGISTERED
11/08/2021
REX R. JONES
6024
PROFESSIONAL
SURVEYOR

FOR THE EXCLUSIVE USE OF
ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones, Registered Professional
Land Surveyor, do hereby state the above plat is
be true and correct to the best of my knowledge.

Rex R. Jones
Registered Professional Land Surveyor
Registration No. 6024

DETAIL PLAT
ENDEAVOR ENERGY RESOURCES, L.P.
PROPOSED 30' DISTRIBUTION ROW
& (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, A-954
SECTION 24, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

PROPOSED DISTRIBUTION POWERLINE		
COURSE	BEARING	DISTANCE
L1	S 14° 13' 09" E	5302.81'
L2	S 76° 09' 02" W	695.24'
TOTAL		5998.05'

METES AND BOUNDS DESCRIPTION OF A
PROPOSED DISTRIBUTION LINE RIGHT OF WAY LOCATED IN
T & P RR CO. SURVEY, ABSTRACT NO. 954, SECTION 24, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

PROPOSED DISTRIBUTION LINE RIGHT OF WAY

Survey of a proposed distribution line right of way, centerline to be 5,998.05 feet or 363.52 rods, more or less, located within T & P RR Co. Survey, Abstract No. 954, Section 24, Block 37, Township 3 South, Midland County, Texas.

Commencing at a Found 1 1/2" Iron Pipe at the Northeast corner of Section 13, **Thence** South 10 degrees 39 minutes 38 seconds East 5,342.17 feet to the **Point of Beginning,** having the following coordinates: X= 1,545,448.74' and Y= 809,225.30' (Texas State Plane Coordinate System, Central Zone, NAD 27).

Thence South 14 degrees 13 minutes 09 seconds East 5,302.81 feet to a point;

Thence South 76 degrees 09 minutes 02 seconds West 695.24 feet to the **Point of Ending,** having the following coordinates: X = 1,546,076.25' and Y = 803,918.53' (Texas State Plane Coordinate System, Central Zone, NAD 27).

The bearings recited hereon are oriented to Texas State Plane Coordinate System, Central Zone, NAD 27.

This description represents a survey made on the ground for a distribution right of way and intended solely for that purpose. This description does not represent a boundary survey.

DIRECTIONS TO LOCATION:
From the intersection of I-20 and East State Hwy. 158, head Southeast along East State Hwy. 158 approximately 16.38 miles. Turn right on an existing lease road and head South approximately 1.09 miles. Turn right on an existing lease road and head West approximately 1.68 miles to the proposed site on the West side of the road.

DISCLAIMER: At this time, C. H. Fenstermaker & Associates, L.L.C. has not performed nor was asked to perform any type of engineering, hydrological modeling, flood plain, or "No Rise" certification analyses, including but not limited to determining whether the project will impact flood hazards in connection with federal/FEMA, state, and/or local laws, ordinances and regulations. Accordingly, Fenstermaker makes no warranty or representation of any kind as to the foregoing issues, and persons or entities using this information shall do so at their own risk.

NOTE:
Please be advised, that while reasonable efforts are made to locate and verify pipelines and anomalies using our standard pipeline locating equipment, it is impossible to be 100 % effective. As such, we advise using caution when performing work as there is a possibility that pipelines and other hazards, such as fiber optic cables, PVC pipelines, etc. may exist undetected on site.

NOTE:
Many states maintain information centers that establish links between those who dig (excavators) and those who own and operate underground facilities (operators). It is advisable and in most states, law, for the contractor to contact the center for assistance in locating and marking underground utilities. For guidance, a few states with such programs are listed below: Texas One Call - www.texas811.org.

C. H. Fenstermaker
& Associates, L.L.C.
135 Regency Sq.
Lafayette, LA 70508
Ph. 337-237-2200
Fax. 337-232-3299
TX Firm 10028500

REVISIONS			
1	PBH	10/04/21	ROW width and number of utility lines
2	PBH	10/28/21	Route changed
3	PBH	11/04/21	Combined 2 plan views into 1 view

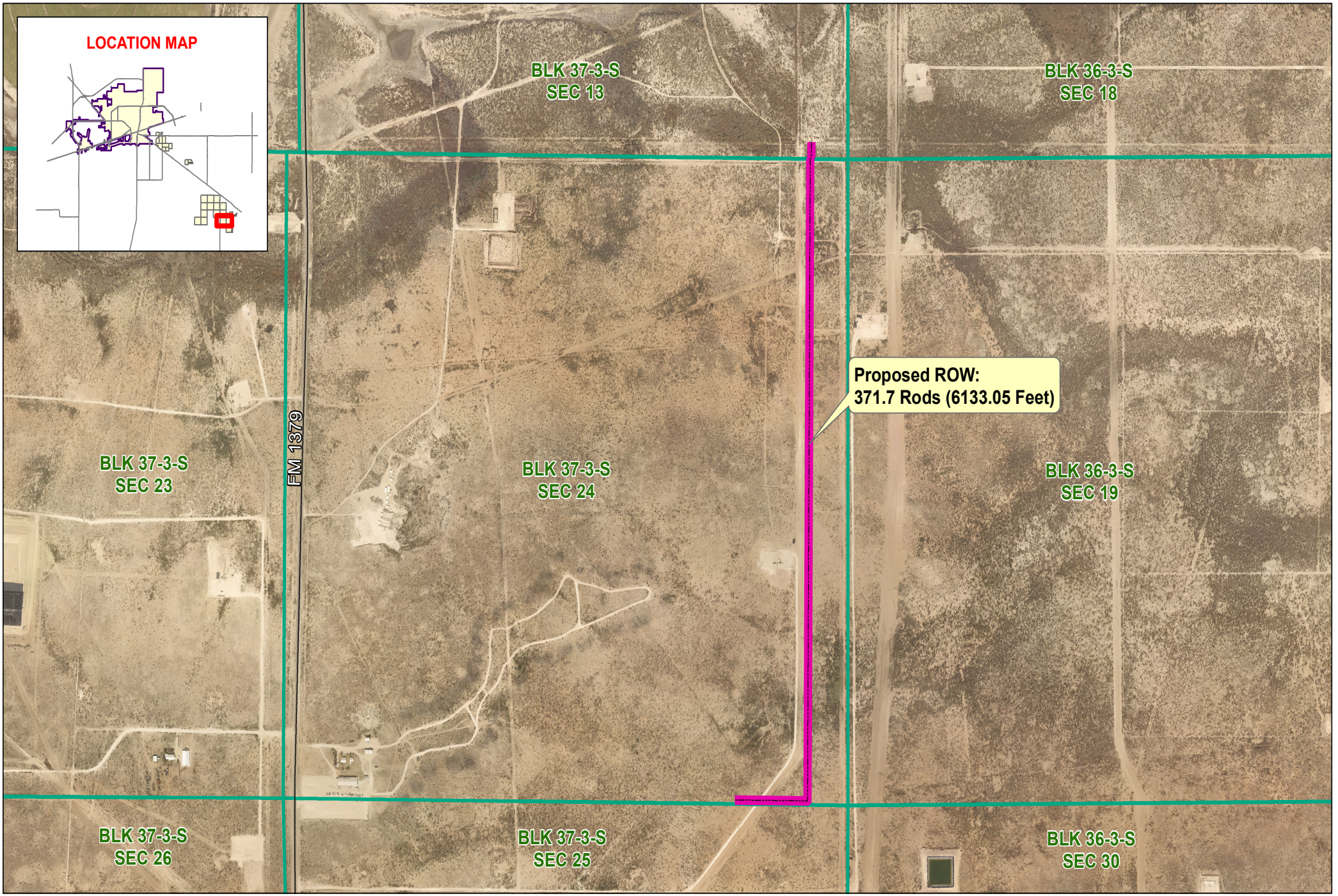
DRAWN BY: PBH	PROJ. MGR.: GDG
DATE: 09/15/2021	
JOB#: 2213326.00C	SHEET 3 OF 3

STATE OF TEXAS
REGISTERED
11/04/2021
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones, Registered Professional Land Surveyor, do hereby state the above plat to be true and correct to the best of my knowledge.

Rex R. Jones
Registered Professional Land Surveyor
Registration No. 6024

DETAIL PLAT
ENDEAVOR ENERGY RESOURCES, L.P.
PROPOSED 30' DISTRIBUTION ROW
& (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, A-954
SECTION 24, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS



Date: 11/4/2021

Proposed ROW
Street
Survey Section

PACKET

29.21

Endeavor Proposed ROW

December 14, 2021

0 250 500 Feet

©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McGriff Insurance Services, Inc.
10100 Katy Freeway, #400
Houston, TX 77043

CONTACT NAME:
PHONE (A/C, No, Ext): 713-877-8975 **FAX (A/C, No):** 713-877-8974
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : The First Liberty Insurance Corporation	33588
INSURER B : Liberty Insurance Corporation	42404
INSURER C : Starr Indemnity & Liability Company	38318
INSURER D : Westchester Fire Insurance Company	10030
INSURER E :	
INSURER F :	

INSURED
Endeavor Energy Resources, L.P.
and Per Attached Named Insureds
110 N Marienfeld, Suite 200
Midland, TX 79701

COVERAGES **CERTIFICATE NUMBER:** DWRGLP65 **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** CLAIMS-MADE X OCCUR X Self-Insured Retention $250,000 X Time Element Poll - Incl GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			EB6-641-443771-111	11/01/2021	11/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ $ $ $ $ $ $	2,000,000 2,000,000 4,000,000 4,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO X OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			AS6-641-443771-101	11/01/2021	11/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ $ $ $ $	2,000,000
C	**UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			1000095483211	11/01/2021	11/01/2022	EACH OCCURRENCE AGGREGATE 	$ $ $	5,000,000 5,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WA7-64D-443771-091	11/01/2021	11/01/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $	 1,000,000 1,000,000 1,000,000
D	Excess Liability $5m xs $5m			G27918748007	11/01/2021	11/01/2022	Each Occurrence Aggregate	$ $	5,000,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder is included as Additional Insured as respects to General Liability and Automobile Liability as required by written contract subject to policy terms, conditions and exclusions. A Waiver of Subrogation is provided as respects to General Liability, Automobile Liability, Excess Liability and Workers' Compensation as required by written contract subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland, TX 79701 PACKET 29.22

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 December 14, 2021

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

PRODUCER McGriff Insurance Services, Inc.	**INSURED** Endeavor Energy Resources, L.P. and Per Attached Named Insureds
POLICY NUMBER	
CARRIER / **NAIC CODE**	**ISSUE DATE:** 10/29/2021

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ **FORM TITLE:** _____

ENDEAVOR ENERGY RESOURCES, L.P.
Named Insured List:
Endeavor Energy Resources L.P. dba EER Energy Services
Endeavor Energy Resources L.P. dba Energy Services Well Servicing Division fka Endeavor Energy Resources, L.P. dba J & L Well Service
Endeavor Energy Resources L.P. dba Energy Services Roustabout Division fka Endeavor Energy Resources, L.P. dba Compadre Roustabout Service
Endeavor Energy Resources L.P. dba Energy Services Trucking Division fka Endeavor Energy Resources, L.P. dba C & W Transports
Endeavor Energy Resources L.P. dba Energy Services Wireline Division fka Endeavor Energy Resources, L.P. dba Jones Wireline Service
Endeavor Energy Resources, L.P. dba Electrical Maintenance and Construction
Endeavor Energy Resources, L.P. dba ACS Pump & Supply
Endeavor Energy Resources L.P. dba Energy Services Construction Division fka Endeavor Energy Resources, L.P. dba Red Dog Construction
Endeavor Petroleum, LLC
Endeavor Energy Resources L.P. dba Energy Services Vehicle Maintenence Division fka Endeavor Energy Resources, L.P. dba Vehicle Service Company
Environmental Disposal Systems, LLC

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CERTIFICATE NUMBER: DWRGLP65

City Council Meeting

Item Number: 30

Meeting Date: December 14, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-045) with Endeavor Energy Resources, L.P., regarding City-owned property described as Section 12, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas. (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way for Endeavor Energy to build a single pole, overhead 25 KV power distribution line on Sprayberry Farm property.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate / power lines (13.09 rods x $20/rod): $261.8 / $400.00 minimum per year – First 5 years paid in advance: $2,000.00

Surface Damages: one time (13.09 rods x $10/ per rod): $130.90 / $400.00 minimum

Total Collected: $3,400.00

Discussion:

This is a privately-owned, overhead electric distribution line, overall right of way width will be 30’ with two additional temporary workspaces of 10’ each. As noted, all poles and overhead lines are away from existing COM water monitoring wells. Power is in support of Endeavor's ongoing production under the existing Surface Use Agreement.

Certificates of Insurance are on file

City Secretary to record all documents

Morris William Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	December 15, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Endeavor Energy Resources, L.P.
Licensee's Representative:	**R. Ben Carter**
Licensee's Mailing Address:	110 N. Marienfeld St. Midland, Texas 79701
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	21-329-045

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of TWO THOUSAND and No/100 Dollars ($2,000.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Intentionally omitted.

C. Application Fee. At the same time the License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall

negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon certain property of Licensor, being fifty (50) feet in width of the location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described location, a single pole, overhead 25 KV power distribution line ("power distribution line"), said construction width shall revert to thirty (30) feet after construction is completed. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the power distribution line described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the power distribution line described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Intentionally omitted.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or

cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not (except to the extent of Licensor's gross negligence or willful misconduct) be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S POWER DISTRIBUTION LINE, ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any power distribution line built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate Licensee's power distribution line, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full

force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Excess Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance

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

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S POWER DISTRIBUTION LINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES, BUT ONLY TO THE EXTENT LICENSEE OWES LICENSOR AN INDEMNITY UNDER THIS PARAGRAPH.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE POWER DISTRIBUTION LINE DESCRIBED HEREIN.

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

PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S POWER DISTRIBUTION LINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, IN NO EVENT SHALL LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, DAMAGES, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT TO THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF LICENSOR OR ANY OF LICENSOR'S OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS OR EMPLOYEES.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL

COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LICENSE, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE WITH REGARDS TO THIS LICENSE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, LICENSOR'S NEGLIGENCE OR CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS; PROVIDED, HOWEVER, THAT SAID RELEASE SHALL NOT EXTEND TO ANY DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION RELATING TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF LICENSOR.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and

mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent

that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Morris Williams, Assistant City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
ENDEAVOR ENERGY RESOURCES, L.P.

By: _____

Printed Name: R. Ben Carter

Title: VP - Land

THE STATE OF TEXAS §
§
COUNTY OF Midland §

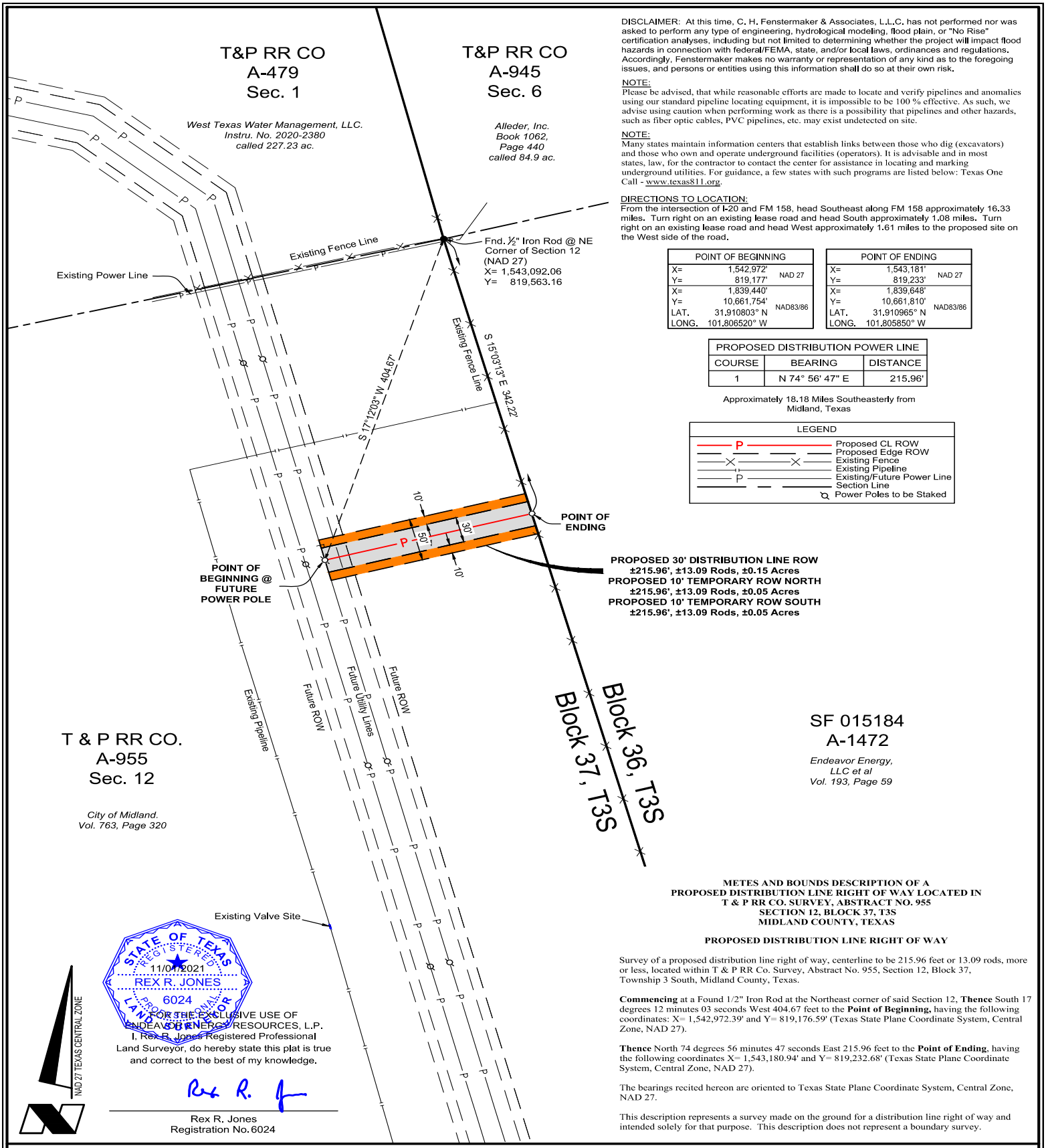
BEFORE ME, the undersigned authority, on this 1st day of December 2021 personally appeared R. Ben Carter an officer of Endeavor Energy Resources, L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1ST day of December, 2021.

_____
Notary Public, State of TEXAS

GARY A FORD
Notary ID #131546585
My Commission Expires
April 27, 2022

Exhibit A



DISCLAIMER: At this time, C. H. Fenstermaker & Associates, L.L.C. has not performed nor was asked to perform any type of engineering, hydrological modeling, flood plain, or "No Rise" certification analyses, including but not limited to determining whether the project will impact flood hazards in connection with federal/FEMA, state, and/or local laws, ordinances and regulations. Accordingly, Fenstermaker makes no warranty or representation of any kind as to the foregoing issues, and persons or entities using this information shall do so at their own risk.

NOTE:
Please be advised, that while reasonable efforts are made to locate and verify pipelines and anomalies using our standard pipeline locating equipment, it is impossible to be 100 % effective. As such, we advise using caution when performing work as there is a possibility that pipelines and other hazards, such as fiber optic cables, PVC pipelines, etc. may exist undetected on site.

NOTE:
Many states maintain information centers that establish links between those who dig (excavators) and those who own and operate underground facilities (operators). It is advisable and in most states, law, for the contractor to contact the center for assistance in locating and marking underground utilities. For guidance, a few states with such programs are listed below: Texas One Call - www.texas811.org.

DIRECTIONS TO LOCATION:
From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

POINT OF BEGINNING		
X=	1,542,972'	NAD 27
Y=	819,177'	
X=	1,839,440'	NAD83/86
Y=	10,661,754'	
LAT.	31.910803° N	
LONG.	101.806520° W	

POINT OF ENDING		
X=	1,543,181'	NAD 27
Y=	819,233'	
X=	1,839,648'	NAD83/86
Y=	10,661,810'	
LAT.	31.910965° N	
LONG.	101.805850° W	

PROPOSED DISTRIBUTION POWER LINE		
COURSE	BEARING	DISTANCE
1	N 74° 56' 47" E	215.96'

Approximately 18.18 Miles Southeasterly from Midland, Texas

LEGEND
- Proposed CL ROW
- Proposed Edge ROW
- Existing Fence
- Existing Pipeline
- Existing/Future Power Line
- Section Line
- Power Poles to be Staked

STATE OF TEXAS
REGISTERED
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR
11/04/2021

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.

I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.

Rex R. Jones
Registration No. 6024

METES AND BOUNDS DESCRIPTION OF A PROPOSED DISTRIBUTION LINE RIGHT OF WAY LOCATED IN T & P RR CO. SURVEY, ABSTRACT NO. 955 SECTION 12, BLOCK 37, T3S MIDLAND COUNTY, TEXAS

PROPOSED DISTRIBUTION LINE RIGHT OF WAY

Survey of a proposed distribution line right of way, centerline to be 215.96 feet or 13.09 rods, more or less, located within T & P RR Co. Survey, Abstract No. 955, Section 12, Block 37, Township 3 South, Midland County, Texas.

Commencing at a Found 1/2" Iron Rod at the Northeast corner of said Section 12, **Thence** South 17 degrees 12 minutes 03 seconds West 404.67 feet to the **Point of Beginning,** having the following coordinates: X= 1,542,972.39' and Y= 819,176.59' (Texas State Plane Coordinate System, Central Zone, NAD 27).

Thence North 74 degrees 56 minutes 47 seconds East 215.96 feet to the **Point of Ending**, having the following coordinates X= 1,543,180.94' and Y= 819,232.68' (Texas State Plane Coordinate System, Central Zone, NAD 27).

The bearings recited hereon are oriented to Texas State Plane Coordinate System, Central Zone, NAD 27.

This description represents a survey made on the ground for a distribution line right of way and intended solely for that purpose. This description does not represent a boundary survey.

DETAIL PLAT

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED 30' DISTRIBUTION ROW & (2) 10' TEMPORARY ROWS
T & P RR CO. SURVEY, ABSTRACT NO. 955
SECTION 12, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

SCALE: 1" = 100'
100' 0 50' 100'

REVISIONS				
DRAWN BY: DMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG	1	DMB	06/30/2021	ROW shifted
DATE: 06/29/2021	2	PBH	10/26/2021	ROW shifted
FILENAME: T:\2021\2213326\DWG\Battle- Tex Transmission Line Sec 12.dwg				

PACKET 30.16 December 14, 2021

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McGriff Insurance Services, Inc.
10100 Katy Freeway, #400
Houston, TX 77043

CONTACT NAME:
PHONE (A/C, No, Ext): 713-877-8975 **FAX (A/C, No):** 713-877-8974
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : The First Liberty Insurance Corporation	33588
INSURER B : Liberty Insurance Corporation	42404
INSURER C : Starr Indemnity & Liability Company	38318
INSURER D : Westchester Fire Insurance Company	10030
INSURER E :	
INSURER F :	

INSURED
Endeavor Energy Resources, L.P.
and Per Attached Named Insureds
110 N Marienfeld, Suite 200
Midland, TX 79701

COVERAGES **CERTIFICATE NUMBER:** DWRGLP65 **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** CLAIMS-MADE X OCCUR X Self-Insured Retention $250,000 X Time Element Poll - Incl GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			EB6-641-443771-111	11/01/2021	11/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG OTHER:	$ $ $ $ $ $ $	2,000,000 2,000,000 4,000,000 4,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO X OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			AS6-641-443771-101	11/01/2021	11/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ $ $ $ $	2,000,000
C	UMBRELLA LIAB X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			1000095483211	11/01/2021	11/01/2022	EACH OCCURRENCE AGGREGATE 	$ $ $	5,000,000 5,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / A **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below			WA7-64D-443771-091	11/01/2021	11/01/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	 1,000,000 1,000,000 1,000,000
D	Excess Liability $5m xs $5m			G27918748007	11/01/2021	11/01/2022	Each Occurrence Aggregate	$ $	5,000,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder is included as Additional Insured as respects to General Liability and Automobile Liability as required by written contract subject to policy terms, conditions and exclusions. A Waiver of Subrogation is provided as respects to General Liability, Automobile Liability, Excess Liability and Workers' Compensation as required by written contract subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland, TX 79701 PACKET 30.17

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 December 14, 2021

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

PRODUCER McGriff Insurance Services, Inc.	**INSURED** Endeavor Energy Resources, L.P. and Per Attached Named Insureds
POLICY NUMBER	
CARRIER / **NAIC CODE**	**ISSUE DATE:** 10/29/2021

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ **FORM TITLE:** _____

ENDEAVOR ENERGY RESOURCES, L.P.
Named Insured List:
Endeavor Energy Resources L.P. dba EER Energy Services
Endeavor Energy Resources L.P. dba Energy Services Well Servicing Division fka Endeavor Energy Resources, L.P. dba J & L Well Service
Endeavor Energy Resources L.P. dba Energy Services Roustabout Division fka Endeavor Energy Resources, L.P. dba Compadre Roustabout Service
Endeavor Energy Resources L.P. dba Energy Services Trucking Division fka Endeavor Energy Resources, L.P. dba C & W Transports
Endeavor Energy Resources L.P. dba Energy Services Wireline Division fka Endeavor Energy Resources, L.P. dba Jones Wireline Service
Endeavor Energy Resources, L.P. dba Electrical Maintenance and Construction
Endeavor Energy Resources, L.P. dba ACS Pump & Supply
Endeavor Energy Resources L.P. dba Energy Services Construction Division fka Endeavor Energy Resources, L.P. dba Red Dog Construction
Endeavor Petroleum, LLC
Endeavor Energy Resources L.P. dba Energy Services Vehicle Maintenence Division fka Endeavor Energy Resources, L.P. dba Vehicle Service Company
Environmental Disposal Systems, LLC

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CERTIFICATE NUMBER: DWRGLP65

City Council Meeting

Item Number: 31

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Cole Furqueron, Senior Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 7, BLOCK 5, FANNIN TERRACE, SECTION TWO, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF FANNIN AVENUE AND MABERRY STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Brad Burgeson, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback for a corner lot to add 989 square foot garage.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 2512 Fannin Avenue, which is zoned SF-1, Single Family Dwelling District.

Per our City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart:

SF-1, Single Family Dwelling District
Lot dimensions
Minimum Side Yard Setback:
Corner Lot: 10 Feet

The applicant's property is a corner lot and would have to meet the required minimum 10-foot side yard setbacks for a corner lot as listed in the zoning ordinance.

The applicant is requesting to reduce the required minimum side yard setback for a corner lot for the proposed lot to be zero feet to be able to proceed with the addition of a 989 square foot garage.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart

concerning the minimum side yard setback for a corner lot.

This lot does not exhibit any hardships that are not already present in other lots around the city.

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

A. That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the minimum side yard setback for the proposed addition on this property shall be zero feet

Letters of Objection:

As of November 10, 2021, staff has not received any letters of objection

Attachments:

Proposed Site Plan (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 7, BLOCK 5, FANNIN TERRACE, SECTION TWO, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF FANNIN AVENUE AND MABERRY STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 7, Block 5, Fannin Terrace, Section Two, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the west side of the lot.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum side yard setback on the west side of the lot shall be zero feet.

B. That the property shall significantly conform to Exhibit "A", which is attached hereto and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

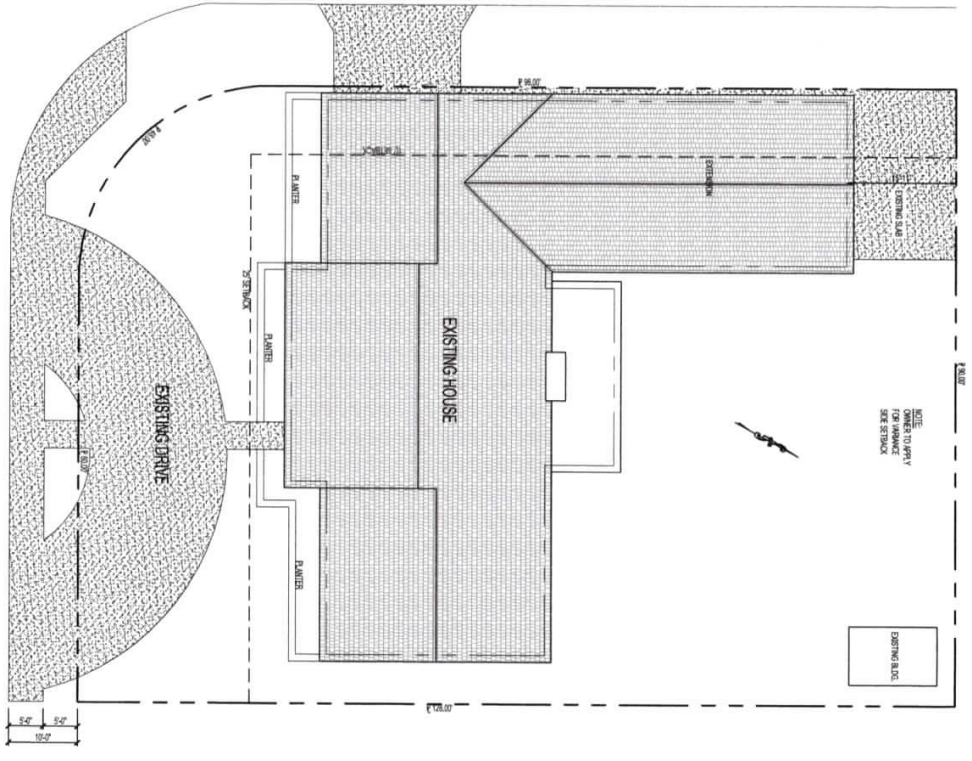
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



A C-1.0 SITE PLAN
SCALE: 1/16" = 1'-0"

1. DRIVEWAY DETAILS ON SHEET D-1.0

RECEIVED
SEP 28 2021
BY: .....

2512 FANNIN
MIDLAND, TEXAS

1	FINAL PLANS	09/22/21

Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 2021015	
DRAWN BY	HCC
CHECKED BY	CDW

C-1.0

© 2021 MIDLAND DCI, LLC

MIDLAND Planning Division

Special Exception Application

Project Number: E-21-0060

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Brad Burgpson		Phone (432) 889 1822 Email rpbfixit@gmail.com	
Address 1611 W. Dengar Ave	City Midland	State TX	Zip 79705

Property Owner Printed Name: Harvey Villanueva		Phone (325) 206 1902 Email msv782@gmail.com	
Address 2512 Fannin	City Midland	State TX	Zip

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 2512 Fannin Midland TX ~~79~~

Legal Description
Lot: 7 Block: 5 Subdivision: FANNIN Terrace

Current Zoning: SF-1

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Approval for encrochment on setback

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
SEP 28 2021
BY: .....

Signatures	
Applicant (signature): B-B	Date: 9-24-21
Applicant (printed): Brad Burgeson	
Property Owner (signature): M Villanueva	Date: 9-24-21
Property Owner (printed) : Marissa Villanueva	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

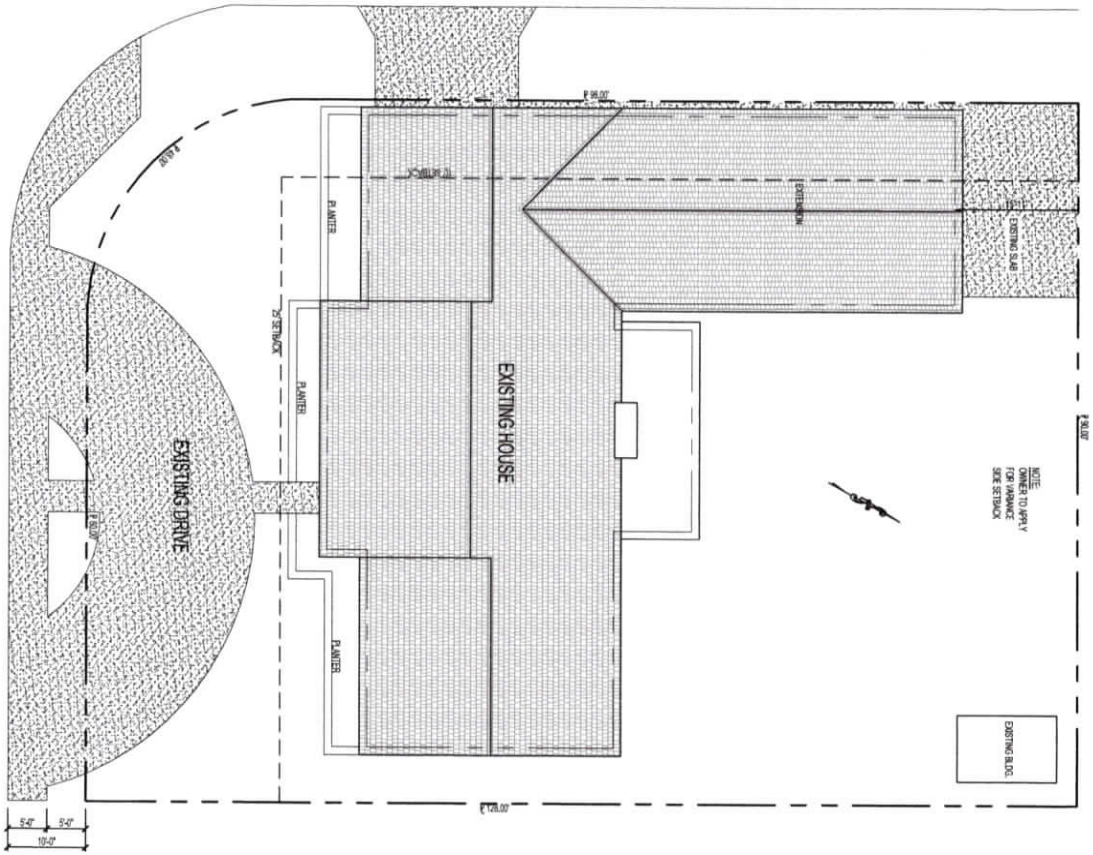
FOR OFFICE USE ONLY

- ☒ Property Owner Authorization
- ☒ Application Fee
  Check # 1746
- ☒ Dimensioned Site Plan
- ☒ Plans in Digital Format (PDF/JPEG)

RECEIVED
SEP 28 2021
BY: .....

Received By: DL | Date:

****Application will not be considered for scheduling until reviewed by a planner.****



A C-1.0 SITE PLAN
SCALE: 1/16" = 1'-0"

1. DRIVEWAY DETAILS ON SHEET D-1.0

RECEIVED
SEP 28 2021
BY: .....

December 14, 2021

2512 FANNIN
MIDLAND, TEXAS

1	FINAL PLANS	09/22/21	

Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

C-1.0

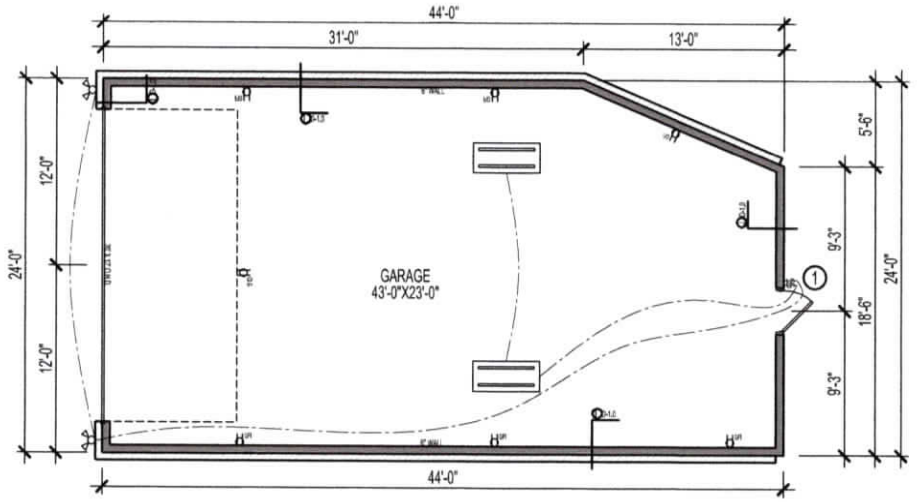
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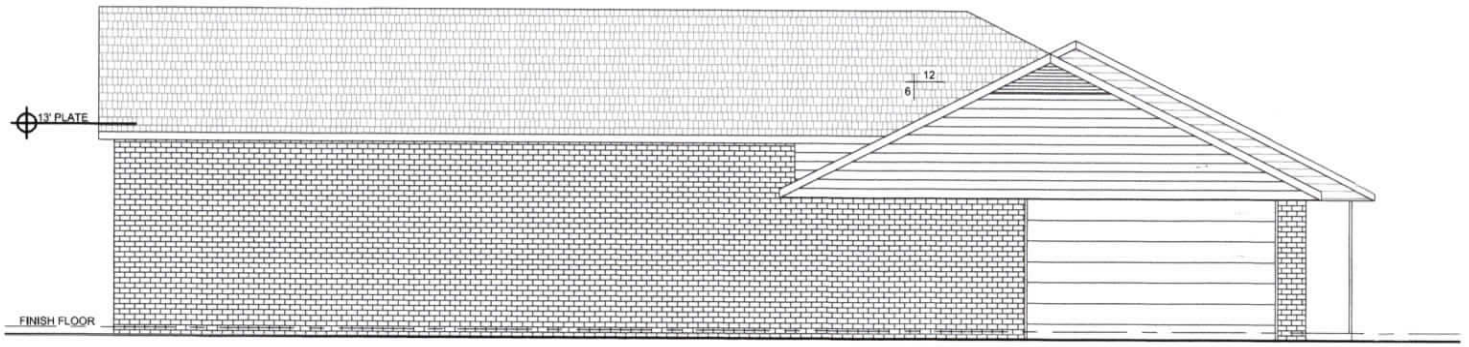
GROUND FAULT INTERRUPT
CEILING DUPLEX
SWITCH
FLUORESCENT LIGHT

1,072 SQ.FT. OVER BRICK

DOOR SCHEDULE				
SYM.	SIZE	THICKNESS	DESCRIPTION	QUANTITY
1	2' 8"	1-5/8	1HR FIRE RATED DOOR	1



A A-1.0 FLOOR PLAN
SCALE: 1/8" = 1'-0"



B A-1.0 WEST ELEVATION
SCALE: 1/8" = 1'-0"

2512 FANNIN
MIDLAND, TEXAS

December 14, 2021

1	FINAL PLANS	09/22/21

Designers-Consultants-Inspectors
DCI
Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

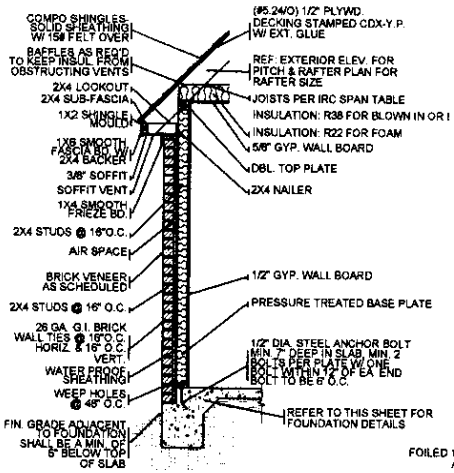
PROJECT NUMBER	
DRAWN BY	HCC
CHECKED BY	CDW

1

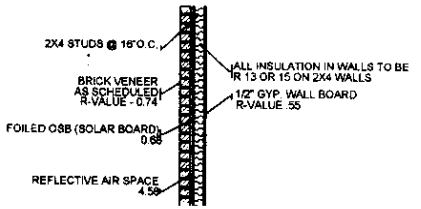
A-1.0

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PACKET PAGE 31.12

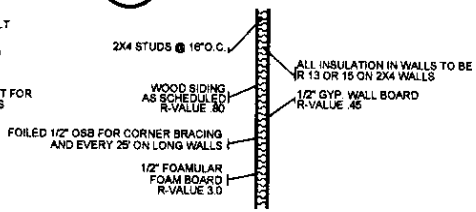


A D-1.0 WALL SECTION TYPE "A"
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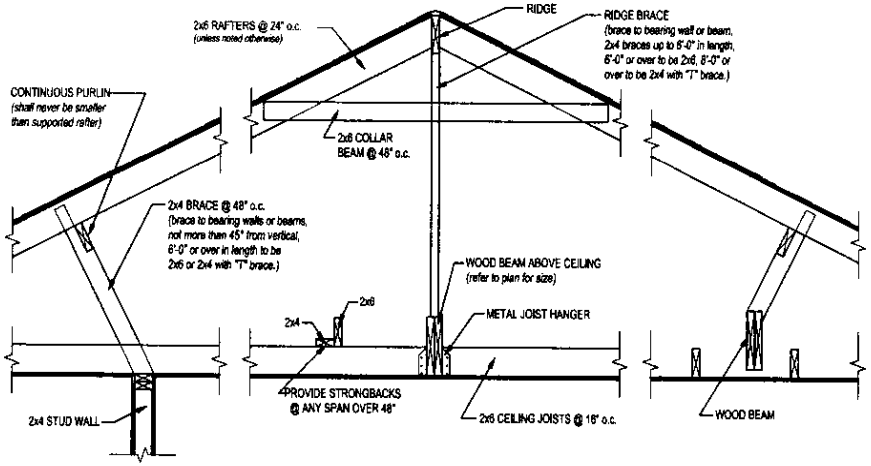
WALL INSULATION REQUIRMENTS FOR 2 X 4 STUDS W/BRICK VENEER

C D-1.0 SCALE: 1/4" = 1'-0"

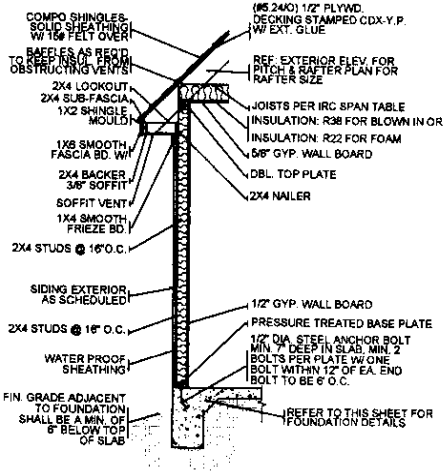


WALL INSULATION REQUIRMENTS FOR 2 X 4 STUDS W/SIDING

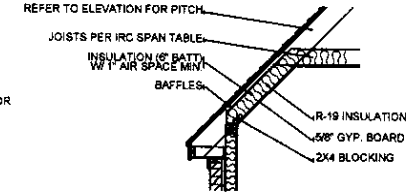
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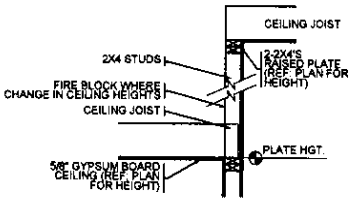
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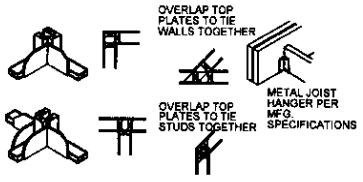
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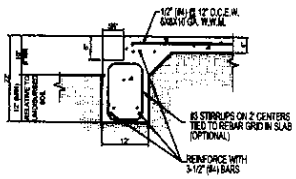
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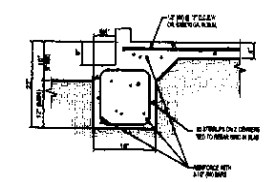
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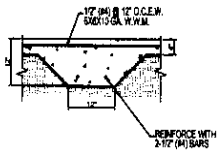
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SCALE: 1/4" = 1'-0"



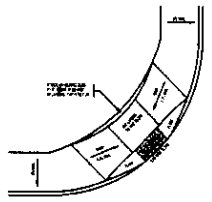
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SCALE: 3/8" = 1'-0"



J D-1.0 PERIMETER BEAM
SCALE: 3/8" = 1'-0"



K D-1.0 INTERIOR BEAM
SCALE: 3/8" = 1'-0"



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1/16" = 1'-0"

December 14, 2021

2512 FANNIN
MIDLAND, TEXAS

31.18

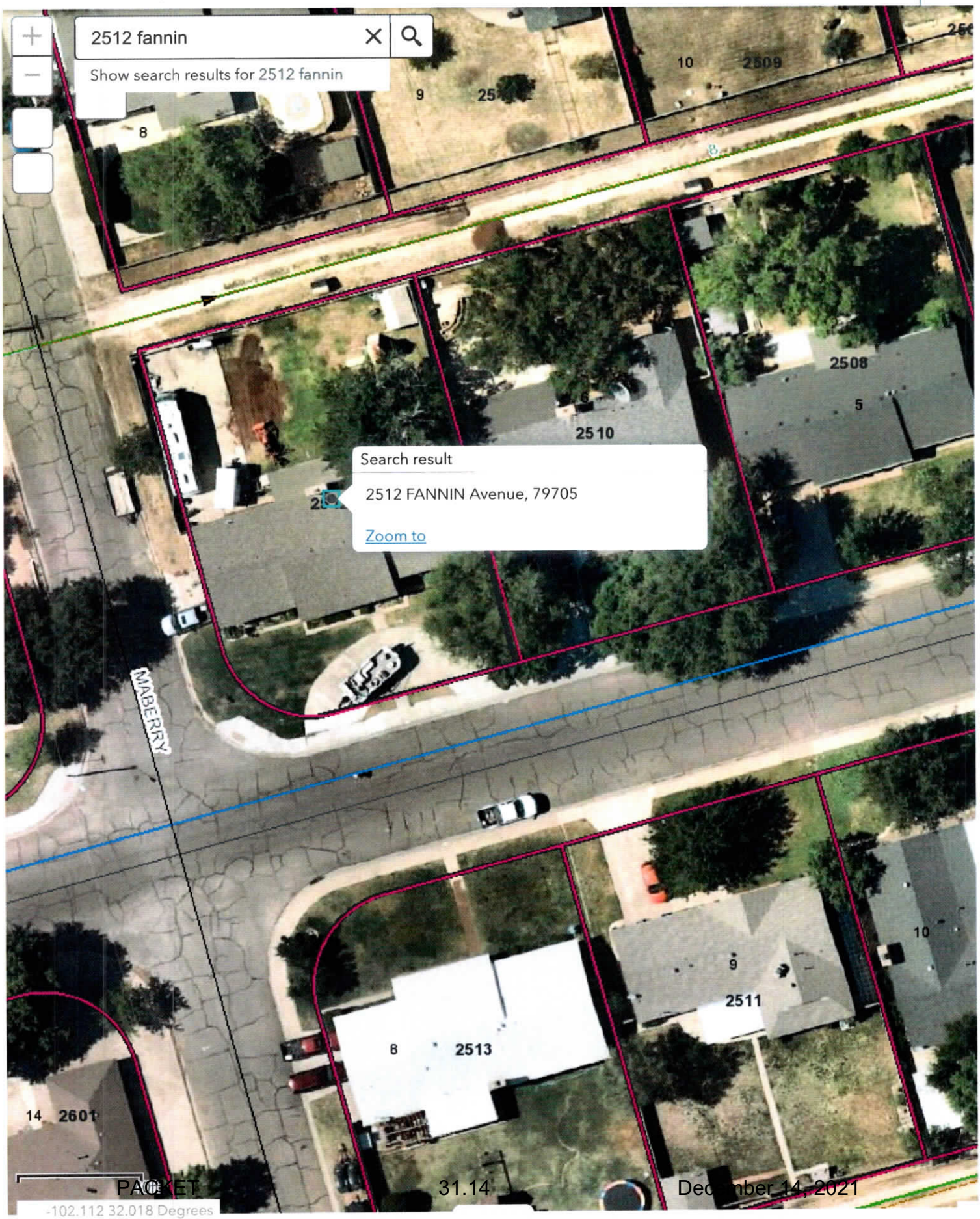
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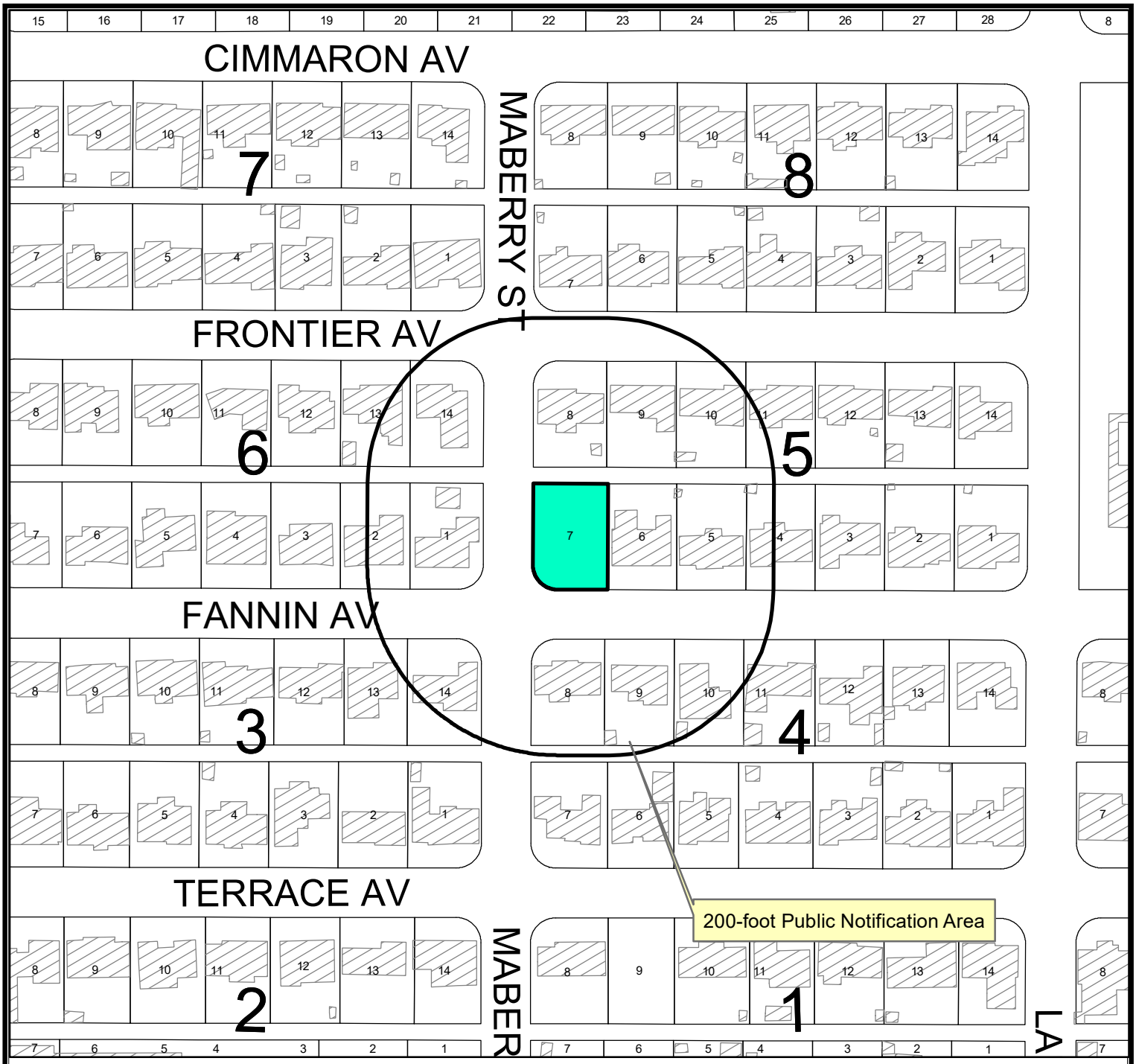
Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER	
DRAWN BY	KCC
CHECKED BY	CDW

3

D-1.0


2512 fannin
Show search results for 2512 fannin
Search result
2512 FANNIN Avenue, 79705
Zoom to
MABERRY
2508
2510
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2513
2601
-102.112 32.018 Degrees



LOCATION MAP

E-21-0060 **Scale: 1" = 200'**

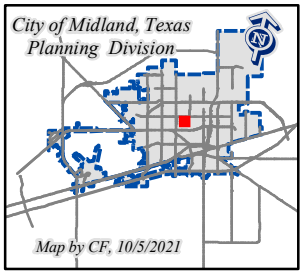
Consider a request by Brad Burgeson for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback for a corner lot on the west 40 feet of Lot 7, Block 5, Fannin Terrace, Section 2, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of Tacket Avenue and Maberry Street. (Council District 3)

PACKET 31.15

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



December 14, 2021

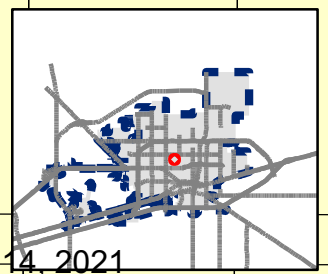
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ST

ONTIER AV

SF1

NIN AV



PACKET 31.16 December 14, 2021

Map By CF, 10/5/2021

E-21-0060

Scale: 1" = 200'

ZONING MAP

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SUPER DUTY


GREY WOLF

City Council Meeting

Item Number: 32

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Cole Furqueron,

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH TYLER STREET AND ORCHARD LANE), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Sylvia Howard, is requesting a Special Exemption from the City of Midland Zoning Ordinance, Section 5.04- Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot width for a corner lot in an SF-3 Single-family Residential Zoning. The 50 foot lot width does not comply with the 55 foot minimum width as indicated by the Zoning Code.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 610 N. Tyler Street and is currently a vacant lot. The applicant is requesting a special exception to the minimum lot width for the prosed SF-3 Single-Family Dwelling District to be able to proceed with the application or rezoning the property to build a single-family home.

The property is currently zoned HI, Heavy Industrial District and does not meet the minimum lot dimensions for its proposed district.

> Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*
>
> *SF-3, Single Family Dwelling District*
> *Lot dimensions*
> *Minimum Lot Width:*
> *Corner Lot: 55 Feet*

As shown on East Midland plat, this property is currently 50 feet wide and 140 feet deep.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning Analysis:

While this request represents a deviation from the existing Zoning Ordinance, due to the unique circumstances surrounding the lot in question, staff is recommending approval of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart. This lot has been platted and zoned in a way that prohibits development, therefore, the City has inadvertently forced this property and others around it to remain vacant under the current zoning ordinance. During the initial adoption period of the new zoning ordinance, there were several lots in this area that were re-zoned to SF-3, single family dwelling district that fell into this same issue. Additionally, the area has dispersed single family housing that was developed before the new zoning ordinance took effect, therefore, developing this property as a single-family home would fit with the character of the neighborhood. This special exception is required in order to change the zoning to SF-3 to better conform to develop a single-family residence. This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential-Medium, a classification which calls for “a mix of housing styles including single-family detached, single-family attached, and townhouses.” This special exception would allow for the development of a single-family residence on this lot that would otherwise remain vacant.

Due to these factors, staff is recommending approval of this special exception subject to conditions A and B.

Conditions:

A. **That the minimum lot width shall be 50 feet.**

B. **That approval of a zone change to SF-3, Single Family Dwelling District shall be required prior to any development on the property.**

Letters of Objection:

As of November 10, 2021, staff has not received any letters of objection

Attachments:

East Midland Plat
Proposed Site Plan (Exhibit A)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH TYLER STREET AND ORCHARD LANE), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 12, Block 50, East Midland Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot width in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from HI, Heavy Industrial District to SF-3, Single-Family Dwelling District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the minimum lot width shall be 50 feet.

B. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Special Exception Application

Project Number: E-21-00164

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Sylvia Howard		Phone (432) 6611493 Email sylscountry@gmail.com	
Address 2505 W County Rd. 130	City Midland	State TX	Zip 79706

Property Owner Printed Name: G+S Electric Co.		Phone ( ) Email	
Address 2505 W. County Rd 130	City Midland	State TX	Zip 79706

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 610 N. Tyler Street

Legal Description
Lot: 12 Block: 50 Subdivision: East Midland Addition

Current Zoning: HI, Heavy Industrial District

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Rezone to residential so we can build a single family residence on this lot

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG) – planning department already has this

RECEIVED
OCT 13 2021
BY: .....

Signatures	
Applicant (signature): Sylvia Howard	Date: 10-12-21
Applicant (printed): Sylvia Howard	
Property Owner (signature):	Date:
Property Owner (printed) :	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Sylvia Howard who, being by me duly sworn, upon oath says: That (s)he is authorized by G+S Electric Co, 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.

Sylvia Howard
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 12 day of October, 20 21, to certify which witness my hand and seal of office.

EDITH W RICO
Notary ID #131904974
My Commission Expires
February 22, 2023

Edith Rico
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

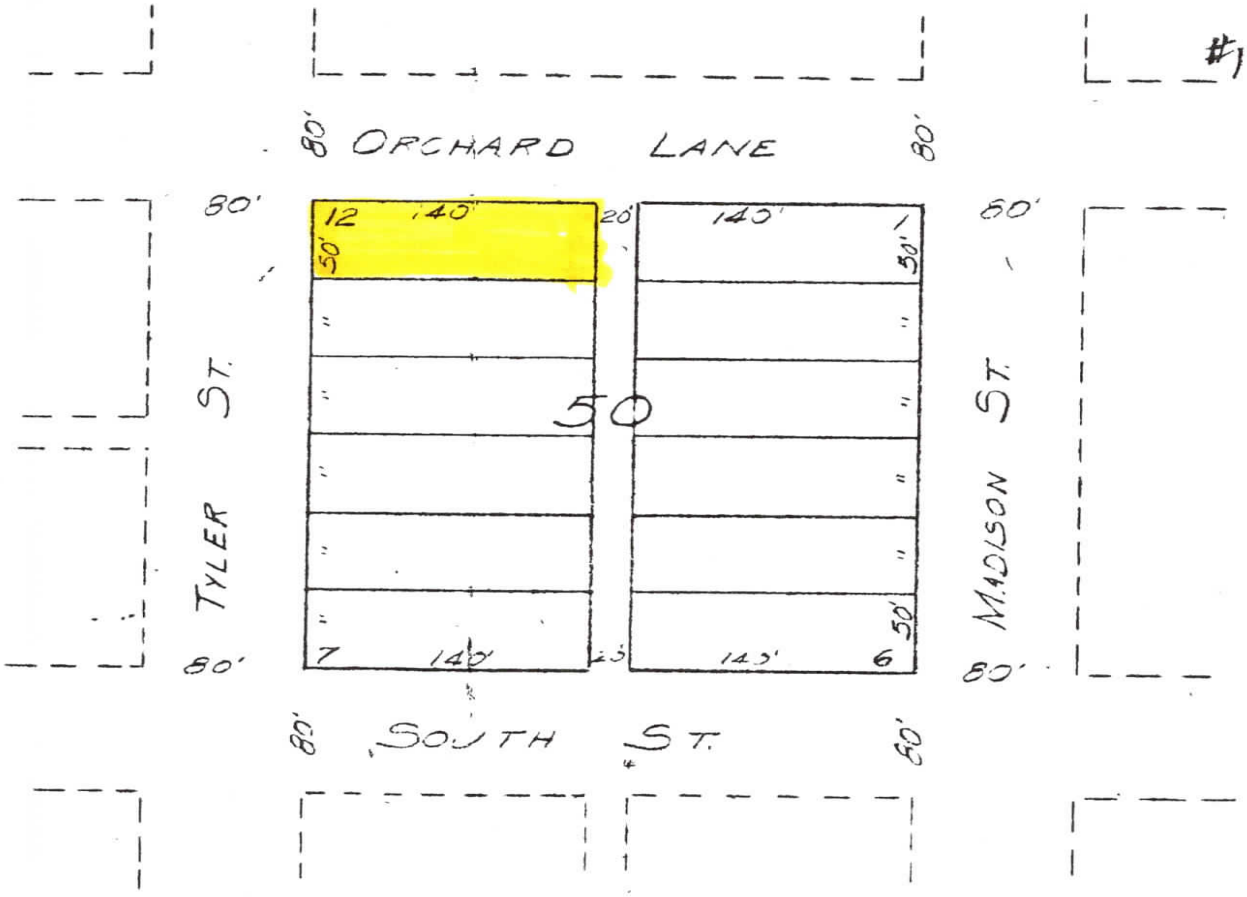
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # CC	
Received By: ES	Date: RECEIVED OCT 13 2021

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****

#14853



Approved 12-15-52
by City Planning
& Zoning Commission
W. B. Harkrider
Chairman.

Approved by action of
the City Council of
Midland, Texas, in
regular meeting held
Dec. 23, 1952.

Mayor
Secretary

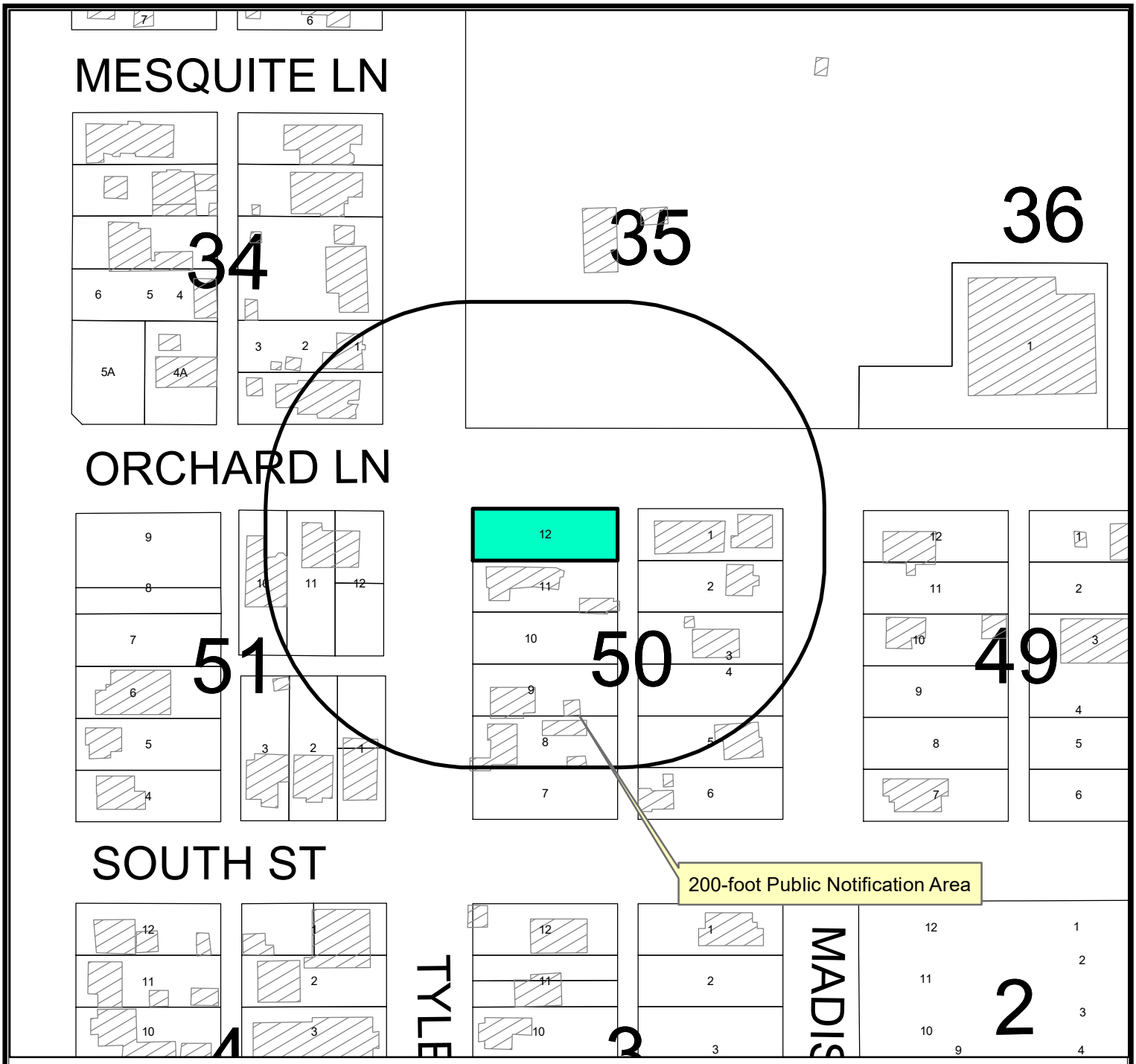
City Planning Department
October 21, 1952

SKETCH SHOWING DEDICATION OF
AN ALLEY IN BLOCK 50,
EAST MIDLAND ADDITION TO THE
CITY OF MIDLAND, TEXAS
Scale: 1" - 100'

Pg. 31

RECEIVED
OCT 13 2021
BY: .....

RECEIVED
SEP 23 2021
BY: .....



LOCATION MAP

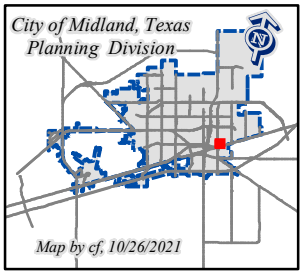
E-21-0064 **Scale: 1" = 200'**

A request by Sylvia Howard for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 - Residential Zoning Distict Dimensional Regulations Chart, concerning the minimum lot dimensions on Lot 12, Block 50, East Midland Addition, City and County of Midland, Texas.

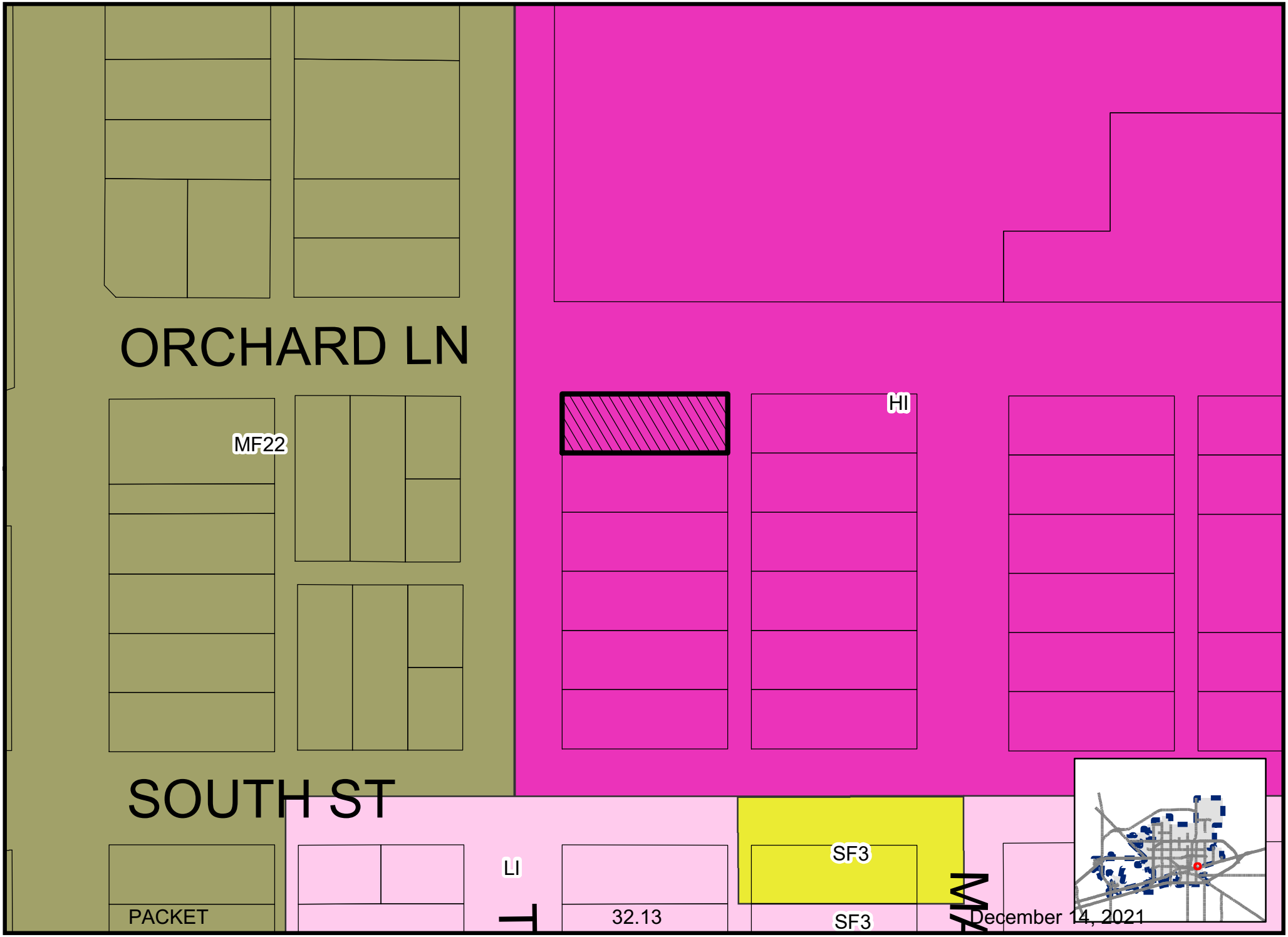
Generally located Southeast corner of the intersection of N. Tyler Street and Orchard Lane- (DISTRICT 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By CF, 11/4/2021

E-21-0064

Scale: 1" = 200'

ZONING MAP

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STOP







City Council Meeting

Item Number: 33

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1 AND 2, BLOCK 24, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND SOUTH MAIN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Faye Golden Homes, LLC, is requesting to rezone the property of Lots 1 & 2, Block 24, Belmont Addition, City and County of Midland, Texas, for the development of office buildings.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

MH, Manufactured Housing District

Surrounding Zoning and Land Use:

The property to the north across West Francis Avenue is zoned SF-2, Single- Family Dwelling District, and the location of a church. The properties to the east and south are zoned RR, Regional Retail District, and the location of offices and vacant land. The properties to the west are zoned SF-2, Single-Family Dwelling District, and the location of residences.

Analysis:

The property is located on Lots 1 and 2, Block 24, Belmont Addition, City and County of Midland, Texas, and is currently vacant. The applicant, Faye Golden Homes, LLC, is requesting this zone change to allow for the development of an office. The property meets the minimum lot size requirements for the RR, Regional Retail District. This zone change will be consistent with the surrounding zoning districts in this area.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objection.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

The request is not compliant with the *Tall City Tomorrow Comprehensive Plan, Chapter 3-An Integrated Land Use Vision.* This area calls for urban-residential medium, a designation that incorporates a mix of housing types, including single-family detached, single-family attached and townhouse uses. The development of an office would not follow the recommendations of the Tall City Tomorrow. However, the development of an office does fit the surrounding land uses in that district.

This request was approved at the October 18, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from MH, Manufacturing Housing District to RR, Regional Retail District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

Staff has not received any letters of objection as of November 10, 2021.

Attachments:

Property Survey (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1 AND 2, BLOCK 24, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND SOUTH MAIN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 1 and 2, Block 24, Belmont Addition, City and County of Midland, Texas (the "Property") to RR, Regional Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MH, Manufactured Housing District to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0267

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Faye Golden Homes, LLC - Billy Gibbs		Phone (432) 215-5005 Email	
Address 500 W Ohio Av, Suite 201D	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: Schumann Engineering Printed Name: Eduardo L. Aleman		Phone (432)684-5548 Email ealeman@schumannonline.net	
Address 800 N. Marienfeld, Suite 100.	City Midland	State TX	Zip 79701

Street Address: 2 Vacant lots north of 1608 S Main Street

Legal Description
Lot: 1 & 2 Block: 24 Subdivision: Belmont Addition

Current Zoning: MH

Proposed Zone: RR
(List by tracts if more than one district is requested)

Reason for Zone Change Request:

Present Use of Property: Vacant Lot

Proposed Use of Property: Office Bulding

How would this zone change affect the public health, safety and welfare?

Describe how conditions affecting the property have changed since present zoning designation:

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed): Schuman Engineering/Ed Aleman	
Property Owner (signature): Billy Gibbs	Date: 9-14-21
Property Owner (printed) : Billy Gibbs	

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 Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Billy Gibbs, 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 14TH day of September, 2021, to certify which witness my hand and seal of office.

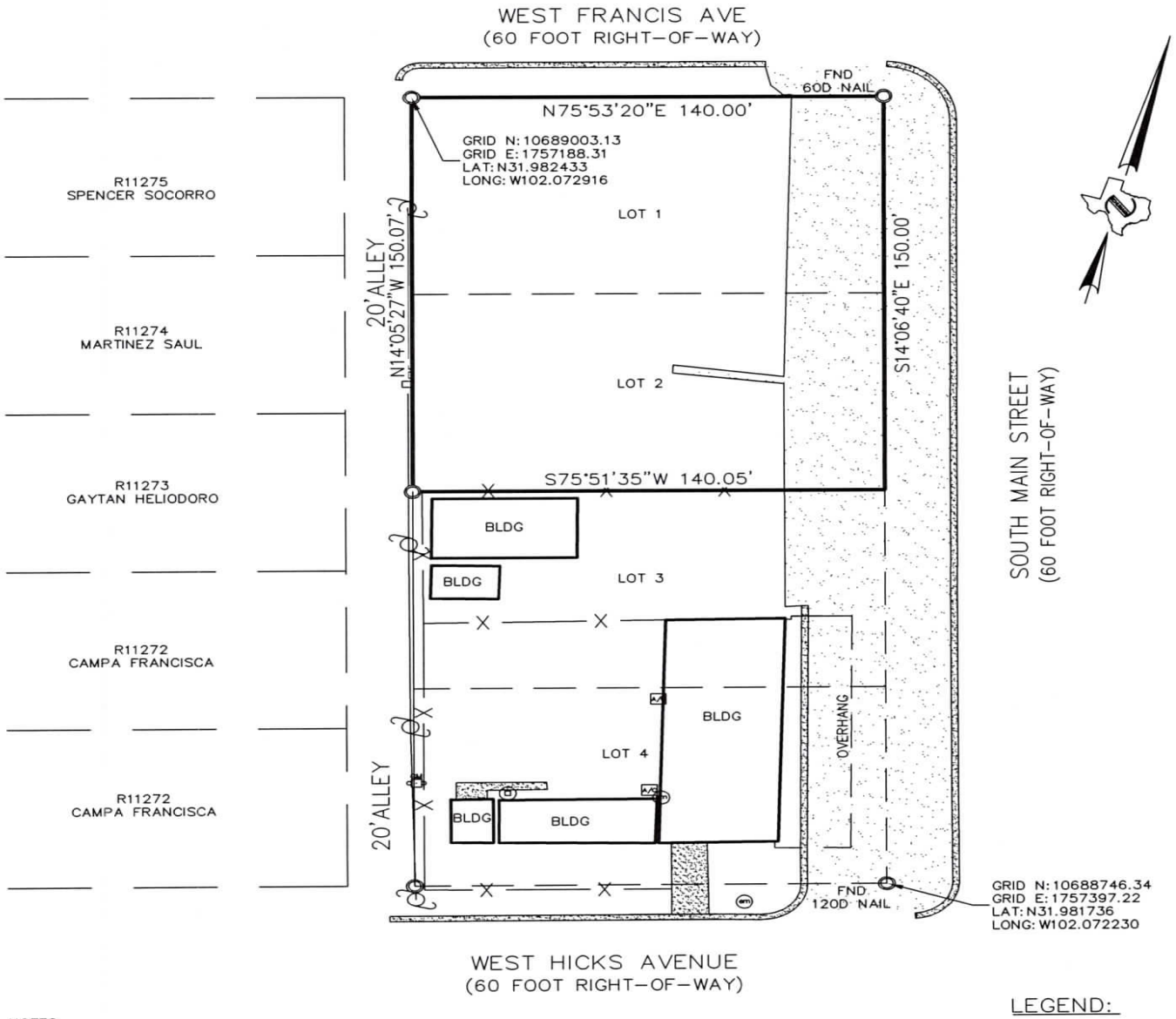
HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-05-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 1689
- Received By: DB
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)
- Date: RECEIVED SEP 15 2021
- BY: .....

Application will not be considered for scheduling until reviewed by a planner.



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID 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.

THIS SURVEY DOES NOT GUARANTEE OWNERSHIP.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

LEGEND:

— x —	FENCE LINE
— OHE —	OVERHEAD ELECTRIC
	UTILITY POLE
ELEC	ELECTRIC METER
A/C	AIR CONDITIONER
GM	GAS METER
	MONUMENT AS DESCRIBED
	PROPERTY LINE
— —	ADJOINING PROPERTIES
BLDG	BUILDING

Surveyor Certification

TO THE LIENHOLDERS, FAYE GOLDEN HOMES LLC

(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 19TH DAY OF AUGUST, 2021

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

RJ DAUM
TEXAS RPLS 4826

SURVEY

LOTS 1-2

BLOCK 24

BELMONT ADDITION

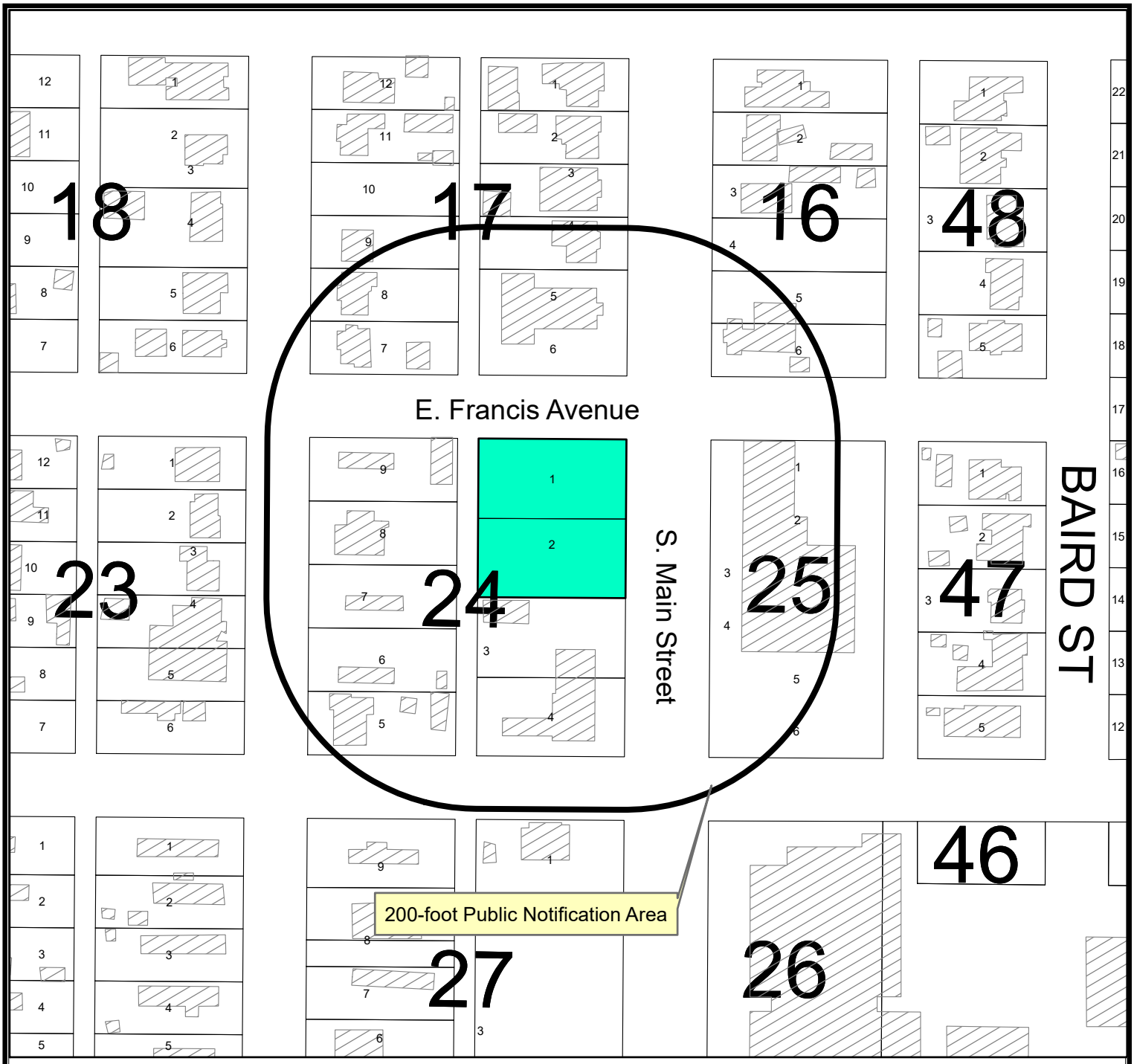
AN ADDITION TO THE CITY OF MIDLAND, AS PER PLAT OF RECORD IN CABINET B, PAGE 1, PLAT RECORDS,

MIDLAND COUNTY, TEXAS

SCALE: 1" = 50'

PROJECT: 78056
JOB NO.: 78056

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING - LAND SURVEYING
800 N. MARIENFELD STREET SUITE 100
MIDLAND, TEXAS 79701
TEXAS FIRM No. F1880 - TEXAS FIRM No. 10149500
Office (432) 684-5548



LOCATION MAP

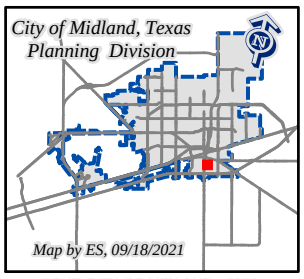
Z-21-0267 **Scale: 1" = 200'**

Consider a request by Faye Golden Homes, LLC for a zone change from MH, Manufactured Housing District to RR, Regional Retail District on Lots 1 & 2, Block 24, Belmont Addition, City and County of Midland, Texas.

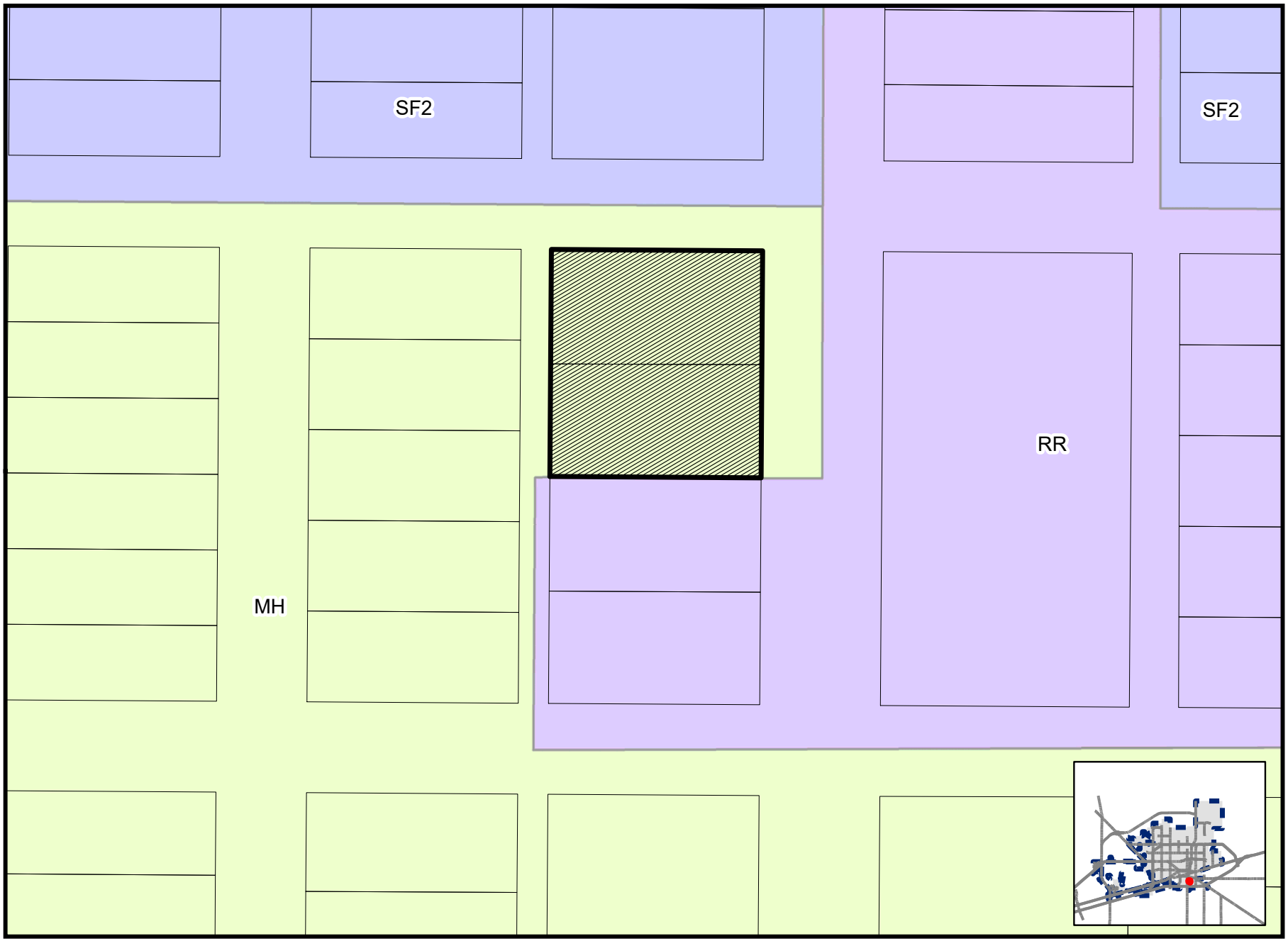
Generally located on the southwest corner of the intersection of E. Francis Avenue and S. Main Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



December 14, 2021



Map By KM, 10/12/2021

Z-21-0267

Scale: 1" = 200'

ZONING MAP

NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.


N FRANCIS AVE
E FRANCIS ST




SPEED
LIMIT
20



City Council Meeting

Item Number: 34

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Raphael Okugbere, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart*, concerning the minimum lot dimension to be able to rezone the property into SF-3, Single-Family Dwelling District.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 601 N Madison Street and the location of vacant land. The applicant is requesting a special exception to the minimum lot width for the proposed SF-3, Single Family Dwelling District to be able to proceed with the application of rezoning the property to build a single family home.

The property is currently zoned HI, Heavy Industrial District and does not meet the minimum lot dimensions for either its current district, or the proposed district.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

SF-3, Single Family Dwelling District
Lot dimensions
Minimum Lot Width:
Corner Lot: 55 Feet

As shown on East Midland plat, this property is currently 50 feet wide and 140 feet deep.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning Analysis:

While this request represents a deviation from the existing Zoning Ordinance, due to the unique circumstances surrounding the lot in question, staff is recommending approval of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart. This lot has been platted and zoned in a way that prohibits development, therefore, the City has inadvertently forced this property and others around it to remain vacant under the current zoning ordinance. During the initial adoption period of the new zoning ordinance, there were several lots in this area that were re-zoned to SF-3, single family dwelling district that fell into this same issue. Additionally, the area has dispersed single family housing that was developed before the new zoning ordinance took effect, therefore, developing this property as a single-family home would fit with the character of the neighborhood. This special exception is required in order to change the zoning to SF-3 to better conform to develop a single-family residence. This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential-Medium, a classification which calls for “a mix of housing styles including single-family detached, single-family attached, and townhouses.” This special exception would allow for the development of a single-family residence on this lot that would otherwise remain vacant.

Due to these factors, staff is recommending approval of this special exception subject to conditions A and B.

Conditions:

A. That the minimum lot width shall be 50 feet.

B. That approval of a zone change to SF-3, Single Family Dwelling District shall be required prior to any development on the property.

Letters of Objection:

As of November 10, 2021, staff has not received any letters of objection

Attachments:

East Midland Plat
Proposed Site Plan (Exhibit A)
Application

Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 6, Block 50, East Midland Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot width in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from HI, Heavy Industrial District to SF-3, Single-Family Dwelling District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the minimum lot width shall be 50 feet.

B. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Special Exception Application

Project Number: E-21-0063

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone (432) 553 8756	
Printed Name: Raphael Okugbere		Email ralph@wellsuitedps.com	
Address 108 Solomon Ln	City Midland	State TX	Zip 79706

Property Owner		Phone (432) 2549434	
Printed Name: Daniel Marquez		Email dmarquez1951@live.com	
Address 601 N Madison st	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)*		Phone ( )	
Firm: _____		Email	
Printed Name: NA			
Address	City	State	Zip

Street Address: 601 N Madison St. Midland TX 79701

Legal Description
Lot: ~~006~~ Block: 050 Subdivision: East Midland.

Current Zoning: HI (Heavy Industrial District).

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☑ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: SF3 LOT Size for Corner Lot is 55ft but property is 50ft.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
OCT 13 2021

BY: .....

Signatures	
Applicant (signature):	Date: 10/11/21
Applicant (printed): Raphael Okugbere.	
Property Owner (signature): Daniel A Marquez	Date: 10-11-21
Property Owner (printed) : Daniel Marquez	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Raphael O chuko Okugbere who, being by me duly sworn, upon oath says: That (s)he is authorized by Daniel Marquez, 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 11th day of Oct, 20 21, to certify which witness my hand and seal of office.

KAITLIN KIRKLAND
My Notary ID # 131936235
Expires March 19, 2023

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☒ Property Owner Authorization
- ☒ Application Fee
- Check # 1462
- ☒ Dimensioned Site Plan
- ☐ Plans in Digital Format (PDF/JPEG)

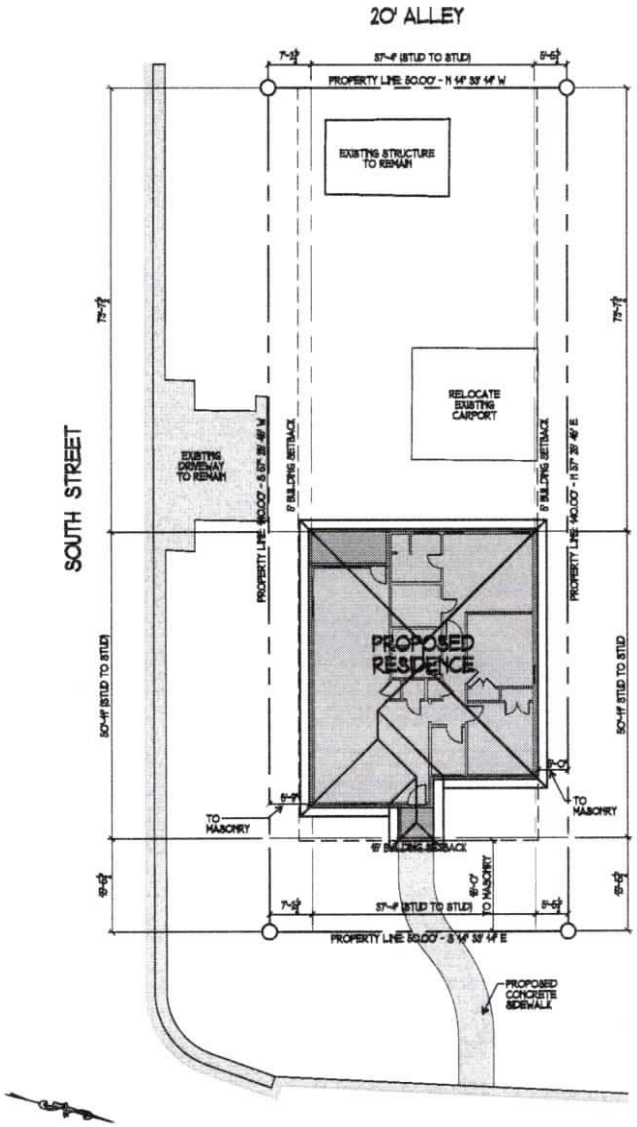
Received By: DR

Date: RECEIVED OCT 13 2021

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****

RECEIVED
OCT 1 3 2021
BY: .....



601 NORTH MADISION

01 SITE PLAN
SCALE: 1" = 20'

PRELIMINARY
NOT FOR CONSTRUCTION
FOR REVIEW AND DISCUSSION ONLY

SHEET NUMBER A1.1 SHEET 02 OF 06	601 N. MADISON MIDLAND TEXAS PROJECT NUMBER: 21106	SHEET TITLE SITE PLAN	CORNERSTONE DESIGN GROUP PHONE: (432)664-8006	DATE 10/12/2021 REVISION DRAWN BY

Do Not Remove
From Drafting Room 00

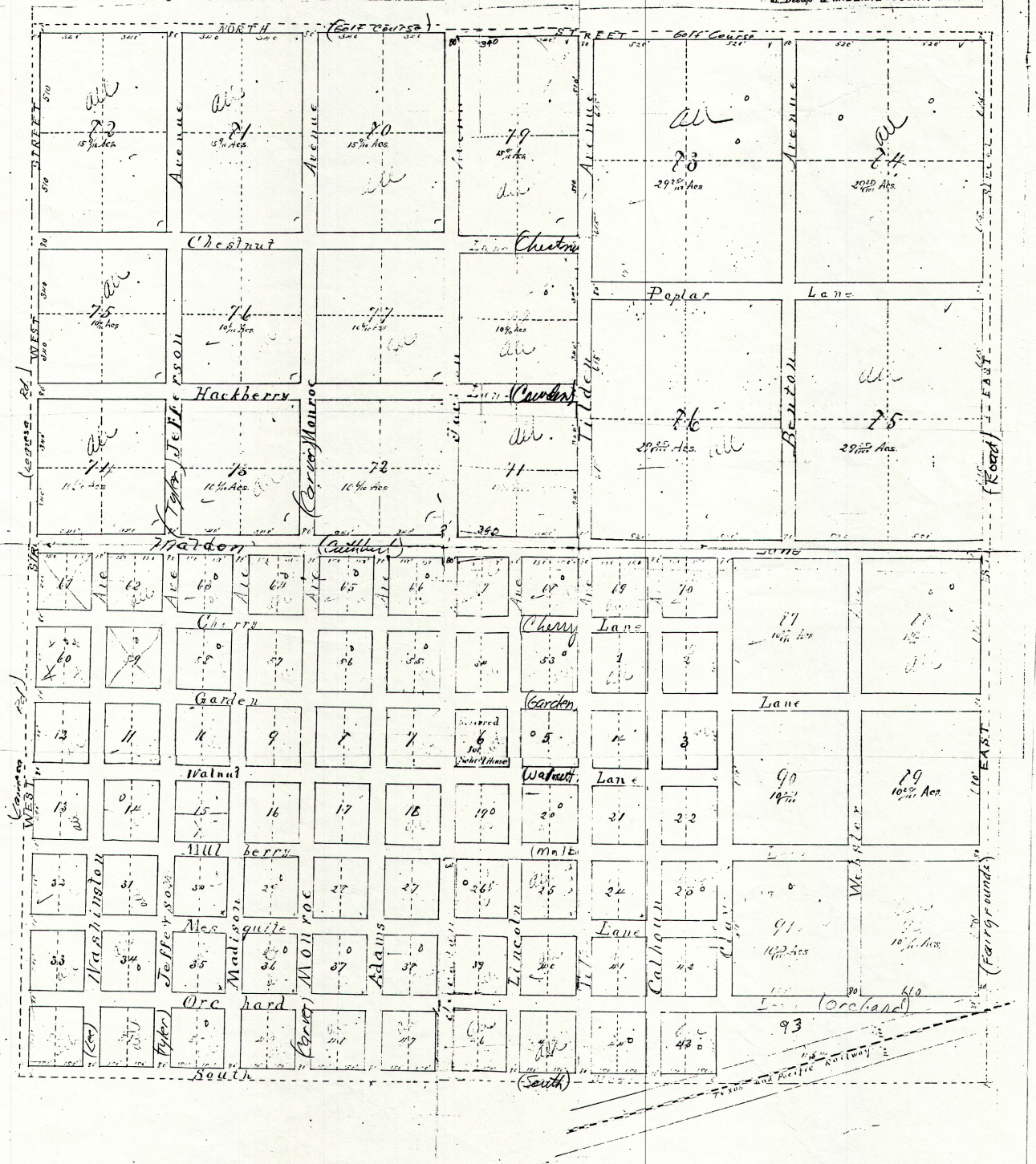
Map of

EASTMIDLAND

MIDLAND COUNTY
TEXAS

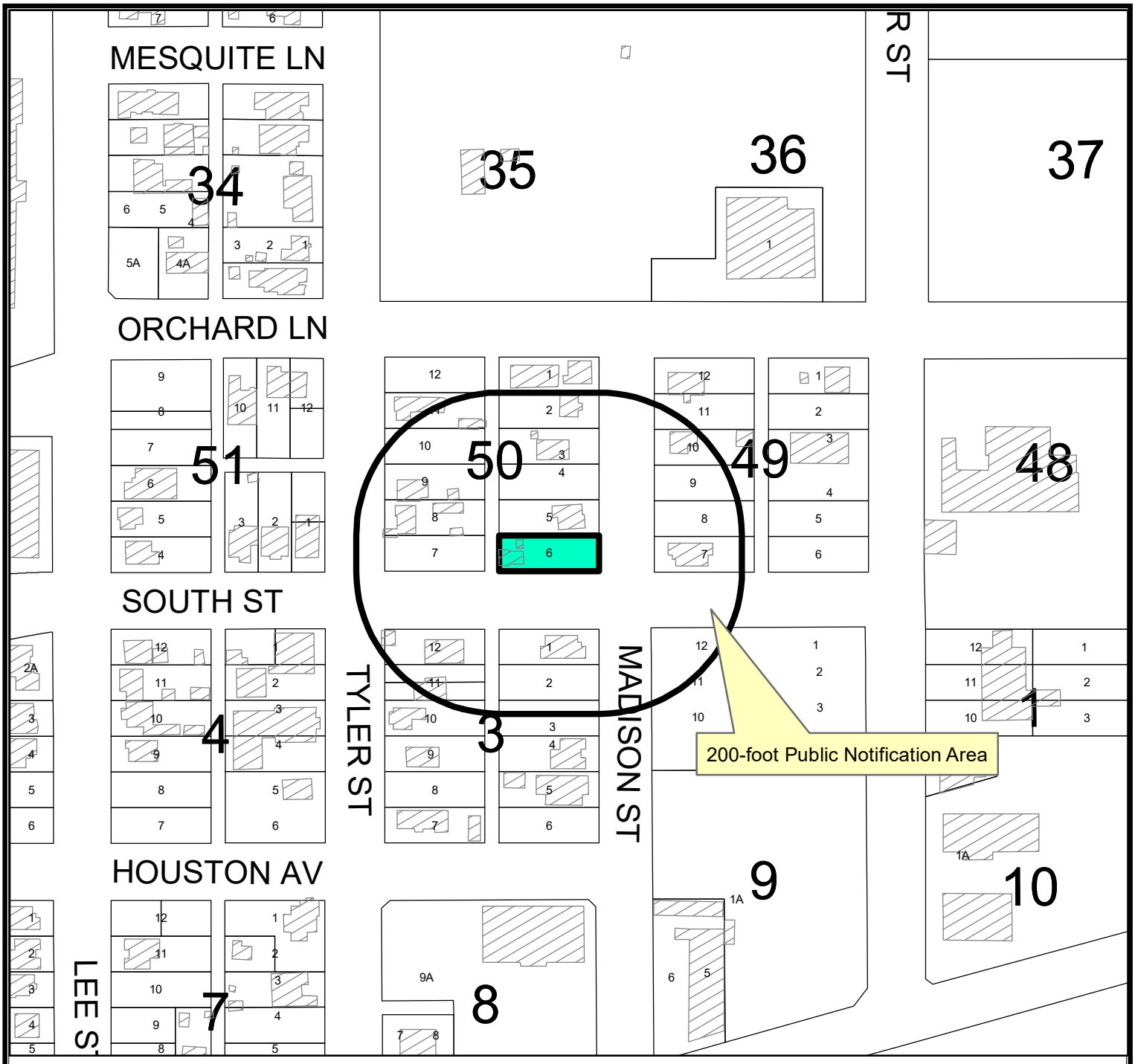
Being all of Section 25, Block 39
Township 1 South Texas and
Pacific Railway Company
Scale 400 ft = 1 inch

This Map is Recorded on pages
of Book of the Records
of Deeds of MIDLAND COUNTY Texas.



State of Texas }
Midland County } Know all men by these presents, That I, John Howard of Tarrant County, Texas and I, S.H. Griffith of Onida County, New York acting herein by my attorney in fact S.E. Griffith of said Tarrant County Texas under Power of attorney dated September 21, 1885 and recorded in the records of deeds of Midland County, Texas in Book I on Pages 86 & 87 and B.K. Brant of said Midland County Texas have bargained granted and donated and by these presents do bargain

Bostwick's



LOCATION MAP

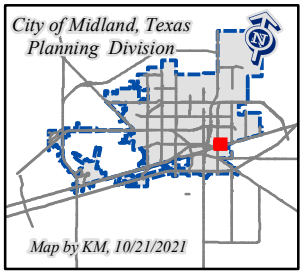
E-21-0063 **Scale: 1" = 200'**

Consider a request by Raphael Okugbere for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimension on Lot 6, Block 50, East Midland, City and County of Midland, Texas.

Generally located on the northwest corner of the intersection of N Madison Street and South Street. (Council District 2)

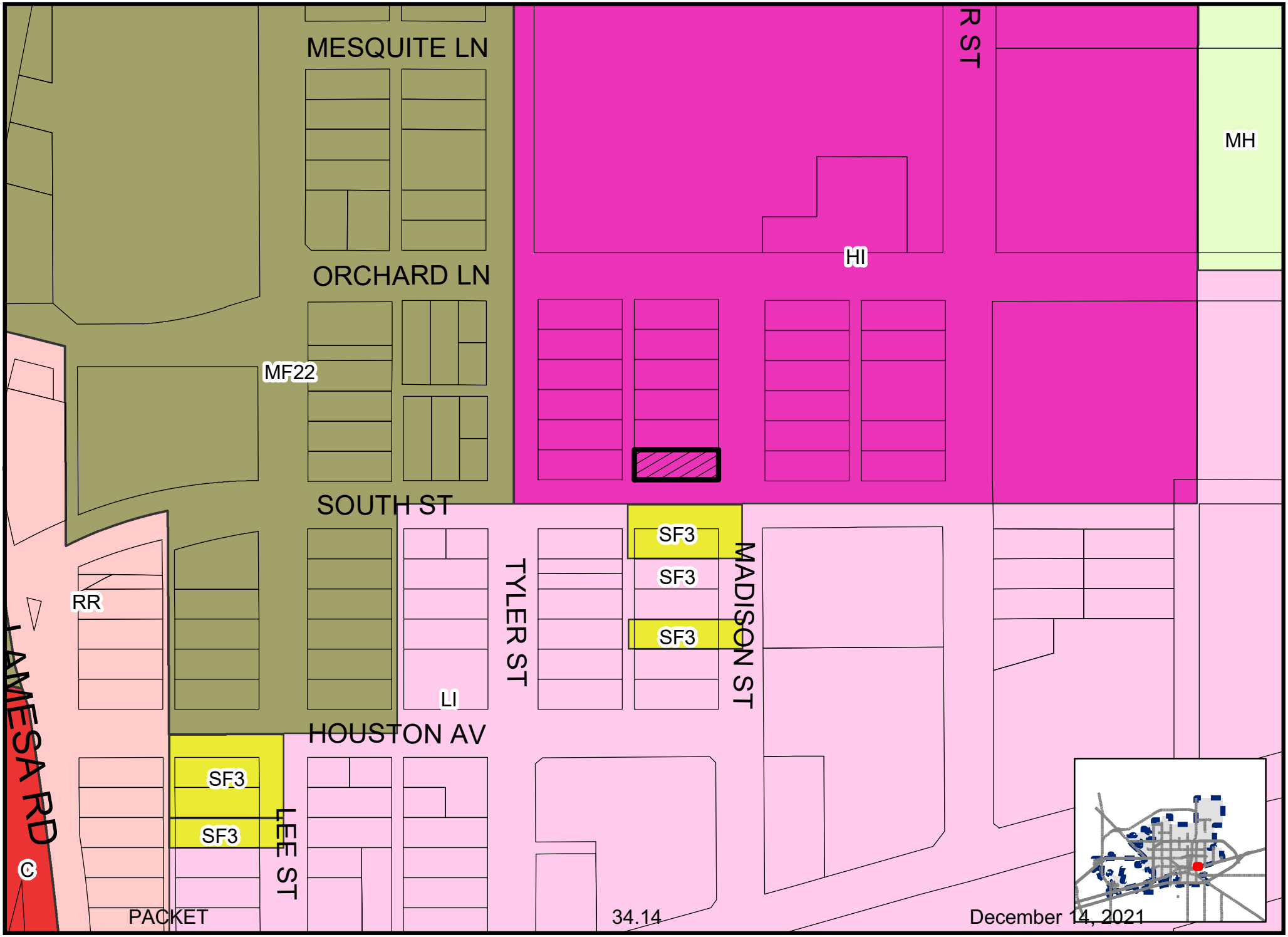
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©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.

December 14, 2021



Map By KM, 10/21/2021

E-21-0063

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




GMC





City Council Meeting

Item Number: 35

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 30.80-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND AVALON DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Lusso Real Estate, LLC, is requesting a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services in order to open a new car dealership.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The property to the north across State Highway 191 is zoned ETJ, Extraterritorial Jurisdiction and is the location of vacant land. The properties to the east are zoned RR, Regional Retail District, and the location of Kent Kwik; and PD, Planned District, and the location of a vacant lot. The properties to the south are zoned RR, Regional Retail District, and the location of vacant lots; and PD, Planned District, and the locations of a vacant lot. The property to the west is zoned ETJ, Extraterritorial Jurisdiction, and the location of vacant land.

Analysis:

The property is currently vacant and is zoned RR, Regional Retail District. Per section 4.03 Use Chart of the zoning ordinance, a car dealership is allowed in the RR, Regional Retail District with a Specific Use Designation without Term.

The proposed site plan, hereto shown as Exhibit B, illustrates eight (8) buildings consisting of three (3) car dealerships, two (2) service centers, a car wash, an amenities building, and a photo booth building. The total square footage of all the buildings combined is about 1,341,212 square feet. The site plan illustrates 1,748 parking spaces. This site will have adequate parking.

The proposed hours of operation are the following:

Monday through Saturday, 7:00 a.m. to 10:00 p.m.

The Automobile or Other Motorized Vehicle Sales and Services will need to comply with the standards as listed in Section 4.04.A.6 of the Zoning Ordinances.

6. Automobile or Other Motorized Vehicle Sales and Service Standards

a. Allowed by Specific Use Designation, according to the permitted Use Chart.

b. All exterior light sources shall be of a down-light type, indirect, diffused, or shielded type luminaries and so installed as to reduce glare effect and consequent interference with use of adjacent properties and boundary streets.

c. No intermittent or flashing lights shall be permitted.

d. Luminaries shall be mounted at a height not to exceed 30 feet as measured vertically from the horizontal surface of the nearest parking pavement.

e. All building façades shall be constructed with the same masonry materials that meet the masonry regulations for the zoning district in which the property is located.

f. No exterior auditory devices shall be permitted.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objection.

Engineering: (Approved)

No objection.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved with Conditions)

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway.

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. The TxDOT Driveway Permit Coordinator is Rachael Ramirez (Rachael.Ramirez@txdot.gov, 432-498-4789).

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Building Code: (Approved)

No objections.

Planning:

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan calls for Urban-High uses in this area, encompassing a higher mix of housing types, major commercial, office and services uses, and limited industrial in suitable locations. Therefore, the new car dealership fits the recommendations of the Tall City Tomorrow Comprehensive Plan.

This request was approved at the November 1, 2021, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request of the

Specific Use Designation without Term for an Automobile or other Motorized Vehicle Sales and Services, subject to Condition A through D.

Conditions:

A. **That the Automobile and other Motorized Vehicle Sales and Service shall significantly conform to the Site Plan (Exhibit B) which is attached hereto and incorporated herein for all purposes.**

B. **That the development of the automobile or other motorized vehicle sales and services shall comply with the standards listed in Section 4.04. A.6 of the Zoning Ordinance.**

C. **That the days and hours of operation of the Automobile or other Motorized Vehicle Sales and Service shall be limited to:**

Monday through Saturday, from 7:00 a.m. to 10:00 p.m.

D. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the Automobile Sales and Services to ensure that the conditions of this permit are satisfied**

Letters of Objection:

As of November 10, 2021, staff has not received any letters of objection.

Attachments:

Meets and Bounds (Exhibit A)
Site Plan (Exhibit B)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 30.80-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND AVALON DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for a 30.80-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property") as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for automobile or other motorized vehicle sales and service (the "Specific Use"), together with

the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the use and development of the Property for the Specific Use shall significantly conform to the site plan, which is attached hereto as Exhibit "B" and incorporated herein for all purposes.

B. That the use and development of the Property for the Specific Use shall conform to the development standards of Section 11-1-4.04.A.6 of the City Code.

C. That the days and hours of operation of the Specific Use shall be limited to Monday through Saturday from 7:00 a.m. to 10:00 p.m.

D. That the applicant shall obtain a Certificate of Occupancy prior to using the Property for the Specific Use to ensure that the conditions of this Specific Use Designation Without Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

NEWTON ENGINEERING, PC
4908 N. Midkiff Rd. F-13856
Midland, Texas 79705
(432) 770-0499

November 1, 2019

Field Notes

Sewell Auto Complex 30.80 acres

All of that certain tract or parcel of land situated in Sections 37 and 38, Block 40, Township 1 South, Texas and Pacific Railroad Company Survey, Midland County, Texas and being 29.96 acres out of a called 634.887 acre tract as described in deed to Cumberland and Western Resources, LLC, in Document Number 2008-26873, Official Public Records of Midland County, Texas and 0.84 acre out of a called 8.84 acre tract described in Document 2012-25587, Official Public Records of Midland County, Texas and being more particularly described as follows:

Beginning at a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977", set at the most Northerly Northeast corner of the said called 634.887 acres and the Northwest corner of the said called 8.84 acres in the South right-of-way line of State Highway 191.

Thence S 14°17'16' E along the East line of the said called 634.887 acres and the West line of the said called 8.84 acres, 15.00 feet to a ½ inch iron rod, with yellow cap, found at the inside Ell corner in the East line of the said called 634.887 acres and inside Ell corner in the West line of the said called 8.84 acres.

Thence N 75°19'50" E along the lower South line of this tract and a line of the said called 8.84 acres, 31.97 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at a deflection in the East line of this tract and the West line of the said called 8.84 acres.

Thence S 64°39'39" E along the East line of this tract and the West line of Avalon Road, 122.29 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" , set at a deflection point in the East line of this tract and the West line of said Avalon Road.

Thence S 24°31'20" E continuing along the East line of this tract and the said West line of Avalon Road, 286.56 feet to a feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at the PC of a 1°17'04" Curve to the Right.

Thence around said Curve to the Right, 312.60 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at the end of said curve and the most northerly Southeast corner of this tract.. Said Curve having a Delta Angle of 4°00'55" with a Chord Bearing of S 22°28'23" E and distance of 312.55 feet.

Thence S 27°25'30" W along a clip corner on the Southeast corner of this tract, 20.07 feet to a ½ inch iron, with cap marked PSC, found at the most southerly southeast corner of this tract in the North line of Deauville Boulevard.

Thence S 75°14'10" W along the South line of this tract and the North line of Deauville Boulevard, 250.69 feet to a ½ inch iron rod, with cap marked PSC, found at the beginning of a 6°03'47" curve to the right.

NEWTON ENGINEERING, PC
4908 N. Midkiff Rd. F-13858
Midland, Texas 79705
(432) 770-0499

Page 2, Sewell Auto Complex -30.80 acres

Thence around said curve to the right, 357.24 feet to the end of said curve at a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set for corner. Said Curve having a Delta Angle of 21°39'35" with Chord Bearing of S 86°03'55" W and distance of 355.12 feet.

Thence N 83°06'17 W continuing along the South line this tract and the North line of Deauville Boulevard,100.00 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977", set at the beginning of a 5°25'51" curve to the left.

Thence around said curve to the left 797.65 feet to a ½ inch iron rod, with cap marked "6423", found at the end of this curve. Said Curve having a Delta Angle of 43°19'09", with a Chord Bearing of S 75°14'08" W and Distance of 778.78 feet

Thence S 53°34'34" W continuing along the South line of this tract and the said North line of Deauville Boulevard, 100.00 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" , set at the PC of a 6°03'47" Curve to the left.

Thence around said curve to the left, 357.24 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" , set at the end of said curve. Said Curve having a Delta Angle 21°39'34" and Chord Bearing of S 64°24'21 W and Distance of 355.11 feet.

Thence S 75°14'08" W continuing along the South line of this tract and the said North line of Deauville Boulevard, 169.39 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set for corner at a point of deflection to the right.

Thence N 59°45'56" W continuing along the said South line of this tract and the said North line of Deauville Boulevard, 21.22 feet to a bent iron rod, found at a point of deflection to the left.

Thence S 75°14'08" W continuing with said South line and North line of Deauville Boulevard, 65.00 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at the Southwest corner of this tract.

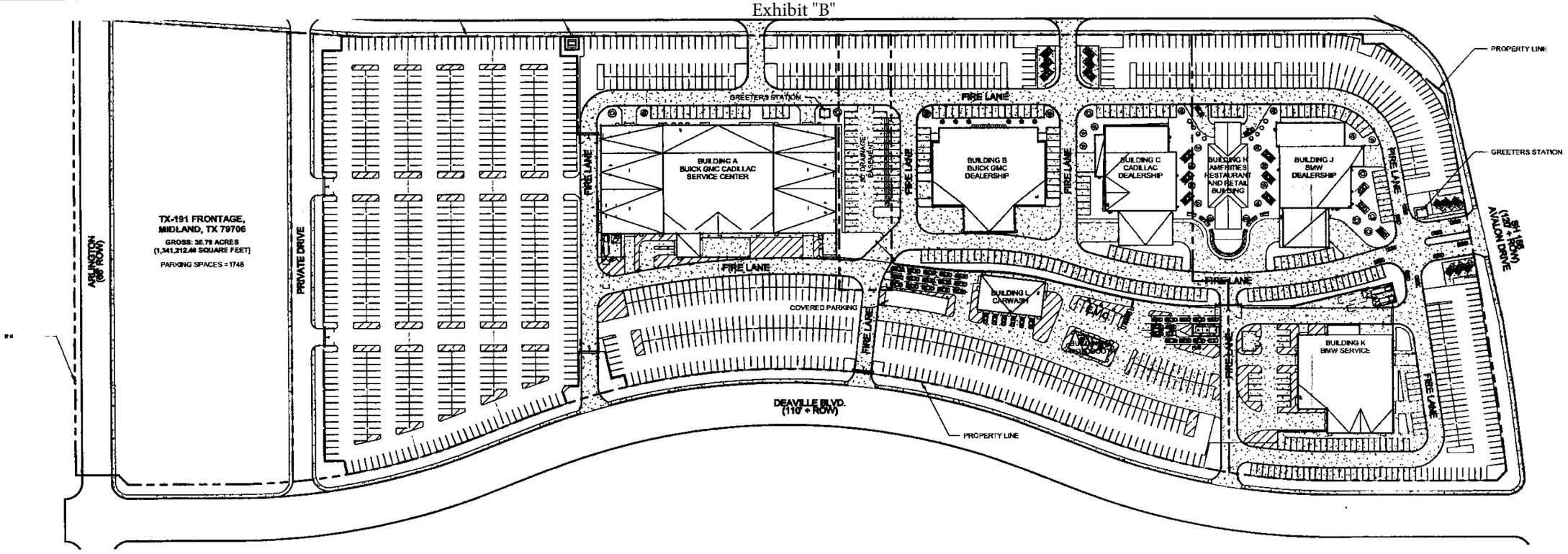
Thence N 14°45'52" W along the West line of this tract and the East line of the remainder of the said called 634.887 acres, 717.81 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at the Northwest corner of this tract in the South line of said State Highway 191.

Thence N 79°21'34" E along the said North line of this tract and said South line of State Highway 191, 440.40 feet to a ½ inch iron rod, with yellow plastic cap stamped "RPLS 1977" set at a point of deflection in said North line, continuing N 75°14'49" E, 1520.67 feet to the place of beginning and containing 30.80 acres of land.

I, Charles P. Rutherford, Registered Professional Land Survey, do hereby state that this field note description and its accompanying plat correctly represent the results of a survey made on the ground under my supervision and direction.

Charles P. Rutherford, Registered Professional Land Surveyor No. 1977 Date

Exhibit "B"



ND DEALERSHIP CAMPUS, TX-191 FRONTAGE, MIDLAND, TX 79706

Scale: 1" = 60' - 0"
File Name: BIM 360://17256 - BMW Permian Basin/17256_SM_SITE_A21.rvt
Not for regulatory approval, permitting, or construction

gff ARCH

MIDLAND
Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUPwo -21-2024

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Lusso Real Estate, LLC		Phone (432) 770-0499 Email	
Address PO Box 3432	City Odessa	State TX	Zip 79760

Property Owner Printed Name: Same as applicant		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Newton Engineering, PC Printed Name: John M. Newton		Phone (432) 770-0499 Email john@ newtoncivil.com	
Address 4501-A Santa Rosa Dr.	City Midland	State TX	Zip 79707

Type of Permit: Automobile or Other Motorized Vehicle Sale and Service in RR zoned property	*For Office Use Only* ☐ with Term ☐without Term
Is there any Code Enforcement action pending on property? ☐ Yes ■ No	

Street Address: No assigned

Legal Description
Lot: 1-3 Block: 12 Subdivision: Westridge Park Addition, Section 49

Current Zoning: RR

Maximum Floor Area: 175,000 **Maximum Occupancy:**

Proposed hours and days of use or operation: 24 hours

Reason for request: To allow the intended use of the property

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience:
The dealership at this location will enhance the areas visual and social appeal by creating a site which will attract other business to develop adjacent properties.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing
  - Parking (if applicable)
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature):	Date: 9/22/2021
Applicant (printed): Collin Sewell	
Property Owner (signature):	Date: 9/22/2021
Property Owner (printed) : Collin Sewell	

The Specific Use Designation shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared John M. Newton who, being by me duly sworn, upon oath says: That (s)he is authorized by Collin Sewell, 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.

J. M. Newton
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 22 day of September, 20 21, to certify which witness my hand and seal of office.

NOTARY PUBLIC STATE OF TEXAS
EDITH W RICO
Notary ID #131904974
My Commission Expires
February 22, 2023

Edith Rico
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee	☒ Site Plan in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

RECEIVED
SEP 22 2021
BY: KM

****Application will not be considered for scheduling until reviewed by a planner.****

NEWTON ENGINEERING, PC
4908 N. Midkiff Rd. F-13856
Midland, Texas 79705
(432) 770-0499

November 1, 2019

Field Notes

Sewell Auto Complex 30.80 acres

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Page 2, Sewell Auto Complex -30.80 acres

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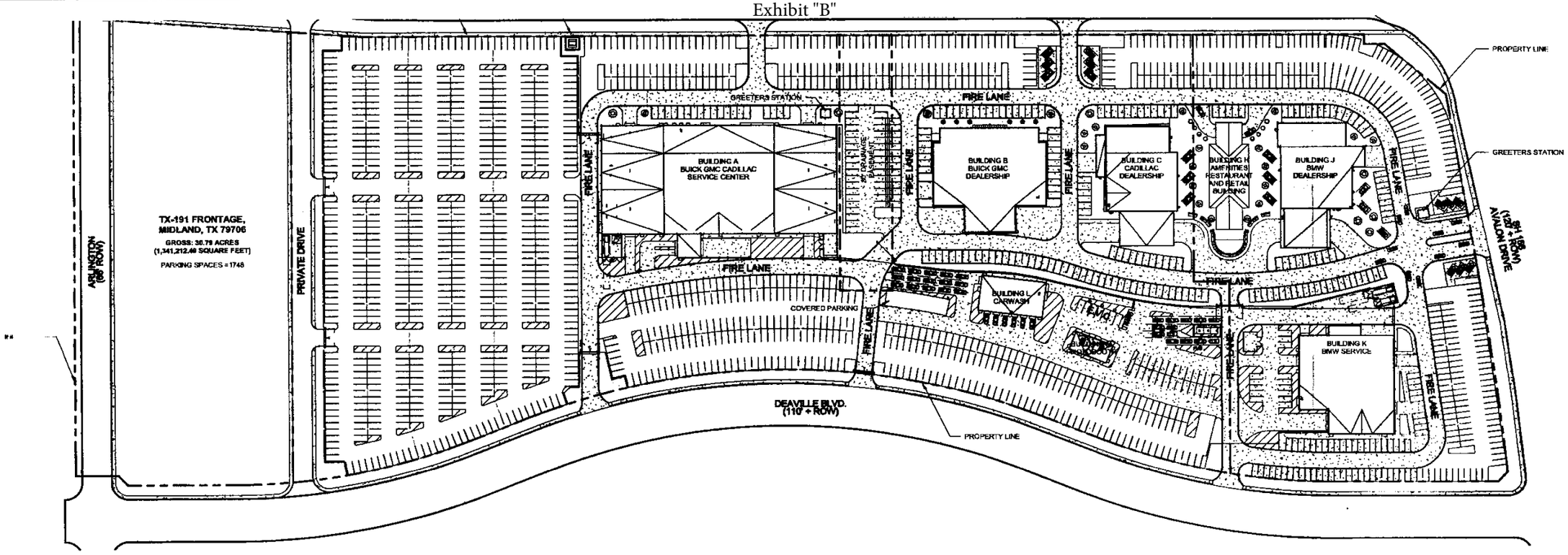
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I, Charles P. Rutherford, Registered Professional Land Survey, do hereby state that this field note description and its accompanying plat correctly represent the results of a survey made on the ground under my supervision and direction.

_____

Charles P. Rutherford, Registered Professional Land Surveyor No. 1977 Date

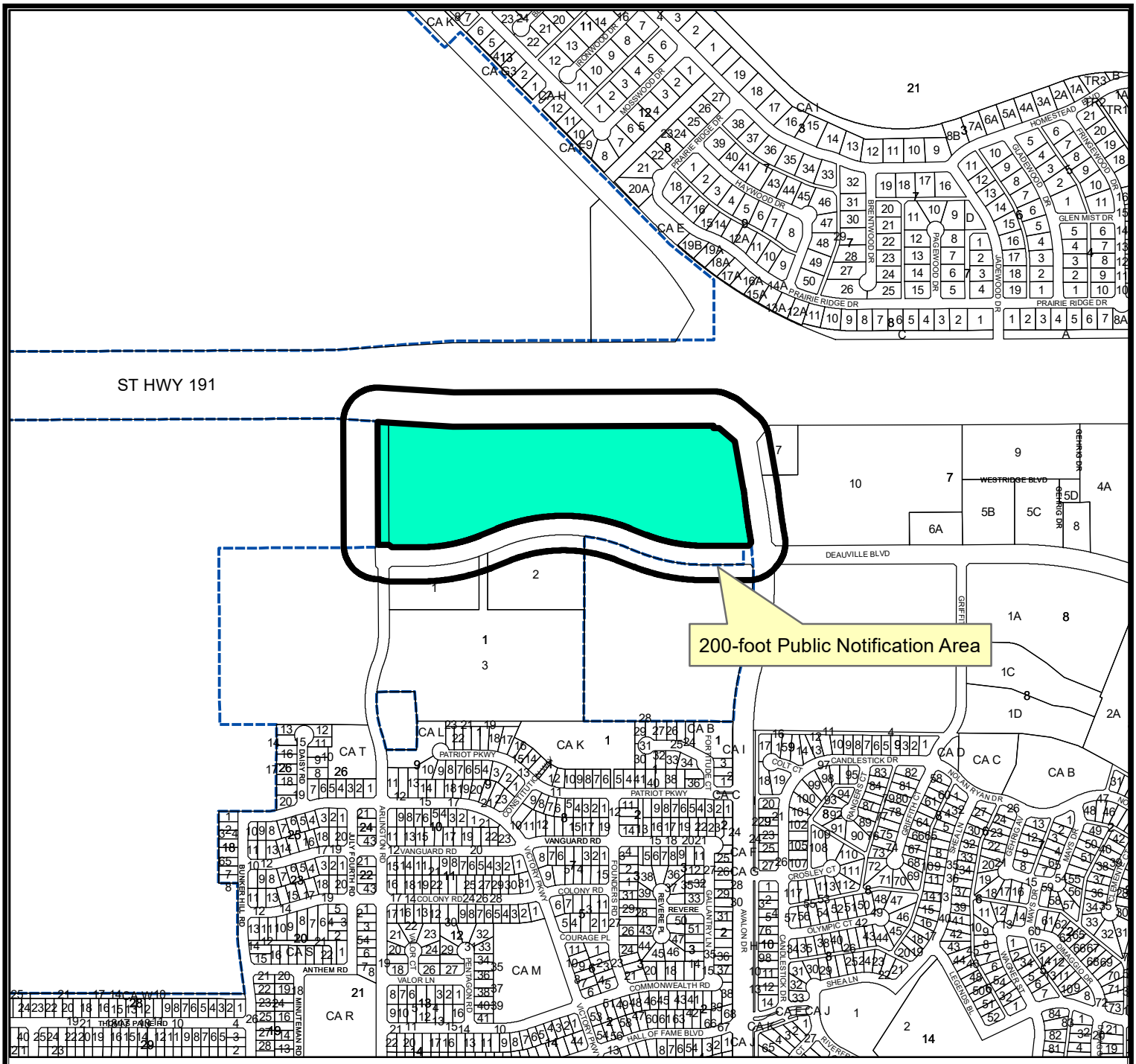
Exhibit "B"



ND DEALERSHIP CAMPUS, TX-191 FRONTAGE, MIDLAND, TX 79706

Scale: 1" = 60' - 0"
File Name: BIM 360://17256 - BMW Permian Basin/17256_SM_SITE_A21.rvt
Not for regulatory approval, permitting, or construction

gff ARCI
Dallas | F



LOCATION MAP

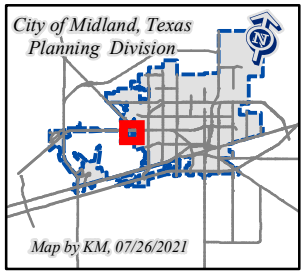
SUDwo-21-0024 **Scale: 1" = 200'**

Consider a request by Lusso Real Estate, LLC for a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Service, on a 30.80-acre tract of land out of Section 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

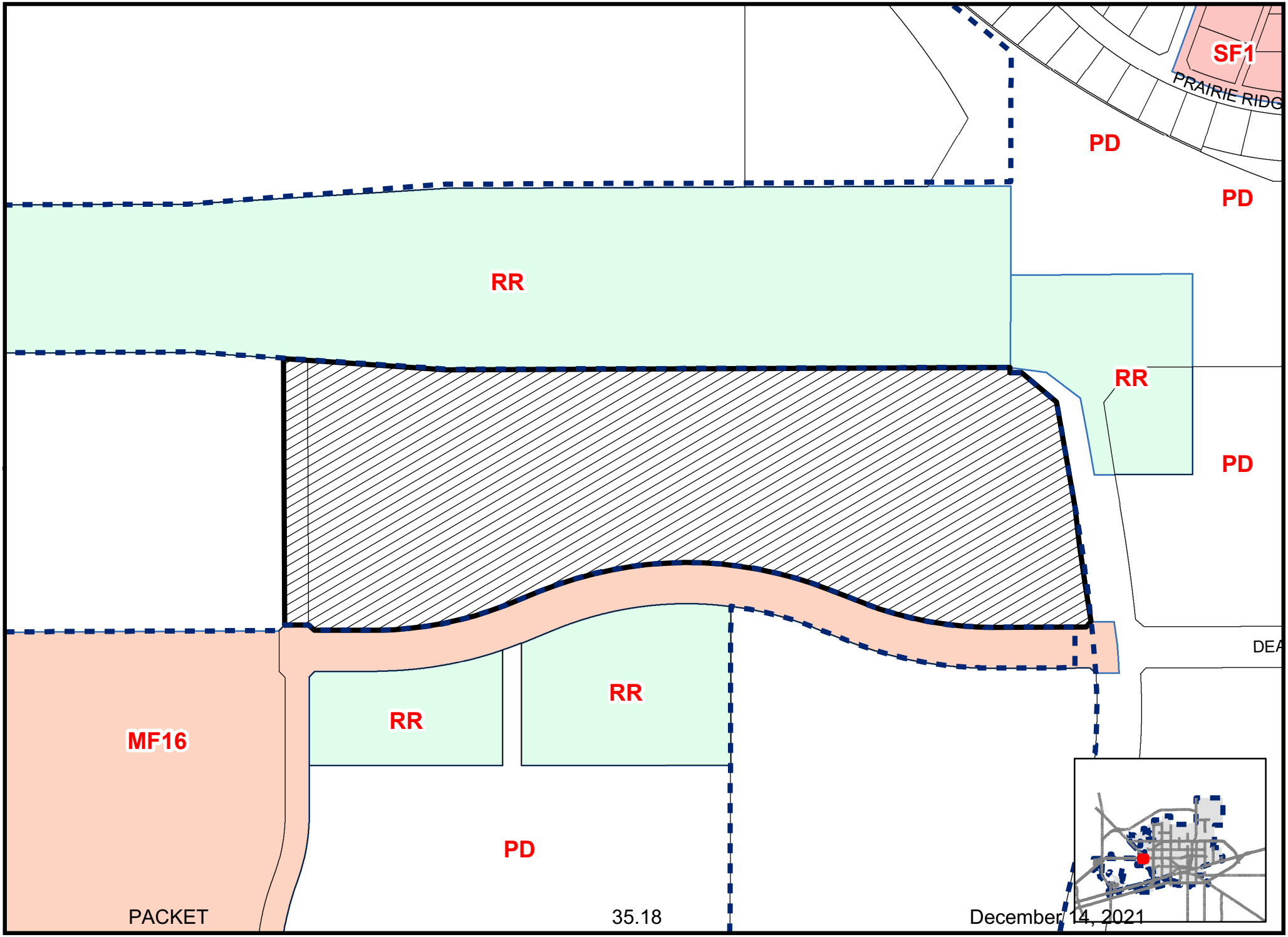
Generally located on the southwest corner of the intersection of State Highway 191 and Avalon Drive. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 09/15/2021

SUDwo-21-0024

Scale: 1" = 200'

ZONING MAP

© **THE CITY OF MIDLAND - 2020:** THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




STOP




SPEED
LIMIT
40
BIKE LANE

City Council Meeting

Item Number: 36

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Cole Furqueron,

Subject: **AN ORDINANCE VACATING AND ABANDONING AN APPROXIMATE 0.61-ACRE PORTION OF MOCKINGBIRD LANE / WEST COUNTY ROAD 50 RIGHT-OF-WAY LOCATED IN SECTION 10, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH HALF OF MOCKINGBIRD LANE, APPROXIMATELY 3,300 FEET WEST OF NORTH A STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $18,300.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Vanderpool Management, is requesting to vacate the 0.61-acre portion of the North 40-feet of an 80-foot right-of-way of Mockingbird Lane/West County Road 50 out of the SW/4 of the SE/4 of the SW/4 of Section 10, Block “X”, H.P. Hilliard Survey, County of Midland, Texas, for future expansion.

Recommended City Council Action:

Approve

Fiscal Impact:

The appraised value of the Mockingbird Lane right-of-way is $30,000.00 per acre or

$18,300.00

Discussion:

The applicant, Vanderpool Management, is requesting to vacate the 0.61-acre portion of the North 40-feet of an 80-foot right-of-way of Mockingbird Lane/West County Road 50 out of the SW/4 of the SE/4 of the SW/4 of Section 10, Block “X”, H.P. Hilliard Survey, County of Midland, Texas, for future expansion.

All the appropriate adjacent owners are aware of the proposed vacation and have signed the application.

The Midland Central’s Appraisal District’s appraisal of the land is $30,000.00 per acre or $18,300.00.

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 and Gas issues.

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.

Fire: (Approved)

No objections.

Transportation: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

AT&T: (Approved)

I don’t show that we have anything in that area.

Atmos: (Approved)

Atmos Energy has no objection to the above referenced changes proposed to the Mockingbird

right of way located between Garfield and A Street in north Midland. We currently have no gas lines or facilities located within this section of right of way.

Grande: (Approved)

We do not have any underground communications in this section of mockingbird.

Oncor: (Approved with Conditions)

Per our phone conversation and speaking with our ROW group. Oncor is retaining the easement at this location.

Suddenlink: (Approved)

We do not have any plant at this location we are good with this request.

Midland Central Appraisal District:

The vacation area indicated has a current value of $30,000.00 per acre or $ 18,300.00.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved it with the condition that a utility easement is retained.

Therefore, staff recommends approval of the vacation of a 0.61-acre portion of the North 40-feet of an 80-foot right-of-way of Mockingbird Lane/West County Road 50 out of the SW/4 of the SE/4 of the SW/4 of Section 10, Block “X”, H.P. Hilliard Survey, County of Midland, Texas, to be subject to conditions A through D.

Conditions:

A. **That the City of Midland has received from the property owner the sum of $18,300.00.**

B. **That an accessible nonexclusive utility easement is retained.**

C. **Authorization for City Manager to execute a quitclaim deed.**

D. **That a replat of the subject property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County.**

Letters of Objection:

As of November 10, 2020, staff has not received any letters of objection to this request.

Attachments:

Vacation Survey (Exhibit A)
Application
Maps
Responses from Franchise Utility Companies and Midland Central Appraisal District

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING AN APPROXIMATE 0.61-ACRE PORTION OF MOCKINGBIRD LANE / WEST COUNTY ROAD 50 RIGHT-OF-WAY LOCATED IN SECTION 10, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH HALF OF MOCKINGBIRD LANE, APPROXIMATELY 3,300 FEET WEST OF NORTH A STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $18,300.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that an approximate 0.61-acre portion of Mockingbird Lane / West County Road 50 right-of-way located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the Property at $18,300.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate

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 purposes. Provided, however, that the City is hereby abandoning only the public interest in the Property, and this ordinance in no way affects any private easement or access easement which abutting property owners may have in the Property.

SECTION TWO. That this Ordinance shall not be effective until:

A. the City of Midland has received the sum of $18,300.00 from the owner of the abutting property;

B. a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas; and

C. a quitclaim deed, as described in Section Four hereof, has been executed and delivered to the owner of the abutting property.

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 Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, a quitclaim deed conveying the City of Midland's right, title and interest in the Property to the owner of the abutting property and reserving and excepting 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 FIVE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, any documents necessary or appropriate to effectuate the conveyance described in this Ordinance.

SECTION SIX. That upon the City's receipt of the sum set forth in Section Two hereof, 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., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

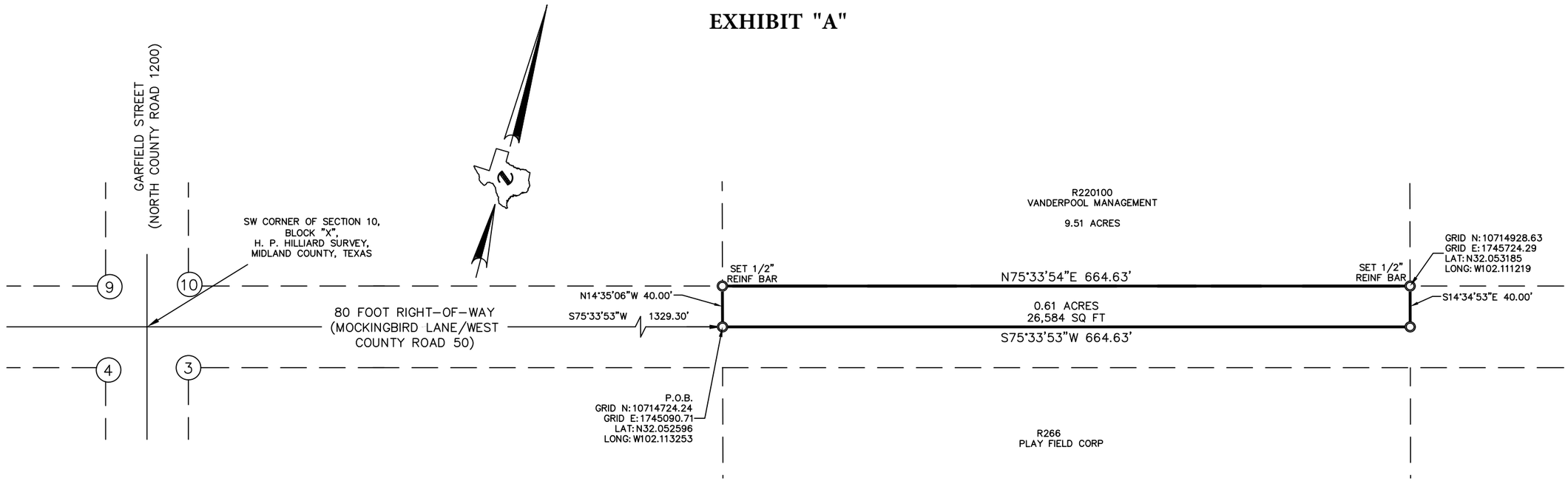
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID 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.

THIS SURVEY DOES NOT GUARANTEE OWNERSHIP.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

FIELD NOTE DESCRIPTION OF THE NORTH 40 FEET OF AN 80 FOOT RIGHT-OF-WAY (MOCKINGBIRD LANE/WEST COUNTY ROAD 50) OUT OF THE SOUTHWEST/4 OF THE SOUTHEAST/4 OF THE SOUTHWEST/4 OF SECTION 10, BLOCK "X", H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.61-ACRE TRACT BEING DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE CENTER OF A RIGHT-OF-WAY LINE OF MOCKINGBIRD LANE (WEST COUNTY ROAD 50) FOR THE SOUTHWEST CORNER OF THIS TRACT, FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 10 BEARS SOUTH 75°33'53" WEST 1329.30 FEET;

THENCE NORTH 14°35'06" WEST 40.00 FEET TO A 1/2" REINF BAR SET FOR THE NORTHWEST CORNER OF THIS TRACT ALSO BEING THE SOUTHWEST CORNER OF A 9.51 ACRE TRACT OF LAND;

THENCE NORTH 75°33'53" EAST 664.63 FEET TO A 1/2" REINF BAR SET FOR THE NORTHEAST CORNER OF THIS TRACT ALSO BEING THE SOUTHEAST CORNER OF THE 9.51 ACRE TRACT OF LAND;

THENCE SOUTH 14°34'47" EAST 40.00 FEET TO THE SOUTHEAST CORNER OF THIS TRACT, ALSO BEING THE CENTERLINE OF THE RIGHT-OF-WAY LINE OF SAID MOCKINGBIRD LANE;

THENCE SOUTH 75°33'54" WEST 664.63 FEET ALONG THE CENTER OF A RIGHT-OF-WAY LINE OF SAID MOCKINGBIRD LANE TO THE POINT OF BEGINNING.

GRAPHIC SCALE
0 1' 2'
(IN FEET)
1 inch = 100 ft.

DATED THIS 26th DAY OF OCTOBER, 2021

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

RJ DAUM
TEXAS RPLS 4826

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING - LAND SURVEYING
800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701
TEXAS FIRM No. F1880 - TEXAS FIRM No. 10149500
Office (432) 684-5548

EXHIBIT

THE NORTH 40 FEET OF AN 80 FOOT RIGHT-OF-WAY (MOCKINGBIRD LANE/WEST COUNTY ROAD 50) OUT OF THE SOUTHWEST/4 OF THE SOUTHEAST/4 OF THE SOUTHWEST/4 OF SECTION 10, BLOCK "X", H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS.

SCALE: 1" = 100'

PROJECT: 75140
JOB NO.: 78148

MIDLAND
Feel the Energy!

Office of the City Manager

November 4, 2021

Midland City Council
City of Midland, Texas

RE: Request for vacation of an approximate 0.61-acre portion of Mockingbird Lane / West County Road 50 right-of-way located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is $18,300.00. Upon the City's receipt of this sum from the adjoining property owner, the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Robert Patrick
City Manager

EXHIBIT "B"

300 N. Loraine, Midland TX 79701 * 432-685-7202 * Fax 432-686-1600

MIDLAND Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: V-21-0038

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Vanderpool Management, L.P.		Phone (979) 885-8236 Email jennihord@hedlocinv.com	
Address P.O. Box 882	City Midland	State Texas	Zip 79702

Application is hereby made to the City Council to vacate the following:

- ☐ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ■ Street

Description of Address: The South forty feet (40') of the SW/4 of the SE/4 of the SW/4 of Section 10, Block "X", H.P. Hilliard Survey, Midland being more fully described in the certain Dedication Deed filed in Volume 862, Page 45 of the Deed Records of Midland County, Texas

Reason for Request: Mockingbird Lane has been relocated to the North, therefore there is not longer a need for the dedication. We are requesting that the entire 40' originally dedicated be released to Vanderpool Management, L.P. as the dedication was originally carved entirely out of the tract currently owned by Vanderpool Management, L.P.

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: Due to the relocation of Mockingbird Lane the dedication serves no purposes to the public welfare whatsoever. Therefore, vacation of the dedication will in no way adversely affect the public welfare.

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
- Atmos Energy
- 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):		Date:
Affected Property Owners:		
Signature:	Print: The Play Field Corporation	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)

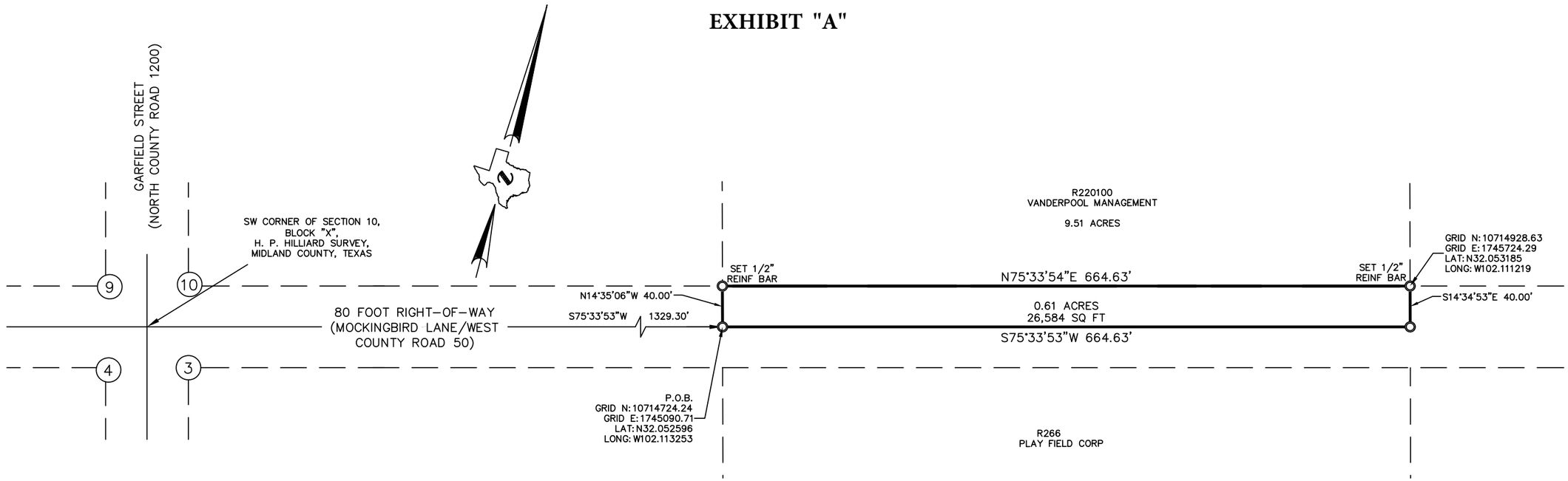
☐ Application Fee

Check #_____

Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

EXHIBIT "A"



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

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GRAPHIC SCALE

0 1' 2'

(IN FEET)

1 inch = 100 ft.

DATED THIS 26th DAY OF OCTOBER, 2021

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

RJ DAUM
TEXAS RPLS 4826

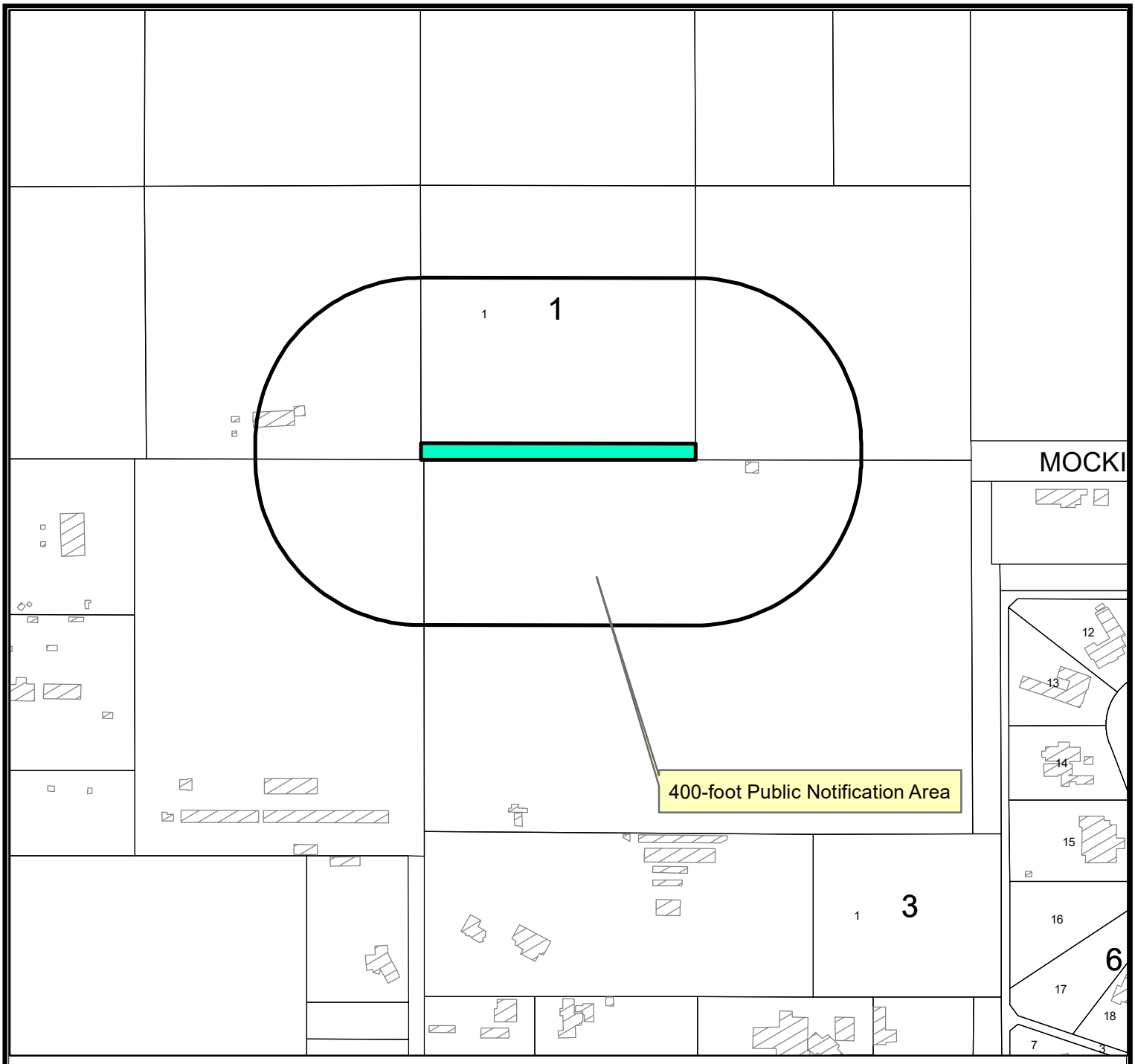
SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING - LAND SURVEYING
800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701
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Office (432) 684-5548

EXHIBIT

THE NORTH 40 FEET OF AN 80 FOOT RIGHT-OF-WAY (MOCKINGBIRD LANE/WEST COUNTY ROAD 50) OUT OF THE SOUTHWEST/4 OF THE SOUTHEAST/4 OF THE SOUTHWEST/4 OF SECTION 10, BLOCK "X", H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS.

SCALE: 1" = 100'

PROJECT: 75140
JOB NO.: 78148



LOCATION MAP

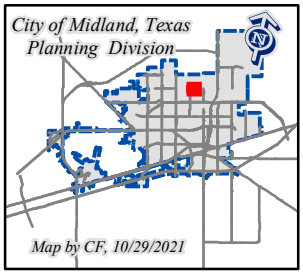
V-21-0038 **Scale: 1" = 345'**

Consider a request for a vacation of a 0.61-acre portion of the North 40 feet of an 80 foot right-of-way of Mockingbird Lane/West Country Road 50 out of the SE/4 of the SW/4 of Section 10, Block "X", H.P. Hillard Survey, County of Midland, Texas.

Generally located on the north side of Mockingbird Lane, approximately 3300-feet west of north "A" Street. (Council District 1)

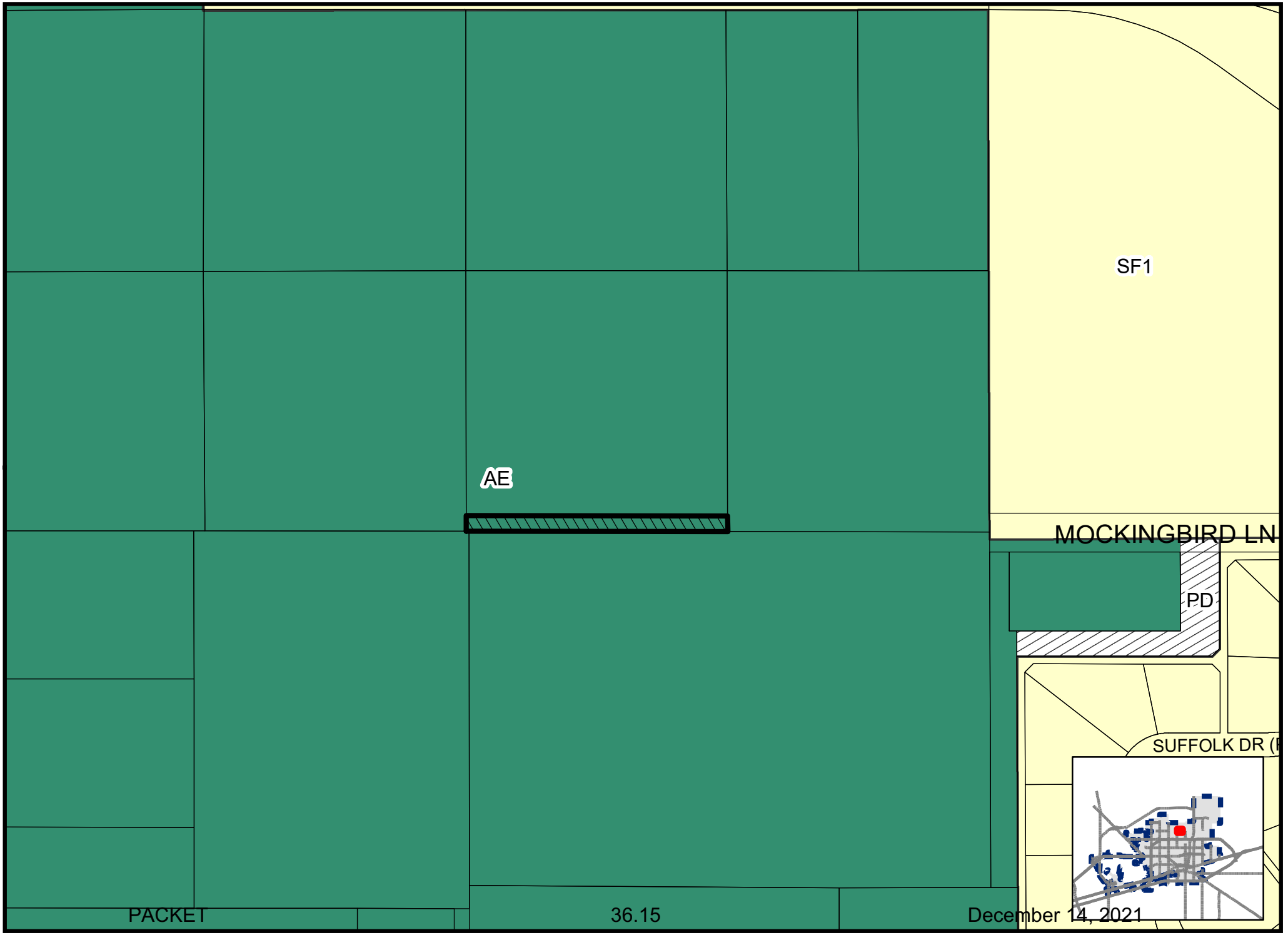
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

December 14, 2021



Map By CF, 11/4/2021

V-21-0038

Scale: 1" = 200'

ZONING MAP

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Cole Furqueron

From: Elizabeth Shaughnessy
Sent: Thursday, November 4, 2021 11:26 AM
To: Bradley Ritter; Cole Furqueron
Subject: RE: External E-mail - Vacation Request from Vanderpool Management, L.P.

Thank you!

From: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Sent: Thursday, November 4, 2021 11:15 AM
To: Cole Furqueron <cfurqueron@midlandtexas.gov>; Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Subject: RE: External E-mail - Vacation Request from Vanderpool Management, L.P.

We do not have any plant at this location we are good with this request

Thank You,



Supervisor Ops.
Abilene, Midland, & San Angelo System's
Altice USA
P: (806)771-6256
C: (806)241-0488
E: Bradley.Ritter@AlticeTechServicesUSA.com
A: 6710 Hartford Ave. Lubbock,Tx. 79413

From: Cole Furqueron <cfurqueron@midlandtexas.gov>
Sent: Thursday, November 4, 2021 8:32 AM
To: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>; Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Subject: RE: External E-mail - Vacation Request from Vanderpool Management, L.P.

[External Email]

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Mr. Ritter,

Have you had a chance to verify if you have any underground utilities at 1800 Mockingbird Lane? The staff report goes out today, so I need comments as soon as possible.

From: Cole Furqueron
Sent: Monday, November 1, 2021 2:16 PM
To: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>; Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Subject: RE: External E-mail - Vacation Request from Vanderpool Management, L.P.

Bradley,

The Address for the property in question is 1800 Mockingbird Lane. If you need any additional information please let me know.

From: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Sent: Monday, November 1, 2021 8:26 AM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Cc: Cole Furqueron <cfurqueron@midlandtexas.gov>
Subject: RE: External E-mail - Vacation Request from Vanderpool Management, L.P.

An address is needed to make a decision

Thank You,



Supervisor Ops.
Abilene, Midland, & San Angelo System's
Altice USA
P: (806)771-6256
C: (806)241-0488
E: Bradley.Ritter@AlticeTechServicesUSA.com
A: 6710 Hartford Ave. Lubbock,Tx. 79413

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Friday, October 29, 2021 2:16 PM
To: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Cc: Cole Furqueron <cfurqueron@midlandtexas.gov>
Subject: External E-mail - Vacation Request from Vanderpool Management, L.P.

[External Email]

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Dear Mr. Ritter:

Vanderpool Management, L.P. has submitted a request to vacate the above described Right of Way (see attached exhibit). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to cfurqueron@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Planning Division Manager|Development Services

O. 432-685-7902
E. eshaughnessy@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Cole Furqueron

From: UNDERWOOD, JERRY D <ju1659@att.com>
Sent: Monday, November 1, 2021 8:07 AM
To: Elizabeth Shaughnessy
Cc: Cole Furqueron
Subject: RE: Vacation Request from Vanderpool Management, L.P.

Good morning,

I don't show that we have anything in that area.

Thanks,
Jerry

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Friday, October 29, 2021 2:16 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Cc: Cole Furqueron <cfurqueron@midlandtexas.gov>
Subject: Vacation Request from Vanderpool Management, L.P.

Dear Mr. Underwood:

Vanderpool Management, L.P. has submitted a request to vacate the above described Right of Way (see attached exhibit). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to cfurqueron@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Planning Division Manager|Development Services
O. 432-685-7902
E. eshaughnessy@midlandtexas.gov



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Cole Furqueron

From: Ruben Guerra <ruben.guerra@mygrande.com>
Sent: Wednesday, November 3, 2021 1:27 PM
To: Cole Furqueron
Cc: Vicki Byler; Elizabeth Shaughnessy
Subject: Re: Vacation Request from Vanderpool Management, L.P.



We do not have any underground communications in this section of mockingbird.

Thank You

Ruben Guerra
Construction Coordinator
C-432-653-9369
T-432-272-3088
Grande Communications

On Wed, Nov 3, 2021 at 10:53 AM Ruben Guerra <ruben.guerra@mygrande.com> wrote:

> We have our locator heading that way to check. I will notify you as soon as I can get an answer within the next 2 to 3 hours.
>
> Thank You
>
> **Ruben Guerra**
> Construction Coordinator
> C-432-653-9369
> T-432-272-3088
> **Grande Communications**
>
> On Wed, Nov 3, 2021 at 10:36 AM Cole Furqueron <cfurqueron@midlandtexas.gov> wrote:
>
> > Just to follow up on this Vacation request. Do y'all know if there are any underground utilities that belong to Grande in the Right-of-Way in front of 1800 Mockingbird Lane. We will need comments by Thursday, November 4th.

From: Vicki Byler <vicki.byler@mygrande.com>
Sent: Friday, October 29, 2021 2:22 PM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>; Ruben Guerra <ruben.guerra@mygrande.com>
Cc: Cole Furqueron <cfurqueron@midlandtexas.gov>
Subject: Re: Vacation Request from Vanderpool Management, L.P.

Elizabeth,

Please add Ruben Guerra to all emails for Grande Communications, he has taken over for William Bentley, and takes care of Midland. Ruben's email address is ruben.guerra@mygrande.com.

Thank you,

Vicki Byler

Construction Coordinator

C - 432-257-2551

O - 432-272-3052

Grande Communications

On Fri, Oct 29, 2021 at 2:16 PM Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov> wrote:

> Dear Mrs. Byler:
>
> Vanderpool Management, L.P. has submitted a request to vacate the above described Right of Way (see attached exhibit). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to cfurqueron@midlandtexas.gov.
>
> Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy

Planning Division Manager|Development Services

O. 432-685-7902

E. eshaughnessy@midlandtexas.gov





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Cole Furqueron

From: Elizabeth Shaughnessy
Sent: Thursday, November 4, 2021 1:08 PM
To: Arguello, Martin
Cc: Blankenship, Chad; Cole Furqueron
Subject: RE: Vacation Request from Vanderpool Management, L.P.

Thanks!

From: Arguello, Martin <Martin.Arguello@oncor.com>
Sent: Thursday, November 4, 2021 12:30 PM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Cc: Blankenship, Chad <Chad.Blankenship@oncor.com>
Subject: FW: Vacation Request from Vanderpool Management, L.P.

Good Afternoon Elizabeth! Per our phone conversation, and speaking with our ROW group. Oncor is retaining the easement at this location.

From: Blankenship, Chad
Sent: Wednesday, November 3, 2021 6:08 PM
To: Arguello, Martin <Martin.Arguello@oncor.com>
Subject: FW: Vacation Request from Vanderpool Management, L.P.

Let's talk about his tomorrow.

Chad Blankenship
PMDS Manager|WTX
Oncor Electric Delivery
325-456-2674

My Director: James Blanton-(817) 905-6455
James.blanton@oncor.com

From: Elizabeth Shaughnessy [mailto:eshaughnessy@midlandtexas.gov]
Sent: Wednesday, November 3, 2021 5:16 PM
To: Haskovec, David <David.Haskovec@oncor.com>; Cole Furqueron <cfurqueron@midlandtexas.gov>; Blankenship, Chad <Chad.Blankenship@oncor.com>
Subject: RE: Vacation Request from Vanderpool Management, L.P.

Thank you, David!

Chad sorry for the short notice but this item is scheduled to go to City Council on November 16. Therefore, I do need an answer from you by tomorrow.

Thank you!

Elizabeth Shaughnessy
Planning Division Manager|Development Services
O. 432-685-7902
E. eshaughnessy@midlandtexas.gov







300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Haskovec, David <David.Haskovec@oncor.com>
Sent: Wednesday, November 3, 2021 5:13 PM
To: Cole Furqueron <cfurqueron@midlandtexas.gov>; Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>; Blankenship, Chad <Chad.Blankenship@oncor.com>
Subject: RE: Vacation Request from Vanderpool Management, L.P.

I have not worked in WTX for 3 years, I believed you would have received an automated email reply from Jeffrey Henderson stating he will no longer be working with the company and to contact his manager Chad Blankenship (325-456-2674 or Chad.Blankenship@oncor.com). I apologize for the inconvenience this may have caused – I am including Chad Blankenship on this email and he should be able to assist you.

Thank you,

David Haskovec
Design Specialist
Oncor I PMDS

3620 Franklin Ave
Waco, Tx 76710
(469) 540-0368 Cell
david.haskovec@oncor.com
oncor.com

Melinda Carson
Design Supervisor
Oncor | PMDS

817-992-8465

From: Cole Furqueron [mailto:cfurqueron@midlandtexas.gov]
Sent: Wednesday, November 3, 2021 4:54 PM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>; Haskovec, David <David.Haskovec@oncor.com>; Henderson, Jeffrey <Jeffrey.Henderson@oncor.com>
Subject: RE: Vacation Request from Vanderpool Management, L.P.

Good Afternoon David,

Did you have a chance to look at the vacation notice for 1800 Mockingbird Lane yet?

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Friday, October 29, 2021 2:16 PM
To: David.Haskovec@oncor.com; Jeffrey Henderson <Jeffrey.Henderson@oncor.com>
Cc: Cole Furqueron <cfurqueron@midlandtexas.gov>
Subject: Vacation Request from Vanderpool Management, L.P.

Dear Mr. Haskovec and Mr. Henderson:

Vanderpool Management, L.P. has submitted a request to vacate the above described Right of Way (see attached exhibit). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to cfurqueron@midlandtexas.gov.
Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Planning Division Manager|Development Services
O. 432-685-7902
E. eshaughnessy@midlandtexas.gov

MIDLAND
Feel the Energy!

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Elizabeth Shaughnessy
300 N. Loraine
Midland, Texas 79701

November 3, 2021

Re: Case Name: Vanderpool Management L.P.
Case Number: V-21-0038

Mrs. Shaughnessy,

Atmos Energy has no objection to the above referenced changes proposed to the Mockingbird right of way located between Garfield and A Street in north Midland. We currently have no gas lines or facilities located within this section of right of way.
Please let me know if you have any further questions.

Sincerely,

Mark Lieb

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-617-3447 office
432-967-0370 cell
mark.lieb@atmosenergy.com









City Council Meeting

Item Number: 37

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Cole Furqueron, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 57.55-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 530 FEET EAST OF SOUTH LAMESA 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)

Purpose:

The applicant, Gary Bellomy, is requesting a zone change from PD, Planned Development District for a Housing Development, Office Center, and Shopping Center (Ordinance No. 10206) to an amended PD, Planned Development District for a Housing Development, Office Center, and Shopping Center.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require and City funds.

Discussion:

Current Zoning:

PD, Planned Development District for a Housing Development, Office Center, and Shopping Center. (Ordinance No. 10206)

Surrounding Zoning and Land Use:

The property to the north is zoned MF-16, Multiple Family Dwelling District and the location of an apartment complex. The property to the east is zoned LI, Light Industrial, in part; and BP, I-20 Business park in part, and the location of an industrial business. The properties to the south are zoned BP, I-20 Business Park and RR, Regional Retail District and the location of a pump jack and vacant land. The property to the west is zoned MF-22, Multiple-Family Dwelling District and the location of an apartment complex that is under construction.

Analysis:

The applicant, Gary Bellomy, is requesting a zone change to amend the current PD, Planned Development District for a Housing Development, Office Center, and Shopping Center. (Ordinance No. 10206) to adopt an update guiding Regulating Plan for this unique development. If approved, the development will need to conform to the adopted Site Plan and Regulating Plan (extracted from exhibit D), and the Regulating Plan and Development Standards 07/27/2021 ® (Exhibit D).

The site will consist of a mix of uses including office, retail, hotel, single-family residential, townhomes, multi-family residential, and a school. This development would integrate with the neighboring apartment complex to the west and is in the process of being constructed to reflect this integration.

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objection to zone change.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City tomorrow comprehensive plan, as this area calls for Employment Reserve Uses. This designation calls for multiple-family housing when integrated with holistic development. As the proposed district integrates a myriad of uses, it is in conformance with the guiding principles of this designation.

This development also aligns with several other aspects of the Tall City Tomorrow Plan. Principle 5 of Chapter 3, requests planning for community amenities such as parks and open spaces space to support “community activity, personal interaction a sense of place, and ultimately a sense of ownership in the community.” Additionally, Principle 8 of the same chapter requests that land use policies and regulations support the creation of more balanced neighborhoods, which include “a variety of housing options, access to open space, and contain activity centers such as parks ”Chapter 9 of the Tall City Tomorrow Plan also seeks to keep us aware of the need for parks and recreational development as Midland continues to expand. Goal 1 of Chapter 9 seeks to provide park facilities accessible to the growing population, nothing that “Midland’s historic trend has been to focus on the need for housing and commercial needs during growth periods without the consideration of additional open space needs. This development fits all of these goals and principles by creating a community with integrated uses, pedestrian friendly streets, and plenty of park and open space areas for residents to recreate in.

Therefore, staff recommends approval of this Zone Change on the above-described property from PD, Planned Development District for a Housing Development, Office Center, and

Shopping Center, to amended PD, Planned Development District for a Housing Development, Office Center, and Shopping Center, subject to condition A through C.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the TH, Townhouse District except as stated below.**

B. **That the development of this property shall significantly conform to the Site Plan of Section 3.1 the *Regulating Plan* (Exhibit B) and Section 4.0 *Summary of Frontage Types* (Exhibit C) of the Regulating Plan and Development Standards 07/27/2021 ®" (Exhibit D).**

C. **That the use and development of this property shall conform to the PD-Planned Development District as set forth in the submitted "Regulating Plan and Development Standards 07/27/2021 ®" (Exhibit D).**

Letters of Objection:

Staff has not received any letters of objection as of November 10, 2021.

Attachments:

Report
Metes and Bounds (Exhibit A)
Section 3.1 Regulating Plan (Exhibit B)
Section 4.0 Summary of Frontage Types (Exhibit C)
Regulating Plan and Development Standards 07/27/2021 ® (Exhibit D)
Application
Maps

Robert Rathmell

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 57.55-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, AND SHOPPING CENTER (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 530 FEET EAST OF SOUTH LAMESA ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 57.55-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property") to an amended PD, Planned Development District for a Housing Development, Office Center, and Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Housing Development, Office Center, and Shopping Center to an amended PD, Planned Development District for a Housing Development, Office Center, and Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the TH, Townhouse (Attached) Dwelling District.

SECTION THREE. That a site plan, attached hereto as Exhibits "B" and "C" and incorporated herein for all purposes, is hereby adopted, said site plan also being contained in Exhibit "D", which is attached hereto and incorporated herein for all purposes, and the use and development of the Property shall be subject to the following conditions and restrictions:

That the use and development of the Property shall significantly conform to the site plan and Exhibit "D".

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars

($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

METES & BOUNDS DESCRIPTION
OF A 57.55-ACRE TRACT
LOCATED IN SECTION 1, BLOCK 39, T-2-S
T&P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

BEING A 57.55-ACRE REMAINDER OF THAT CERTAIN 101.49-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2010-4195 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, IN SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT (Y=10,688,784.49' & X= 1,762,775.17') A 3/8" IRON ROD WITH CAP MARKED "LCA ODESSA TX" (CONTROL MONUMENT) FOUND AT THE NORTHEAST CORNER OF LOT 1 BLOCK 1 TAHOE LAKES ADDITION, AS RECORDED IN CABINET I, PAGE 190 OF THE MIDLAND COUNTY PLAT RECORDS AND ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF THE CURVED SOUTH RIGHT-OF-WAY LINE OF LATTA STREET AS DESCRIBED IN DOCUMENT NO. 2008-22815 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS HAVING A RADIAL BEARING OF NORTH 37°19'47" WEST;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 330.00 FEET, A DELTA ANGLE OF 33°32'10", AN ARC LENGTH OF 193.15 FEET, A CHORD LENGTH OF 190.41 FEET BEARING NORTH 35°54'06" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF TANGENCY;

THENCE NORTH 19°08'00" EAST WITH THE SOUTH RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 195.48 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF CURVATURE OF A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 330.00 FEET, A DELTA ANGLE OF 23°09'45", AN ARC LENGTH OF 133.41 FEET, A CHORD LENGTH OF 132.50 FEET BEARING NORTH 07°33'08" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET FOR THE POINT OF TANGENCY;

THENCE NORTH 04°01'57" WEST WITH THE EASTERN RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 24.19 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF CURVATURE OF A CURVE TO THE RIGHT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 295.00 FEET, A DELTA ANGLE OF 23°10'30", AN ARC LENGTH OF 119.32 FEET, A CHORD LENGTH OF 118.51 FEET BEARING NORTH

07°33'31" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET FOR THE POINT OF TANGENCY;

THENCE NORTH 19°04'24" EAST WITH THE EAST RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 36.38 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE WEST CORNER OF THAT CERTAIN 7.53-ACRE TRACT CURRENTLY IN THE NAME OF MIDLAND COUNTY ON THE EAST RIGHT-OF-WAY LINE OF SAID LATTA STREET, WHENCE A 3/8" IRON ROD (CONTROL MONUMENT) FOUND AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY OF SAID LATTA STREET AND THE SOUTHERN RIGHT-OF-WAY OF E. TAYLOR AVENUE BEARS NORTH 19°03'10" EAST, A DISTANCE OF 300.00 FEET;

THENCE SOUTH 71°05'09" EAST WITH THE SOUTHERN LINE OF SAID 7.53-ACRE TRACT, A DISTANCE OF 467.02 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" FOUND AT AN ELL CORNER OF THIS SURVEY AND THE NORTHERNMOST CORNER OF THAT CERTAIN 5.57-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2014-17375 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY TEXAS;

THENCE SOUTH 23°20'09" WEST WITH A WEST LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 48.93 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF DEFLECTION OF THIS SURVEY:

THENCE SOUTH 71°08'48" EAST WITH A SOUTH LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 152.80 FEET TO A FOUND 3/8" IRON ROD (CONTROL MONUMENT);

THENCE SOUTH 23°29'35" WEST WITH A WEST LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 300.87 FEET TO A 3/8" IRON ROD FOUND AT THE SOUTHERNMOST WEST CORNER OF SAID 5.57-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 71°49'04" EAST WITH THE SOUTHERN LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 570.74 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE NORTH CORNER OF THAT CERTAIN 4.92-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2010-12057 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY TEXAS AND A POINT OF DEFLECTION OF THIS SURVEY;

THENCE SOUTH 23°35'54" WEST WITH THE WESTERN LINE OF SAID 4.92-ACRE TRACT, A DISTANCE OF 363.93 FEET TO A ½" IRON ROD (CONTROL MONUMENT) FOUND AT THE WEST CORNER OF SAID 4.92-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 72°30'41" EAST, WITH THE SOUTH LINE OF SAID 4.92-ACRE TRACT, A DISTANCE OF 627.03 FEET TO A ½" IRON ROD FOUND AT THE SOUTH CORNER OF SAID 4.92-ACRE TRACT, THE NORTH CORNER OF THAT CERTAIN 2.15-ACRE TRACT AS DESCRIBED IN VOLUME 1817, PAGE 300 OF THE DEED RECORDS OF MIDLAND COUNTY TEXAS AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 19°04'38" WEST WITH THE WESTERN LINE OF SAID 2.15-ACRE TRACT, A DISTANCE OF 269.33 FEET TO A ½" IRON ROD FOUND AT THE WEST CORNER OF SAID 2.15-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 73°48'45" EAST WITH THE SOUTHERN LINE OF SAID 2.15-ACRE TRACT, A DISTANCE OF 157.05 FEET TO A ½" IRON ROD FOUND AT THE

NORTHWEST CORNER OF THAT CERTAIN 1.01-ACRE TRACT AS DESCRIBED IN SAID VOLUME 1817 PAGE 300 OF SAID MIDLAND COUNTY DEED RECORDS FOR AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 08°35'01" EAST WITH THE WESTERN LINE OF SAID 1.01-ACRE TRACT, A DISTANCE OF 293.86 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHWEST CORNER OF SAID 1.01-ACRE TRACT ON THE NORTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 20 FOR THE EASTERNMOST SOUTHEAST CORNER OF THIS SURVEY;

THENCE SOUTH 70°34'45" WEST WITH THE NORTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 899.28 FEET TO A TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) CONCRETE MONUMENT WITH A BRASS DISK (CONTROL MONUMENT) FOR THE POINT OF CURVATURE OF A CURVE TO THE RIGHT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A SOUTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 11,309.20 FEET, A DELTA ANGLE OF 04°59'56", AN ARC LENGTH OF 986.68 FEET, A CHORD LENGTH OF 986.37 FEET BEARING SOUTH 73°03'27" WEST TO A TXDOT CONCRETE MONUMENT WITH BRASS DISK AT THE POINT OF TANGENCY;

THENCE SOUTH 75°34'27" WEST WITH THE NORTH RIGHT-OF-WAY OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 192.73 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHEAST CORNER OF THAT CERTAIN 3.30-ACRE TRACT AS DESCRIBED IN VOLUME 1198 PAGE 204 OF SAID MIDLAND COUNTY DEED RECORDS FOR THE WESTERNMOST SOUTHWEST CORNER OF THIS SURVEY;

THENCE NORTH 14°32'03" WEST WITH THE EAST LINE OF SAID 3.30-ACRE TRACT, A DISTANCE OF 242.05 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 18.61 FEET, A DELTA ANGLE OF 89°59'12", AN ARC LENGTH OF 29.23 FEET, A CHORD LENGTH OF 26.32 FEET BEARING NORTH 59°31'38" WEST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" (CONTROL MONUMENT) FOUND AT THE POINT OF TANGENCY;

THENCE NORTH 75°41'32" EAST, A DISTANCE OF 349.07 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE POINT OF DEFLECTION OF THIS TRACT;

THENCE NORTH 14°33'23" WEST, A DISTANCE OF 173.46 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE POINT OF DEFLECTION OF THIS TRACT;

THENCE SOUTH 75°37'36" WEST, A DISTANCE OF 45.07 FEET A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIAL BEARING OF NORTH 83°54'09" EAST;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 530.00 FEET, A DELTA ANGLE OF 27°47'11", AN ARC

LENGTH OF 257.03 FEET, A CHORD LENGTH OF 254.52 FEET BEARING NORTH 07°47'45" EAST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE END OF THIS CURVE;

THENCE NORTH 21°41'20" EAST, A DISTANCE OF 522.76 FEET TO 3/8" IRON ROD SET AT THE POINT OF CURVATURE OF A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 556.30 FEET, A DELTA ANGLE OF 44°23'54", AN ARC LENGTH OF 431.07 FEET, A CHORD LENGTH OF 420.37 FEET BEARING NORTH 00°30'36" WEST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF TANGENCY;

THENCE NORTH 22°42'31" WEST, DISTANCE OF 86.39 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT AN ELL CORNER OF THIS TRACT;

THENCE SOUTH 32°04'31" WEST, DISTANCE OF 61.92 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT AN ELL CORNER OF THIS TRACT;

THENCE NORTH 42°34'20" WEST, DISTANCE OF 168.30 FEET TO THE POINT OF THE BEGINNING CONTAINING 57.55 SURFACE ACRES.

BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "LAM 20" (Y=10,686,841.66' AND X=1,761,908.42'', ELEVATION = 2775.01 NAVD 29) WITH A THETA ANGLE OF -00°53'17" WITH A COMBINED GRID FACTOR OF 0.999893673 AS PUBLISHED IN US SURVEY FEET.

THIS DOCUMENT WAS PREPARED UNDER 22 TAC 663.21, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTEREST IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTEREST IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

LCA

JOHN F. LANDGRAF, RPLS 2410
27 May 2021

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA PROJECT NO. 2021-001

EXHIBIT "B"

Section 3.1
The Regulating Plan

LEGEND

FRONTAGE TYPES

F1	(Section 4.1) Type F1:	Main Street Commercial
F2	(Section 4.2) Type F2:	Live/Work
F3	(Section 4.3) Type F3:	Townhouse
F4	(Section 4.4) Type F4:	Side Yard House
F5	(Section 4.5) Type F5:	Education / Civic

STREET TYPES

MS-78	Main Street 78' R.O.W.
BVD-VAR	Boulevard Variable R.O.W.
CS-65	Commercial Street 65' R.O.W.
CS-60	Commercial Street 60' R.O.W.
US-50	Urban Street 50' R.O.W.
US-45	Urban Street 45' R.O.W.
US-40	Urban Street 40' R.O.W.
CL-20	Commercial Alley 20' Access Easement
AL-20	Residential Alley 20' Access Easement

PUBLIC OPEN SPACE

PL	Plaza
SQ	Square
GR	Green
GB	Greenbelt
P	Park



NORTH

0 300' 600' 900'

PACKET
37.13
December 14, 2021

EXHIBIT "C"

Section 4.0

Summary of Frontage Types

Complete detailed requirements of Frontage Types can be found in Sections 4.1 through 4.5

FRONTAGES	F1 (See Section F1) Main Street Commercial	F2 (See Section F2) Live/Work	F3 (See Section F3) Townhouse	F4 (See Section F4) Sideyard House	F5 (See Section F5) Education
PERMITTED USES	Retail Sales and Service (20,000 SF max per tenant) Office/Research and Development Lodging/Hotel Multi-Family Residential Single Family Attached Residential Day Care	Limited Retail (≤3,000 SF) Limited Office (≤3,000 SF) Lodging/Hotel (≤10 rooms) Multi-Family Residential (≤10 dwelling units Single Family Attached Residential	Single Family Attached Residential	Single Family Detached Residential Ancillary unit	Public or private School
CONDITIONAL USES	Manufacturing (10,000 SF max. per tenant) Congregate Care (100 room max)	None	Home Occupation	Home Occupation	None
PROHIBITED USES	Vehicle Sales Auto Service & Repair Auto Parts Sales Gas Stations Auto Body Painting and Repair Drive-Through Commercial Storage &Warehouse Single Family Detached Residential Sexually-Oriented Businesses	Same as F1 - Main Street	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing
LOT WIDTH	30' min. 240' max (30' increments)	20' min. 40' max	20' min. 40' max	35' min. 60' max	90' min. no max.
LOT DEPTH	No Minimum Maximum limited by block size	No Minimum Maximum limited by block size	80' min. 125' max.	80' min. 150' max.	50' min. no max.
BUILDING HEIGHT	2 stories or 25' minimum 5 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 2.5 stories maximum	2 stories minimum 5 stories maximum
SIDE SETBACK	None	None	None	2.5' on one side & 10' on the opposite side	5'
BUILD-TO LINE	0' to 10' from property line (on designated primary frontage)	0' to 10' from property line (on designated primary frontage)	10' from property line (on designated primary frontage)	20' from property line (on designated primary frontage)	90' from property line (on designated primary frontage)
REAR SETBACK	None	None	5' from Alley	5' from Alley	N/A
PARKING RATIOS					
Retail	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Office	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Lodging/Hotel	1 space per Room	1 space per Room	N/A	N/A	N/A
Residential	1.5 spaces per Unit	1.5 spaces per Unit	2 spaces per Primary Unit plus 1 space per ancillary unit	2 spaces per Primary Unit plus 1 space per ancillary unit	N/A
Congregate Care	1.0 spaces per every 2 beds	NA	NA	NA	N/A
Manufacturing	1.0 spaces per 600 GSF	N/A	N/A	N/A	N/A
Education	1.0 spaces per 575 GSF	N/A	N/A	N/A	1.0 spaces per 575 GSF

Table 4.01

PACKET
37.14
December 14, 2021

EXHIBIT "D"

OASIS

A NEW VISION FOR DEVELOPMENT IN MIDLAND



REGULATING PLAN AND DEVELOPMENT STANDARDS

07/27/2021 (R)

Oasis
Regulating Plan and Development Standards
Midland, Texas

CITY COUNCIL

Patrick Payton • Mayor
Scott Dufford • Council Member
Spencer Robnett• Council Member
John Norman • Council Member
Jack Ladd• Council Member
Lori Blong• Council Member
Michael Trost• Council Member

PLANNING AND ZONING COMMISSION

Cristina Odenborg Burns • Planning Manager
Chuck Harrington • Development Services
Reggie Lawrence • Commission Chair
Lucy Sisniega • Commission Vice Chair
Zachary Deck. • Commission Member
Chase Gardaphe • Commission Member
Stacy Jo Grosse • Commission Member
Diane Williams • Commission Member
Karen Bryant • Commission Member
Emily Holeva • Alternates
Adrian Carrasco • Alternates

OASIS PLANNING TEAM
Land Design Studio • Urban Planning & Design
LCA • Civil Engineers

PLANNED DEVELOPMENT CREATION

An action creating the PLANNED DEVELOPMENT district number _____ for Oasis.

This Regulating Plan is approved by the Planning and Zoning Commission on _____ ___ , 2021 and takes effect on _____ ___ , 2021

Passed and Approved:

_____, 2021 _____ _____, Chairman

Attest:_____ _____, Recording Secretary

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The Oasis Plan

Oasis was conceived as a new mixed-use, mixed-income neighborhood for the City of Midland, offering local retail, daily services, and residential development all in close proximity to one another. The goal is to offer a quality development in a previously undeveloped area near the core of the city.

While this form of development is traditional from a historic standpoint, it no longer represents conventional suburban development patterns. Traditional Neighborhood Development principles form the backbone for the design decisions that have been made in creating the Oasis plan. Many of these principles are rooted in time-tested methodologies and practices, but vary from current development models in most cities around the country. Consequently, the Oasis team has crafted a Regulating Plan and Development Standards in order to assist the City of Midland in administration of the development and allow the Master Developer to utilize a new form of development regulation in the build-out of Oasis.

The Regulating Plan and Development Standards streamlines the entitlement and site planning process while outlining the desired form of development in greater detail than single purpose zoning regulations.

PRINCIPLES OF TRADITIONAL NEIGHBORHOOD DEVELOPMENT (TND)

These are the principles that have been integrated into the Oasis plan. Each principle is followed by the reason or condition that has caused us to pursue this form of development.

1. Cluster retail and basic services together along a single street, without expansive parking lots between them.

This allows people to 'park once' and walk from store to store, reducing vehicle-miles traveled and the congestion often associated with new suburban retail locations.

2. Locate the parking behind the building, shading the parking and providing broad sidewalks in front of the stores, shaded by street trees.

Shaded parking and pedestrian-oriented sidewalks greatly enhances the experience of coming and going from that retail space. Trees have consistently been shown to increase land values, even if only used to shade or screen parking.

3. Integrate residential in close proximity to retail to create a more walkable, sustainable, and usable neighborhood.

If people can walk or bike to work or shopping locations, a second household vehicle may become optional. This flexibility is also enhanced by alternative transportation options. In communities around Texas and around the country, neighborhoods offering this degree of flexibility are consistently becoming more desirable than neighborhoods that isolate residential from commercial uses.

4. Buildings are required to be built adjacent to the edge of the sidewalk, clearly defining a public street space known as 'the public realm'. Parking is predominantly located in the back of buildings, improving the visual connection of buildings to the street. Parking is connected to the front sidewalk by pedestrian passages between buildings.

Placing commercial space directly on the sidewalk improves the experience of walking along the sidewalk and improves the retailing performance by a continous pedestrian activity zone.

5. Provide moderately dense housing alternatives for people less interested in, or not needing a large house and yard.

Conventional suburban housing is often designed for families with two parents and kids, assuming they are looking for a large house and yard. This demographic now represents a much smaller part of the market than it used to, and increasingly, buyers are looking for smaller homes with less maintenance. The townhouse and cottage neighborhoods included in Oasis are designed to offer a variety of homes catering to a variety of ages and income levels.



Above is an artist's rendering of the desired look and feel of a commercial/mixed use street in Oasis - retail shop fronts are pulled up to the shaded sidewalk, parking is provided along the street and behind the buildings. Sidewalks are generous and street widths are narrower than usual. All streets are designed to accommodate pedestrians and cyclists as well as low speed auto traffic.



Oasis' Main Street encourages development of retail frontages and public spaces. This artist's rendering illustrates the possibility of a public open space anchoring one side of the street. Evening entertainment and dining within Oasis would add to the quality of the neighborhood by offering walkable destinations other than just for shopping.



The plan includes a location for a K-12 public charter school. Additionally, Oasis has several acres of public open space of various sizes located throughout the community.

The intent of the Development Standards is to create a clear and predictable system of mandatory design standards that become enabling tools to create a more varied and inherently richer form of community. This form of community embraces a diversity of uses, people, and buildings. The standards are prescriptive, that is, they delineate the desired result and enable its success. The standards are graphic by nature as drawings can more clearly communicate what is prescribed under, or enabled by the standards. The standards are organized into four principle sections, The Regulating Plan, The Frontage Types, The Street Types and Other Standards. Used in concert, these four components form a "Graphical User Interface" utilized by the public and private sectors to expedite the permitting and development process.

DEVELOPMENT PROCEDURE

Component developments in the various Frontage Type Districts will have the incentive of speed to delivery in that the first two steps in the development process, Zoning and Preliminary Plat, are approved by the adoption of this Regulating Plan. Final plats will follow the same procedure as other projects, but will be aided by being components of the Regulating Plan. Building permits and approval of construction plans for infrastructure will follow the review and approval procedures currently in place.

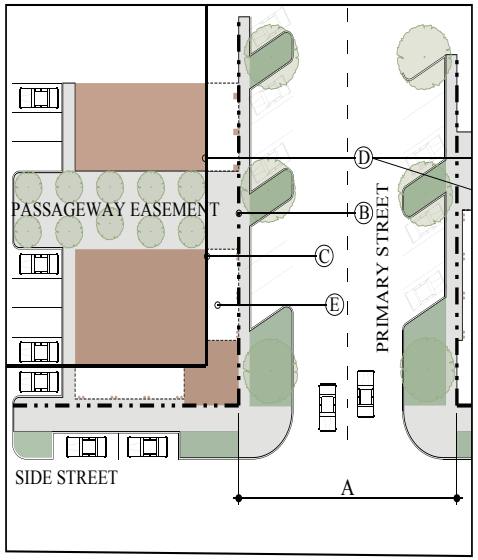
THE REGULATING PLAN

The Regulating Plan lays out the street grid and precisely marks the various urban design regulations within the Standards which are used to produce the community design or town plan. The Regulating Plan designates where and how the Frontage Types are appropriately combined with the various Street Types. The Regulating Plan also designates sites to be set-aside for public open spaces and special sites reserved for civic buildings (such as town halls, schools, and churches).



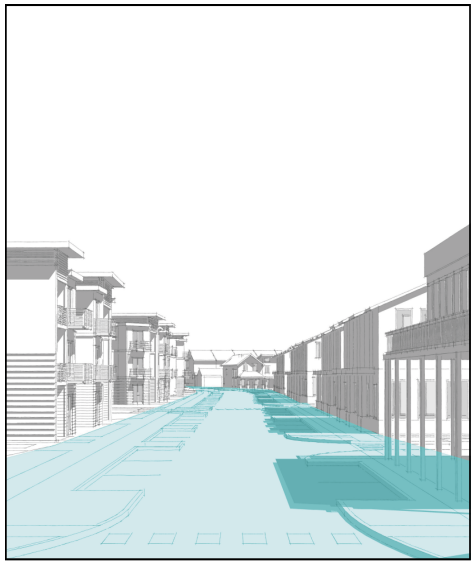
THE FRONTAGE TYPES

The Frontage types take the place of typical zoning categories. Each Frontage type defines the required placement of buildings (build-to-line), the minimum and maximum height, parking standards, architectural standards, and allowable uses for the property. By using a Frontage type instead of traditional zoning, the standards require that buildings meet the sidewalk in a particular way, ensuring the quality of the pedestrian experience.



THE STREET TYPES

The Street Types set out, according to the Regulating Plan, the physical parameters of each street including right-of-way and pavement width, design speed, parking, placement of street trees, etc. The Street Type combined with the Frontage Type establishes the all-important public realm. The public realm is the space defined by opposing building fronts which contains the sidewalks, streets, and open spaces.



OTHER STANDARDS

Other Standards including Open Space, Landscape, Drainage and Signage augment the Frontage and Street Types by filling in important details. These details serve to define the quality of the community beyond what type of building should be built. They set out and ensure what the quality of the public realm will be.



THE ILLUSTRATIVE PLAN

This plan for Oasis represents one potential build-out option and is not intended to replace individual site plans. Streets, block patterns, and land uses shown on this plan are defined and enabled by the Regulating Plan on the following pages.



For the purposes of these Development Standards, the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this section:

Accessory Dwelling Units
A secondary living space which shares ownership and utility connections, and which is on-site with a primary living space and that may be contained within the same structure as is the primary living space, or may be contained in a separate structure.

Appurtenances: Spires, belfries, cupolas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

Arcade: a Private Frontage conventional for Retail use wherein the Facade is a colonnade supporting habitable space that overhangs the Sidewalk, while the Facade at Sidewalk level remains at the Build to Line.

Avenue (AV): a Thoroughfare of high vehicular capacity and low to moderate speed, acting as a short distance connector between urban centers, and usually equipped with a landscaped median.

Bed and Breakfast: An owner-occupied Lodging type offering 1 to 5 bedrooms, permitted to serve breakfast in the mornings to guests.

Bicycle Lane (BL): a dedicated lane for cycling within a moderate-speed vehicular Thoroughfare, demarcated by striping or other markings.

Block: the aggregate of private Lots, Passages, Rear Alleys and Rear Lanes, circumscribed by Thoroughfares.

Boulevard (BV): a Thoroughfare designed for high vehicular capacity and moderate speed, traversing an Urbanized area. Boulevards are often equipped with Slip Roads buffering Sidewalks and buildings.

Civic: the term defining not-for-profit organizations dedicated to arts, culture, education, recreation, government, transit, and/or municipal parking.

Build to Line (BTL): The line within a property defining the maximum horizontal distance between a building and the adjacent street right of way line.

City: refers to the City of Midland, Texas

Civic Building: a building operated by not-for-profit organizations dedicated to arts, culture, education, economic development, recreation, religion, government, transit, and municipal parking, or for use approved by Oasis.

Civic Uses: The use of a parcel of land for one or more of the following purposes: park and recreation services, cultural services, religious assembly use, safety and medical services, or transit stops.

Commercial: the term collectively defining workplace, Office, Retail, Service, Sales, Display and Lodging Functions.

Diameter at breast height (DBH): Standard method, in forestry terminology, of expressing the diameter of the trunk of a tree at approximately four feet above grade.

Design Speed: is the velocity at which a Thoroughfare tends to be driven without the constraints of signage or enforcement. There are four ranges of speed: Very Low: (below 20 MPH); Low (20-25 MPH); Moderate: (25-35 MPH); High: (above 35 MPH). Lane width is determined by desired Design Speed. Design Speed is related to but separate from the posted Speed Limit.

Developer (Master Developer): Oasis Development Corporation, a Texas Limited Liability Company, or assigns; serves as the owner and development entity for the Oasis project.

Director: The Director of Planning for the City of Midland.

District: An area of land developed with similar, distinguishing characteristics or uses as defined by Frontage Type.

Driveway: a vehicular lane within a Lot, often leading to a garage.

Effective Turning Radius: the measurement of the inside Turning Radius taking parked cars into account.

Elevation: an exterior wall of a building not along a Frontage Line. See: Facade.

Encroach: to break the plane of a vertical or horizontal regulatory limit with a structural element, so that it extends into a Setback, into the Public Frontage, or above a height limit.

Encroachment: any structural element that breaks the plane of a vertical or horizontal regulatory limit, extending into a Setback, into the Public Frontage, or above a height limit.

Facade: the exterior wall of a building that is set along a Frontage Line. See Elevation.

Forecourt: a frontage wherein a portion of the facade is at the build-to line while a significant portion is setback allowing suitable space for a garden, terrace or entry courtyard.

Frontage: The area between a building Facade and the vehicular lanes, inclusive of its built and planted components. Frontage is divided into Private Frontage and Public Frontage.

Frontage Line: a Lot line bordering a Public Frontage,ie the R.O.W. line. Facades facing Frontage Lines define the public realm and are therefore more regulated than the Elevations facing other Lot Lines.

Green: a Civic Space type for unstructured recreation, spatially defined by landscaping rather than building Frontages and having at least one boundary fronting on a public right-of-way.

Half-Story: the portion of a buildings habitable, conditioned space such as an attic or basement with windows.

Home Occupation: non-Retail Commercial enterprises. The work quarters should be invisible from the Frontage, located either within the house or in an Outbuilding.

Live-Work (or Work-Live): a Mixed Use unit consisting of a Commercial and Residential Functions. The Commercial and/or Residential Function may be anywhere in the unit. It may to be occupied by a business operator who lives in the same structure that contains the Commercial activity or industry or it may be leased.

Lodging: Premises available for daily and weekly renting of bedrooms.

Lot Line: the boundary that legally and geometrically demarcates a Lot.

Lot Width: the length along the Principal Frontage Line of a Lot.

Oasis: Oasis Development Corporation, a Texas Limited Liability Company, or assigns; serves as the owner and development entity for the Oasis project.

Off-Street Parking: Vehicular parking outside the street right-of-way that have adequate drives, aisles, and turning and maneuvering areas for access and usability.

Office: uses associated with buildings occupied for the transaction of business, excluding retail and manufacturing.

On-Street Parking: Vehicular parking contained on the street pavement (public and private streets) located outside the primary travel way, which spaces shall be designated and located parallel or at an angle to the street centerline.

Open Space: A parcel or parcels of land or an area of water, or a combination of land and water, which may include floodplain and wetland areas, within a development area and intended for the use and enjoyment of residents of the development area and, where designated, the community at large, which may be landscaped and improved.

Park: a Public Space type that is available for rest and recreation, may be privately developed and maintained but publicly accessible and having at least one boundary fronting on a public right-of-way.

Planned Development (PD): a development in which the applicable code restrictions, other density requirements, may be modified and/or applied to the development as a whole rather than to each individual lot.

Plaza: a Civic Space type designed for Civic purposes and Commercial activities in the more urban Transect Zones, generally paved and spatially defined by building Frontages and having at least one boundary fronting on a public right-of-way.

Primary Street: . The primary street will be determined based on the following criteria:
1. The street with the highest street classification;
2. The street abutting the longest face of the block;
3. The street generally parallel to an alley within the block.

Principal Building: the main building on a Lot, usually located toward the Frontage.

Regulating Plan: a Zoning Map or set of maps that shows the Use Zones, Civic Zones, Special Districts if any, and Special Requirements if any, of areas subject to, or potentially subject to, regulation by the Development Standards.

Retail: uses for commercial enterprises established for the sale of goods and services.

Residential: uses associated with buildings occupied for the purpose of long term human habitation, excluding short term lodging.

Shared Parking Factor: an accounting for parking spaces that are available to more than one Function.

Shopfront: a Private Frontage conventional for Retail use, with substantial glazing and an awning, wherein the Facade is aligned close to the Frontage Line with the building entrance at Sidewalk grade.

Side Yard Lot: A Lot created for the purpose of a dwelling to be constructed along or near an interior side Lot line with a yard created on the opposite side of the Lot.

Sideyard Building: a building that occupies one side of the Lot with a Setback for a yard on the other side. This type can be a Single or Duplex depending on whether it abuts the neighboring house.

Square: a Civic Space type designed for unstructured recreation and Civic purposes, spatially defined by building Frontages and consisting of Paths, lawns and trees, formally disposed and having at least one boundary fronting on a public right-of-way.

Story: a habitable level within a building, excluding an Attic or raised basement and not exceeding 15 feet in height.

Town Architect/Design Review Board: A licensed Architect or designated committee, contracted by Oasis, with the responsibility of reviewing development concepts, finished construction drawings or completed construction for aesthetic compliance with the overall concept of the Oasis project.

PACKET

Section 3.1

The Regulating Plan

LEGEND

FRONTAGE TYPES

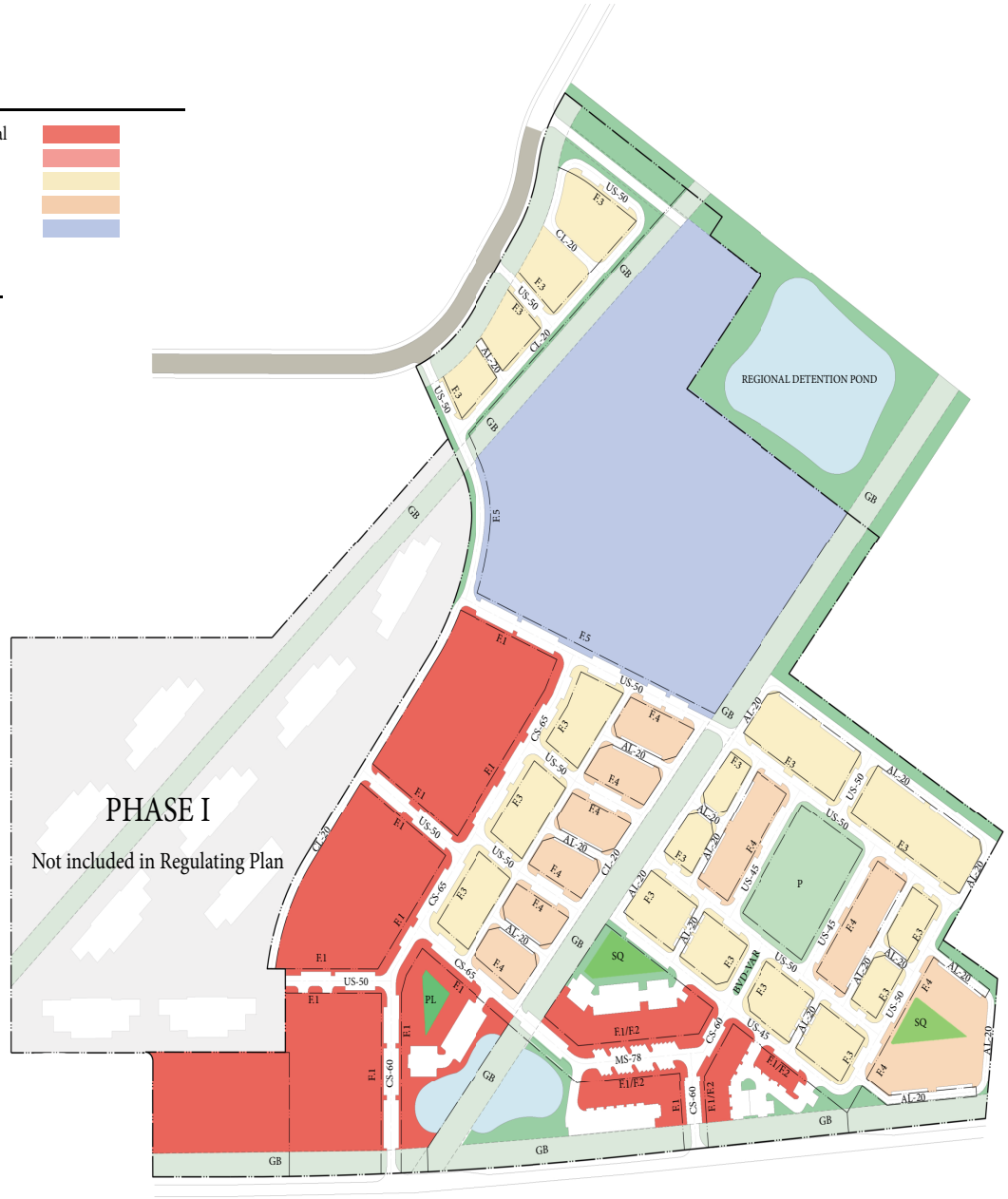
F1	(Section 4.1) Type F1:	Main Street Commercial
F2	(Section 4.2) Type F2:	Live/Work
F3	(Section 4.3) Type F3:	Townhouse
F4	(Section 4.4) Type F4:	Side Yard House
F5	(Section 4.5) Type F5:	Education / Civic

STREET TYPES

MS-78	Main Street 78' R.O.W.
BVD-VAR	Boulevard Variable R.O.W.
CS-65	Commercial Street 65' R.O.W.
CS-60	Commercial Street 60' R.O.W.
US-50	Urban Street 50' R.O.W.
US-45	Urban Street 45' R.O.W.
US-40	Urban Street 40' R.O.W.
CL-20	Commercial Alley 20' Access Easement
AL-20	Residential Alley 20' Access Easement

PUBLIC OPEN SPACE

PL	Plaza
SQ	Square
GR	Green
GB	Greenbelt
P	Park

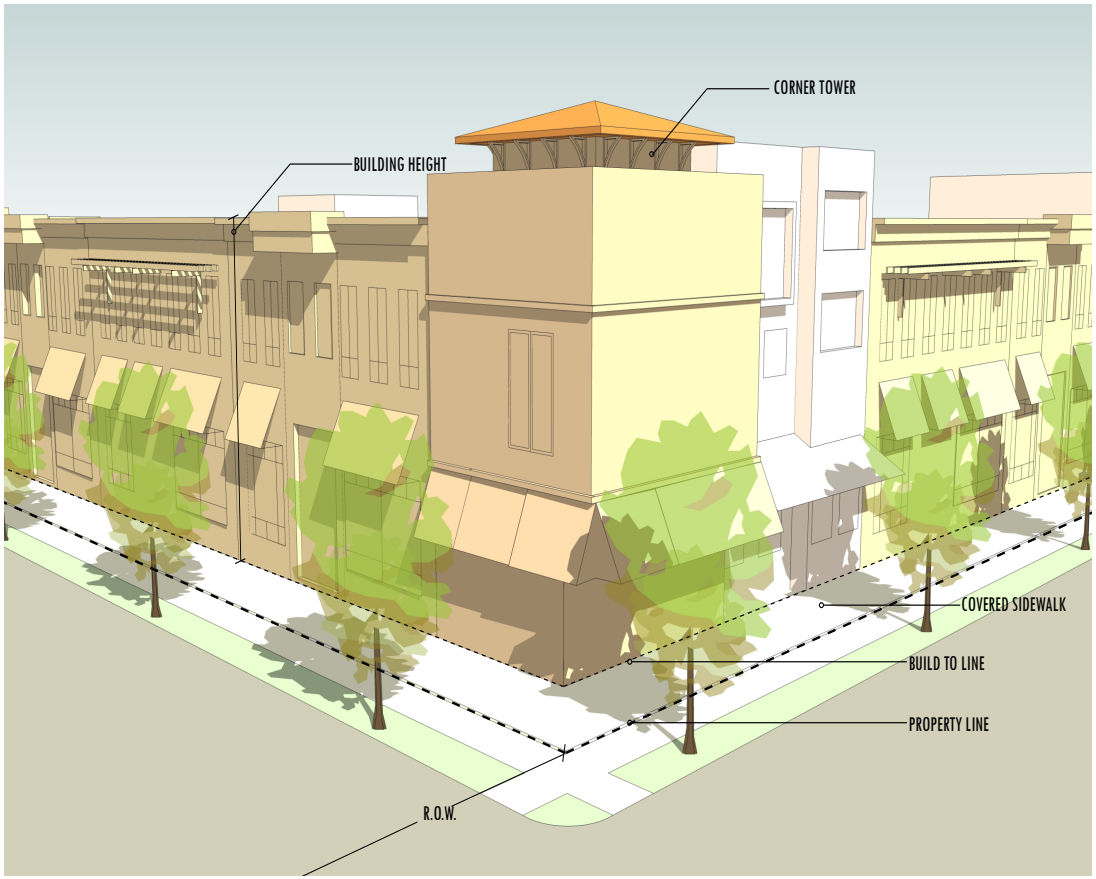


HOW DOES A FRONTAGE TYPE CODE WORK?

The Oasis Regulating Plan is a Frontage Type code; this means that land uses, height restrictions, parking requirements, etc. are defined by street frontage, rather than by zoning of a particular parcel. In most cases, a parcel will have only one frontage designation; however, unlike traditional zoning, the Frontage Type code prescribes the location of buildings in a way that forms a quality public realm between buildings.

Another unique element of this Frontage Type code is that density is limited primarily by parking requirements. There is no mandated mix of uses, nor compatibility restrictions; instead, frontage types have been assigned in a way that forms a cohesive neighborhood with market flexibility as the project is built out.

Each Frontage Type has a text description and a site plan diagram to help illustrate the intended regulation. The summary Table 4.01, gives a snapshot of the five frontage types designated within the Oasis Regulating Plan.



Summary of Frontage Types

Complete detailed requirements of Frontage Types can be found in Sections 4.1 through 4.5

FRONTAGES	F1 (See Section F1) Main Street Commercial	F2 (See Section F2) Live/Work	F3 (See Section F3) Townhouse	F4 (See Section F4) Sideyard House	F5 (See Section F5) Education
PERMITTED USES	Retail Sales and Service (20,000 SF max per tenant) Office/Research and Development Lodging/Hotel Multi-Family Residential Single Family Attached Residential Day Care	Limited Retail (≤3,000 SF) Limited Office (≤3,000 SF) Lodging/Hotel (≤10 rooms) Multi-Family Residential (≤10 dwelling units Single Family Attached Residential	Single Family Attached Residential	Single Family Detached Residential Ancillary unit	Public or private School
CONDITIONAL USES	Manufacturing (10,000 SF max. per tenant) Congregate Care (100 room max)	None	Home Occupation	Home Occupation	None
PROHIBITED USES	Vehicle Sales Auto Service & Repair Auto Parts Sales Gas Stations Auto Body Painting and Repair Drive-Through Commercial Storage &Warehouse Single Family Detached Residential Sexually-Oriented Businesses	Same as F1 - Main Street	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing
LOT WIDTH	30' min. 240' max (30' increments)	20' min. 40' max	20' min. 40' max	35' min. 60' max	90' min. no max.
LOT DEPTH	No Minimum Maximum limited by block size	No Minimum Maximum limited by block size	80' min. 125' max.	80' min. 150' max.	50' min. no max.
BUILDING HEIGHT	2 stories or 25' minimum 5 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 2.5 stories maximum	2 stories minimum 5 stories maximum
SIDE SETBACK	None	None	None	2.5' on one side & 10' on the opposite side	5'
BUILD-TO LINE	0' to 10' from property line (on designated primary frontage)	0' to 10' from property line (on designated primary frontage)	10' from property line (on designated primary frontage)	20' from property line (on designated primary frontage)	90' from property line (on designated primary frontage)
REAR SETBACK	None	None	5' from Alley	5' from Alley	N/A
PARKING RATIOS					
Retail	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Office	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Lodging/Hotel	1 space per Room	1 space per Room	N/A	N/A	N/A
Residential	1.5 spaces per Unit	1.5 spaces per Unit	2 spaces per Primary Unit plus 1 space per ancillary unit	2 spaces per Primary Unit plus 1 space per ancillary unit	N/A
Congregate Care	1.0 spaces per every 2 beds	NA	NA	NA	N/A
Manufacturing	1.0 spaces per 600 GSF	N/A	N/A	N/A	N/A
Education	1.0 spaces per 400 GSF	N/A	N/A	N/A	1.0 spaces per 400 GSF

Table 4.01

4.1.1 DEVELOPMENT REGULATIONS

4.1.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.
2) If a forecourt is utilized it may occupy up to 50% of the frontage

B) Rear and side setbacks:
Not required

C) Encroachment:
Arcades and corner towers with occupied or unoccupied space may encroach beyond the Build-to Line to the Property Line. Arcades and corner towers shall encroach a maximum of 10'. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to line.

D) Pedestrian Passageways:
If parking is provided behind a building, pedestrian passageway must be provided at the ground level providing access to the parking area from the from the Right-of-Way. The passageway shall be a minimum 15' in width and one full floor in height. The passageway may be covered by additional occupied floors or a roof structure.
1. When pedestrian passageways are required, one must be provided for every 150' of frontage.

E) Covered sidewalks:
Covered sidewalks shall be constructed along a minimum of 80% of the primary building facade. Covered sidewalks may be provided as arcades or shop-fronts (fig.4.1A).
1) Covered sidewalks and associated structures may encroach beyond the build-to-line up to the property line. Occupiable space may be constructed above the covered sidewalk and may also encroach beyond the build-to-line up to the property line.
2) Building facades with a covered sidewalk may be constructed a maximum of 3' behind the build-to-line.
3) Arcades shall be constructed to provide a minimum of 8' clear walkway between vertical supports and building facade.
4) Shop-fronts (fig.4.1A) shall provide a minimum of 8' of continuous covered walkway width.
5) If the building does not occupy the entire frontage the sidewalk must still occupy 100% of the frontage.

F) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas Accessibility Standards.

G) Minimum and Maximum Wall Height:
The maximum building height shall be five stories. Buildings shall be a minimum of two stories or 25' in height at the primary building facade.

4.1.1.2 PARKING

A) Parking spaces shall be 9' width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to satisfy minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may replace conventional parking requirements outlined in Use Standards below. Minimum parking requirements may be reduced by 15% percent if shared parking lots serve more than a single use (e.g. Restaurants and Office) long term shared parking agreement shall apply.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking Garages
Structured parking may be provided for optimal land use efficiency. Parking structure shall meet architectural standards.

4.1.2 USE STANDARDS

4.1.2.1 RETAIL

A) Defined Retail Use:
Retail uses include commercial enterprises established for the sales of goods and services including shops, entertainment establishments, banking, restaurants, and hotel lobbies, eateries and day care facilities.
1) No single retail space shall exceed 20,000 SF per floor.
2) Retail uses shall provide parking at 4 spaces per 1,000 square feet.

4.1.2.2 OFFICE

A) Office Uses Defined:
Office uses are those associated with buildings occupied for the transaction of business, excluding retail and manufacturing.
1) Office uses shall provide parking at 4 spaces per 1,000 square feet (no maximum square footage)

4.1.2.3 LODGING

A) Lodging Uses Defined:
Lodging uses are those associated with buildings occupied for short-term (not to exceed three consecutive weeks) human habitation.
1) Lodging uses shall provide 1 parking space per lodging unit. (no maximum number of units)

4.1.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 1.5 spaces per dwelling unit. (no maximum density)
2)Multifamily residential uses may provide detached garages for up to 10% of total dwelling units and may include storage outside dwelling unit not to exceed a rate of 2 storage units per garage.

4.1.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Design Review Board or Town Architect. The following may be acceptable conditional uses in areas designated F1:
1) Limited Manufacturing:
No single manufacturing occupied building space shall exceed 10,000 SF. All rear service yards and visible materials must be screened by a solid masonry wall at least 6 ft. tall. The parking requirement shall be negotiated according to the specific manufacturing activity. Screens shall match adjacent architecture.
2) Congregate Care:
Longterm residential facilities offering skilled nursing services are allowed, not to exceed 100 beds. Related single family attached residences for individuals utilizing services of the congregate care facility are allowed so long as they are owned and managed by the congregate care provider.

4.1.2.6 PROHIBITED USES

A) See prohibited use Table 4.01

4.1.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.1.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historic.

A) Building massing and facades:
No single building facade type shall exceed 90' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), wood or engineered wood. Exterior insulation finishing system (E.I.F.S.) may be used above the first story or a minimum of 12' above grade, whichever is higher. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas/poly membrane. Plastic or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Signage: refer to signage standards (section 9.0)

F) Bicycle racks:
One bicycle rack shall be provided per 10,000 square feet of occupied building area. Bike racks may be ganged together block-by-block and located in the Passageway Easements.

G) Roofs:
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. Composition shingles are permitted only where not visible from a public right-of-way. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level from either the front or side. Screening devices may be parapet extensions or free standing and shall be of material similar to the base building.

H) Glazing:
Glazed openings shall be at least 40 percent of the wall surface along a build-to line at the ground level and 25 percent on upper floors. Glazing shall not exceed 80 percent.
1) Framing shall be commercial grade painted wood, aluminum, or steel.
2) Glazing shall be clear; no reflective or spandrel glass is permitted.
3) Window openings shall be vertical or square in proportion.

Frontage Type F1 : Main Street Commercial

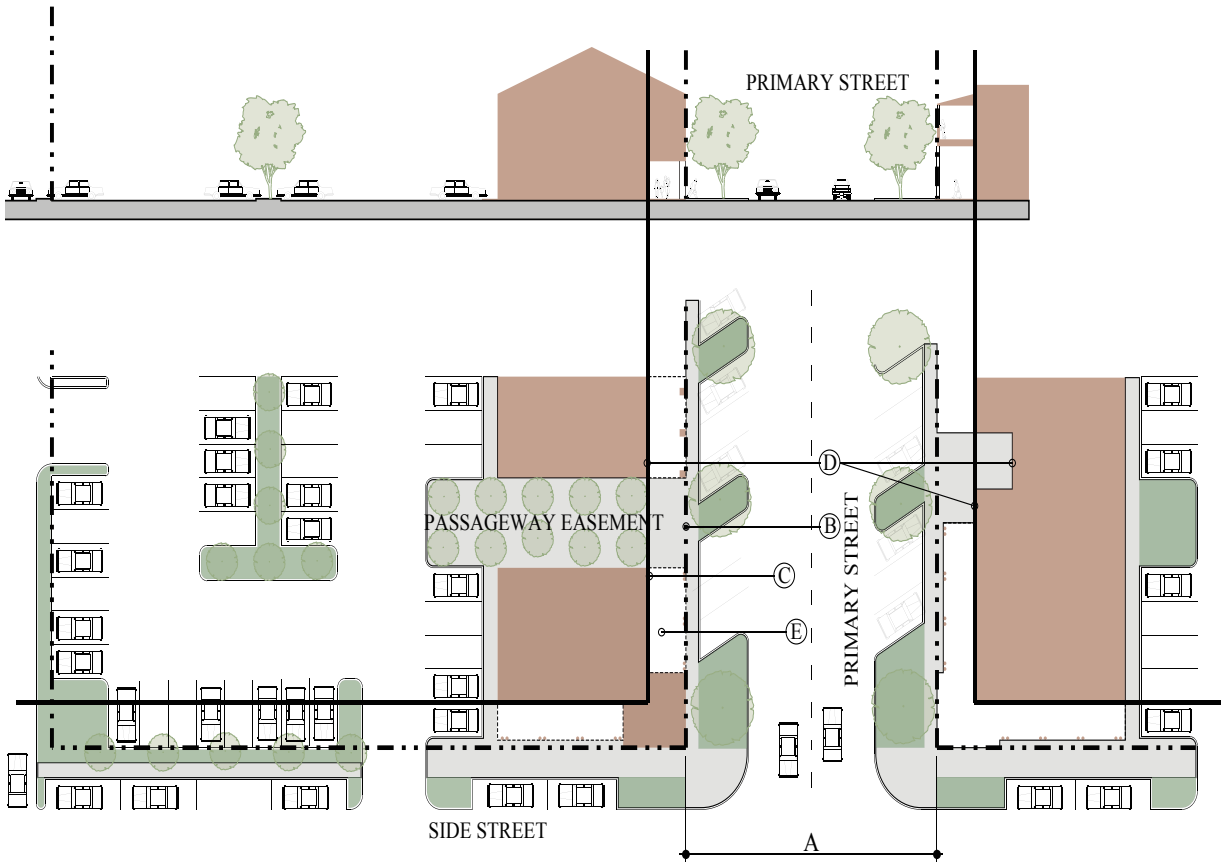


Figure 4.1 Frontage Type - Main Street Commercial

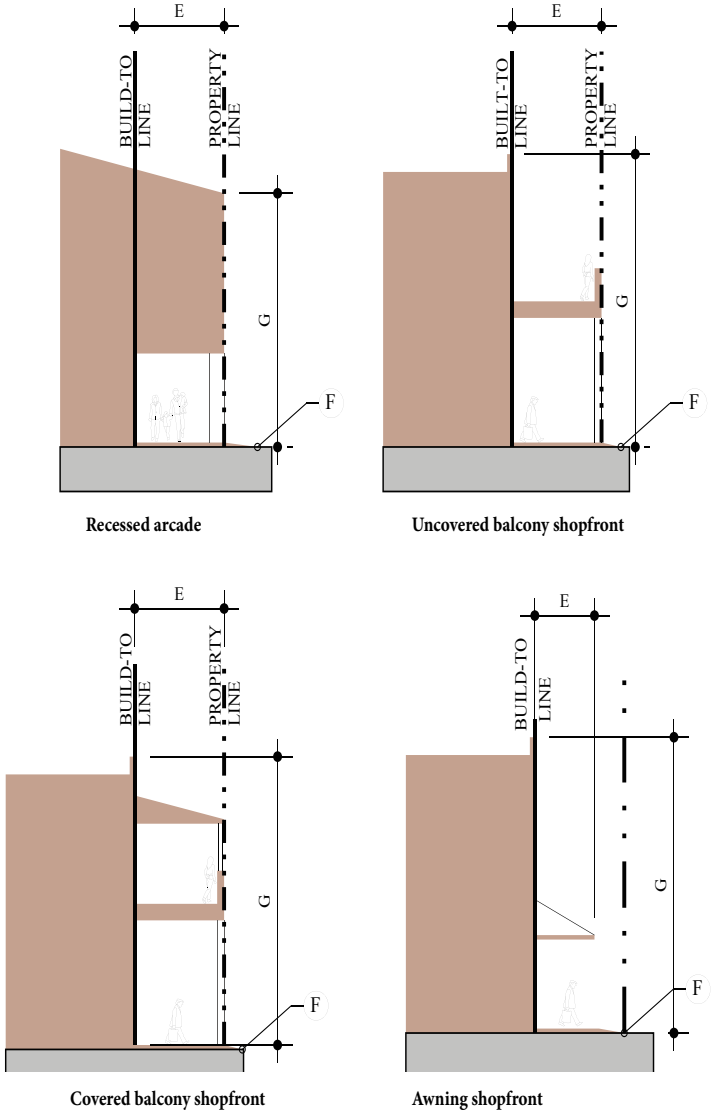


Figure 4.1A
STREET FRONTAGE ARCHITECTURAL OPTIONS

KEYED NOTES

Frontage Type F1: Main Street Commercial

- (A) Right of Way; see street types and standards
- (B) Property Line:
- (C) The Build-to-Line, 0' to 10' setback from the property line
- (D) Primary Building Facade; constructed along 80% of the length of the Build-to-Line
- (E) Covered Sidewalk; may encroach in the setback up to the property line, minimum of 8' deep
- (F) First floor elevation flush with sidewalk or fully accessible
- (G) Building height; 2 stories or 25' minimum; 5 stories maximum

4.2.1 DEVELOPMENT REGULATIONS

4.2.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.

B) Rear and side setbacks:
Not required

D) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 8' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) Stoops and/or porches shall be spaced no more than 60 linear feet along the Build-to-Line within a single parcel.

E) Pedestrian Passageways:
None required

F) Covered sidewalks:
Not required

J) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas accessibility standards.

K) Minimum and Maximum Wall Height:
The maximum building height shall be three stories. Buildings shall be a minimum of two stories at the primary building facade.

4.2.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to satisfy minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may replace conventional parking requirements outlined in Use Standards below. Minimum parking requirements may be reduced by 15% percent if shared parking lots serve more than a single use (e.g. Restaurants and Office)

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 25%.

F) Parking Garages
Structured parking may be provided for optimal land use efficiency. Parking structure shall meet architectural standards.

4.2.2 USE STANDARDS

4.2.2.1 RETAIL (limited)

A) Defined Retail Use:
Retail uses include commercial enterprises established for the sales of goods and services including shops, entertainment establishments, banking, restaurants, and hotel lobbies and eateries.
1) Retail uses shall provide parking at 4 spaces per 1,000 square feet (maximum of 3,000 square feet)

4.2.2.2 OFFICE (limited)

A) Office Uses Defined:
Office uses are those associated with buildings occupied for the transaction of business, excluding retail and manufacturing.
1) Office uses shall provide parking at 4 spaces per 1,000 square feet (maximum of 3,000 square feet)

4.2.2.3 LODGING (limited)

A) Lodging Uses Defined:
Lodging uses are those associated with buildings occupied for short-term human habitation.
1) Lodging uses shall provide 1 parking space per lodging unit. (maximum of 10 units)

4.2.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 1.5 spaces per dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.2.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Master Developer. The following may be acceptable conditional uses in areas designated F2:
1) Multifamily Residential:
Townhouse lots may be combined to create multifamily development parcels. Architectural massing shall remain consistent with that of surrounding uses, as determined by the Town Architect. Multifamily uses shall be allowed a maximum height of 4 stories and not exceed 20 dwelling units. A maximum of 25% of all combined F2 and F3 frontage may be used for Multifamily Residential.
2) Home occupation permitted

4.2.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.2.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.1.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades:
No single building facade type shall exceed 90' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), wood or engineered wood. Exterior insulation finishing system (E.I.F.S.) may be used above the first story or a minimum of 12' above grade, whichever is higher. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas/poly membrane. Plastic or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Signage: refer to signage standards (section 9.0)

F) Bicycle racks:
One bicycle rack shall be provided per 10,000 square feet of occupied building area. Bike racks may be ganged together block-by-block and located in the Passageway Easements.

G) Roofs:
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. Composition shingles are permitted only where not visible from a public right-of-way. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level from either the front or side. Screening devices may be parapet extensions or free standing and shall be of material similar to the base building.

H) Glazing:
Glazed openings shall be at least 30 percent of the wall surface along a build-to line at the ground level and 20 percent on upper floors. Glazing shall not exceed 70 percent.
1) Framing shall be commercial grade painted wood, aluminum, or steel.
2) Glazing shall be clear; no reflective or spandrel glass is permitted.
3) Window openings shall be vertical or square in proportion.

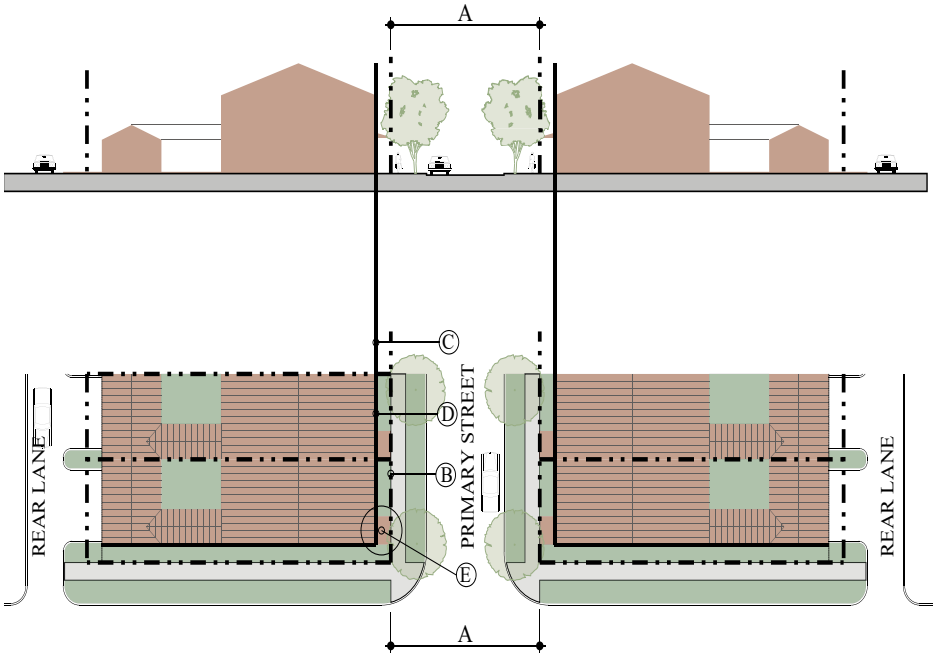


Figure 4.2: Frontage Type- - Livework

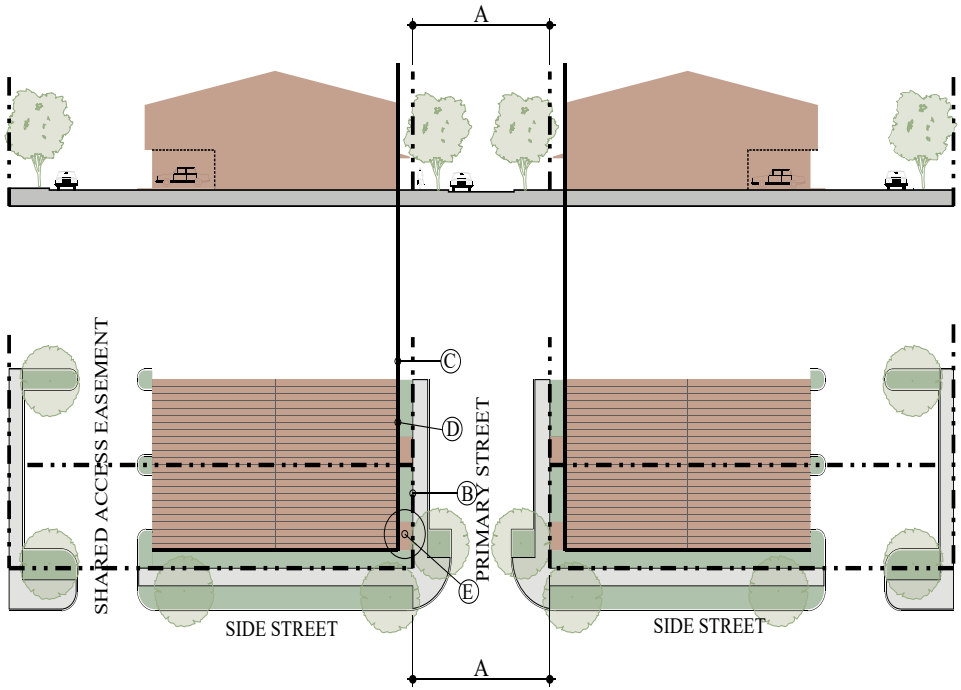


Figure 4.2a
TYPE F2 with TUCK-UNDER GARAGE

KEYED NOTES
Frontage Type F2: Livework

- (A) Right of Way; see street types and standards
- (B) Property Line:
- (C) The Build-to-Line, 0' to 10' setback from the property line
- (D) Primary Building Facade; constructed along 80% of the length of the Build-to-Line
- (E) Porch/Stoop Encroachment
- (F) Building height; 2 stories or 25' minimum; 3 stories maximum

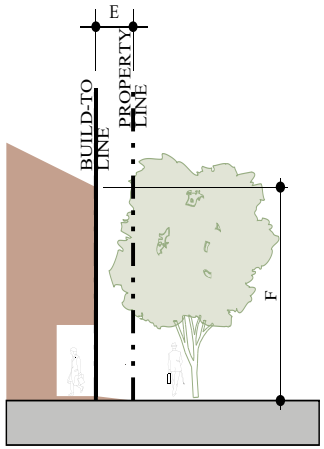


Figure 4.2b
TYPE F2 with RECESSED STOOP

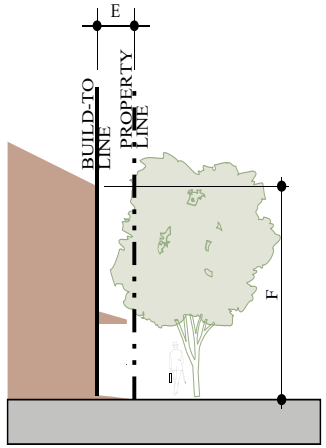


Figure 4.2c
TYPE F2 with PROJECTING STOOP

4.3.1 DEVELOPMENT REGULATIONS

4.3.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.

B) Rear and side setbacks:
Not required

C) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 8' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) Stoops and/or porches shall be spaced no more than 60 linear feet along the Build-to-Line within a single parcel.

D) Pedestrian Passageways:
None required

E) Covered sidewalks:
Not required

F) 1st Floor Elevation:
The finish floor of the first level shall be a minimum of 24 inches above the sidewalk or top of curb.

G) Minimum and Maximum Wall Height:
The maximum building height shall be three stories. Buildings shall be a minimum of two stories at the primary building facade.

4.3.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to supplement minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F3.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking garages shall count as required parking.

4.3.2 USE STANDARDS

4.3.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 2 spaces per dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.3.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Town Architect or district Design Review Board. The following may be acceptable conditional uses in areas designated F3:
1) Multifamily Residential:
Townhouse lots may be combined to create multifamily development parcels. Architectural massing shall remain consistent with that of surrounding uses, as determined by the Town Architect. Multifamily uses shall be allowed a maximum height of 4 stories and not exceed 20 dwelling units. A maximum of 25% of all combined F2 and F3 frontage may be used for Multifamily Residential.
2) Home occupation permitted

4.3.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.3.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.3.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the Central Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades
No single building facade type shall exceed 30' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), or wood. Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or weathered metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas membrane. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Roofs
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level.

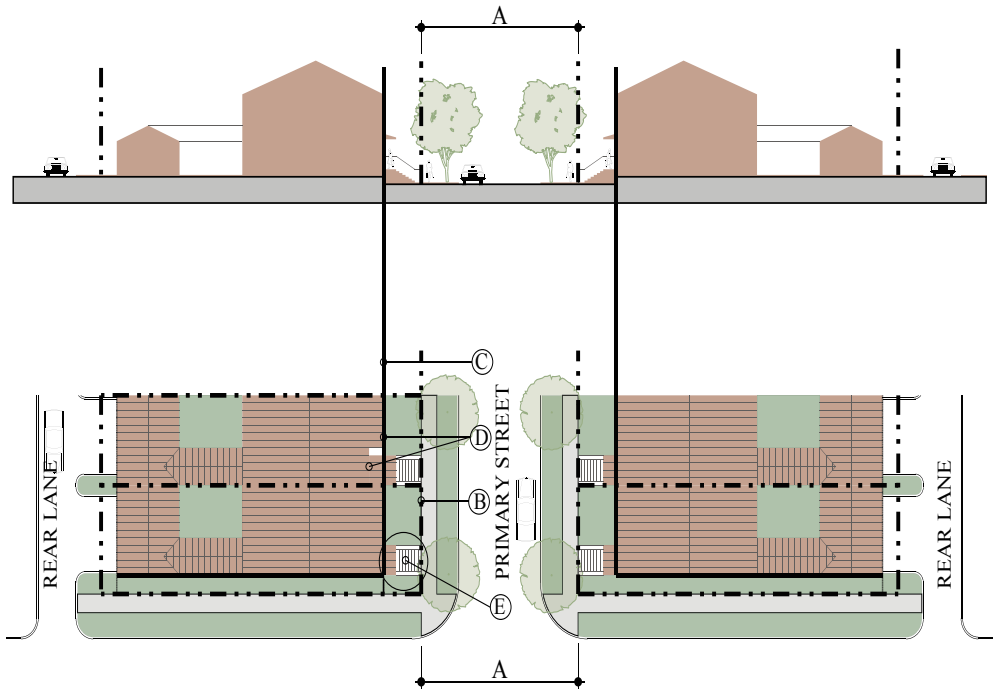


Figure 4.3: Frontage Type - Townhouse

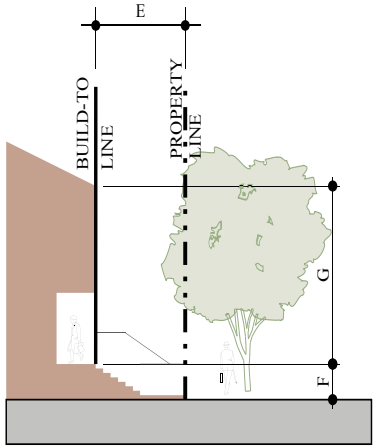


Figure 4.3a
TYPE F3 with RECESSED STOOP

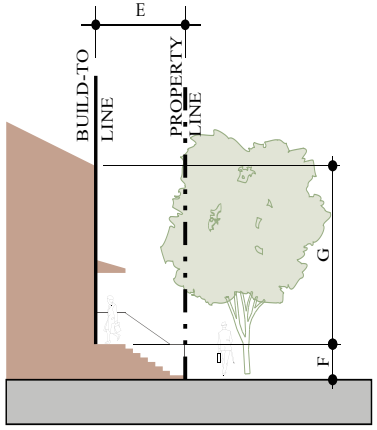


Figure 4.3b
TYPE F3 with PROJECTING STOOP

KEYED NOTES
Frontage Type F3: Townhouse

- (A) Right of Way; see street types and standards
- (B) Property Line:
- (C) The Build-to-Line, 10' setback from the property line
- (D) Primary Building Facade; constructed along 80% of the length of the Build-to-Line
- (E) Porch/Stoop Encroachment
- (F) First floor elevation min. 24" above sidewalk
- (G) Building height; 2 stories or 25' minimum; 3 stories maximum

4.4.1 DEVELOPMENT REGULATIONS

4.4.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 20' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 50% of the total length of the Build-to-Line.

B) Rear and side setbacks:
1) 5' rear setback
2) 2.5' side setback on one side; 10' side setback on opposite side.
3) 10' street sideyard setback where the lot occupies the end of a block.

D) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 10' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) If a porch is provided, it shall be a minimum of 8' deep.

E) Pedestrian Passageways:
None required

F) Covered sidewalks:
Not required

J) 1st Floor Elevation:
The finish floor of the first level shall be a minimum of 24 inches above the sidewalk.

K) Minimum and Maximum Wall Height:
The maximum building height shall be two and one-half stories. Buildings shall be a minimum of two stories at the primary building facade.

4.4.1.2 PARKING

A) Off street parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to supplement minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F4.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking garages shall count as required parking

4.4.2 USE STANDARDS

4.4.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 2 spaces per dwelling unit plus 1 space per accessory dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.4.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Town Architect. The following may be acceptable conditional uses in areas designated F4:
1) Multifamily Residential is not permitted
2) Home occupation permitted
3) Ancillary units permitted

4.4.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.4.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.4.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the Central Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades
No single building facade type shall exceed 30' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), or wood. Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or weathered metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas membrane. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

G) Roofs
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level.

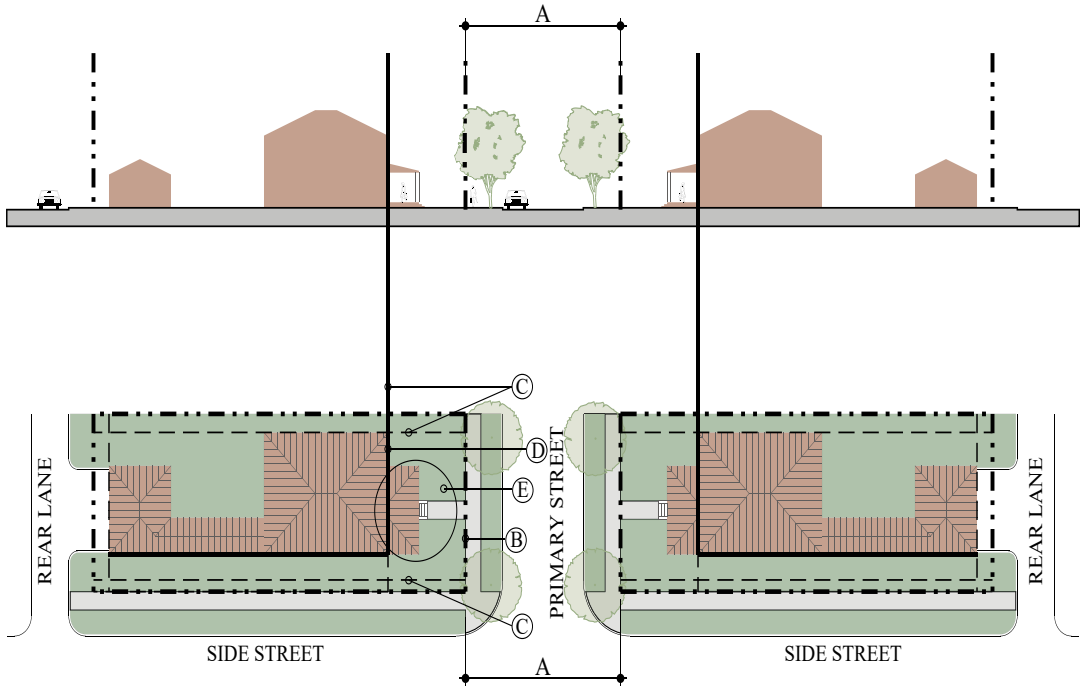


Figure 4.4: Frontage Type - Sideyard

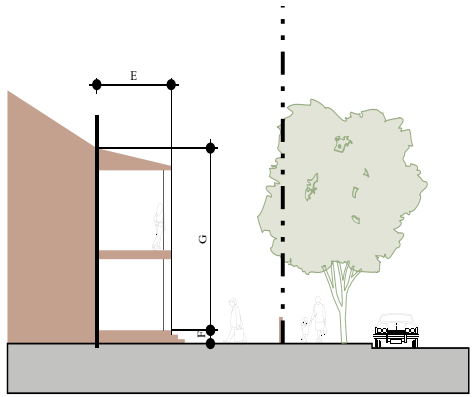


Figure 4.4a
TYPE F4 with COLONNADE

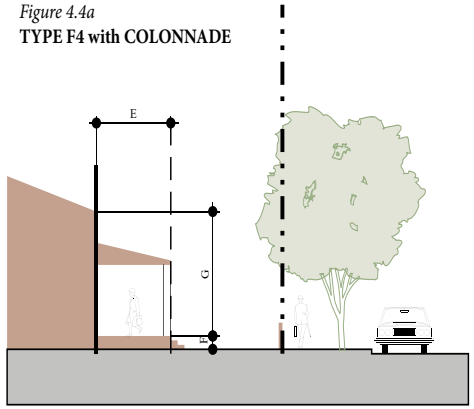


Figure 4.4b
TYPE F4 with ONE STORY PORCH

KEYED NOTES
Frontage Type F4: Sideyard

- (A) Right of Way; see street types and standards
- (B) Property Line:
- (C) The Build-to-Line, 20' setback from the front property line, 5' rear and side setback, 2.5' side setback on one side.
- (D) Primary Building Facade; constructed along 80% of the length of the Build-to-Line
- (E) Porch/Stoop Encroachment
- (F) First floor elevation min. 24" above sidewalk
- (G) Building height; 2 stories or 25' minimum; 2.5 stories maximum

4.4.1 DEVELOPMENT REGULATIONS

4.4.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 90' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 50% of the total length of the Build-to-Line.

B) Rear and side setbacks:
1) 5' rear setback
2) 5' side setback

D) Encroachment:
Corner towers, or canopies with occupied or unoccupied space may encroach a maximum of 30' beyond the Build-to-Line. No corner tower shall have more than 1,000 SF on the ground floor encroaching beyond the Build-to-Line.

E) Pedestrian Passageways:
None required

F) Covered sidewalks:
Recommended for primary student entries.

J) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas accessibility standards.

K) Minimum and Maximum Wall Height:
The minimum building height shall be two and maximum five stories. Ancillary structures may be one story.

4.4.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only behind the building.

C) On-Street Parking in front of building may be used to satisfy visitor parking requirements.

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F5.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

4.4.2 USE STANDARDS

4.4.2.4 EDUCATIONAL

A) Educational Uses Defined:
Educational uses are those associated with buildings occupied for the purpose of educational instruction and related services, for public school grades Pre-K through 12.
1) Educational uses shall provide designated parking at one space per 400 gross square feet excluding ancillary structures, play fields, etc not to exceed 200 spaces. Visitor spaces shall be included in the total parking allowed.

4.4.2.5 CONDITIONAL USES

None are allowed.

4.4.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.4.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.4.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historic.

A) Building massing and facades
No single building facade type shall exceed 180 feet in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco or cementitious board (Hardie). Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of factory finished metal or other permanent roofing materials. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

G) Roofs
1) Pitched roofs:
Pitched roofs may be clad in factory finished or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Canopy, colonnade and arcade roofs may be 1/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level, including adjacent public rights-of-way.

Frontage Type F5 : Education (Special District)

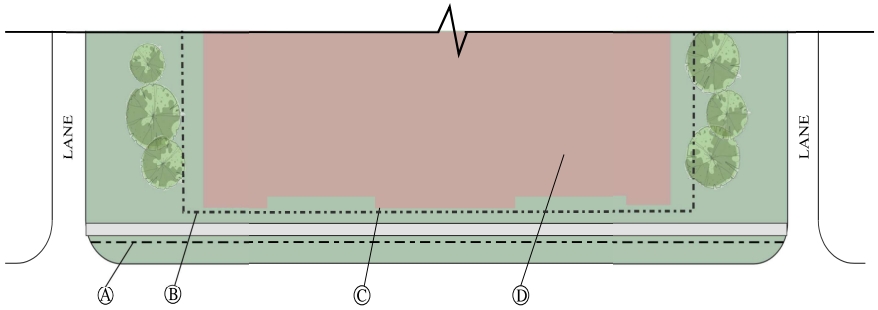


Figure 4.5: Frontage Type - Education

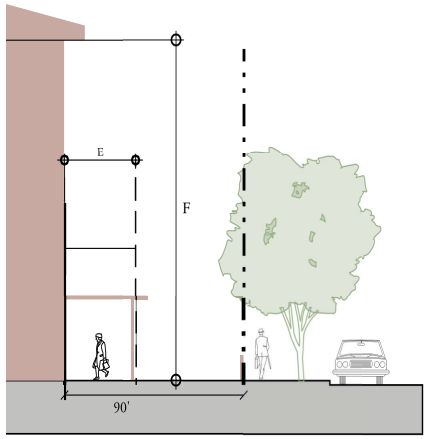


Figure 4.5a
TYPE F5 with ONE STORY PORCH

KEYED NOTES
Frontage Type F5: Education

Ⓐ Right of Way; see street types and standards
Ⓑ Property Line:
Ⓒ The Build-to-Line, 10' setback from the property line, 5' rear and side setback
Ⓓ Primary Building Facade; constructed along 75% of the length of the Build-to-Line
Ⓔ Porch/Stoop Encroachment
Ⓕ Building height 2 stories or 25' minimum, 5 stories maximum

HOW DO STREET TYPES AFFECT DEVELOPMENT?

The frontage types outlined in the previous section of these standards are paired with street types to define the general character and quality of public space within the plan. The Regulating Plan defines locations for each street type and frontage type. The remainder of the Development Standards fills in the gaps, specifying landscape and drainage requirements, utility locations, open space programming, etc.

SEQUENCING

All streets within the Oasis PD shall be built in complete block lengths. A block is defined as a section of street from the intersection of one perpendicular street to the next. If the street-type has a parallel alley, the alley and access to it must be built at the same time as the street.

The following street types are detailed in this section:

MS-78: Main Street 78' R.O.W.

BVD-VAR: Boulevard Variable R.O.W.

CS-65: Commercial Street 65' R.O.W.

CS-60: Commercial Street 60' R.O.W.

US-50: Urban Street 50' R.O.W.

US-45: Urban Street 45' R.O.W.

US-40: Urban Street 40' R.O.W.

CL-20: Comercial Alley 20' Access Easement

AL-20: Residential Alley 20' Access Easement

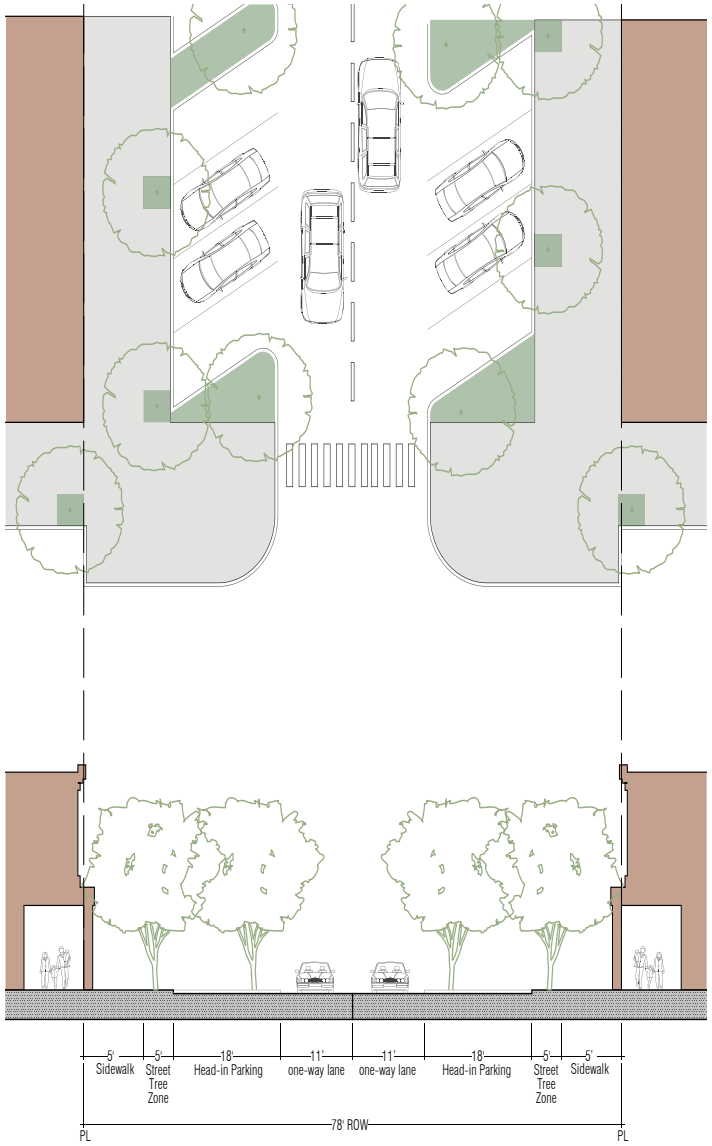
OWNERSHIP AND MAINTENANCE

All streets within the Oasis PD shall be built to meet City of Midland construction standards. However, geometric layout, design speed and details including bulb-outs, pedestrian crossings, sidewalks etc. shall be controlled by this Code.

Maintenance of streets and sidewalks in public rights-of-way shall be performed by a private property owners association as provided for in Section 13.5 of this Code.

Section 5.1

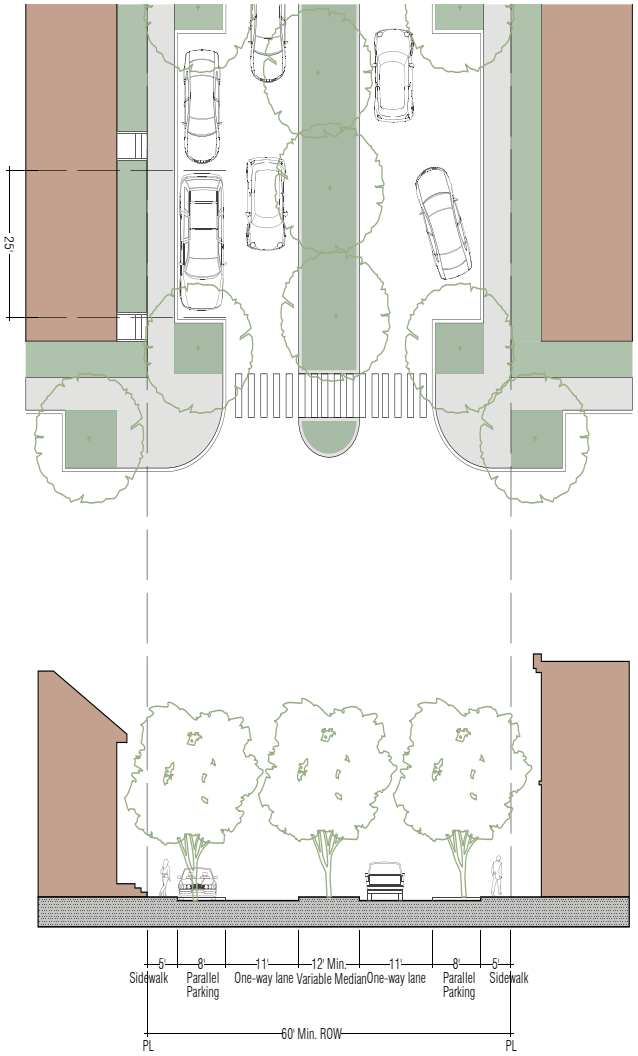
Street Type MS-78 : Main Street 78' R.O.W.



ROW	78'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	58'
PARKING	Head-in both sides
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c. max.
MIN. CENTERLINE RADII.	166'

Section 5.2

Street Type BVD-VAR : Boulevard Variable R.O.W.



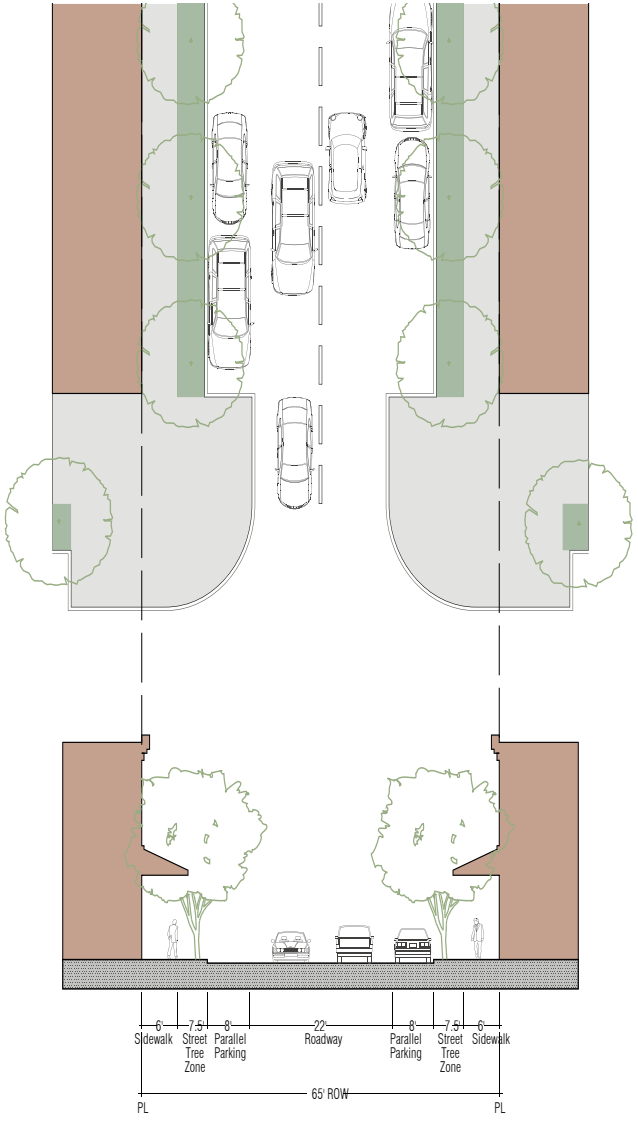
ROW	Min. 60'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	38'
PARKING	Parallel either side (or none)
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII.	166'

PACKET

December 14, 2021

Section 5.3

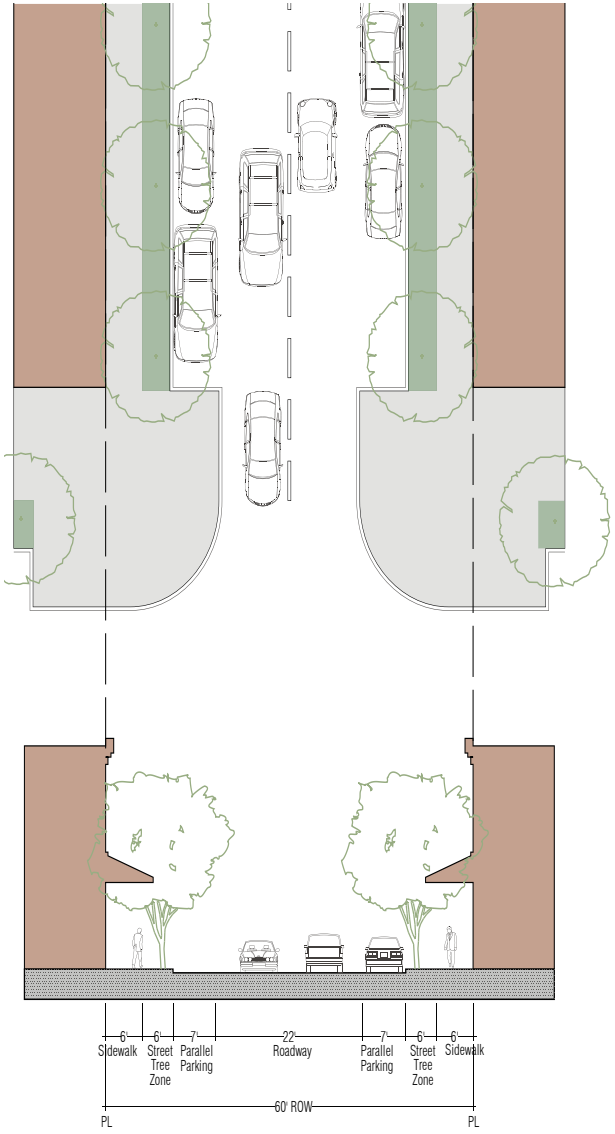
Street Type CS-65 : Commercial Street 65' R.O.W.



ROW	65'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	38'
PARKING	Parallel both sides
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII	166'

Section 5.4

Street Type CS-60 : Commercial Street 60' R.O.W.



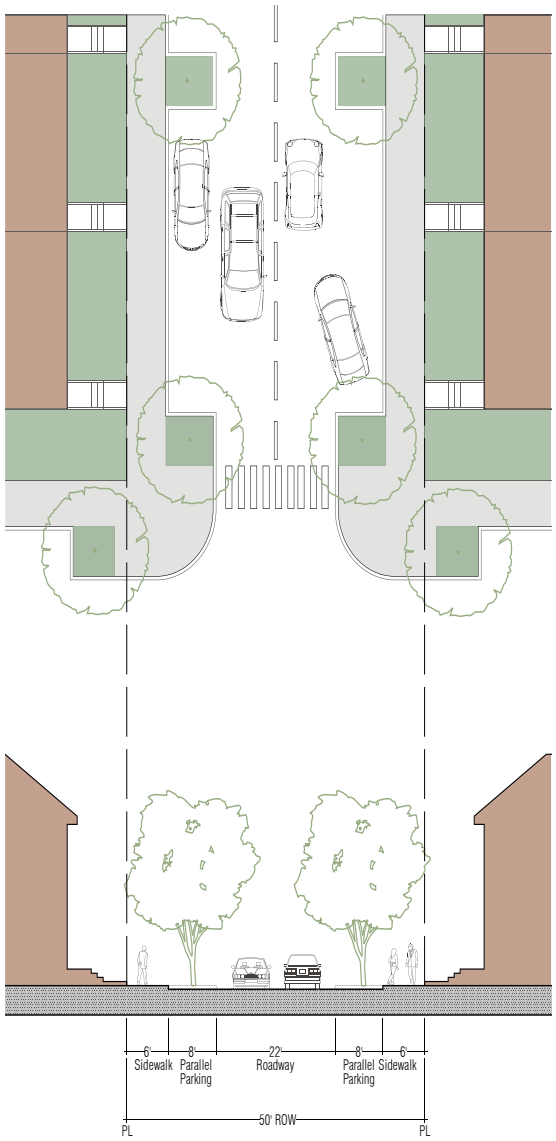
ROW	60'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	22'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII	166'

PACKET

December 14, 2021

Section 5.5

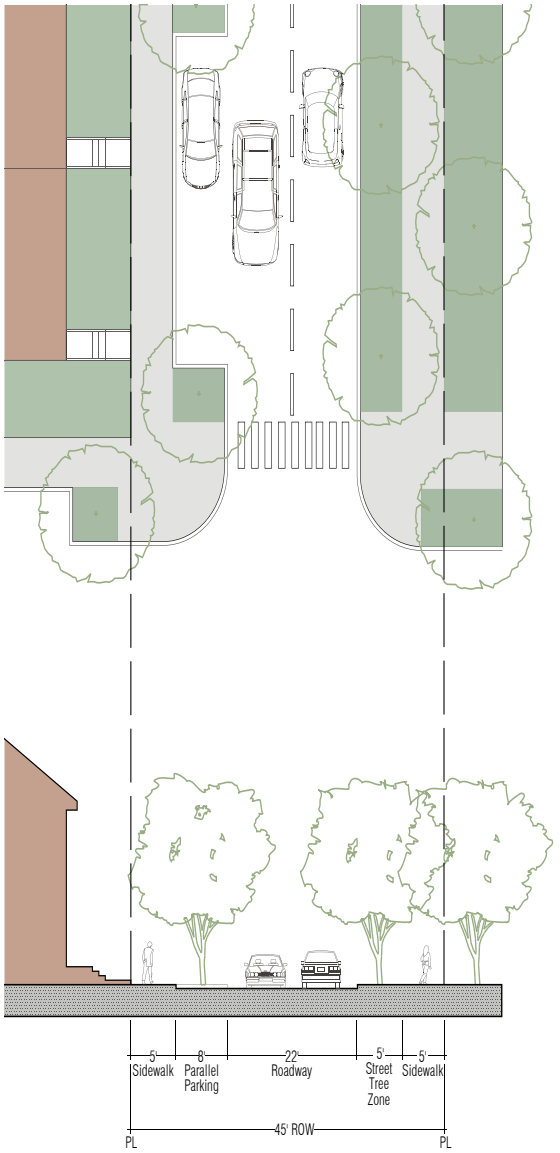
Street Type US-50 : Urban Street 50′ R.O.W.



ROW	50′
DESIGN SPEED	20 mph
PAVEMENT WIDTH	38′
PARKING	Parallel both sides
CURB RADIUS	20′ radius at street corners
STREET TREES	50′ o.c.
MIN. CENTERLINE RADII.	90

Section 5.6

Street Type US-45 : Urban Street 45′ R.O.W.



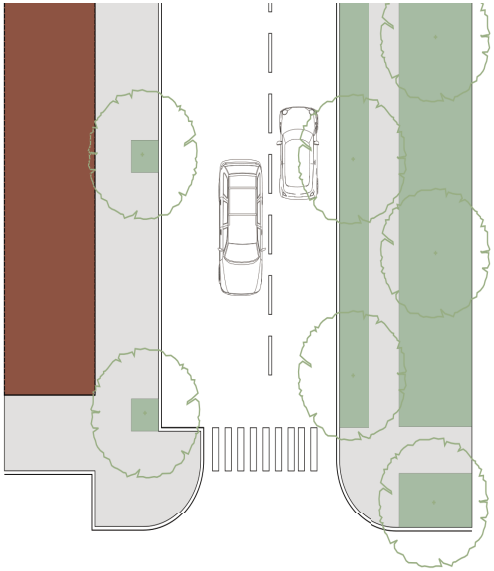
ROW	45′
DESIGN SPEED	20 mph
PAVEMENT WIDTH	30′
PARKING	Parallel Parking one side
CURB RADIUS	20′ radius at street corners
STREET TREES	30′ o.c.
MIN. CENTERLINE RADII.	90′

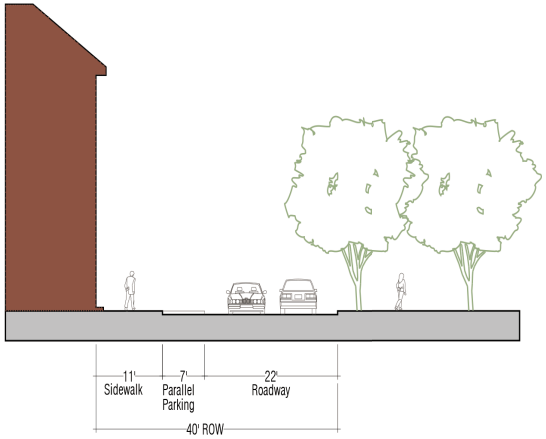
PACKET

December 14, 2021

Section 5.7

Street Type US-40 : Urban Street 40' R.O.W.

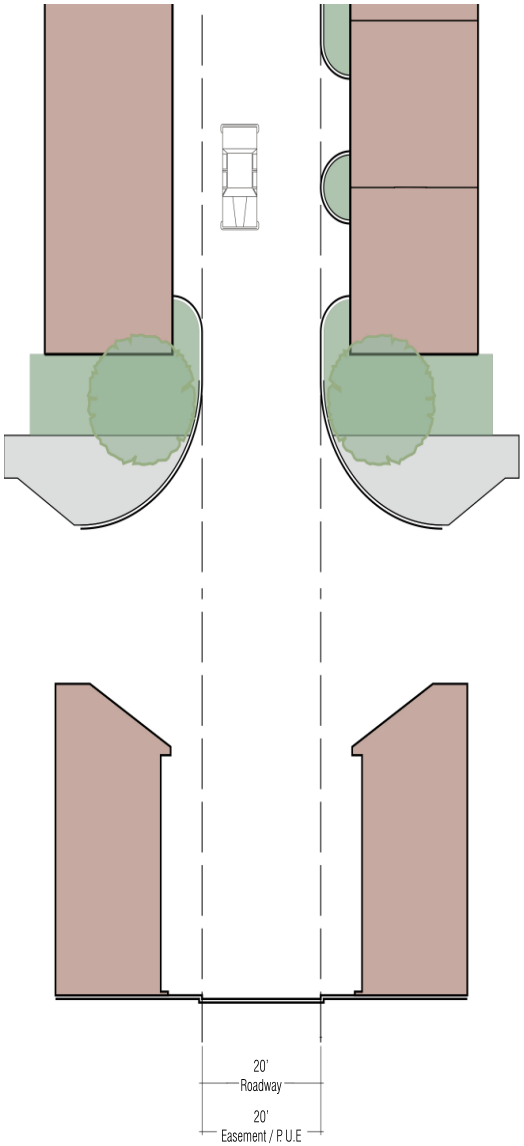




ROW/EASEMENT	40'
DESIGN SPEED	20 mph
PAVEMENT WIDTH	29'
PARKING	Parallel one side
CURB RADIUS	20' radius at street corners
STREET TREES	None
MIN. CENTERLINE RADII.	90

Section 5.8

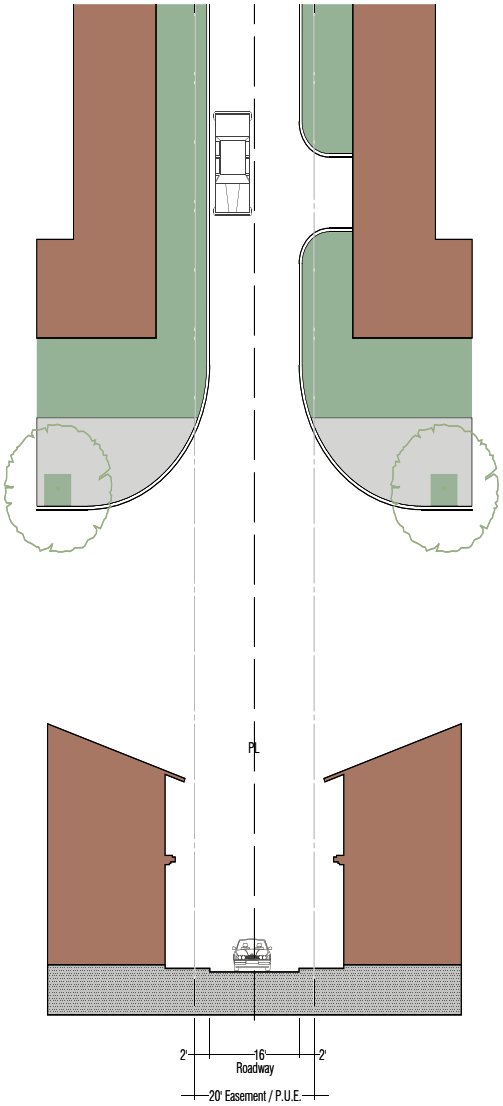
Street Type CL-20 : Commercial Alley 20' Easement



ROW/EASEMENT	20'
DESIGN SPEED	10 mph
PAVEMENT WIDTH	20'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	None
MIN. CENTERLINE RADII.	50'

PACKET

Street Type AL-20 : Residential Alley 20' Easement



ROW/EASEMENT	20'
DESIGN SPEED	10 mph
PAVEMENT WIDTH	16'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	None
MIN. CENTERLINE RADII	50

6.1 UTILITIES

All utilities must be located in 1) a Dedicated Utility Corridor within a Public Right of Way, 2) a public utility easement (P.U.E.) on a lot as indicated on a final plat, 3) or by separate dedication instrument. This includes both Dry Utilities and Wet Utilities. Except for temporary construction site offices, utilities shall be located underground. Dry Utilities in common trenches are allowed, providing required separation distances are maintained. Utilities must follow the pattern in the Typical Utility Corridor Section diagram unless the City Engineer or the City Engineer's designee authorizes deviation from the standards in the diagram.

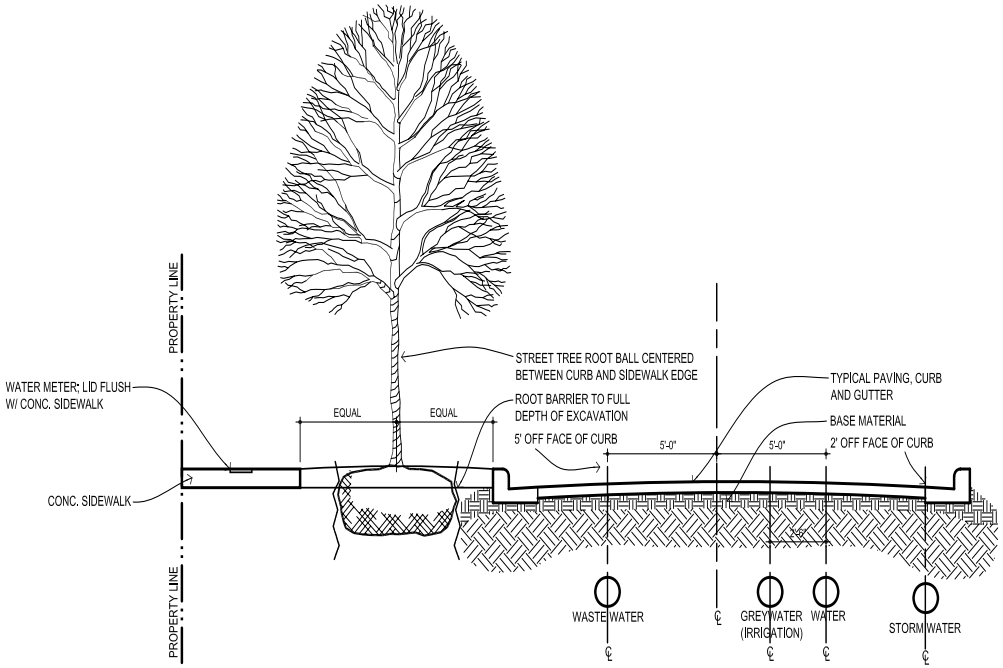
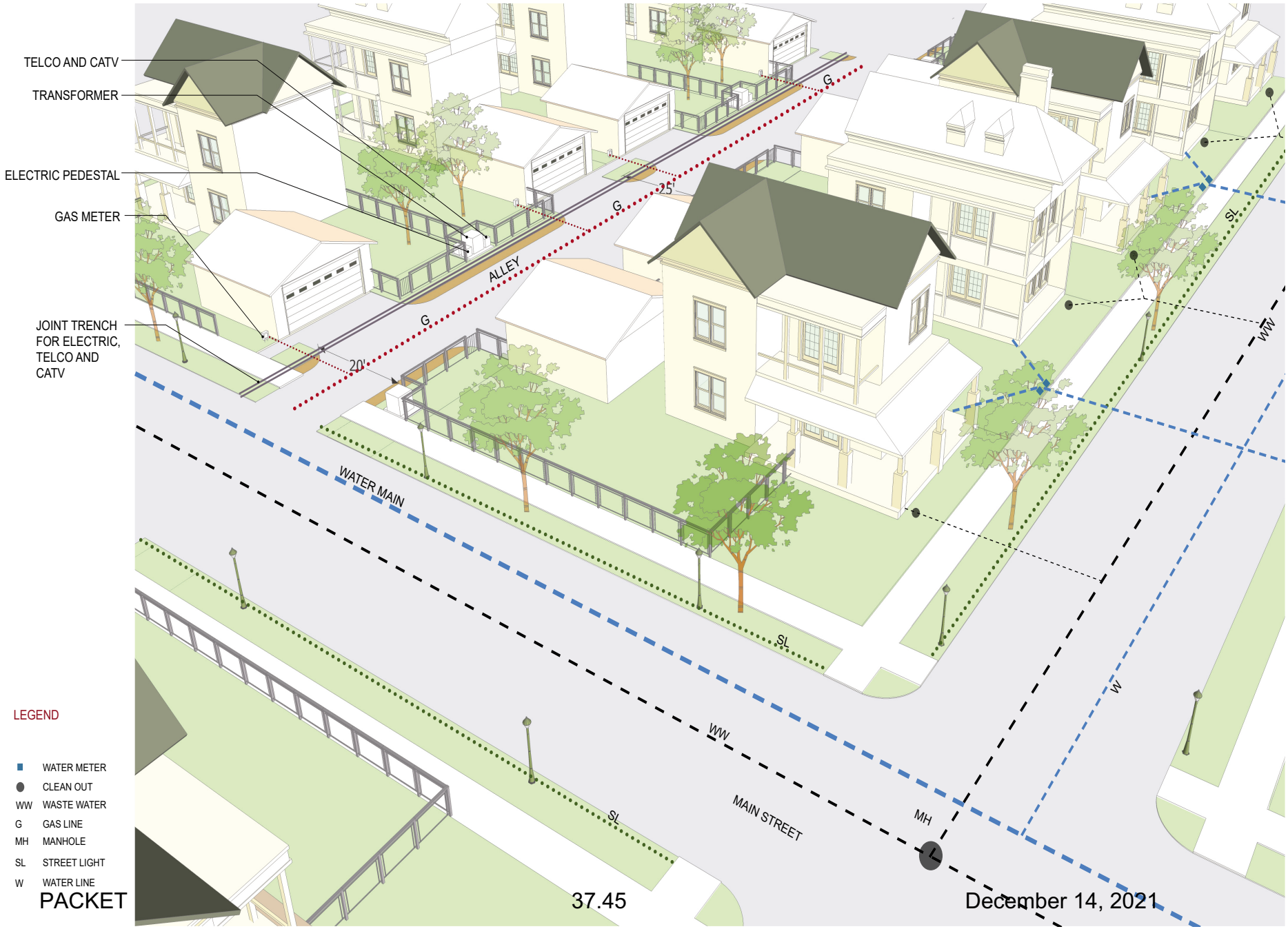


Figure 6a: **Typical Utility Corridor Section**

Fig. 6b: Assignments



PACKET 37.45 December 14, 2021

7.1 INTENT

The following is the intent of the public space standards:

· To create socially active and culturally vibrant public open spaces.

· To create a public open space system which becomes a source of community pride and an attractive feature for encouraging positive town growth.

· To provide for a range of public open space types for community use from highly developed public squares to larger more loosely programmed public greens and greenbelts.

· Public Spaces shall be privately owned, developed and maintained and publicly accessible.

7.2 DEFINITIONS & PROGRAMMING

7.2.1 PLAZA

A plaza is an open area adjacent to, or part of, a civic building or facility. Plazas function as gathering places and may incorporate a variety of temporary activities such as vendors and display stands. Plazas shall be no less than 75% paved in brick or another type of paver or crushed stone. Plazas shall be level, stepped, or gently sloping (less than 3% grade). The following sizes are recommended but may be larger or smaller depending on the building or facility design. The recommended minimum size is 2000 sf., and the recommended maximum size shall be 30,000 sf.

A) Plantings:
Plaza interiors may be left unplanted or may be planted with shade trees. If a programming element such as an outdoor cafe or seating area is incorporated then trees may be planted to provide shade. Arbors may also be used as shade elements. Street trees shall be planted as per Street Types Standards (see tree list in Landscape Guidelines).

B) Public seating:
Seating should be provided with exposure to both shady and sunny conditions. Benches or seat walls should provide seating for at 10 linear feet of seating per 1,000 square feet of plaza area.

C) Optional programming elements:
Optional programming elements might be music concerts, festivals, outdoor cafes or vending areas. Other elements may be considered if determined appropriate by the City.

D) Street Lamps:
Street lighting shall be provided along pedestrian path and marking entrances to the Plaza. At least on half of a foot candle of light shall be provided per 20 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

D) Irrigation:
Irrigation is required for all landscaped areas within the Plaza.

7.2.2 SQUARE

An open space, spatially defined by the facades of surrounding buildings (as a room is defined by its walls), usually surrounded by streets on at least two sides. Squares are at the intersection of important streets and are designed to accommodate public gathering and activities, usually with an area set aside for civic structures or monuments.

A) Shade Trees:
Shade trees (no less than 4 caliper inches at installation and container grown) shall be planted at no less than 1 tree per 2,000 sf. Street trees (as required in the Street Types Standards) shall count towards the minimum number of tree planting. Trees shall be limbed up to a minimum of 10' at maturity. (see tree list in Landscape Standards)

B) Small Flowering Trees:
Small Flowering Trees (no less than 2 caliper inches) shall be planted at no less than 1 tree per 2,000 sf in groupings no greater than 15' on center. (see tree list in Landscape Standards).

C) Lawn:
In areas requiring turfgrass, only shade tolerant varieties of turfgrass shall be allowed. Decomposed granite and other pervious paving is encouraged in all high traffic areas. Mulched beds and native grasses are encouraged to minimize irrigation demand. Solid sod shall have a sandy loam growing soil, not clay.

D) Street Lamps:
Street lighting shall be provided along pedestrian path and marking entrances to the Square. At least on half of a foot candle of light shall be provided per 20 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be a minimum of 10 linear ft. of seating per 1,000 sf. of square area. Other seating alternatives may be approved or by the Town Architect if they meet the criteria of long term durability and minimal susceptibility to vandalism.

F) Irrigation:
Irrigation is required for all landscaped areas. Irrigation shall be minimized through the use of native and drought resistant landscaping.

G) Drinking fountains:
At least two (2) shall be provided within a Square.

H) Other elements:
Plaza or Square shall incorporate at least one of the following as a primary organizing element to be approved by the Town Architect:

· Fountain or water feature
· Monument, sculpture or statue
· Gazebo, covered pavilion, or shade structure

7.2.3 GREEN

A Green is similar to a Square in that it is spatially defined by the facades of surrounding buildings surrounded by streets on at least two sides. A Green is more informally planted than a Square.

A) Shade Trees:
Shade trees (no less than 4 caliper inches and container grown) shall be planted at no less than 1 tree per 4,000 sf. Street trees (as required in the Street Types Standards) shall count towards the minimum number of tree planting. Trees shall be limbed up to a minimum of 10' at maturity. (see tree list in Landscape Standards)

C) Lawn:
In areas requiring turfgrass, only shade tolerant varieties of turfgrass shall be allowed. Decomposed granite and other pervious paving is encouraged in all high traffic areas. Mulched beds and native grasses are encouraged to minimize irrigation demand.

D) Street Lamps:
At least 1/2 of a foot candle of light shall be provided per 50 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be a minimum of 10 linear ft. of seating per 2,000 sf. of Green area. Other seating alternatives may be approved or by the Town Architect if they meet the criteria of long term durability and minimal susceptibility to vandalism.

F) Irrigation:
Irrigation is required for all landscaped areas. Irrigation shall be minimized through the use of native and drought resistant landscaping.

7.2.4 GREENBELT

Greenbelts are linear greenways or natural preserves which may feature walking or cycling trails and serve to buffer a neighborhood from surrounding non-compatible uses such as highway corridor or industrial district.

Uses may include large scale recreational uses such as golf courses, multiple playing fields, hike and bike trails or other program elements that help to create a green buffer. There are no tree planting requirements along ROWs for greenbelts. Greenbelts shall integrate the existing natural landscape. Newly landscaped area shall be compatible with existing vegetation. Shade trees shall be planted at 1 per 100 linear feet of trail and shall be 2" caliper container grown or 3" balled and burlapped or transplanted trees planted in naturalistic pattern.

7.2.5 PARK

An open space defined by surrounding buildings and vegetation and connecting with streets on at least two sides.

A) Paving:
Parks shall be naturally landscaped, not more than 10% paved.

B) Boundaries:
Parks will be bounded by streets on a minimum of 50% of their perimeter. Parks are encouraged to be entirely bounded by streets.

C) Size:
Minimum size shall be one (1) acre; maximum size shall be three (3) acres. Maximum park size may exceed three (3) acres if through design, the park creates a central open space that services an entire neighborhood or group of neighborhoods, or incorporates physical features which are an asset to the community (i.e., lake frontage, high ground or significant stands of trees.

7.3 IMPLEMENTATION

All public and private open space improvements shall be constructed or installed at the time of adjacent street and utility infrastructure construction. Park land dedication, fee in lieu or development of parks in value equal to fees in lieu will be accomplished as each 100 dwelling units are platted.



Figure 7a
PLAZA



Figure 7b
SQUARE

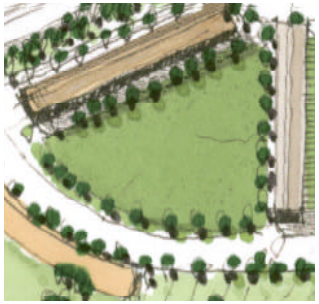


Figure 7c
GREEN



Figure 7d
GREENBELT

PACKET 37.46 December 14, 2021

8.1.THE PUBLIC LANDSCAPE

8.1.1 SOIL PRESERVATION
Wherever possible grades for thoroughfare and open spaces shall follow existing topography and drainage patterns. Areas to be left natural shall be fenced and undisturbed during construction. The soil structure for planting strips shall be protected from compaction with protective fencing. During construction, topsoil shall be removed, and stockpiled for later use.

8.1.2 COMPACTION
All planting areas shall be cultivated and top-dressed with organic matter. Deeply compacted areas shall be cultivated to a depth of one foot and top-dressed with an addition of loose topsoil, coarse sand and compost. Ballfields shall be underlain with a mix of coarse sand.

8.1.3 HYDROLOGY / DRAINAGE
All planting areas shall have drainage outlets achieve positive drainage. Playing fields shall be uniformly graded to a 2% -3% slope.

8.1.4 SITE CLEARING / EROSION CONTROL
To prevent erosion, clearing of easements and access routes should not occur more than 60 days prior to construction. Trees to be removed shall be taken down in a manner that will not impact any of the adjacent trees to remain. All trees will have crown and limbs removed before being felled and depending upon the density of vegetation the trunk shall be felled before the stump is removed. It is recommended that limbs and underbrush be chipped shredded and retained on site to be spread as a mulch after construction has finished. The boundary of construction sites shall be marked with a barrier and erosion control fencing on the downhill sides. No clearing operations will be allowed in an unmarked area. When construction is adjacent to a waterway, care should be taken to prevent any excavated material from spilling into the waterway by use of erosion control barriers.

8.1.5 TREE PROTECTION:
Protecting existing trees on site adds value and prevents additional planting costs. In areas of construction where trees are to be preserved, tree protection fencing must be installed and maintained at the dripline. No storage of materials or equipment is allowed within the dripline area of trees to be protected.

With the exception of Protected Trees as defined by the City's General Landscape Ordinance these Oasis landscape standards shall be adhered to in lieu of City's landscape regulations.

8.1.6 PLANT SELECTION
Trees may be selected from the lists outlined below. The use of native shrubs and ground cover species is encouraged given their adaptability to drought and indigenous soil conditions. Plant quality shall follow the highest Nursery Industry Standards.

8.2. PUBLIC OPEN SPACE TREES

8.2.1 STREETS, SQUARES, AND GREENS
The following is a list of trees that may be used in Squares and Greens, as well as for Street Trees. These trees were selected for their shade providing qualities and their ability to tolerate compaction, drought and pollution typically associated with heavily trafficked areas. Low maintenance and disease resistance are also important qualities for trees in this category. With pruning, these trees also have high a branching character so as not interfere with pedestrian and vehicular activities. Street trees shall have a single trunk and should be limbed up to a minimum of 14' at maturity. All street tree plantings shall utilize root barriers to prevent heaving of adjacent paving.

·Live Oak, Quercus virginiana
·Bur Oak, Quercus macrocarpa
·Texas Red Oak, Quercus texana
·Pecan, Carya illinoensis
·Bald Cypress, Taxodium distinctum
·Afghan Pine, Pinus elderica
·Mexican White Oak, Quercus polymorpha.

8.2.2 GREENBELT TREES

The following trees may be planted in Greenbelts (as defined in the Open Space Standards) This list of trees was selected for their more naturalistic character which is representative of the above listed public open spaces. Native species are encouraged given their adaptability to native soils and drought conditions:

Native Large Trees (Mature Height Over 30'):
·Texas Ash, Fraxinus texensis
·Bald Cypress, Taxodium distinctum
·Cedar Elm, Ulmus crassifolia
·Live Oak, Quercus virginiana
·Pecan, Carya illinoensis
·Bur Oak, Quercus macrocarpa
·Chinkapin Oak, Quercus muhlenbergii
·Texas Red Oak, Quercus texana
·Eastern Red Cedar, Juniperus virginiana

Non-Native Large Trees (Mature Height Over 30'):
·Arizona Cypress, Cupressus arizonica
·Austrian Pine, Pinus nigra
·Goldenraintree, Koelreuteria paniculata
·Italian Stone Pine, Pinus pinea
·Lacebark Elm, Ulmus parvifolia

Native Small Trees (Mature Height 30' or less):
·Crabapple, Malus spp.
·Eve's Necklace, Sophora affinis.
·Goldenball Leadtree, Leucaena retusa.
·Mexican Redbud, Cercis canadensis var. mexicana.
·Mexican-Buckeye, Ungnadia speciosa.
·Pinyon Pine, Pinus edulis.
·Prairie Flameleaf Sumac, Rhus Lanceolata.
·Texas Mountain Laurel, Sophora secundiflora.
·Texas Walnut, Juglans microcarpa.
·Desert Willow, Chilopsis linearis
·Texas Persimmon, Diospyros virginiana
·Texas Pistache, Pistacia texana
·Mexican Plum, Prunus mexicana
·Texas Redbud, Cercis canadensis texensis
·Vitex, Vitex agnus-castus

Non-Native Small Trees (Mature Height 30' or less):
·American Smoketree, Cotinus obovatus
·Crape Myrtle, Lagerstroemia indica
·Chinese Pistache, Pistacia chinensis

8.2.3 PARKS
Shade trees shall be 3" caliper container grown or 4" balled and burlapped trees planted in naturalistic pattern. At least 1 tree per 5,000 sf shall be planted. Existing hardwood trees may count toward the minimum number of trees. Trees may be grouped to allow for large lawn cover areas (see tree list in Landscape Standards 8.2.2)

B) Small Flowering Trees:
Small flowering trees(no less than 2 caliper inches) shall be planted in groupings at no less than 1 per 5,000 SF. (see tree list in Landscape Standards).

C) Lawn:
Lawns shall include Bermuda grass in sun to partly shade conditions; St. Augustine shall be provided in dense shade. In conditions with a more natural landscape character, coverage should be a mixture of native grass and wildflower seed. This mixture should contain a minimum of three (3) different species of grass and five (5) different species of wildflowers.

D) Street Lamps:
Street lamps shall be provided along pedestrian paths and at entrances to a Square or Plaza. At least 1/2 of a foot candle must be maintained.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be provided at no less than ten linear feet of seating per 10,000 SF of park area.

F) Irrigation:
Irrigation is required for all landscaped areas.

8.3 PARKING LOT LANDSCAPES

It is the intent of this section to establish standards in harmony with a city's landscape ordinance. However, due to the different development pattern (i.e. parking behind rather than in front of buildings) these standards shall apply where they may conflict with the landscape ordinance, including the Buffer requirements.

8.3.1 LANDSCAPE ISLANDS
In parking lots, landscaped islands must be provided at the end of all parking rows. Landscaped islands shall have a minimum width of 9 feet measured from back of curb to back of curb. A continuous poured-in-place concrete curb shall be provided around parking islands to prevent vehicular intrusion.

8.3.2 TREE ISLANDS
In addition to landscaping islands at the end of all parking rows, tree islands shall be incorporated into the parking lot layout every eight spaces to provide for additional shade. Tree islands shall incorporate a continuous poured-in-place concrete curb and shall be a minimum of 5' from back of curb to back of curb.

8.3.3 PARKING LOT TREES
In parking areas, two shade trees shall be planted in landscape islands at the end of all parking rows. A shade tree shall be installed no further than 30' from each stall. In addition, one shade tree will be provided for each five perimeter parking spaces. The parking lot trees will be a minimum 4 inch caliper balled and burlapped or 3 inch caliper container grown.

8.3.4 STREET TREES
Street trees shall be installed in locations shown on Street Types (Section 5.0), and shall be a minimum of 4" caliper, container grown with a minimum branching height of 9'-0".

8.3.5 MAXIMUM AREA OF PARKING SECTIONS
Parking areas shall be broken into individual sections not to exceed 60 cars. Each section shall be separated by a 10' wide major landscaped buffer to provide visual relief.·

8.3.6 PARKING LOT SCREENING
Any parking lot fronting along a Build-to-Line shall be landscaped at the perimeter and screened from view. A landscaped strip at least three feet wide shall be planted with a shrub hedge at least 30 inches in height at the time of installation and a mature height of 4' to 5'.

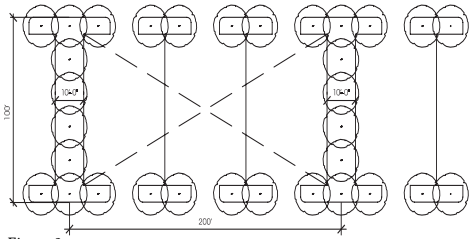


Figure 8a
MAXIMUM PARKING AREA

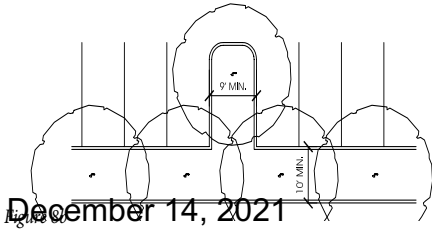


Figure 8b
LANDSCAPE ISLANDS

PACKET 37.47 December 14, 2021

8.3.7 STORAGE SCREENING
All loading and storage areas for commercial uses shall be screened from view from public streets and public open space. This provision includes above grade utility transformers, meters, valve boxes or other such apparatus. Screen elements may include permanent walls, fences, plant material or architectural enclosures. Open storage of goods, materials, machinery, equipment, vehicles, plants, trash or other items shall be similarly screened from public view.

8.3.8 IRRIGATION
All landscape areas shall be irrigated with the exception of natural areas and undeveloped areas. All irrigation systems are to be below ground, fully automated systems and in compliance with applicable building code requirements. The use of drip irrigation for shrubs and trees is acceptable. All backflow control devices are to be installed in below-grade Valve boxes or located and screened so that they are not visible from public streets or parking lots. All parking areas, drives and walks are to be "trimmed" to minimize spray onto pavements. Owners shall be required to irrigate to back of the curb of public roads. Oasis will provide reclaimed waste water to all irrigation users.

8.3. EXISTING TREE LOCATIONS
If specimen quality existing trees of 16" DBH or greater are encountered in tree surveys subsequent to the formulation of these standards, modifications to the layout of streets and walks may be considered. Refer to section 11.0 for Revisions to the Regulating Plan.

8.4 IMPLEMENTATION

All public landscape improvements shall be constructed or installed at the time of adjacent street and utility infrastructure construction.

9.1 STORM WATER MANAGEMENT

A Regional Storm water Management approach is desirable for the Oasis District. The benefits of a regional approach to providing storm water detention over an on-site approach are many. They include the following:

- A greater level of confidence in the hydraulic performance of the regional facilities;
- Less land area required thus increasing taxable land base in the District;
- Centralized, focused long term maintenance and thus a greater level of confidence in the long term function of the regional facility;
- Less overall construction, design, and administration costs;
- The ability to combine the regional facilities into an amenity area.

9.2 DRAINAGE STANDARDS
The Oasis District is anticipated to be a moderately high density and impervious cover area and as such the management of storm water runoff will be essential and critical to the ongoing health, safety, and welfare of not only the District, but also areas downstream of the District.

9.3 FLOODING CONDITIONS
There is increased potential for downstream erosion and degradation of water quality due to the increase in frequency of storm water runoff by the smaller more frequent storm events and corresponding increase in storm runoff volume. The increase in volume of runoff and frequency of storm water runoff events will have the effect of eroding the natural downstream waterways and further the potential for flooding. The effects of this can be mitigated by providing detention for the higher frequency (smaller) storm events and/or providing extended detention or a combination of detention/retention.

9.4 REGIONAL DETENTION
Due to the location of the Oasis District and its direct interface with the Midland County detention facility, accomodating approximately the north half of the project. The south half of the project shall drain to a combination of common area detention facilities.

9.5 WET PONDS
Detention may be combined with irrigation reservoirs and/or aesthetic ponds. Sufficient free board shall be designed into the pond to allow for adequate detention volume. These ponds may also be used to create man made wetlands where appropriate.

9.6 TIME OF IMPLEMENTATION
As with open space and landscape improvements, the implementation of drainage and water quality improvements outlined in this section shall be simultaneous with the development of sub basin served by the various drainage phases.



Figure 9a: Storm water management facilities can become a community amenity (Hogan Park Golf Course, Midland, TX)

Bike Path Plan

LEGEND

- 10' - 12' Bikeway
- 6' - 7' Bike lane / track buffered
- Signed bike paths on regular streets
- Signed crosswalk



Section 11.0
Lighting Standards

11.1 GENERAL INTENT

A) Street lights shall be decorative and blend with the architectural style of the buildings in the Oasis District. Exterior lighting in the Public right-of-way will be coordinated with the electric utility provider. Standards for exterior lighting of private development such as parking areas and public spaces shall be subject to the regulations below and enforced by the Master Developer.

B) Street lights and site lights shall provide adequate lighting, while minimizing adverse impacts, such as glare and upward oriented glow. House side shields shall be provided where abutting a residential use. 'Dark Sky' protocols shall be integrated to the greatest extent possible.

11.2 PLACEMENT

A) Along all commercial or mixed use streets, parking areas, sidewalks, walkways, courtyards, community greens, and common open spaces, twelve to fourteen foot high decorative light posts shall be provided at regular intervals. Post shall be spaced at no greater than 60 feet on center on both sides of a commercial or main street and at all street intersections. Lighting on residential streets should be confined to the intersections and corners. Lighting standards shall be consistent throughout each district.

1) Lighting level along commercial streets shall be no less than one-half foot candle and shall be no greater than two foot candles.
2) Lighting level at an intersection of two residential streets (excluding alleys or access easements) shall be no less than one foot candle and shall be no greater than three foot candles.
3) Lighting level at an intersection of a commercial street and any other street (excluding alleys or access easements) shall be no less than one foot candle and shall be no greater than three foot candles.
4) Lighting level in parking lots shall be no less than one foot candle and shall be no greater than two foot candles.

B) In parking lots, post heights may be extended to a maximum of 18 feet.

11.3 TYPES

A) Use of metal halide or color corrected LED light sources are required. High pressure and sodium and non-color corrected mercury vapor light sources may be considered in special circumstances.

B) Porch light and yard post lighting are encouraged in residential areas. Where yard post lighting is used post and luminaires shall be of compatible styles.



12.1 INTENT

The following Standards address the number, location, size and types of allowable signs throughout the Oasis District. These signage standards take precedent over the Midland Signage Ordinance and shall be enforced by the Master Developer. Where this section is silent, the standards of the Midland Sign Ordinance, if any, shall apply.

12.2 TYPE AND PLACEMENT

12.2.1 SIGNS AND EXTERIORS
Signing should be designed to directly relate to the exterior design of the building. Signing should not cover important features or cross transitions between features. Signing should be at the first floor level, should not project above the cornice or facia line, and should be primarily oriented to the pedestrian with the exception of the commercial district. However, lettering on second story windows, to identify separate uses located there, is appropriate. Anchor tenants (10,000 sq. ft. or greater) may place signage to within two feet of highest point of facade.

12.2.2 PROJECTING SIGNS
Signs should generally be flush with the facade and not protrude more than eight (8) inches from the wall. Projecting signs may be considered when the sign does not conflict with the building's exterior design.

12.2.3 OTHER PERMITTED SIGNS
Under-canopy shingle type signs and signing painted on canopies or awnings are permitted. Symbolic three-dimensional signs, such as barber poles, are encouraged. Moving and rotating signs are not permitted.

12.2.4 FREESTANDING SIGNS
Freestanding signs are allowed to identify a district, or multiple-business complex. In a multiple business complex one permanent directory or freestanding master identification sign, not to exceed twenty-five (25) square feet per sign face, is allowed at each main entrance to a public street.

12.2.5 SHINGLE SIGN STANDARDS
Shingle sign, also known as blade or projecting signs, may be permitted to be placed on a building frontage only if all of the following Standards are met:

A) Context
The sign is historically accurate or appropriate for the building

B) Visibility
The sign does not impair the visibility of adjacent signs

C) Materials
The size, location and materials of the sign are compatible with the building and conform to the requirements of this section.

D) Height
The height of the sign does not extend above the cornice line of a one story building or the sill of a second floor window.

12.2.6 SIGN CONTENT
A permanent sign is limited to the name and graphic logo of the business, the type of service rendered, the principal brand names or classification of merchandise for sale, and street address. Street addresses are mandatory for each building. Brand names may occupy not more than twenty five percent (25%) of the allowable sign area, except for storefront window signs.

12.2.7 NEON SIGNS
Neon signs are permitted only when all of the following Standards are met:

A) Visibility
The sign does not impair the visibility of adjacent signs.

B) Materials
The sign, location and materials of the sign are compatible with the building and conform to the other requirements of this Section.

C) Associated Use
The sign is more appropriate than an otherwise illuminated sign because of its associated use (e.g. nightclub).

12.3 ALLOWABLE SIGN AREA

12.3.1 MAXIMUM SIGN AREA
A maximum area of one-half (1/2) square foot of signing may be permitted for each linear foot of a business on a primary frontage (facing a public street, public parking lot, or public space) not to exceed forty (40) square feet on any one frontage. A maximum of one-fourth (1/4) square foot of signing may be permitted for each linear foot of a business on a secondary frontage (facing an alley, private driveway, an adjacent building, private parking or service area) not to exceed twenty (20) square feet on any one frontage.

12.3.2 APPLICABILITY
The maximum area of signing noted above shall apply to all wall, window and projecting signs and signs painted on awnings. Further, shingle signs shall not exceed twenty (20) square feet per sign face and shall not project more than five (5) feet from the wall. Shingle signs located under canopies may be the width of the canopy.

12.3.3 FIRST FLOOR SIGNS
Each business with first floor frontage or direct sidewalk access may have a pedestrian-oriented sign attached below a canopy not exceeding five (5) square feet per sign face and with a minimum clearance of eight (8) feet above the sidewalk. Such a sign will not count as part of the maximum business sign allowance.

12.3.4 MULTIPLE TENANT SIGNS
Multiple business directories are intended to address situations where businesses have limited visibility from the adjacent street, and may be permitted when not exceeding two (2) square feet per tenant and twenty (20) square feet total per sign face. Such a sign will not count as part of the maximum business sign allowance.

12.4 MATERIALS

Signs should be painted and/or carved wood, wrought iron, cut out, non reflective metal lettering such as brass, or glass (including stained glass). Signs painted directly on plain surfaces, windows and canvas awnings are generally appropriate. Three dimensional metal "box" signs are not permitted. Decorative neon identification signs may be used as an accent or design feature, but shall not dominate the general appearance of the facade.

12.5 ILLUMINATION

12.5.1 INDIRECT ILLUMINATION
Illumination should generally be indirect such as that provided by "goose necked" light fixtures. In some instances, signs may be flood-lighted or may utilize exposed LED light bulbs.

12.5.2 ILLUMINATED SIGNS NOT PERMITTED
No interior-illuminated signs are permitted. Fluorescent, flashing, and intermittent illumination is not permitted.

12.5.3 ILLUMINATED SCHOOL SIGN
One exception will be allowed in the frontage type F5 to allow one internally lit school marque sign. The internally lit portion of the marque shall not exceed 40 square feet.

12.6 TEMPORARY SIGNS

12.6.1 STORE EVENTS
Temporary signs pertaining to special store events or sales lasting no more than thirty (30) days may be painted or affixed to display windows provided that their total area shall not exceed twenty-five percent (25%) of the window area.

12.6.2 TEMPORARY BANNERS
Banners or other promotional signs may be displayed for up to thirty (30) days. The same or similar signage shall not be replaced within thirty (30) days after removal.

12.7 NON-CONFORMING SIGNS

Non-conforming signs or sign structures shall be removed upon change in tenancy or ownership of the business identified by the sign. No change in copy and/or reuse of non-conforming sign or sign structure shall be permitted in order to identify a new business, product, tenant or occupant.

12.8 UNUSED SIGNS

12.8.1 UNUSED SIGNS
Any sign existing as of or after the effective date of these Standards, which no longer advertises a bona fide business conducted or a product available for purchase by the public, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or structure or land upon to do so.

12.8.2 SIGN REMOVAL BY CITY OR DEVELOPER
Upon failure to comply with such notice within the time specified in such order, the Developer is authorized to cause removal of such sign and any expense incident thereto shall be paid by the owner of the building or structure to which such sign is attached or, if the sign is not attached to a building, then such expense shall be paid by the owner of the sign.

12.9 ILLEGAL CONSTRUCTION

If the Developer finds that any sign has been constructed or erected, or is being maintained in violation of the provisions of this Section, they shall give written notice of such conditions to the permittee. In the event no valid permit exists, the owner will remove or alter the sign so as to comply with this section within thirty (30) days after such notice. Such signs may be removed or altered to comply at the expense of the permittee or the owner of the property upon which the sign is located.

12.10 STREET ADDRESS SIGNS

Building shall display a numerical address sign indicating the legal address in letters not less than four inches in height and clearly visible from the public street.

12.11 PROHIBITED SIGNS

All auto oriented pylon, pole mounted berm mounted, or off-premise identification signs are prohibited. Off-premise directional signs may be approved on a case-by-case basis by the Design Review Board or Town Architect.

PACKET 37.51 December 14, 2021

13.1 ADOPTION AND REVISION OF THE REGULATING PLAN

The Regulating Plan for the Oasis District shall be included in the ordinance zoning for the area as the Oasis District.

13.2 REVISION OF THE REGULATING PLAN

13.2.1 MINOR REVISIONS

The Director of Development Services, or their designee, may administratively approve minor revisions to the Regulating Plan if the Director determines that there are no adverse effects on areas that are part of a final plat nor to the overall intent of the Regulating Plan. The following shall be considered minor revisions:

A) The size of a District Area, including its building or structures, may be revised if the size is increased or decreased by not more than 5% and (a) the Director determines that the basic layout of the District remains the same and (b) the Regulating Plan functions as well as before the revision. Any changes shall be in accord with Section 4.0.

B) The location of a Frontage Type may be revised if the Director determines that the revised location is appropriate.

C) The location or size of an open space may be revised if the overall amount of open space does not decrease by more than ten percent, and the Director determines that the quality and functionality of the revised open space is the same or better.

D) A construction phasing plan for open space improvements may be revised to extend a deadline for completion by not more than six months after the adjacent streets are completed.

E) The locations of major utility facilities and easements may be revised if the Director determines the revised locations are more functional or appropriate.

F) The location of a civic site may be revised if the Director determines that (a)the revised location is appropriate, and (b) the transportation network, the infrastructure, and the overall land use mix are not adversely affected.

13.2.2 MAJOR REVISIONS

All revisions other than those described above are major revisions. Major revisions must be approved by the City Council through a rezoning of the property.

13.3 PRIORITY

Requirements of these standards supersede any inconsistent provisions of the City's Development Codes and Ordinances.

13.4 OTHER PERMITS REQUIRED

A) Building Permit Required
A building permit issued by the City is required for a structure within the District.

B) Construction Permit Required
A construction permit is required for development of more than 1,000 sq. ft. of site area if a building permit is not otherwise required.

C) Site Plan
A site plan must be submitted with the building or construction permit application. A building or construction permit may not be issued unless a site plan complies with these Regulations. A site plan must provide the following information, if applicable:

1. Locations and types of easements;

2. The locations of proposed utility connections;

3. Building location and gross building square footage;

4. Proposed use that complies with the Regulating Plan;

5. Locations, quantity, and dimensions of sidewalks, pedestrian ramps, driveways, parking areas, parking spaces, and off-street loading areas;

6. Information that shows compliance with accessibility requirements;

7. Landscaping, screening, and fencing;

8. Locations of protected trees and significant tree clusters;

9. An erosion and sedimentation control plan;

10. Lot size, setbacks, build-to lines, building height and building coverage;

11. Other information that may be required by the Town Architect or Design Review Board.

D) Architectural Standards
A building or construction permit may not be issued unless the Design Review Board or the Town Architect has certified that the proposed development complies with the architectural standards. This requirement applies to other than single family housing intended for sale.

13.5 PROPERTY OWNERS' ASSOCIATIONS

A) Conditions, Covenants, and Restrictions for all single family residential property within the Oasis District must be filed in the county real property records by the owner before a final subdivision plat may be approved, a lot sold, or a building permit issued.

B) Conditions, Covenants, and Restrictions must be approved by the Master Developer, and they must:

1. Create a Property Owners' Association (or Home Owners' Association) with mandatory membership for each property owner;

2. Establish Design Review Board(DRB) if no Town Architect is hired by the master developer.

3. Establish architectural standards that are in conformity with the requirements of these standards;

4. Collaborate with the Town Architect or DRB to review projects for compliance with the architectural standards and issue certificates of approval;

5. Provide for the ownership, development, management, and maintenance of private open space (except plazas owned by individual property owners), community parking facilities, community meeting halls, and other common areas;

6.Provide for the maintenance of the landscaping and trees within the rigth-of-way;

7. Require the collection of assessments from members in an amount sufficient to pay for its functions;

8. Be effective for a term of not less than 50 years;

9. Require that the Property Owners' Association (or Home Owners' Association) obtain the approval of the Director regarding the disposition and management of private open space, community parking facilities, community meeting halls, and other common areas before it may be dissolved; and

10. Require the Property Owners' Association (or Home Owners' Association) obtain the approval of the Director for amendments to the Conditions, Covenants, and Restrictions which relate to provisions required by this chapter.

13.6 ARCHITECTURAL STANDARDS

The Property Owners Association may establish separate Architectural Standards for non commercial buildings in the District. If created those standards shall accomplish the following:

A) Conditions, Covenants, and Restrictions shall establish architectural standards for the property within the Oasis District. The standards must comply with this section.

B) The architectural standards must achieve the following objectives:

1. Architectural compatibility between residential and commercial buildings;

2. Human scale design;

3. Integration of uses;

3. Encouragement of pedestrian activity;

5. Buildings that relate to and are oriented toward the street and surrounding buildings;

6. Residential scale buildings in Mixed Residential Areas;

7. Buildings that contain special architectural features to signify entrances to the Neighborhood Center Area and important street intersections; and

8. Neighborhood Center Area buildings that focus activity on the neighborhood square.

13.7 LIFE SAFETY CODES

A) Due to the proximity of commercial to residential buildings, voluntary sprinkler compliance should be considered for all commercial buildings and residential buildings over 500 sq. ft. in the district.

B) NFPA Standards for commercial buildings in excess of 500 sq. ft. shall apply.

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-21-0266

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Gary Bellomy		Phone (512) 694-8839 Email garyb@landdesignstudio.com	
Address 3307 Northlandf Drive, Suite 240	City Austin	State TX	Zip 78731

Property Owner Printed Name: Zekelman Property, LLC		Phone (734) 582-2650 Email brandon.ryckman@zekelman.com	
Address 100 West Big Beaver Road, Suite 390	City Troy	State MI	Zip 48084

Representative *(if different from Applicant or Property Owner)* Firm: Land Design Studio Printed Name: Gary Bellomy		Phone (512) 694-8839 Email garyb@landdesignstudio.com	
Address 3307 Nothrland Drive, Suite 240	City Austin	State Texas	Zip 78731

Street Address: N/A - Interstate 20 frontage road between La Mesa Rd and Fairgrounds Rd

Legal Description Section 1, Block 39, T-2-S T&P RR Co Survey, see attachment

Lot: N/A Block: 39 Subdivision: Carolcrest

Current Zoning: Manufactured Housing and Business Park

Proposed Zone: Planned Development *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To allow a mixed used project.

Present Use of Property: Vacant land

Proposed Use of Property: Planned Develepment based on attached Regulating Plan.

How would this zone change affect the public health, safety and welfare? Provide housing opportunities for a variety of income levels with adjacent neighborhood services. All plan elements are in a well connected, walkable form which promotes healthy living.

These project elements are consistent with many of the goals found in the current Comprehensive Plan.

Describe how conditions affecting the property have changed since present zoning designation: Present zoning is TH,Townhouse However the Future Land Use Map designates the tract as a Future Planning Area. The Planned Development designation being sought and the concepts it includes are well aligned with the vision put forth in the Tall City Tomorrow Plan.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland' ~$2,500.00
- Dimensioned Site Plan see Regulating Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: 9-10-21
Applicant (printed): Gary Bellomy	
Property Owner (signature):	Date:
Property Owner (printed) :	

Digitally signed by Brandon Ryckman
DN: C=US, E=brandon.ryckman@cpsolutions.com, O=Z-Modular, OU=Vice President - Field Services, CN=Brandon Ryckman
Date: 2021.09.13 08:35:06-04'00'

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared Gary Bellomy who, being by me duly sworn, upon oath says: That (s)he is authorized by Zekelman Property LLC, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 10th day of September, 2021, to certify which witness my hand and seal of office.

NOTARY PUBLIC STATE OF TEXAS
Marissa Colleen Peterson
MY COMMISSION EXPIRES
August 12, 2022
NOTARY ID: 12499900-1

NOTARY PUBLIC, TRAVIS COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☐ Dimensioned Site Plan
☑ Application Fee Check # 39346	☐ Plans in Digital Format (PDF/JPEG)
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

09 September, 2021

City of Midland- Planning Department
Attn: Cristina Odenborg Burns
300 N. Loraine
Midland, Texas 79702

To whom it may concern:

I/We, Gary Bellomy, authorize LCA to act as our agent for the platting/zoning purposes regarding our project **Tahoe Lakes Addition, Section 3**. 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: Gary Bellomy
Title: Applicant
Company: Land Design Studio

September 9, 2021
Date:

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Gary Bellomy, 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 Applicant for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of September, A.D., 2021.

Notary Public in and for the State of Texas

My Commission Expires: 08/12/2022

Marissa Colleen Peterson
MY COMMISSION EXPIRES
August 12, 2022
NOTARY ID: 12499900-1

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

METES & BOUNDS DESCRIPTION
OF A 57.55-ACRE TRACT
LOCATED IN SECTION 1, BLOCK 39, T-2-S
T&P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

BEING A 57.55-ACRE REMAINDER OF THAT CERTAIN 101.49-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2010-4195 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, IN SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT (Y=10,688,784.49' & X= 1,762,775.17') A 3/8" IRON ROD WITH CAP MARKED "LCA ODESSA TX" (CONTROL MONUMENT) FOUND AT THE NORTHEAST CORNER OF LOT 1 BLOCK 1 TAHOE LAKES ADDITION, AS RECORDED IN CABINET I, PAGE 190 OF THE MIDLAND COUNTY PLAT RECORDS AND ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF THE CURVED SOUTH RIGHT-OF-WAY LINE OF LATTA STREET AS DESCRIBED IN DOCUMENT NO. 2008-22815 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS HAVING A RADIAL BEARING OF NORTH 37°19'47" WEST;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 330.00 FEET, A DELTA ANGLE OF 33°32'10", AN ARC LENGTH OF 193.15 FEET, A CHORD LENGTH OF 190.41 FEET BEARING NORTH 35°54'06" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF TANGENCY;

THENCE NORTH 19°08'00" EAST WITH THE SOUTH RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 195.48 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF CURVATURE OF A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 330.00 FEET, A DELTA ANGLE OF 23°09'45", AN ARC LENGTH OF 133.41 FEET, A CHORD LENGTH OF 132.50 FEET BEARING NORTH 07°33'08" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET FOR THE POINT OF TANGENCY;

THENCE NORTH 04°01'57" WEST WITH THE EASTERN RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 24.19 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF CURVATURE OF A CURVE TO THE RIGHT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHEASTERLY DIRECTION, HAVING A RADIUS LENGTH OF 295.00 FEET, A DELTA ANGLE OF 23°10'30", AN ARC LENGTH OF 119.32 FEET, A CHORD LENGTH OF 118.51 FEET BEARING NORTH

07°33'31" EAST TO A ½" IRON ROD WITH PLASTIC CAP MARKED "LCA ODESSA TX" SET FOR THE POINT OF TANGENCY;

THENCE NORTH 19°04'24" EAST WITH THE EAST RIGHT-OF-WAY OF SAID LATTA STREET, A DISTANCE OF 36.38 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE WEST CORNER OF THAT CERTAIN 7.53-ACRE TRACT CURRENTLY IN THE NAME OF MIDLAND COUNTY ON THE EAST RIGHT-OF-WAY LINE OF SAID LATTA STREET, WHENCE A 3/8" IRON ROD (CONTROL MONUMENT) FOUND AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY OF SAID LATTA STREET AND THE SOUTHERN RIGHT-OF-WAY OF E. TAYLOR AVENUE BEARS NORTH 19°03'10" EAST, A DISTANCE OF 300.00 FEET;

THENCE SOUTH 71°05'09" EAST WITH THE SOUTHERN LINE OF SAID 7.53-ACRE TRACT, A DISTANCE OF 467.02 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" FOUND AT AN ELL CORNER OF THIS SURVEY AND THE NORTHERNMOST CORNER OF THAT CERTAIN 5.57-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2014-17375 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY TEXAS;

THENCE SOUTH 23°20'09" WEST WITH A WEST LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 48.93 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF DEFLECTION OF THIS SURVEY:

THENCE SOUTH 71°08'48" EAST WITH A SOUTH LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 152.80 FEET TO A FOUND 3/8" IRON ROD (CONTROL MONUMENT);

THENCE SOUTH 23°29'35" WEST WITH A WEST LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 300.87 FEET TO A 3/8" IRON ROD FOUND AT THE SOUTHERNMOST WEST CORNER OF SAID 5.57-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 71°49'04" EAST WITH THE SOUTHERN LINE OF SAID 5.57-ACRE TRACT, A DISTANCE OF 570.74 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE NORTH CORNER OF THAT CERTAIN 4.92-ACRE TRACT AS DESCRIBED IN DOCUMENT NO. 2010-12057 OF SAID OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY TEXAS AND A POINT OF DEFLECTION OF THIS SURVEY;

THENCE SOUTH 23°35'54" WEST WITH THE WESTERN LINE OF SAID 4.92-ACRE TRACT, A DISTANCE OF 363.93 FEET TO A ½" IRON ROD (CONTROL MONUMENT) FOUND AT THE WEST CORNER OF SAID 4.92-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 72°30'41" EAST, WITH THE SOUTH LINE OF SAID 4.92-ACRE TRACT, A DISTANCE OF 627.03 FEET TO A ½" IRON ROD FOUND AT THE SOUTH CORNER OF SAID 4.92-ACRE TRACT, THE NORTH CORNER OF THAT CERTAIN 2.15-ACRE TRACT AS DESCRIBED IN VOLUME 1817, PAGE 300 OF THE DEED RECORDS OF MIDLAND COUNTY TEXAS AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 19°04'38" WEST WITH THE WESTERN LINE OF SAID 2.15-ACRE TRACT, A DISTANCE OF 269.33 FEET TO A ½" IRON ROD FOUND AT THE WEST CORNER OF SAID 2.15-ACRE TRACT AND AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 73°48'45" EAST WITH THE SOUTHERN LINE OF SAID 2.15-ACRE TRACT, A DISTANCE OF 157.05 FEET TO A ½" IRON ROD FOUND AT THE

NORTHWEST CORNER OF THAT CERTAIN 1.01-ACRE TRACT AS DESCRIBED IN SAID VOLUME 1817 PAGE 300 OF SAID MIDLAND COUNTY DEED RECORDS FOR AN ELL CORNER OF THIS SURVEY;

THENCE SOUTH 08°35'01" EAST WITH THE WESTERN LINE OF SAID 1.01-ACRE TRACT, A DISTANCE OF 293.86 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHWEST CORNER OF SAID 1.01-ACRE TRACT ON THE NORTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 20 FOR THE EASTERNMOST SOUTHEAST CORNER OF THIS SURVEY;

THENCE SOUTH 70°34'45" WEST WITH THE NORTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 899.28 FEET TO A TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) CONCRETE MONUMENT WITH A BRASS DISK (CONTROL MONUMENT) FOR THE POINT OF CURVATURE OF A CURVE TO THE RIGHT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A SOUTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 11,309.20 FEET, A DELTA ANGLE OF 04°59'56", AN ARC LENGTH OF 986.68 FEET, A CHORD LENGTH OF 986.37 FEET BEARING SOUTH 73°03'27" WEST TO A TXDOT CONCRETE MONUMENT WITH BRASS DISK AT THE POINT OF TANGENCY;

THENCE SOUTH 75°34'27" WEST WITH THE NORTH RIGHT-OF-WAY OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 192.73 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHEAST CORNER OF THAT CERTAIN 3.30-ACRE TRACT AS DESCRIBED IN VOLUME 1198 PAGE 204 OF SAID MIDLAND COUNTY DEED RECORDS FOR THE WESTERNMOST SOUTHWEST CORNER OF THIS SURVEY;

THENCE NORTH 14°32'03" WEST WITH THE EAST LINE OF SAID 3.30-ACRE TRACT, A DISTANCE OF 242.05 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE LEFT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 18.61 FEET, A DELTA ANGLE OF 89°59'12", AN ARC LENGTH OF 29.23 FEET, A CHORD LENGTH OF 26.32 FEET BEARING NORTH 59°31'38" WEST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" (CONTROL MONUMENT) FOUND AT THE POINT OF TANGENCY;

THENCE NORTH 75°41'32" EAST, A DISTANCE OF 349.07 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE POINT OF DEFLECTION OF THIS TRACT;

THENCE NORTH 14°33'23" WEST, A DISTANCE OF 173.46 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX SET AT THE POINT OF DEFLECTION OF THIS TRACT;

THENCE SOUTH 75°37'36" WEST, A DISTANCE OF 45.07 FEET A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIAL BEARING OF NORTH 83°54'09" EAST;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 530.00 FEET, A DELTA ANGLE OF 27°47'11", AN ARC

LENGTH OF 257.03 FEET, A CHORD LENGTH OF 254.52 FEET BEARING NORTH 07°47'45" EAST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE END OF THIS CURVE;

THENCE NORTH 21°41'20" EAST, A DISTANCE OF 522.76 FEET TO 3/8" IRON ROD SET AT THE POINT OF CURVATURE OF A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION, HAVING A RADIUS LENGTH OF 556.30 FEET, A DELTA ANGLE OF 44°23'54", AN ARC LENGTH OF 431.07 FEET, A CHORD LENGTH OF 420.37 FEET BEARING NORTH 00°30'36" WEST TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE POINT OF TANGENCY;

THENCE NORTH 22°42'31" WEST, DISTANCE OF 86.39 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT AN ELL CORNER OF THIS TRACT;

THENCE SOUTH 32°04'31" WEST, DISTANCE OF 61.92 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT AN ELL CORNER OF THIS TRACT;

THENCE NORTH 42°34'20" WEST, DISTANCE OF 168.30 FEET TO THE POINT OF THE BEGINNING CONTAINING 57.55 SURFACE ACRES.

BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "LAM 20" (Y=10,686,841.66' AND X=1,761,908.42'', ELEVATION = 2775.01 NAVD 29) WITH A THETA ANGLE OF -00°53'17" WITH A COMBINED GRID FACTOR OF 0.999893673 AS PUBLISHED IN US SURVEY FEET.

THIS DOCUMENT WAS PREPARED UNDER 22 TAC 663.21, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTEREST IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTEREST IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

LCA

JOHN F. LANDGRAF, RPLS 2410
27 May 2021

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA PROJECT NO. 2021-001

Section 3.1
The Regulating Plan

LEGEND

FRONTAGE TYPES

F1	(Section 4.1) Type F1:	Main Street Commercial
F2	(Section 4.2) Type F2:	Live/Work
F3	(Section 4.3) Type F3:	Townhouse
F4	(Section 4.4) Type F4:	Side Yard House
F5	(Section 4.5) Type F5:	Education / Civic

STREET TYPES

MS-78	Main Street 78' R.O.W.
BVD-VAR	Boulevard Variable R.O.W.
CS-65	Commercial Street 65' R.O.W.
CS-60	Commercial Street 60' R.O.W.
US-50	Urban Street 50' R.O.W.
US-45	Urban Street 45' R.O.W.
US-40	Urban Street 40' R.O.W.
CL-20	Commercial Alley 20' Access Easement
AL-20	Residential Alley 20' Access Easement

PUBLIC OPEN SPACE

PL	Plaza
SQ	Square
GR	Green
GB	Greenbelt
P	Park



PACKET
37.60
December 14, 2021

Section 4.0

Summary of Frontage Types

Complete detailed requirements of Frontage Types can be found in Sections 4.1 through 4.5

FRONTAGES	F1 (See Section F1) Main Street Commercial	F2 (See Section F2) Live/Work	F3 (See Section F3) Townhouse	F4 (See Section F4) Sideyard House	F5 (See Section F5) Education
PERMITTED USES	Retail Sales and Service (20,000 SF max per tenant) Office/Research and Development Lodging/Hotel Multi-Family Residential Single Family Attached Residential Day Care	Limited Retail (≤3,000 SF) Limited Office (≤3,000 SF) Lodging/Hotel (≤10 rooms) Multi-Family Residential (≤10 dwelling units Single Family Attached Residential	Single Family Attached Residential	Single Family Detached Residential Ancillary unit	Public or private School
CONDITIONAL USES	Manufacturing (10,000 SF max. per tenant) Congregate Care (100 room max)	None	Home Occupation	Home Occupation	None
PROHIBITED USES	Vehicle Sales Auto Service & Repair Auto Parts Sales Gas Stations Auto Body Painting and Repair Drive-Through Commercial Storage &Warehouse Single Family Detached Residential Sexually-Oriented Businesses	Same as F1 - Main Street	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing
LOT WIDTH	30' min. 240' max (30' increments)	20' min. 40' max	20' min. 40' max	35' min. 60' max	90' min. no max.
LOT DEPTH	No Minimum Maximum limited by block size	No Minimum Maximum limited by block size	80' min. 125' max.	80' min. 150' max.	50' min. no max.
BUILDING HEIGHT	2 stories or 25' minimum 5 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 2.5 stories maximum	2 stories minimum 5 stories maximum
SIDE SETBACK	None	None	None	2.5' on one side & 10' on the opposite side	5'
BUILD-TO LINE	0' to 10' from property line (on designated primary frontage)	0' to 10' from property line (on designated primary frontage)	10' from property line (on designated primary frontage)	20' from property line (on designated primary frontage)	90' from property line (on designated primary frontage)
REAR SETBACK	None	None	5' from Alley	5' from Alley	N/A
PARKING RATIOS					
Retail	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Office	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Lodging/Hotel	1 space per Room	1 space per Room	N/A	N/A	N/A
Residential	1.5 spaces per Unit	1.5 spaces per Unit	2 spaces per Primary Unit plus 1 space per ancillary unit	2 spaces per Primary Unit plus 1 space per ancillary unit	N/A
Congregate Care	1.0 spaces per every 2 beds	NA	NA	NA	N/A
Manufacturing	1.0 spaces per 600 GSF	N/A	N/A	N/A	N/A
Education	1.0 spaces per 575 GSF	N/A	N/A	N/A	1.0 spaces per 575 GSF

Table 4.01

PACKET
37.61
December 14, 2021

OASIS

A NEW VISION FOR DEVELOPMENT IN MIDLAND



REGULATING PLAN AND DEVELOPMENT STANDARDS

07/27/2021 (R)

PACKET 37.63 December 14, 2021

Oasis
Regulating Plan and Development Standards
Midland, Texas

CITY COUNCIL

Patrick Payton • Mayor
Scott Dufford • Council Member
Spencer Robnett• Council Member
John Norman • Council Member
Jack Ladd• Council Member
Lori Blong• Council Member
Michael Trost• Council Member

PLANNING AND ZONING COMMISSION

Cristina Odenborg Burns • Planning Manager
Chuck Harrington • Development Services
Reggie Lawrence • Commission Chair
Lucy Sisniega • Commission Vice Chair
Zachary Deck. • Commission Member
Chase Gardaphe • Commission Member
Stacy Jo Grosse • Commission Member
Diane Williams • Commission Member
Karen Bryant • Commission Member
Emily Holeva • Alternates
Adrian Carrasco • Alternates

OASIS PLANNING TEAM
Land Design Studio • Urban Planning & Design
LCA • Civil Engineers

PLANNED DEVELOPMENT CREATION

An action creating the PLANNED DEVELOPMENT district number _____ for Oasis.

This Regulating Plan is approved by the Planning and Zoning Commission on _____ ___, 2021 and takes effect on _____ ___, 2021

Passed and Approved:

_____, 2021 _____ _____, Chairman

Attest:_____ _____, Recording Secretary

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3A.67
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The Oasis Plan

Oasis was conceived as a new mixed-use, mixed-income neighborhood for the City of Midland, offering local retail, daily services, and residential development all in close proximity to one another. The goal is to offer a quality development in a previously undeveloped area near the core of the city.

While this form of development is traditional from a historic standpoint, it no longer represents conventional suburban development patterns. Traditional Neighborhood Development principles form the backbone for the design decisions that have been made in creating the Oasis plan. Many of these principles are rooted in time-tested methodologies and practices, but vary from current development models in most cities around the country. Consequently, the Oasis team has crafted a Regulating Plan and Development Standards in order to assist the City of Midland in administration of the development and allow the Master Developer to utilize a new form of development regulation in the build-out of Oasis.

The Regulating Plan and Development Standards streamlines the entitlement and site planning process while outlining the desired form of development in greater detail than single purpose zoning regulations.

PRINCIPLES OF TRADITIONAL NEIGHBORHOOD DEVELOPMENT (TND)

These are the principles that have been integrated into the Oasis plan. Each principle is followed by the reason or condition that has caused us to pursue this form of development.

1. Cluster retail and basic services together along a single street, without expansive parking lots between them.

This allows people to 'park once' and walk from store to store, reducing vehicle-miles traveled and the congestion often associated with new suburban retail locations.

2. Locate the parking behind the building, shading the parking and providing broad sidewalks in front of the stores, shaded by street trees.

Shaded parking and pedestrian-oriented sidewalks greatly enhances the experience of coming and going from that retail space. Trees have consistently been shown to increase land values, even if only used to shade or screen parking.

3. Integrate residential in close proximity to retail to create a more walkable, sustainable, and usable neighborhood.

If people can walk or bike to work or shopping locations, a second household vehicle may become optional. This flexibility is also enhanced by alternative transportation options. In communities around Texas and around the country, neighborhoods offering this degree of flexibility are consistently becoming more desirable than neighborhoods that isolate residential from commercial uses.

4. Buildings are required to be built adjacent to the edge of the sidewalk, clearly defining a public street space known as 'the public realm'. Parking is predominantly located in the back of buildings, improving the visual connection of buildings to the street. Parking is connected to the front sidewalk by pedestrian passages between buildings.

Placing commercial space directly on the sidewalk improves the experience of walking along the sidewalk and improves the retailing performance by a continous pedestrian activity zone.

5. Provide moderately dense housing alternatives for people less interested in, or not needing a large house and yard.

Conventional suburban housing is often designed for families with two parents and kids, assuming they are looking for a large house and yard. This demographic now represents a much smaller part of the market than it used to, and increasingly, buyers are looking for smaller homes with less maintenance. The townhouse and cottage neighborhoods included in Oasis are designed to offer a variety of homes catering to a variety of ages and income levels.



Above is an artist's rendering of the desired look and feel of a commercial/mixed use street in Oasis - retail shop fronts are pulled up to the shaded sidewalk, parking is provided along the street and behind the buildings. Sidewalks are generous and street widths are narrower than usual. All streets are designed to accommodate pedestrians and cyclists as well as low speed auto traffic.

PACKET



Oasis' Main Street encourages development of retail frontages and public spaces. This artist's rendering illustrates the possibility of a public open space anchoring one side of the street. Evening entertainment and dining within Oasis would add to the quality of the neighborhood by offering walkable destinations other than just for shopping.



The plan includes a location for a K-12 public charter school. Additionally, Oasis has several acres of public open space of various sizes located throughout the community.

December 14, 2021

PACKET 3.C.9

Section 2.0
How to Use These Standards

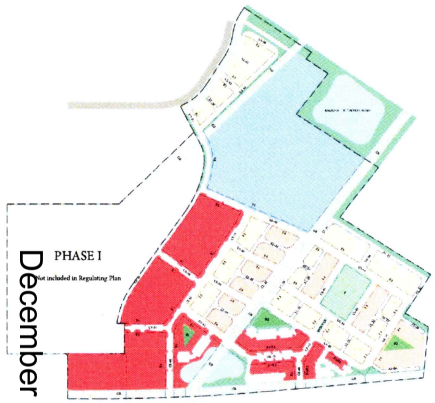
The intent of the Development Standards is to create a clear and predictable system of mandatory design standards that become enabling tools to create a more varied and inherently richer form of community. This form of community embraces a diversity of uses, people, and buildings. The standards are prescriptive, that is, they delineate the desired result and enable its success. The standards are graphic by nature as drawings can more clearly communicate what is prescribed under, or enabled by the standards. The standards are organized into four principle sections, The Regulating Plan, The Frontage Types, The Street Types and Other Standards. Used in concert, these four components form a "Graphical User Interface" utilized by the public and private sectors to expedite the permitting and development process.

DEVELOPMENT PROCEDURE

Component developments in the various Frontage Type Districts will have the incentive of speed to delivery in that the first two steps in the development process, Zoning and Preliminary Plat, are approved by the adoption of this Regulating Plan. Final plats will follow the same procedure as other projects, but will be aided by being components of the Regulating Plan. Building permits and approval of construction plans for infrastructure will follow the review and approval procedures currently in place.

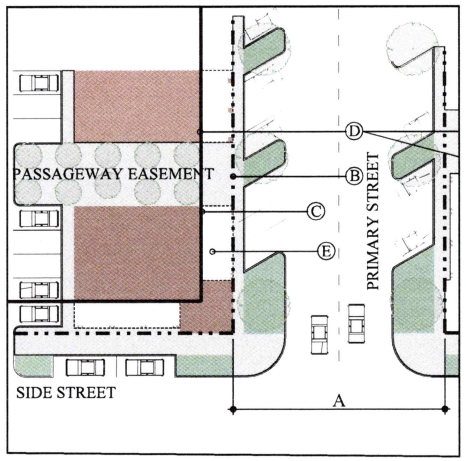
THE REGULATING PLAN

The Regulating Plan lays out the street grid and precisely marks the various urban design regulations within the Standards which are used to produce the community design or town plan. The Regulating Plan designates where and how the Frontage Types are appropriately combined with the various Street Types. The Regulating Plan also designates sites to be set-aside for public open spaces and special sites reserved for civic buildings (such as town halls, schools, and churches).



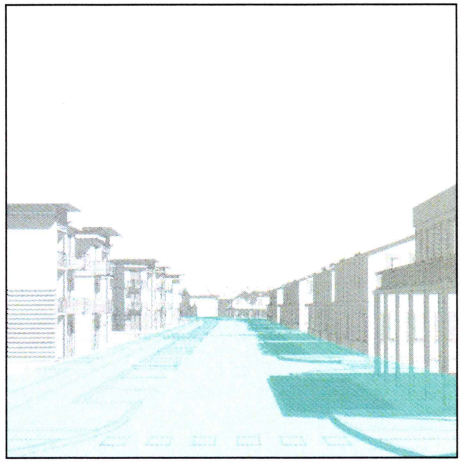
THE FRONTAGE TYPES

The Frontage types take the place of typical zoning categories. Each Frontage type defines the required placement of buildings (build-to-line), the minimum and maximum height, parking standards, architectural standards, and allowable uses for the property. By using a Frontage type instead of traditional zoning, the standards require that buildings meet the sidewalk in a particular way, ensuring the quality of the pedestrian experience.



THE STREET TYPES

The Street Types set out, according to the Regulating Plan, the physical parameters of each street including right-of-way and pavement width, design speed, parking, placement of street trees, etc. The Street Type combined with the Frontage Type establishes the all-important public realm. The public realm is the space defined by opposing building fronts which contains the sidewalks, streets, and open spaces.



OTHER STANDARDS

Other Standards including Open Space, Landscape, Drainage and Signage augment the Frontage and Street Types by filling in important details. These details serve to define the quality of the community beyond what type of building should be built. They set out and ensure what the quality of the public realm will be.



December 14, 2021

PACKET

THE ILLUSTRATIVE PLAN

This plan for Oasis represents one potential build-out option and is not intended to replace individual site plans. Streets, block patterns, and land uses shown on this plan are defined and enabled by the Regulating Plan on the following pages.



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Section 3.0
Definitions

PACKET
3.1
December 2017

For the purposes of these Development Standards, the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this section:

Accessory Dwelling Units
A secondary living space which shares ownership and utility connections, and which is on-site with a primary living space and that may be contained within the same structure as is the primary living space, or may be contained in a separate structure.

Appurtenances: Spires, belfries, cupolas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

Arcade: a Private Frontage conventional for Retail use wherein the Facade is a colonnade supporting habitable space that overhangs the Sidewalk, while the Facade at Sidewalk level remains at the Build to Line.

Avenue (AV): a Thoroughfare of high vehicular capacity and low to moderate speed, acting as a short distance connector between urban centers, and usually equipped with a landscaped median.

Bed and Breakfast: An owner-occupied Lodging type offering 1 to 5 bedrooms, permitted to serve breakfast in the mornings to guests.

Bicycle Lane (BL): a dedicated lane for cycling within a moderate-speed vehicular Thoroughfare, demarcated by striping or other markings.

Block: the aggregate of private Lots, Passages, Rear Alleys and Rear Lanes, circumscribed by Thoroughfares.

Boulevard (BV): a Thoroughfare designed for high vehicular capacity and moderate speed, traversing an Urbanized area. Boulevards are often equipped with Slip Roads buffering Sidewalks and buildings.

Civic: the term defining not-for-profit organizations dedicated to arts, culture, education, recreation, government, transit, and/or municipal parking.

Build-to Line (BTL): The line within a property defining the maximum horizontal distance between a building and the adjacent street right of way line.

City: refers to the City of Midland, Texas

Civic Building: a building operated by not-for-profit organizations dedicated to arts, culture, education, economic development, recreation, religion, government, transit, and municipal parking, or for use approved by Oasis.

Civic Uses: The use of a parcel of land for one or more of the following purposes: park and recreation services, cultural services, religious assembly use, safety and medical services, or transit stops.

Commercial: the term collectively defining workplace, Office, Retail, Service, Sales, Display and Lodging Functions.

Diameter at breast height (DBH): Standard method, in forestry terminology, of expressing the diameter of the trunk of a tree at approximately four feet above grade.

Design Speed: is the velocity at which a Thoroughfare tends to be driven without the constraints of signage or enforcement. There are four ranges of speed: Very Low: (below 20 MPH); Low (20-25 MPH); Moderate: (25-35 MPH); High: (above 35 MPH). Lane width is determined by desired Design Speed. Design Speed is related to but separate from the posted Speed Limit.

Developer (Master Developer): Oasis Development Corporation, a Texas Limited Liability Company, or assigns; serves as the owner and development entity for the Oasis project.

Director: The Director of Planning for the City of Midland.

District: An area of land developed with similar, distinguishing characteristics or uses as defined by Frontage Type.

Driveway: a vehicular lane within a Lot, often leading to a garage.

Effective Turning Radius: the measurement of the inside Turning Radius taking parked cars into account.

Elevation: an exterior wall of a building not along a Frontage Line. See: Facade.

Encroach: to break the plane of a vertical or horizontal regulatory limit with a structural element, so that it extends into a Setback, into the Public Frontage, or above a height limit.

Encroachment: any structural element that breaks the plane of a vertical or horizontal regulatory limit, extending into a Setback, into the Public Frontage, or above a height limit.

Facade: the exterior wall of a building that is set along a Frontage Line. See Elevation.

Forecourt: a frontage wherein a portion of the facade is at the build-to line while a significant portion is setback allowing suitable space for a garden, terrace or entry courtyard.

Frontage: The area between a building Facade and the vehicular lanes, inclusive of its built and planted components. Frontage is divided into Private Frontage and Public Frontage.

Frontage Line: a Lot line bordering a Public Frontage,ie the R.O.W. line. Facades facing Frontage Lines define the public realm and are therefore more regulated than the Elevations facing other Lot Lines.

Green: a Civic Space type for unstructured recreation, spatially defined by landscaping rather than building Frontages and having at least one boundary fronting on a public right-of-way.

Half-Story: the portion of a buildings habitable, conditioned space such as an attic or basement with windows.

Home Occupation: non-Retail Commercial enterprises. The work quarters should be invisible from the Frontage, located either within the house or in an Outbuilding.

Live-Work (or Work-Live): a Mixed Use unit consisting of a Commercial and Residential Functions. The Commercial and/or Residential Function may be anywhere in the unit. It may to be occupied by a business operator who lives in the same structure that contains the Commercial activity or industry or it may be leased.

Lodging: Premises available for daily and weekly renting of bedrooms.

Lot Line: the boundary that legally and geometrically demarcates a Lot.

Lot Width: the length along the Principal Frontage Line of a Lot.

Oasis: Oasis Development Corporation, a Texas Limited Liability Company, or assigns; serves as the owner and development entity for the Oasis project.

Off-Street Parking: Vehicular parking outside the street right-of-way that have adequate drives, aisles, and turning and maneuvering areas for access and usability.

Office: uses associated with buildings occupied for the transaction of business, excluding retail and manufacturing.

On-Street Parking: Vehicular parking contained on the street pavement (public and private streets) located outside the primary travel way, which spaces shall be designated and located parallel or at an angle to the street centerline.

Open Space: A parcel or parcels of land or an area of water, or a combination of land and water, which may include floodplain and wetland areas, within a development area and intended for the use and enjoyment of residents of the development area and, where designated, the community at large, which may be landscaped and improved.

Park: a Public Space type that is available for rest and recreation, may be privately developed and maintained but publicly accessible and having at least one boundary fronting on a public right-of-way.

Planned Development (PD): a development in which the applicable code restrictions, other density requirements, may be modified and/or applied to the development as a whole rather than to each individual lot.

Plaza: a Civic Space type designed for Civic purposes and Commercial activities in the more urban Transect Zones, generally paved and spatially defined by building Frontages and having at least one boundary fronting on a public right-of-way.

Primary Street: . The primary street will be determined based on the following criteria:
1. The street with the highest street classification;
2. The street abutting the longest face of the block;
3. The street generally parallel to an alley within the block.

Principal Building: the main building on a Lot, usually located toward the Frontage.

Regulating Plan: a Zoning Map or set of maps that shows the Use Zones, Civic Zones, Special Districts if any, and Special Requirements if any, of areas subject to, or potentially subject to, regulation by the Development Standards.

Retail: uses for commercial enterprises established for the sale of goods and services.

Residential: uses associated with buildings occupied for the purpose of long term human habitation, excluding short term lodging.

Shared Parking Factor: an accounting for parking spaces that are available to more than one Function.

Shopfront: a Private Frontage conventional for Retail use, with substantial glazing and an awning, wherein the Facade is aligned close to the Frontage Line with the building entrance at Sidewalk grade.

Side Yard Lot: A Lot created for the purpose of a dwelling to be constructed along or near an interior side Lot line with a yard created on the opposite side of the Lot.

Sideyard Building: a building that occupies one side of the Lot with a Setback for a yard on the other side. This type can be a Single or Duplex depending on whether it abuts the neighboring house.

Square: a Civic Space type designed for unstructured recreation and Civic purposes, spatially defined by building Frontages and consisting of Paths, lawns and trees, formally disposed and having at least one boundary fronting on a public right-of-way.

Story: a habitable level within a building, excluding an Attic or raised basement and not exceeding 15 feet in height.

Town Architect/Design Review Board: A licensed Architect or designated committee, contracted by Oasis, with the responsibility of reviewing development concepts, finished construction drawings or completed construction for aesthetic compliance with the overall concept of the Oasis project.

Section 3.1
The Regulating Plan

LEGEND

FRONTAGE TYPES

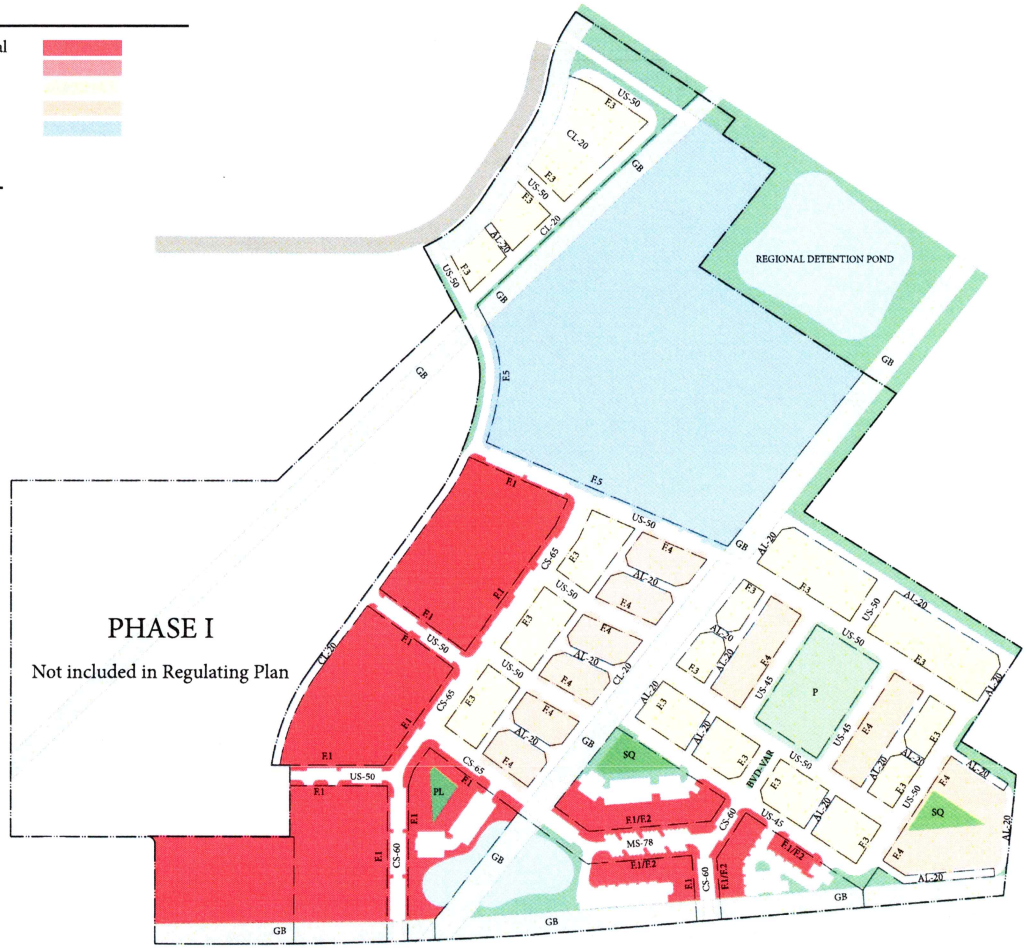
F1	(Section 4.1) Type F1:	Main Street Commercial
F2	(Section 4.2) Type F2:	Live/Work
F3	(Section 4.3) Type F3:	Townhouse
F4	(Section 4.4) Type F4:	Side Yard House
F5	(Section 4.5) Type F5:	Education / Civic

STREET TYPES

MS-78	Main Street 78' R.O.W.
BVD-VAR	Boulevard Variable R.O.W.
CS-65	Commercial Street 65' R.O.W.
CS-60	Commercial Street 60' R.O.W.
US-50	Urban Street 50' R.O.W.
US-45	Urban Street 45' R.O.W.
US-40	Urban Street 40' R.O.W.
CL-20	Commercial Alley 20' Access Easement
AL-20	Residential Alley 20' Access Easement

PUBLIC OPEN SPACE

PL	Plaza
SQ	Square
GR	Green
GB	Greenbelt
P	Park



NORTH

300' 600' 900'

Summary of Frontage Types

PACKET

HOW DOES A FRONTAGE TYPE CODE WORK?

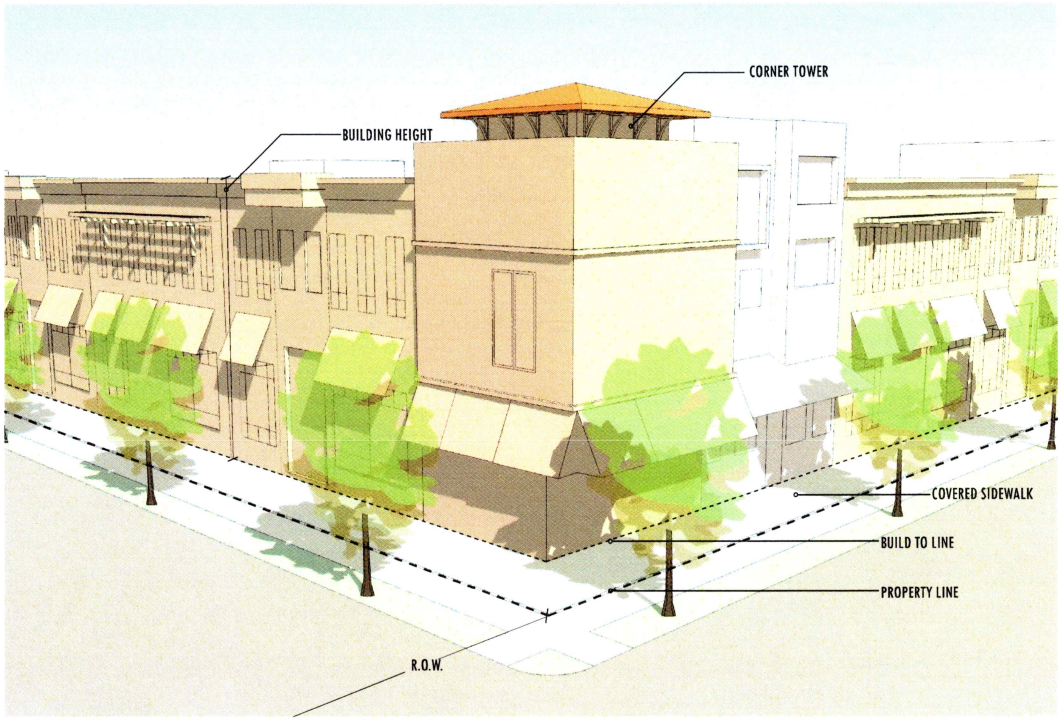
The Oasis Regulating Plan is a Frontage Type code; this means that land uses, height restrictions, parking requirements, etc. are defined by street frontage, rather than by zoning of a particular parcel. In most cases, a parcel will have only one frontage designation; however, unlike traditional zoning, the Frontage Type code prescribes the location of buildings in a way that forms a quality public realm between buildings.

Another unique element of this Frontage Type code is that density is limited primarily by parking requirements. There is no mandated mix of uses, nor compatibility restrictions; instead, frontage types have been assigned in a way that forms a cohesive neighborhood with market flexibility as the project is built out.

Each Frontage Type has a text description and a site plan diagram to help illustrate the intended regulation. The summary Table 4.01, gives a snapshot of the five frontage types designated within the Oasis Regulating Plan.

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December 14, 2021



Summary of Frontage Types

Complete detailed requirements of Frontage Types can be found in Sections 4.1 through 4.5

FRONTAGES	F1 (See Section F1) Main Street Commercial	F2 (See Section F2) Live/Work	F3 (See Section F3) Townhouse	F4 (See Section F4) Sideyard House	F5 (See Section F5) Education
PERMITTED USES	Retail Sales and Service (20,000 SF max per tenant) Office/Research and Development Lodging/Hotel Multi-Family Residential Single Family Attached Residential Day Care	Limited Retail (≤3,000 SF) Limited Office (≤3,000 SF) Lodging/Hotel (≤10 rooms) Multi-Family Residential (≤10 dwelling units Single Family Attached Residential	Single Family Attached Residential	Single Family Detached Residential Ancillary unit	Public or private School
CONDITIONAL USES	Manufacturing (10,000 SF max. per tenant) Congregate Care (100 room max)	None	Home Occupation	Home Occupation	None
PROHIBITED USES	Vehicle Sales Auto Service & Repair Auto Parts Sales Gas Stations Auto Body Painting and Repair Drive-Through Commercial Storage &Warehouse Single Family Detached Residential Sexually-Oriented Businesses	Same as F1 - Main Street	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing	Same as F1 - Main Street Plus: Retail Office Manufacturing
LOT WIDTH	30' min. 240' max (30' increments)	20' min. 40' max	20' min. 40' max	35' min. 60' max	90' min. no max.
LOT DEPTH	No Minimum Maximum limited by block size	No Minimum Maximum limited by block size	80' min. 125' max.	80' min. 150' max.	50' min. no max.
BUILDING HEIGHT	2 stories or 25' minimum 5 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 3 stories maximum	2 stories minimum 2.5 stories maximum	2 stories minimum 5 stories maximum
SIDE SETBACK	None	None	None	2.5' on one side & 10' on the opposite side	5'
BUILD-TO LINE	0' to 10' from property line (on designated primary frontage)	0' to 10' from property line (on designated primary frontage)	10' from property line (on designated primary frontage)	20' from property line (on designated primary frontage)	90' from property line (on designated primary frontage)
REAR SETBACK	None	None	5' from Alley	5' from Alley	N/A
PARKING RATIOS					
Retail	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Office	4 spaces per 1000 GSF	4 spaces per 1000 GSF	N/A	N/A	N/A
Lodging/Hotel	1 space per Room	1 space per Room	N/A	N/A	N/A
Residential	1.5 spaces per Unit	1.5 spaces per Unit	2 spaces per Primary Unit plus 1 space per ancillary unit	2 spaces per Primary Unit plus 1 space per ancillary unit	N/A
Congregate Care	1.0 spaces per every 2 beds	NA	NA	NA	N/A
Manufacturing	1.0 spaces per 600 GSF	N/A	N/A	N/A	N/A
Education	1.0 spaces per 400 GSF	N/A	N/A	N/A	1.0 spaces per 400 GSF

Table 4.01

PACKET 37.74 December 14, 2021

Section 4.1

Frontage Type F1 : Main Street Commercial

PACKET - 5/15/2018 - Section 4.1

4.1.1 DEVELOPMENT REGULATIONS

4.1.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.
2) If a forecourt is utilized it may occupy up to 50% of the frontage

B) Rear and side setbacks:
Not required

C) Encroachment:
Arcades and corner towers with occupied or unoccupied space may encroach beyond the Build-to Line to the Property Line. Arcades and corner towers shall encroach a maximum of 10'. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to line.

D) Pedestrian Passageways:
If parking is provided behind a building, pedestrian passageway must be provided at the ground level providing access to the parking area from the from the Right-of-Way. The passageway shall be a minimum 15' in width and one full floor in height. The passageway may be covered by additional occupied floors or a roof structure.
1. When pedestrian passageways are required, one must be provided for every 150' of frontage.

E) Covered sidewalks:
Covered sidewalks shall be constructed along a minimum of 80% of the primary building facade. Covered sidewalks may be provided as arcades or shop-fronts (fig.4.1A).
1) Covered sidewalks and associated structures may encroach beyond the build-to-line up to the property line. Occupiable space may be constructed above the covered sidewalk and may also encroach beyond the build-to-line up to the property line.
2) Building facades with a covered sidewalk may be constructed a maximum of 3' behind the build-to-line.
3) Arcades shall be constructed to provide a minimum of 8' clear walkway between vertical supports and building facade.
4) Shop-fronts (fig.4.1A) shall provide a minimum of 8' of continuous covered walkway width.
5) If the building does not occupy the entire frontage the sidewalk must still occupy 100% of the frontage.

F) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas Accessibility Standards.

G) Minimum and Maximum Wall Height:
The maximum building height shall be five stories. Buildings shall be a minimum of two stories or 25' in height at the primary building facade.

4.1.1.2 PARKING

A) Parking spaces shall be 9' width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to satisfy minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may replace conventional parking requirements outlined in Use Standards below. Minimum parking requirements may be reduced by 15% percent if shared parking lots serve more than a single use (e.g. Restaurants and Office) long term shared parking agreement shall apply.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking Garages
Structured parking may be provided for optimal land use efficiency. Parking structure shall meet architectural standards.

4.1.2 USE STANDARDS

4.1.2.1 RETAIL

A) Defined Retail Use:
Retail uses include commercial enterprises established for the sales of goods and services including shops, entertainment establishments, banking, restaurants, and hotel lobbies, eateries and day care facilities.
1) No single retail space shall exceed 20,000 SF per floor.
2) Retail uses shall provide parking at 4 spaces per 1,000 square feet.

4.1.2.2 OFFICE

A) Office Uses Defined:
Office uses are those associated with buildings occupied for the transaction of business, excluding retail and manufacturing.
1) Office uses shall provide parking at 4 spaces per 1,000 square feet (no maximum square footage)

4.1.2.3 LODGING

A) Lodging Uses Defined:
Lodging uses are those associated with buildings occupied for short-term (not to exceed three consecutive weeks) human habitation.
1) Lodging uses shall provide 1 parking space per lodging unit. (no maximum number of units)

4.1.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 1.5 spaces per dwelling unit. (no maximum density)
2)Multifamily residential uses may provide detached garages for up to 10% of total dwelling units and may include storage outside dwelling unit not to exceed a rate of 2 storage units per garage.

4.1.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Design Review Board or Town Architect. The following may be acceptable conditional uses in areas designated F1:
1) Limited Manufacturing:
No single manufacturing occupied building space shall exceed 10,000 SF. All rear service yards and visible materials must be screened by a solid masonry wall at least 6 ft. tall. The parking requirement shall be negotiated according to the specific manufacturing activity. Screens shall match adjacent architecture.
2) Congregate Care:
Longterm residential facilities offering skilled nursing services are allowed, not to exceed 100 beds. Related single family attached residences for individuals utilizing services of the congregate care facility are allowed so long as they are owned and managed by the congregate care provider.

4.1.2.6 PROHIBITED USES

A) See prohibited use Table 4.01

4.1.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.1.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historic.

A) Building massing and facades:
No single building facade type shall exceed 90' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), wood or engineered wood. Exterior insulation finishing system (E.I.F.S.) may be used above the first story or a minimum of 12' above grade, whichever is higher. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas/poly membrane. Plastic or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Signage: refer to signage standards (section 9.0)

F) Bicycle racks:
One bicycle rack shall be provided per 10,000 square feet of occupied building area. Bike racks may be ganged together block-by-block and located in the Passageway Easements.

G) Roofs:
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. Composition shingles are permitted only where not visible from a public right-of-way. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level from either the front or side. Screening devices may be parapet extensions or free standing and shall be of material similar to the base building.

H) Glazing:
Glazed openings shall be at least 40 percent of the wall surface along a build-to line at the ground level and 25 percent on upper floors. Glazing shall not exceed 80 percent.
1) Framing shall be commercial grade painted wood, aluminum, or steel.
2) Glazing shall be clear; no reflective or spandrel glass is permitted.
3) Window openings shall be vertical or square in proportion.

Frontage Type F1 : Main Street Commercial

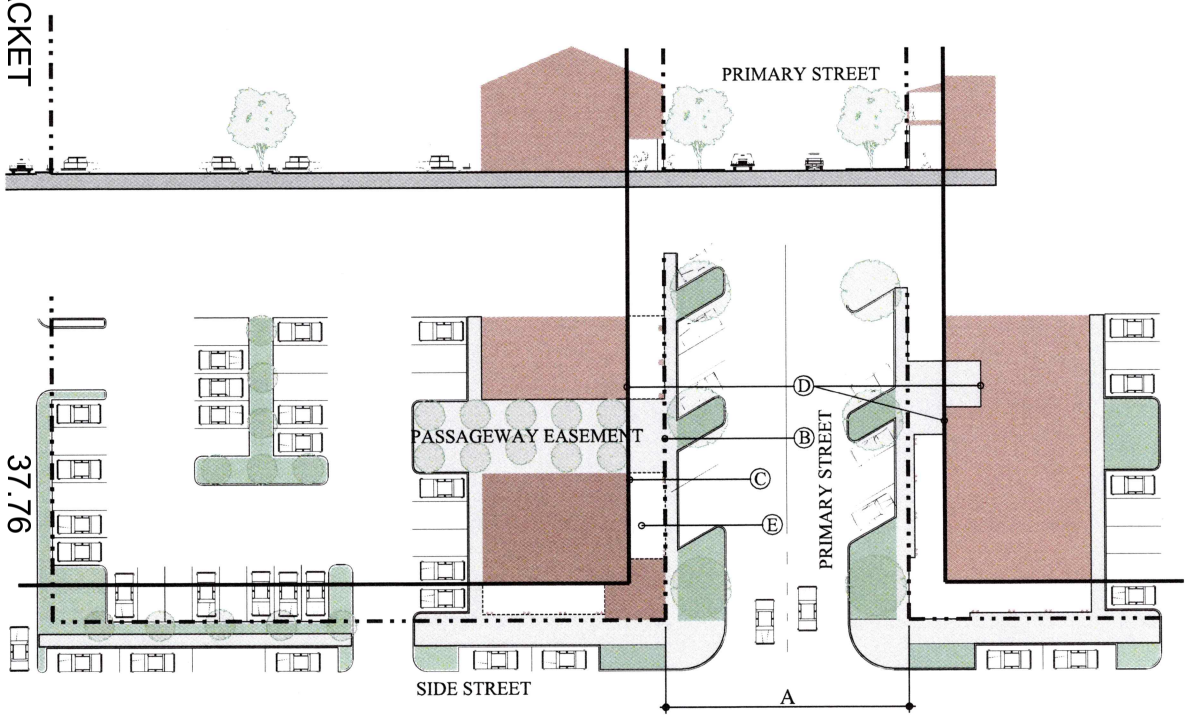


Figure 4.1 Frontage Type - Main Street Commercial

KEYED NOTES

Frontage Type F1: Main Street Commercial

A Right of Way; see street types and standards
B Property Line:
C The Build-to-Line, 0' to 10' setback from the property line
D Primary Building Facade; constructed along 80% of the length of the Build-to-Line
E Covered Sidewalk; may encroach in the setback up to the property line, minimum of 8' deep
F First floor elevation flush with sidewalk or fully accessible
G Building height; 2 stories or 25' minimum; 5 stories maximum

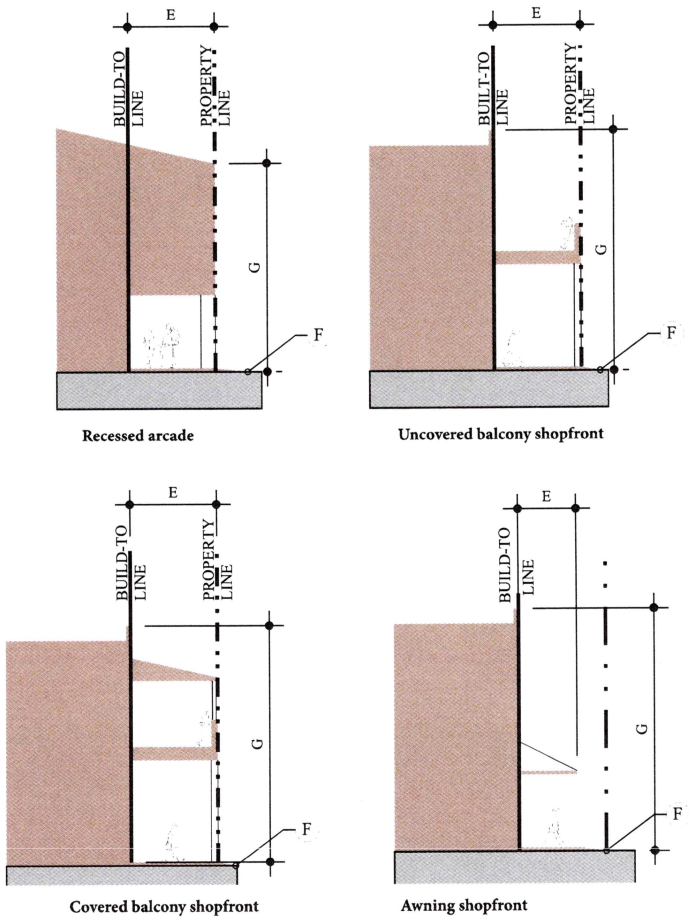


Figure 4.1A
STREET FRONTAGE ARCHITECTURAL OPTIONS

PACKET 37.76 December 14, 2021

PACKET 37.2 December 14, 2021

4.2 DEVELOPMENT REGULATIONS

4.2.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.

B) Rear and side setbacks:
Not required

D) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 8' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) Stoops and/or porches shall be spaced no more than 60 linear feet along the Build-to-Line within a single parcel.

E) Pedestrian Passageways:
None required

F) Covered sidewalks:
Not required

J) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas accessibility standards.

K) Minimum and Maximum Wall Height:
The maximum building height shall be three stories. Buildings shall be a minimum of two stories at the primary building facade.

4.2.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to satisfy minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may replace conventional parking requirements outlined in Use Standards below. Minimum parking requirements may be reduced by 15% percent if shared parking lots serve more than a single use (e.g. Restaurants and Office)

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 25%.

F) Parking Garages
Structured parking may be provided for optimal land use efficiency. Parking structure shall meet architectural standards.

4.2.2 USE STANDARDS

4.2.2.1 RETAIL (limited)

A) Defined Retail Use:
Retail uses include commercial enterprises established for the sales of goods and services including shops, entertainment establishments, banking, restaurants, and hotel lobbies and eateries.
1) Retail uses shall provide parking at 4 spaces per 1,000 square feet (maximum of 3,000 square feet)

4.2.2.2 OFFICE (limited)

A) Office Uses Defined:
Office uses are those associated with buildings occupied for the transaction of business, excluding retail and manufacturing.
1) Office uses shall provide parking at 4 spaces per 1,000 square feet (maximum of 3,000 square feet)

4.2.2.3 LODGING (limited)

A) Lodging Uses Defined:
Lodging uses are those associated with buildings occupied for short-term human habitation.
1) Lodging uses shall provide 1 parking space per lodging unit. (maximum of 10 units)

4.2.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 1.5 spaces per dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.2.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Master Developer. The following may be acceptable conditional uses in areas designated F2:
1) Multifamily Residential:
Townhouse lots may be combined to create multifamily development parcels. Architectural massing shall remain consistent with that of surrounding uses, as determined by the Town Architect. Multifamily uses shall be allowed a maximum height of 4 stories and not exceed 20 dwelling units. A maximum of 25% of all combined F2 and F3 frontage may be used for Multifamily Residential.
2) Home occupation permitted

4.2.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.2.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.1.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades:
No single building facade type shall exceed 90' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), wood or engineered wood. Exterior insulation finishing system (E.I.F.S.) may be used above the first story or a minimum of 12' above grade, whichever is higher. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas/poly membrane. Plastic or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Signage: refer to signage standards (section 9.0)

F) Bicycle racks:
One bicycle rack shall be provided per 10,000 square feet of occupied building area. Bike racks may be ganged together block-by-block and located in the Passageway Easements.

G) Roofs:
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. Composition shingles are permitted only where not visible from a public right-of-way. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level from either the front or side. Screening devices may be parapet extensions or free standing and shall be of material similar to the base building.

H) Glazing:
Glazed openings shall be at least 30 percent of the wall surface along a build-to line at the ground level and 20 percent on upper floors. Glazing shall not exceed 70 percent.
1) Framing shall be commercial grade painted wood, aluminum, or steel.
2) Glazing shall be clear; no reflective or spandrel glass is permitted.
3) Window openings shall be vertical or square in proportion.

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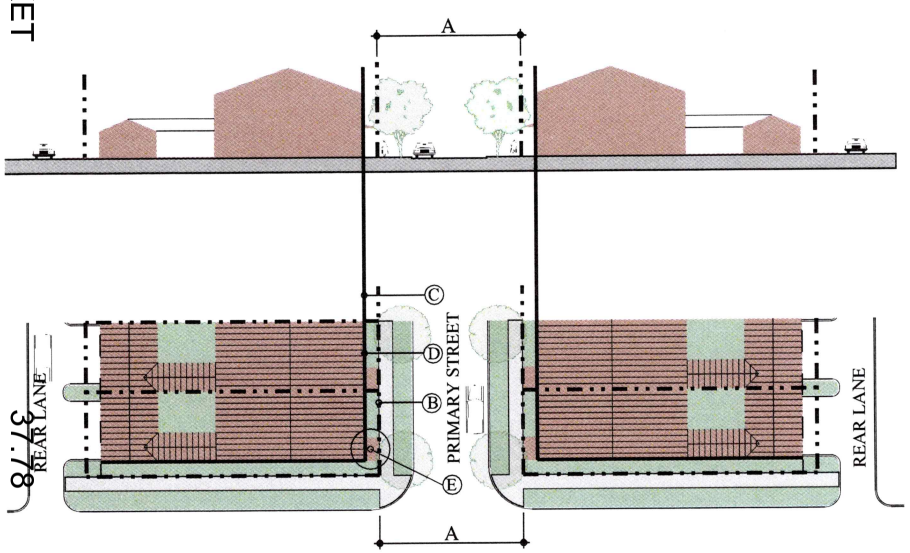


Figure 4.2: Frontage Type- - Livework

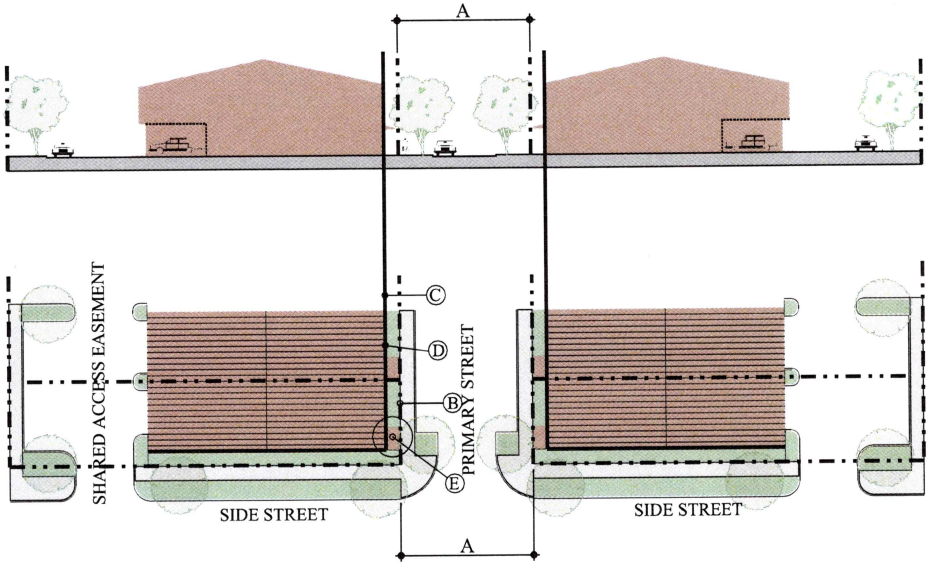


Figure 4.2a
TYPE F2 with TUCK-UNDER GARAGE

KEYED NOTES
Frontage Type F2: Livework

Right of Way; see street types and standards
Property Line:
The Build-to-Line, 0' to 10' setback from the property line
Primary Building Facade; constructed along 80% of the length of the Build-to-Line
Porch/Stoop Encroachment
Building height; 2 stories or 25' minimum; 3 stories maximum

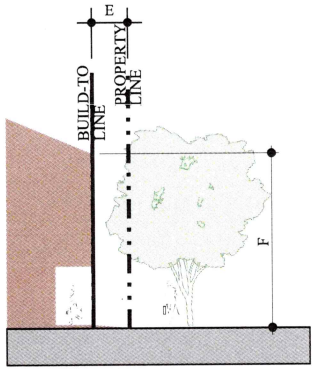


Figure 4.2b
TYPE F2 with RECESSED STOOP

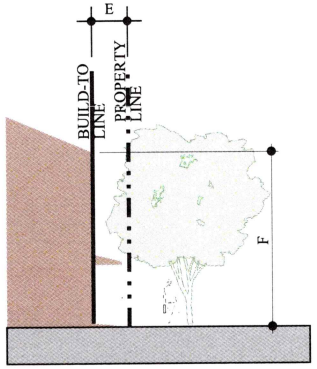


Figure 4.2c
TYPE F2 with PROJECTING STOOP

Section 4.3
Frontage Type F3 : Townhouse

PACKET
37.18
December 7, 2021

4.3.1 DEVELOPMENT REGULATIONS

4.3.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 10' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 80% of the total length of the Build-to-Line.

B) Rear and side setbacks:
Not required

C) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 8' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) Stoops and/or porches shall be spaced no more than 60 linear feet along the Build-to-Line within a single parcel.

D) Pedestrian Passageways:
None required

E) Covered sidewalks:
Not required

F) 1st Floor Elevation:
The finish floor of the first level shall be a minimum of 24 inches above the sidewalk or top of curb.

G) Minimum and Maximum Wall Height:
The maximum building height shall be three stories. Buildings shall be a minimum of two stories at the primary building facade.

4.3.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to supplement minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F3.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking garages shall count as required parking.

4.3.2 USE STANDARDS

4.3.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 2 spaces per dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.3.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Town Architect or district Design Review Board. The following may be acceptable conditional uses in areas designated F3:
1) Multifamily Residential:
Townhouse lots may be combined to create multifamily development parcels. Architectural massing shall remain consistent with that of surrounding uses, as determined by the Town Architect. Multifamily uses shall be allowed a maximum height of 4 stories and not exceed 20 dwelling units. A maximum of 25% of all combined F2 and F3 frontage may be used for Multifamily Residential.
2) Home occupation permitted

4.3.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.3.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.3.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the Central Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades
No single building facade type shall exceed 30' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), or wood. Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or weathered metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas membrane. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

E) Roofs
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level.

PACKET
37.80
December 14, 2021

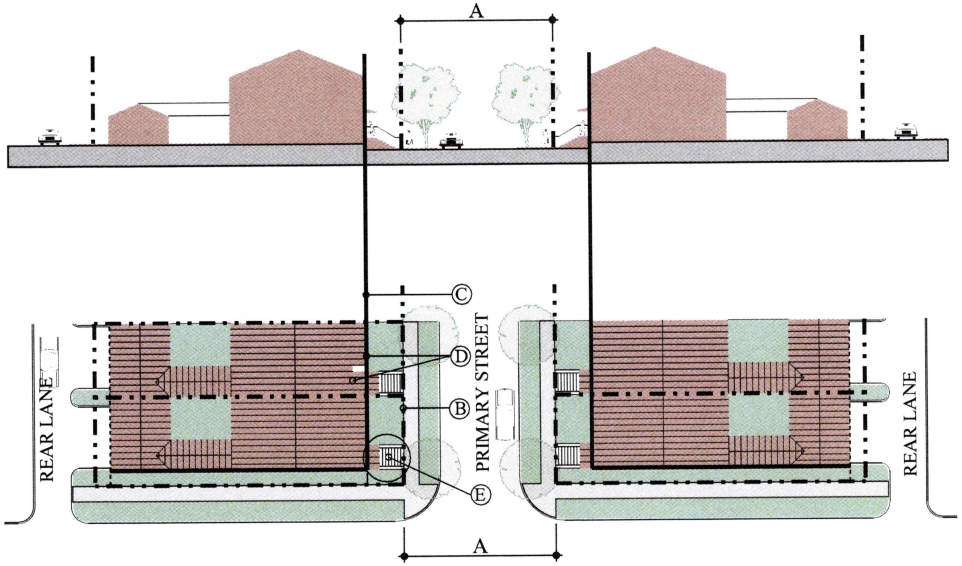


Figure 4.3: Frontage Type - Townhouse

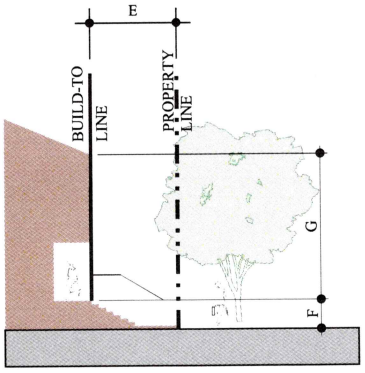


Figure 4.3a
TYPE F3 with RECESSED STOOP

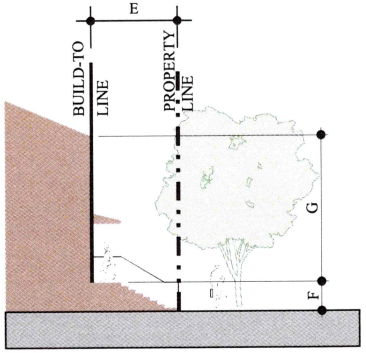


Figure 4.3b
TYPE F3 with PROJECTING STOOP

KEYED NOTES
Frontage Type F3: Townhouse

Right of Way; see street types and standards
Property Line:
The Build-to-Line, 10' setback from the property line
Primary Building Facade; constructed along 80% of the length of the Build-to-Line
Porch/Stoop Encroachment
First floor elevation min. 24" above sidewalk
Building height; 2 stories or 25' minimum; 3 stories maximum

Section 4.4
Frontage Type F4 : Sideyard House

PACKET 3781 December 14, 2021

4.4.1 DEVELOPMENT REGULATIONS

4.4.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 20' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 50% of the total length of the Build-to-Line.

B) Rear and side setbacks:
1) 5' rear setback
2) 2.5' side setback on one side; 10' side setback on opposite side.
3) 10' street sideyard setback where the lot occupies the end of a block.

D) Encroachment:
Corner towers, bay windows, or canopies with occupied or unoccupied space may encroach a maximum of 3' beyond the Build-to-Line. No corner tower shall have more than 300 SF on the ground floor encroaching beyond the Build-to-Line.
1) Stoops, porches or balconies may encroach a maximum of 10' beyond the Build-to-Line.
2) If a stoop is provided, it shall be a minimum of 30 square feet.
3) If a porch is provided, it shall be a minimum of 8' deep.

E) Pedestrian Passageways:
None required

F) Covered sidewalks:
Not required

J) 1st Floor Elevation:
The finish floor of the first level shall be a minimum of 24 inches above the sidewalk.

K) Minimum and Maximum Wall Height:
The maximum building height shall be two and one-half stories. Buildings shall be a minimum of two stories at the primary building facade.

4.4.1.2 PARKING

A) Off street parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only at the rear of the building.

C) On-Street Parking in front of building may be used to supplement minimum parking requirements (see Use Standards below)

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F4.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

F) Parking garages shall count as required parking

4.4.2 USE STANDARDS

4.4.2.4 RESIDENTIAL

A) Residential Uses Defined:
Residential uses are those associated with buildings occupied for the purpose of long term human habitation, excluding lodging.
1) Residential uses shall provide designated parking at 2 spaces per dwelling unit plus 1 space per accessory dwelling unit. (no maximum density)
2) Parking for conditional uses and non-conventional unit sizes may be modified with approval of the Town Architect.

4.4.2.5 CONDITIONAL USES

A) Conditional Uses Defined:
Conditional Uses are considered exceptional situations that must have the approval of the Town Architect. The following may be acceptable conditional uses in areas designated F4:
1) Multifamily Residential is not permitted
2) Home occupation permitted
3) Ancillary units permitted

4.4.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.4.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.4.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the Central Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historicist.

A) Building massing and facades
No single building facade type shall exceed 30' in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco, cementitious board (Hardie), or wood. Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or weathered metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of sheet metal or canvas membrane. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

G) Roofs
1) Pitched roofs:
Pitched roofs may be clad in painted or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Porch and arcade roofs may be 2/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level.

PACKET

37.82

Section 4.4

Frontage Type F4 : Sideyard House

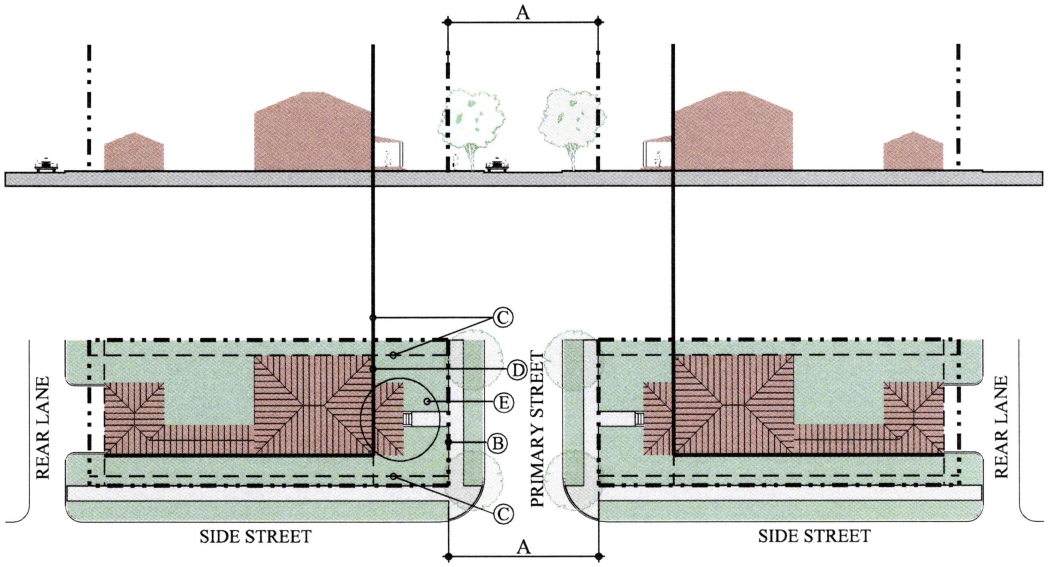


Figure 4.4: Frontage Type - Sideyard

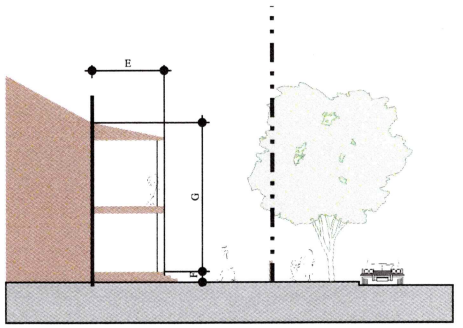


Figure 4.4a
TYPE F4 with COLONNADE

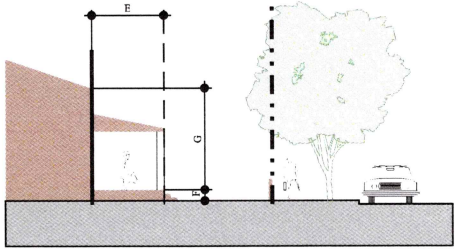


Figure 4.4b
TYPE F4 with ONE STORY PORCH

KEYED NOTES

Frontage Type F4: Sideyard

Right of Way; see street types and standards

Property Line:

The Build-to-Line, 20' setback from the front property line, 5' rear and side setback, 2.5' side setback on one side.

Primary Building Facade; constructed along 80% of the length of the Build-to-Line

Porch/Stoop Encroachment

First floor elevation min. 24" above sidewalk

Building height; 2 stories or 25' minimum; 2.5 stories maximum

December 14, 2021

Section 4.5

Frontage Type F5 : Education (Special District)

PACKET
07883
December 7, 2021

4.4.1 DEVELOPMENT REGULATIONS

4.4.1.1 BUILDING PLACEMENT

A) Build-to Line:
A 90' setback from the front property line
1) Primary building facade shall be constructed along a minimum of 50% of the total length of the Build-to-Line.

B) Rear and side setbacks:
1) 5' rear setback
2) 5' side setback

D) Encroachment:
Corner towers, or canopies with occupied or unoccupied space may encroach a maximum of 30' beyond the Build-to-Line. No corner tower shall have more than 1,000 SF on the ground floor encroaching beyond the Build-to-Line.

E) Pedestrian Passageways:
Not required

F) Covered sidewalks:
Recommended for primary student entries.

J) 1st Floor Elevation:
The finish floor of the first level shall be at grade with street sidewalk or made accessible to disabled persons in compliance with the Americans With Disabilities Act and Texas accessibility standards.

K) Minimum and Maximum Wall Height:
The minimum building height shall be two and maximum five stories. Ancillary structures may be one story.

4.4.1.2 PARKING

A) Parking spaces shall be 9' in width by 18' depth, up to 10% of the total spaces may be assigned as oversized spaces with a width of 10' and a depth of 20'.

B) On-site parking is allowed only behind the building.

C) On-Street Parking in front of building may be used to satisfy visitor parking requirements.

D) Shared Parking Standards:
Shared parking standards may NOT replace minimum parking standards in areas designated F5.

E) Parking supply may not exceed the minimum parking requirements outlined in the Use Standards by more than 15%.

4.4.2 USE STANDARDS

4.4.2.4 EDUCATIONAL

A) Educational Uses Defined:
Educational uses are those associated with buildings occupied for the purpose of educational instruction and related services, for public school grades Pre-K through 12.
1) Educational uses shall provide designated parking at one space per 400 gross square feet excluding ancillary structures, play fields, etc not to exceed 200 spaces. Visitor spaces shall be included in the total parking allowed.

4.4.2.5 CONDITIONAL USES

None are allowed.

4.4.2.6 PROHIBITED USES

A) See prohibited use Table 4.01.

4.4.3 ARCHITECTURAL STANDARDS

Architectural standards shall be enforced by the Oasis Master Developer.

4.4.3.1 ARCHITECTURAL CHARACTER

All architectural design shall reflect the vernacular traditions of the West Texas region. The following architectural standards allow for a variety of interpretations, both contemporary and historic.

A) Building massing and facades
No single building facade type shall exceed 180 feet in length along the primary Build-to-Line; change in massing or materials shall constitute a change in facade type.

B) Exterior walls:
All exterior-building walls shall be finished in brick, native stone, cast stone, stucco or cementitious board (Hardie). Exterior insulation finishing system (E.I.F.S.) may not be used. Galvanized or factory finished metal paneling is permitted, but may be used on no more than 50% of exterior elevations.

C) Change in materials:
Shall occur along a horizontal line (with the heavier material at the bottom), or at the joint along an inside corner. Facades shall include no more than three major materials.

D) Awnings and canopies:
Shall be made of factory finished metal or other permanent roofing materials. Plastic, fabric or vinyl awnings are not permitted. Trellises and sun shading devices are recommended and shall be made of wood or metal.

G) Roofs
1) Pitched roofs:
Pitched roofs may be clad in factory finished or galvanized metal, clay or concrete tile. No composition shingles are permitted. Pitched roofs shall be symmetrical gable, hip, or barrel vault with a pitch no less than 3/12. Canopy, colonnade and arcade roofs may be 1/12 min. Pitch. Mansard roofs are not permitted.
2) Flat roofs may be made of built-up roofing or a membrane roofing system.
3) Roof penetrations and rooftop mechanical systems shall be screened or setback from view at street level, including adjacent public rights-of-way.

Frontage Type F5 : Education (Special District)

PACKET 37.84 December 14, 2021

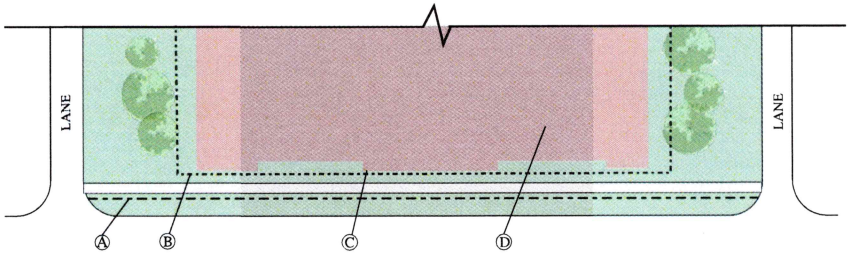


Figure 4.5: Frontage Type - Education

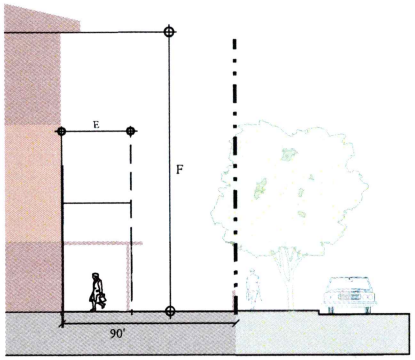


Figure 4.5a
TYPE F5 with ONE STORY PORCH

KEYED NOTES
Frontage Type F5: Education

A Right of Way; see street types and standards
B Property Line:
The Build-to-Line, 10' setback from the property line, 5' rear and side setback
C Primary Building Facade; constructed along 75% of the length of the Build-to-Line
D Porch/Stoop Encroachment
E Building height 2 stories or 25' minimum, 5 stories maximum

Section 5.0
Street Types

PACKET

HOW DO STREET TYPES AFFECT DEVELOPMENT?

The frontage types outlined in the previous section of these standards are paired with street types to define the general character and quality of public space within the plan. The Regulating Plan defines locations for each street type and frontage type. The remainder of the Development Standards fills in the gaps, specifying landscape and drainage requirements, utility locations, open space programming, etc.

SEQUENCING

All streets within the Oasis PD shall be built in complete block lengths. A block is defined as a section of street from the intersection of one perpendicular street to the next. If the street-type has a parallel alley, the alley and access to it must be built at the same time as the street.

The following street types are detailed in this section:

MS-78: Main Street 78' R.O.W.

BV-VAR: Boulevard Variable R.O.W.

CS-65: Commercial Street 65' R.O.W.

CS-60: Commercial Street 60' R.O.W.

US-50: Urban Street 50' R.O.W.

US-45: Urban Street 45' R.O.W.

US-40: Urban Street 40' R.O.W.

CL-20: Comercial Alley 20' Access Easement

AL-20: Residential Alley 20' Access Easement

37.85

OWNERSHIP AND MAINTENANCE

All streets within the Oasis PD shall be built to meet City of Midland construction standards. However, geometric layout, design speed and details including bulb-outs, pedestrian crossings, sidewalks etc. shall be controlled by this Code.

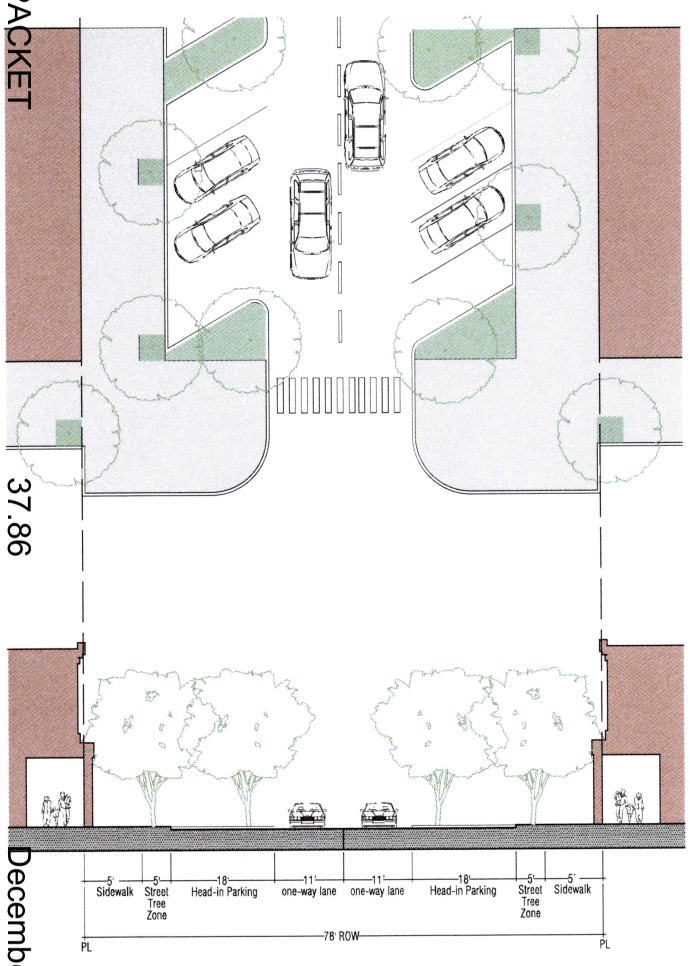
Maintenance of streets and sidewalks in public rights-of-way shall be performed by a private property owners association as provided for in Section 13.5 of this Code.

December 14, 2021

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Section 5.1

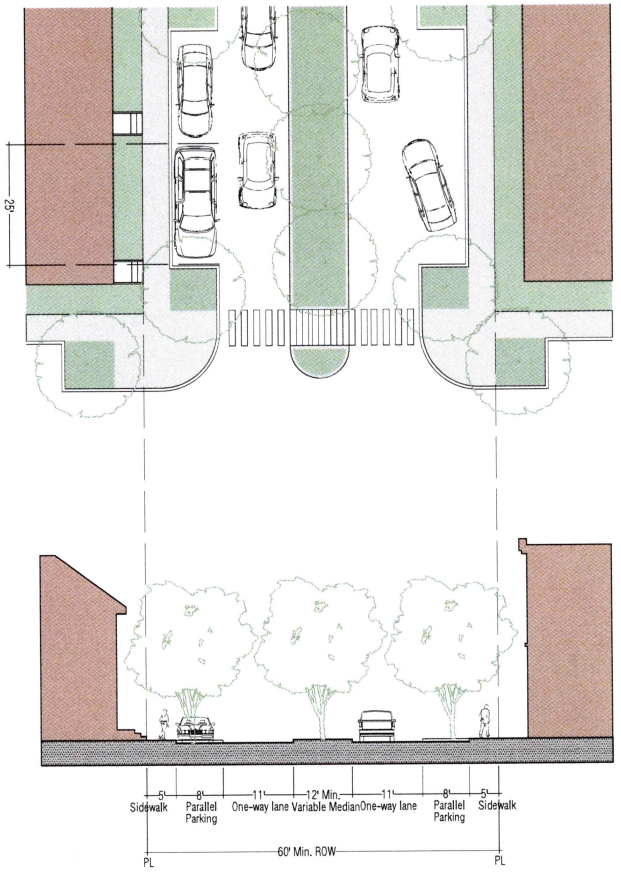
Street Type MS-78 : Main Street 78' R.O.W.



ROW	78'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	58'
PARKING	Head-in both sides
CURB RADIUS	20' radius at street corners
STREET TREES	50' o.c. max.
MIN. CENTERLINE RADII.	166'

Section 5.2

Street Type BVD-VAR : Boulevard Variable R.O.W.

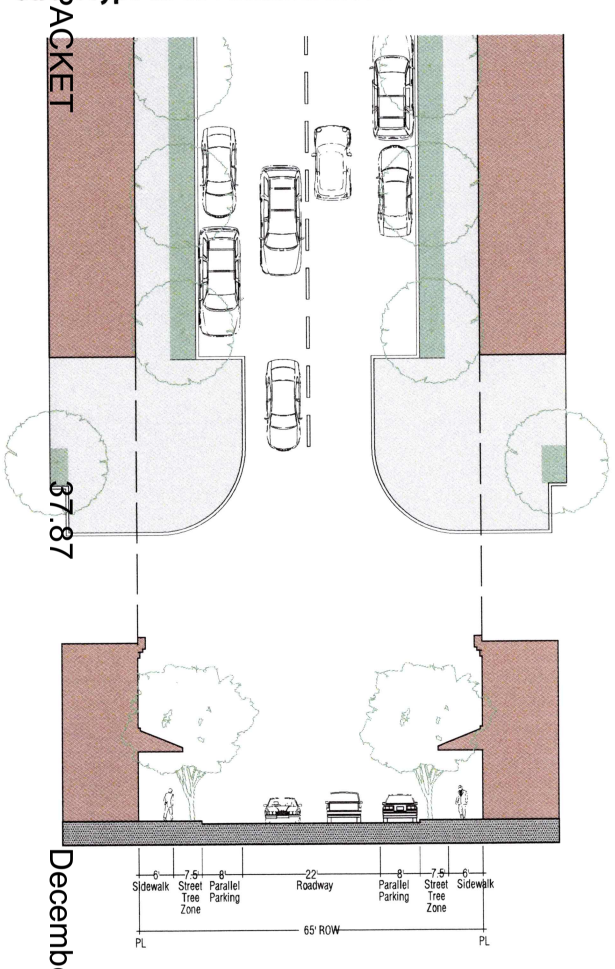


ROW	Min. 60'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	38'
PARKING	Parallel either side (or none)
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII.	166'

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Section 5.3

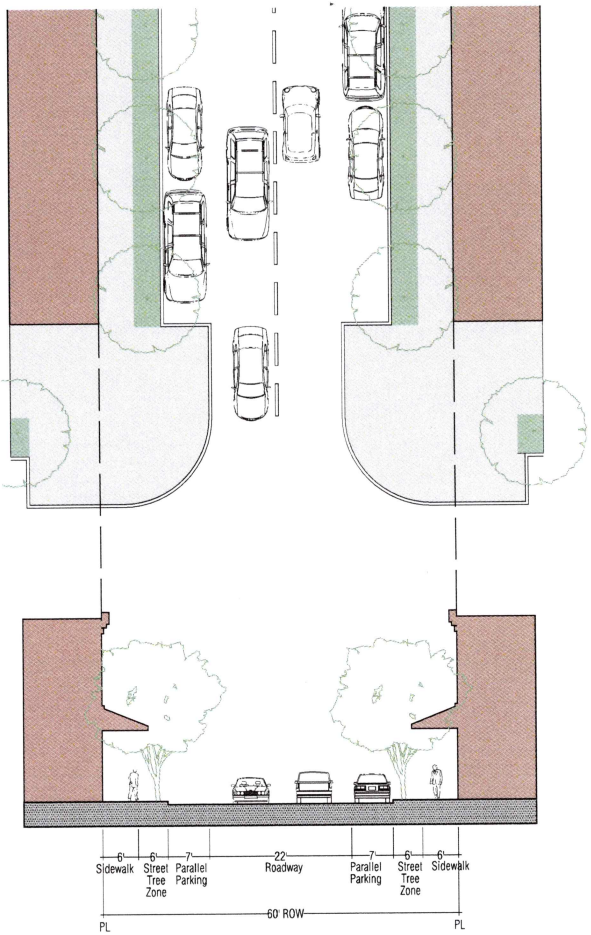
Street Type CS-65 : Commercial Street 65' R.O.W.



ROW	65'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	38'
PARKING	Parallel both sides
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII	166

Section 5.4

Street Type CS-60 : Commercial Street 60' R.O.W.

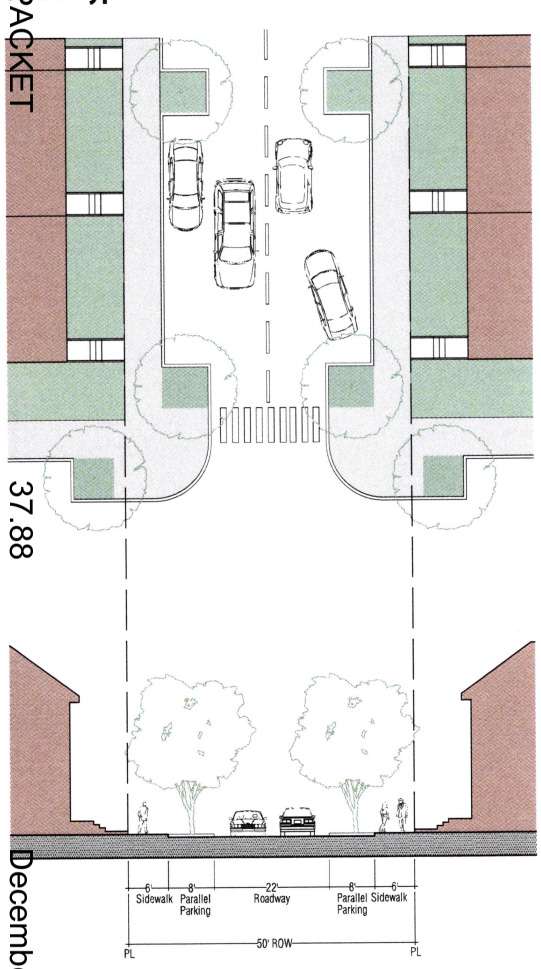


ROW	60'
DESIGN SPEED	25 mph
PAVEMENT WIDTH	22'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII	166'

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Section 5.5

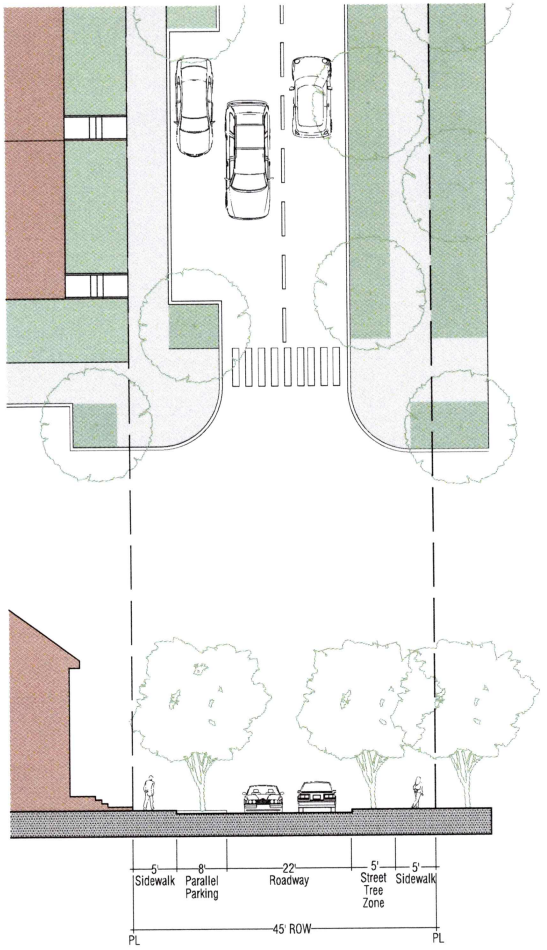
Street Type US-50 : Urban Street 50' R.O.W.



ROW	50'
DESIGN SPEED	20 mph
PAVEMENT WIDTH	38'
PARKING	Parallel both sides
CURB RADIUS	20' radius at street corners
STREET TREES	50' o.c.
MIN. CENTERLINE RADII.	90'

Section 5.6

Street Type US-45 : Urban Street 45' R.O.W.

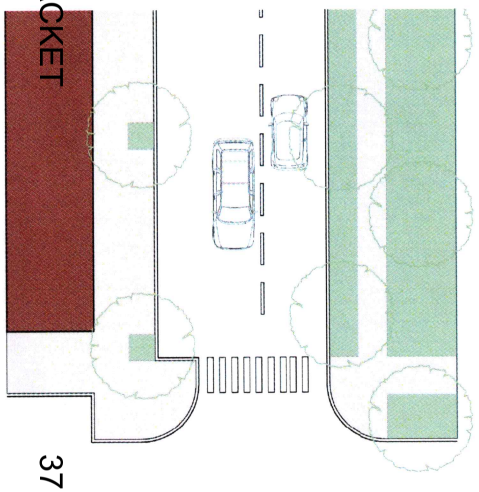


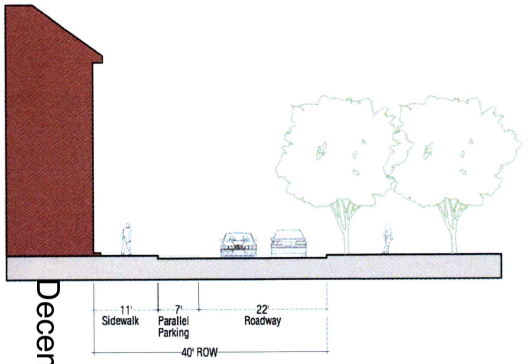
ROW	45'
DESIGN SPEED	20 mph
PAVEMENT WIDTH	30'
PARKING	Parallel Parking one side
CURB RADIUS	20' radius at street corners
STREET TREES	30' o.c.
MIN. CENTERLINE RADII.	90'

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Section 5.7

Street Type US-40 : Urban Street 40' R.O.W.

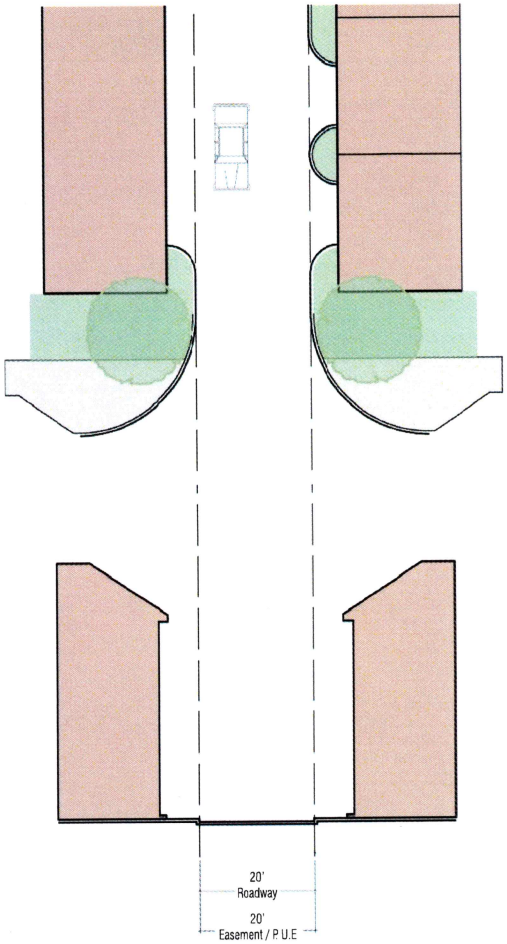




ROW/EASEMENT	40'
DESIGN SPEED	20 mph
PAVEMENT WIDTH	29'
PARKING	Parallel one side
CURB RADIUS	20' radius at street corners
STREET TREES	30' O.C.
MIN. CENTERLINE RADII.	90

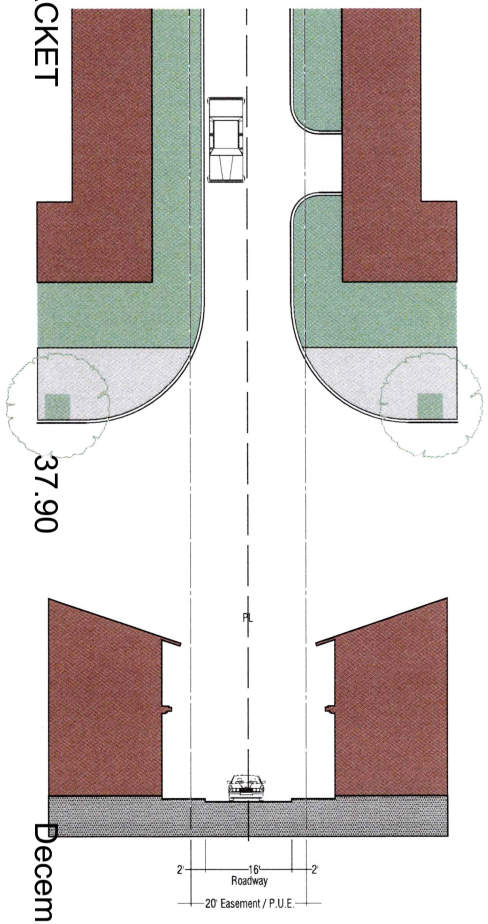
Section 5.8

Street Type CL-20 : Commercial Alley 20' Easement



ROW/EASEMENT	20'
DESIGN SPEED	10 mph
PAVEMENT WIDTH	20'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	None
MIN. CENTERLINE RADII.	50'

Street Type AL-20 : Residential Alley 20' Easement



ROW/EASEMENT	20'
DESIGN SPEED	10 mph
PAVEMENT WIDTH	16'
PARKING	None
CURB RADIUS	20' radius at street corners
STREET TREES	None
MIN. CENTERLINE RADII	50

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PACKET
37.91
December 14, 2021

6.1 UTILITIES

All utilities must be located in 1) a Dedicated Utility Corridor within a Public Right of Way, 2) a public utility easement (P.U.E.) on a lot as indicated on a final plat, 3) or by separate dedication instrument. This includes both Dry Utilities and Wet Utilities. Except for temporary construction site offices, utilities shall be located underground. Dry Utilities in common trenches are allowed, providing required separation distances are maintained. Utilities must follow the pattern in the Typical Utility Corridor Section diagram unless the City Engineer or the City Engineer's designee authorizes deviation from the standards in the diagram.

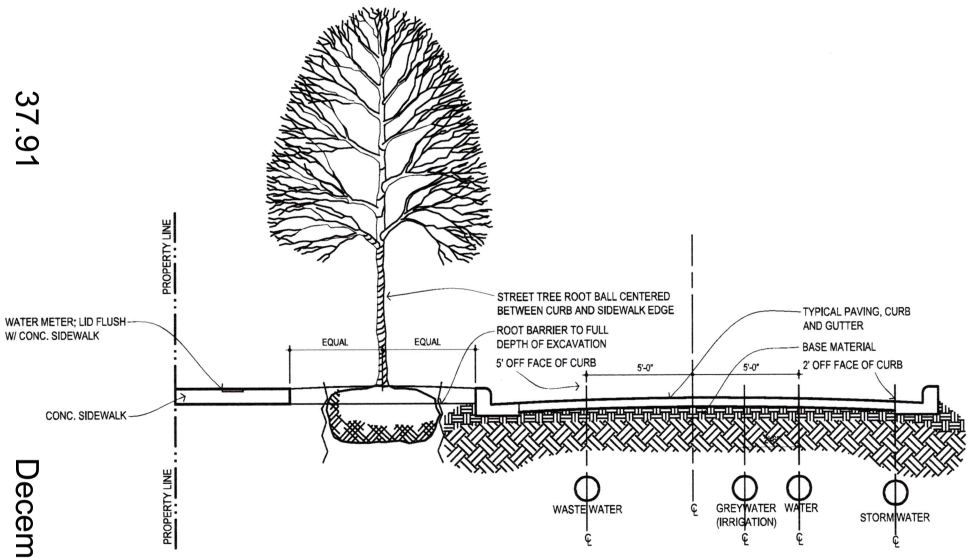
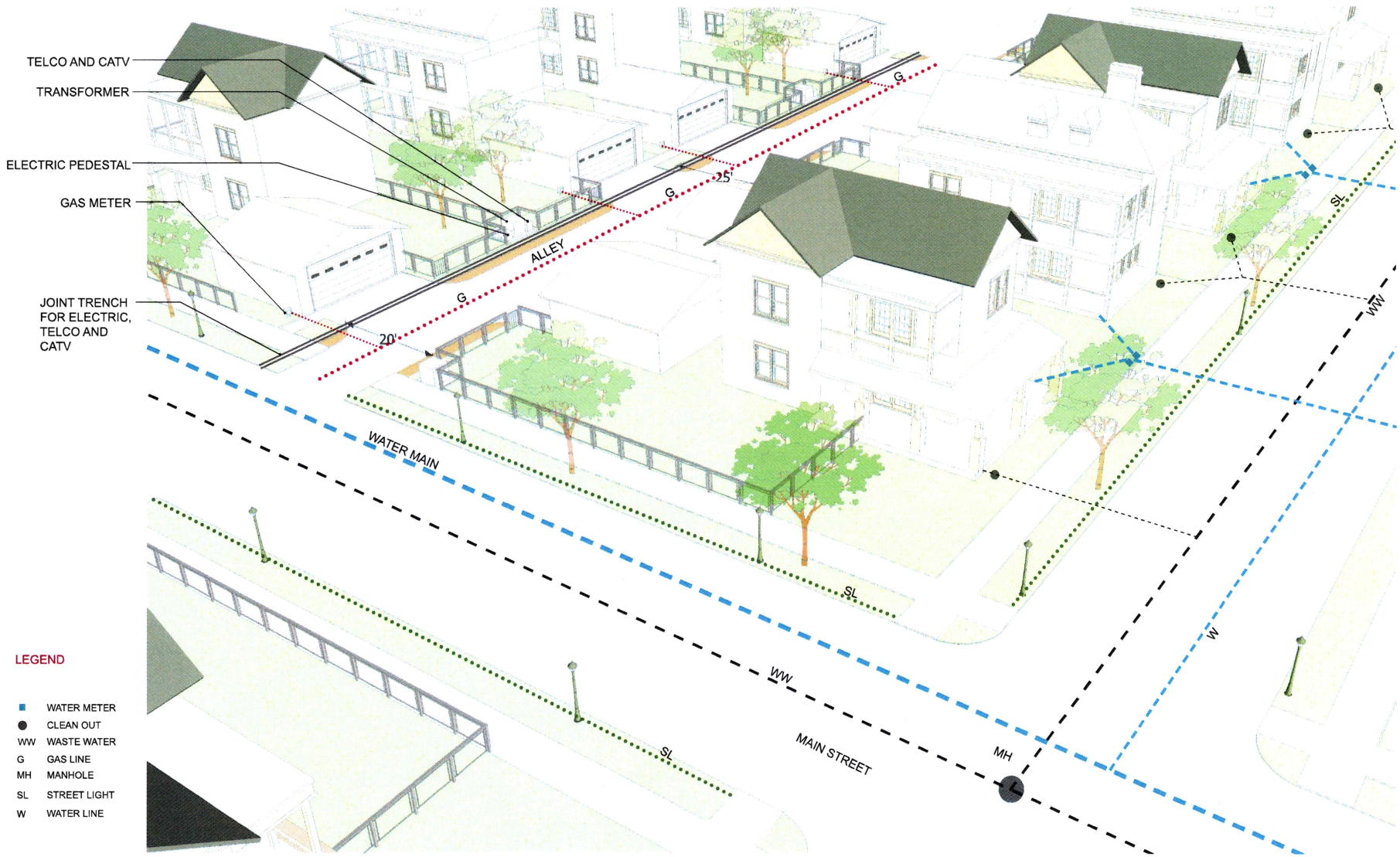


Figure 6a: **Typical Utility Corridor Section**

Fig. 6b: Assignments



PACKET 37.92 December 14, 2021

Section 7.0
Public Space Standards

PACKET 3 - 7.3 Open Space Standards

7.1 INTENT

The following is the intent of the public space standards:

· To create socially active and culturally vibrant public open spaces.

· To create a public open space system which becomes a source of community pride and an attractive feature for encouraging positive town growth.

· To provide for a range of public open space types for community use from highly developed public squares to larger more loosely programmed public greens and greenbelts.

· Public Spaces shall be privately owned, developed and maintained and publicly accessible.

7.2 DEFINITIONS & PROGRAMMING

7.2.1 PLAZA

A plaza is an open area adjacent to, or part of, a civic building or facility. Plazas function as gathering places and may incorporate a variety of temporary activities such as vendors and display stands. Plazas shall be no less than 75% paved in brick or another type of paver or crushed stone. Plazas shall be level, stepped, or gently sloping (less than 3% grade). The following sizes are recommended but may be larger or smaller depending on the building or facility design. The recommended minimum size is 2000 sf., and the recommended maximum size shall be 30,000 sf.

A) Plantings:
Plaza interiors may be left unplanted or may be planted with shade trees. If a programming element such as an outdoor cafe or seating area is incorporated then trees may be planted to provide shade. Arbors may also be used as shade elements. Street trees shall be planted as per Street Types Standards (see tree list in Landscape Guidelines).

B) Public seating:
Seating should be provided with exposure to both shady and sunny conditions. Benches or seat walls should provide seating for at 10 linear feet of seating per 1,000 square feet of plaza area.

C) Optional programming elements:
Optional programming elements might be music concerts, festivals, outdoor cafes or vending areas. Other elements may be considered if determined appropriate by the City.

D) Street Lamps:
Street lighting shall be provided along pedestrian path and marking entrances to the Plaza. At least on half of a foot candle of light shall be provided per 20 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

D) Irrigation:
Irrigation is required for all landscaped areas within the Plaza.

7.2.2 SQUARE

An open space, spatially defined by the facades of surrounding buildings (as a room is defined by its walls), usually surrounded by streets on at least two sides. Squares are at the intersection of important streets and are designed to accommodate public gathering and activities, usually with an area set aside for civic structures or monuments.

A) Shade Trees:
Shade trees (no less than 4 caliper inches at installation and container grown) shall be planted at no less than 1 tree per 2,000 sf. Street trees (as required in the Street Types Standards) shall count towards the minimum number of tree planting. Trees shall be limbed up to a minimum of 10' at maturity. (see tree list in Landscape Standards)

B) Small Flowering Trees:
Small Flowering Trees (no less than 2 caliper inches) shall be planted at no less than 1 tree per 2,000 sf in groupings no greater than 15' on center. (see tree list in Landscape Standards).

C) Lawn:
In areas requiring turfgrass, only shade tolerant varieties of turfgrass shall be allowed. Decomposed granite and other pervious paving is encouraged in all high traffic areas. Mulched beds and native grasses are encouraged to minimize irrigation demand. Solid sod shall have a sandy loam growing soil, not clay.

D) Street Lamps:
Street lighting shall be provided along pedestrian path and marking entrances to the Square. At least on half of a foot candle of light shall be provided per 20 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be a minimum of 10 linear ft. of seating per 1,000 sf. of square area. Other seating alternatives may be approved or by the Town Architect if they meet the criteria of long term durability and minimal susceptibility to vandalism.

F) Irrigation:
Irrigation is required for all landscaped areas. Irrigation shall be minimized through the use of native and drought resistant landscaping.

G) Drinking fountains:
At least two (2) shall be provided within a Square.

H) Other elements:
Plaza or Square shall incorporate at least one of the following as a primary organizing element to be approved by the Town Architect:

· Fountain or water feature
· Monument, sculpture or statue
· Gazebo, covered pavilion, or shade structure

7.2.3 GREEN

A Green is similar to a Square in that it is spatially defined by the facades of surrounding buildings surrounded by streets on at least two sides. A Green is more informally planted than a Square.

A) Shade Trees:
Shade trees (no less than 4 caliper inches and container grown) shall be planted at no less than 1 tree per 4,000 sf. Street trees (as required in the Street Types Standards) shall count towards the minimum number of tree planting. Trees shall be limbed up to a minimum of 10' at maturity. (see tree list in Landscape Standards)

C) Lawn:
In areas requiring turfgrass, only shade tolerant varieties of turfgrass shall be allowed. Decomposed granite and other pervious paving is encouraged in all high traffic areas. Mulched beds and native grasses are encouraged to minimize irrigation demand.

D) Street Lamps:
At least 1/2 of a foot candle of light shall be provided per 50 ft. of perimeter sidewalk. All street lighting shall be Metal Halide or color corrected LED light sources and shall have full cut-off shields to minimize light pollution.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be a minimum of 10 linear ft. of seating per 2,000 sf. of Green area. Other seating alternatives may be approved or by the Town Architect if they meet the criteria of long term durability and minimal susceptibility to vandalism.

F) Irrigation:
Irrigation is required for all landscaped areas. Irrigation shall be minimized through the use of native and drought resistant landscaping.

7.2.4 GREENBELT

Greenbelts are linear greenways or natural preserves which may feature walking or cycling trails and serve to buffer a neighborhood from surrounding non-compatible uses such as highway corridor or industrial district.

Uses may include large scale recreational uses such as golf courses, multiple playing fields, hike and bike trails or other program elements that help to create a green buffer. There are no tree planting requirements along ROWs for greenbelts. Greenbelts shall integrate the existing natural landscape. Newly landscaped area shall be compatible with existing vegetation. Shade trees shall be planted at 1 per 100 linear feet of trail and shall be 2" caliper container grown or 3" balled and burlapped or transplanted trees planted in naturalistic pattern.

7.2.5 PARK

An open space defined by surrounding buildings and vegetation and connecting with streets on at least two sides.

A) Paving:
Parks shall be naturally landscaped, not more than 10% paved.

B) Boundaries:
Parks will be bounded by streets on a minimum of 50% of their perimeter. Parks are encouraged to be entirely bounded by streets.

C) Size:
Minimum size shall be one (1) acre; maximum size shall be three (3) acres. Maximum park size may exceed three (3) acres if through design, the park creates a central open space that services an entire neighborhood or group of neighborhoods, or incorporates physical features which are an asset to the community (i.e., lake frontage, high ground or significant stands of trees.

7.3 IMPLEMENTATION

All public and private open space improvements shall be constructed or installed at the time of adjacent street and utility infrastructure construction. Park land dedication, fee in lieu or development of parks in value equal to fees in lieu will be accomplished as each 100 dwelling units are platted.



Figure 7a
PLAZA



Figure 7b
SQUARE

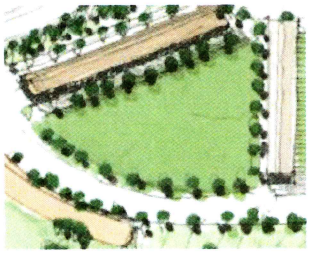


Figure 7c
GREEN



Figure 7d
GREENBELT

BACKUP 6.09.14 December 2014

8.1. THE PUBLIC LANDSCAPE

8.1.1 SOIL PRESERVATION
Wherever possible grades for thoroughfare and open spaces shall follow existing topography and drainage patterns. Areas to be left natural shall be fenced and undisturbed during construction. The soil structure for planting strips shall be protected from compaction with protective fencing. During construction, topsoil shall be removed, and stockpiled for later use.

8.1.2 COMPACTION
All planting areas shall be cultivated and top-dressed with organic matter. Deeply compacted areas shall be cultivated to a depth of one foot and top-dressed with an addition of loose topsoil, coarse sand and compost. Ballfields shall be underlain with a mix of coarse sand.

8.1.3 HYDROLOGY / DRAINAGE
All planting areas shall have drainage outlets achieve positive drainage. Playing fields shall be uniformly graded to a 2% -3% slope.

8.1.4 SITE CLEARING / EROSION CONTROL
To prevent erosion, clearing of easements and access routes should not occur more than 60 days prior to construction. Trees to be removed shall be taken down in a manner that will not impact any of the adjacent trees to remain. All trees will have crown and limbs removed before being felled and depending upon the density of vegetation the trunk shall be felled before the stump is removed. It is recommended that limbs and underbrush be chipped shredded and retained on site to be spread as a mulch after construction has finished. The boundary of construction sites shall be marked with a barrier and erosion control fencing on the downhill sides. No clearing operations will be allowed in an unmarked area. When construction is adjacent to a waterway, care should be taken to prevent any excavated material from spilling into the waterway by use of erosion control barriers.

8.1.5 TREE PROTECTION:
Protecting existing trees on site adds value and prevents additional planting costs. In areas of construction where trees are to be preserved, tree protection fencing must be installed and maintained at the dripline. No storage of materials or equipment is allowed within the dripline area of trees to be protected.

With the exception of Protected Trees as defined by the City's General Landscape Ordinance these Oasis landscape standards shall be adhered to in lieu of City's landscape regulations.

8.1.6 PLANT SELECTION
Trees may be selected from the lists outlined below. The use of native shrubs and ground cover species is encouraged given their adaptability to drought and indigenous soil conditions. Plant quality shall follow the highest Nursery Industry Standards.

8.2. PUBLIC OPEN SPACE TREES

8.2.1 STREETS, SQUARES, AND GREENS
The following is a list of trees that may be used in Squares and Greens, as well as for Street Trees. These trees were selected for their shade providing qualities and their ability to tolerate compaction, drought and pollution typically associated with heavily trafficked areas. Low maintenance and disease resistance are also important qualities for trees in this category. With pruning, these trees also have high a branching character so as not interfere with pedestrian and vehicular activities. Street trees shall have a single trunk and should be limbed up to a minimum of 14' at maturity. All street tree plantings shall utilize root barriers to prevent heaving of adjacent paving.

·Live Oak, Quercus virginiana
·Bur Oak, Quercus macrocarpa
·Texas Red Oak, Quercus texana
·Pecan, Carya illinoensis
·Bald Cypress, Taxodium distinctum
·Afghan Pine, Pinus elderica
·Mexican White Oak, Quercus polymorpha.

8.2.2 GREENBELT TREES

The following trees may be planted in Greenbelts (as defined in the Open Space Standards) This list of trees was selected for their more naturalistic character which is representative of the above listed public open spaces. Native species are encouraged given their adaptability to native soils and drought conditions:

Native Large Trees (Mature Height Over 30'):
·Texas Ash, Fraxinus texensis
·Bald Cypress, Taxodium distinctum
·Cedar Elm, Ulmus crassifolia
·Live Oak, Quercus virginiana
·Pecan, Carya illinoensis
·Bur Oak, Quercus macrocarpa
·Chinkapin Oak, Quercus muhlenbergii
·Texas Red Oak, Quercus texana
·Eastern Red Cedar, Juniperus virginiana

Non-Native Large Trees (Mature Height Over 30'):
·Arizona Cypress, Cupressus arizonica
·Austrian Pine, Pinus nigra
·Goldenraintree, Koelreuteria paniculata
·Italian Stone Pine, Pinus pinea
·Lacebark Elm, Ulmus parvifolia

Native Small Trees (Mature Height 30' or less):
·Crabapple, Malus spp.
·Eve's Necklace, Sophora affinis.
·Goldenball Leadtree, Leucaena retusa.
·Mexican Redbud, Cercis canadensis var. mexicana.
·Mexican-Buckeye, Ungnadia speciosa.
·Pinyon Pine, Pinus edulis.
·Prairie Flameleaf Sumac, Rhus Lanceolata.
·Texas Mountain Laurel, Sophora secundiflora.
·Texas Walnut, Juglans microcarpa.
·Desert Willow, Chilopsis linearis
·Texas Persimmon, Diospyros virginiana
·Texas Pistache, Pistacia texana
·Mexican Plum, Prunus mexicana
·Texas Redbud, Cercis canadensis texensis
·Vitex, Vitex agnus-castus

Non-Native Small Trees (Mature Height 30' or less):
·American Smoketree, Cotinus obovatus
·Crape Myrtle, Lagerstroemia indica
·Chinese Pistache, Pistacia chinensis

8.2.3 PARKS
Shade trees shall be 3" caliper container grown or 4" balled and burlapped trees planted in naturalistic pattern. At least 1 tree per 5,000 sf shall be planted. Existing hardwood trees may count toward the minimum number of trees. Trees may be grouped to allow for large lawn cover areas (see tree list in Landscape Standards 8.2.2)

B) Small Flowering Trees:
Small flowering trees(no less than 2 caliper inches) shall be planted in groupings at no less than 1 per 5,000 SF. (see tree list in Landscape Standards).

C) Lawn:
Lawns shall include Bermuda grass in sun to partly shade conditions; St. Augustine shall be provided in dense shade. In conditions with a more natural landscape character, coverage should be a mixture of native grass and wildflower seed. This mixture should contain a minimum of three (3) different species of grass and five (5) different species of wildflowers.

D) Street Lamps:
Street lamps shall be provided along pedestrian paths and at entrances to a Square or Plaza. At least 1/2 of a foot candle must be maintained.

E) Public seating:
Public seating shall include metal, stone or concrete benches placed along pathways. Seating shall be provided at no less than ten linear feet of seating per 10,000 SF of park area.

F) Irrigation:
Irrigation is required for all landscaped areas.

8.3 PARKING LOT LANDSCAPES

It is the intent of this section to establish standards in harmony with a city's landscape ordinance. However, due to the different development pattern (i.e. parking behind rather than in front of buildings) these standards shall apply where they may conflict with the landscape ordinance, including the Buffer requirements.

8.3.1 LANDSCAPE ISLANDS
In parking lots, landscaped islands must be provided at the end of all parking rows. Landscaped islands shall have a minimum width of 9 feet measured from back of curb to back of curb. A continuous poured-in-place concrete curb shall be provided around parking islands to prevent vehicular intrusion.

8.3.2 TREE ISLANDS
In addition to landscaping islands at the end of all parking rows, tree islands shall be incorporated into the parking lot layout every eight spaces to provide for additional shade. Tree islands shall incorporate a continuous poured-in-place concrete curb and shall be a minimum of 5' from back of curb to back of curb.

8.3.3 PARKING LOT TREES
In parking areas, two shade trees shall be planted in landscape islands at the end of all parking rows. A shade tree shall be installed no further than 30' from each stall. In addition, one shade tree will be provided for each five perimeter parking spaces. The parking lot trees will be a minimum 4 inch caliper balled and burlapped or 3 inch caliper container grown.

8.3.4 STREET TREES
Street trees shall be installed in locations shown on Street Types (Section 5.0), and shall be a minimum of 4" caliper, container grown with a minimum branching height of 9'-0".

8.3.5 MAXIMUM AREA OF PARKING SECTIONS
Parking areas shall be broken into individual sections not to exceed 60 cars. Each section shall be separated by a 10' wide major landscaped buffer to provide visual relief.-

8.3.6 PARKING LOT SCREENING
Any parking lot fronting along a Build-to-Line shall be landscaped at the perimeter and screened from view. A landscaped strip at least three feet wide shall be planted with a shrub hedge at least 30 inches in height at the time of installation and a mature height of 4' to 5'.

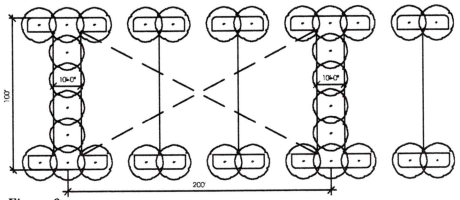


Figure 8a
MAXIMUM PARKING AREA

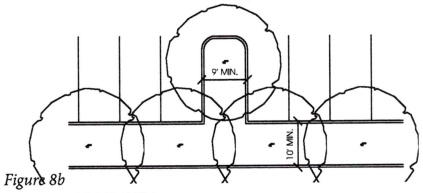


Figure 8b
LANDSCAPE ISLANDS

PACKET 3 of 3

8.3.7 STORAGE SCREENING
All loading and storage areas for commercial uses shall be screened from view from public streets and public open space. This provision includes above grade utility transformers, meters, valve boxes or other such apparatus. Screen elements may include permanent walls, fences, plant material or architectural enclosures. Open storage of goods, materials, machinery, equipment, vehicles, plants, trash or other items shall be similarly screened from public view.

8.3.8 IRRIGATION
All landscape areas shall be irrigated with the exception of natural areas and undeveloped areas. All irrigation systems are to be below ground, fully automated systems and in compliance with applicable building code requirements. The use of drip irrigation for shrubs and trees is acceptable. All backflow control devices are to be installed in below-grade Valve boxes or located and screened so that they are not visible from public streets or parking lots. All parking areas, drives and walks are to be "trimmed" to minimize spray onto pavements. Owners shall be required to irrigate to back of the curb of public roads. Oasis will provide reclaimed waste water to all irrigation users.

8.3. EXISTING TREE LOCATIONS
If specimen quality existing trees of 16" DBH or greater are encountered in tree surveys subsequent to the formulation of these standards, modifications to the layout of streets and walks may be considered. Refer to section 11.0 for Revisions to the Regulating Plan.

8.4 IMPLEMENTATION

All public landscape improvements shall be constructed or installed at the time of adjacent street and utility infrastructure construction.

December 14, 2021

9.1 STORM WATER MANAGEMENT

A Regional Storm water Management approach is desirable for the Oasis District. The benefits of a regional approach to providing storm water detention over an on-site approach are many. They include the following:

- A greater level of confidence in the hydraulic performance of the regional facilities;
- Less land area required thus increasing taxable land base in the District;
- Centralized, focused long term maintenance and thus a greater level of confidence in the long term function of the regional facility;
- Less overall construction, design, and administration costs;
- The ability to combine the regional facilities into an amenity area.

9.2 DRAINAGE STANDARDS
The Oasis District is anticipated to be a moderately high density and impervious cover area and as such the management of storm water runoff will be essential and critical to the ongoing health, safety, and welfare of not only the District, but also areas downstream of the District.

9.3 FLOODING CONDITIONS
There is increased potential for downstream erosion and degradation of water quality due to the increase in frequency of storm water runoff by the smaller more frequent storm events and corresponding increase in storm runoff volume. The increase in volume of runoff and frequency of storm water runoff events will have the effect of eroding the natural downstream waterways and further the potential for flooding. The effects of this can be mitigated by providing detention for the higher frequency (smaller) storm events and/or providing extended detention or a combination of detention/retention.

9.4 REGIONAL DETENTION
Due to the location of the Oasis District and its direct interface with the Midland County detention facility, accomodating approximately the north half of the project. The south half of the project shall drain to a combination of common area detention facilities.

9.5 WET PONDS
Detention may be combined with irrigation reservoirs and/or aesthetic ponds. Sufficient free board shall be designed into the pond to allow for adequate detention volume. These ponds may also be used to create man made wetlands where appropriate.

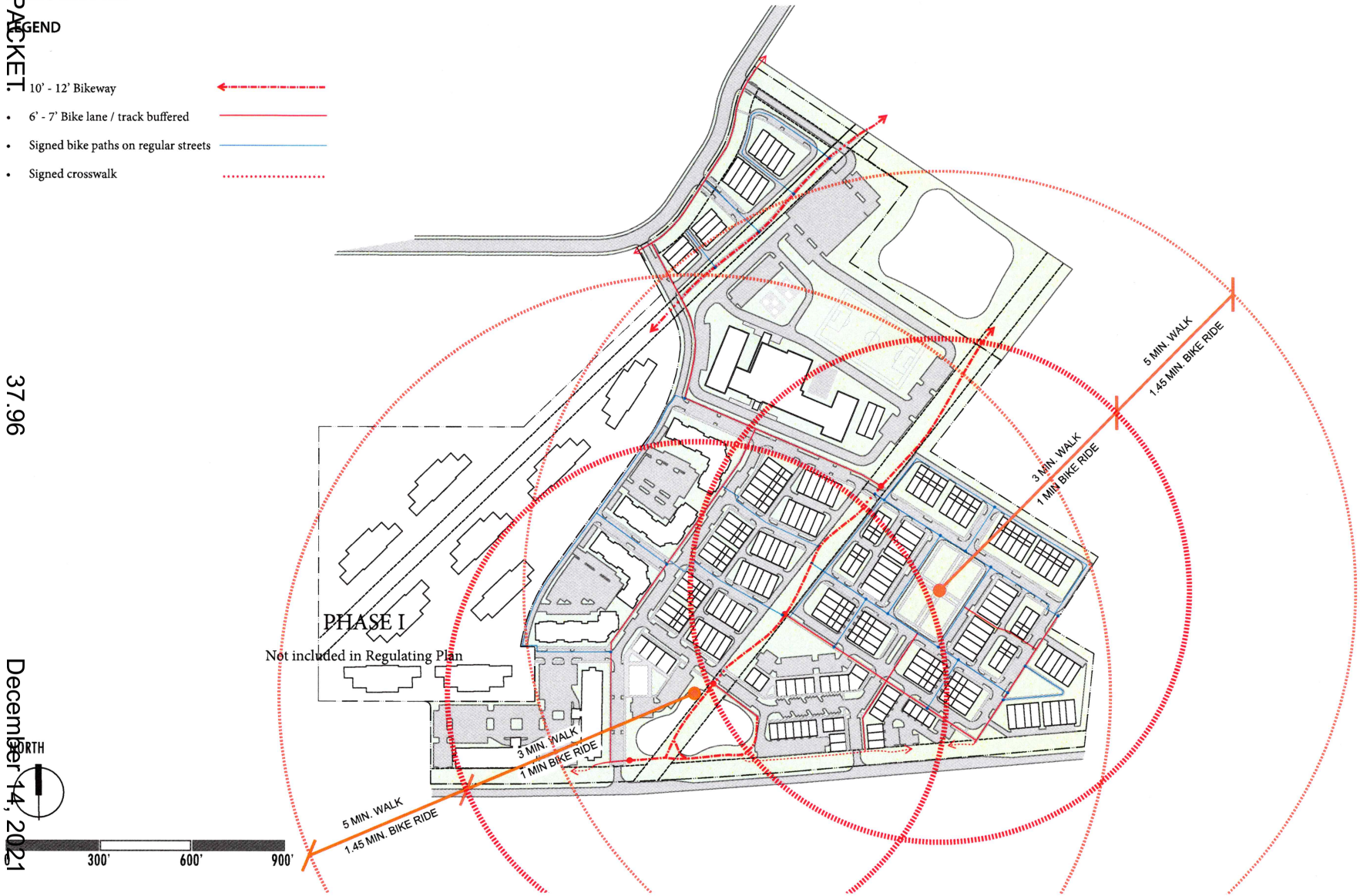
9.6 TIME OF IMPLEMENTATION
As with open space and landscape improvements, the implementation of drainage and water quality improvements outlined in this section shall be simultaneous with the development of sub basin served by the various drainage phases.



Figure 9a: Storm water management facilities can become a community amenity. (Hogan Park Golf Course, Midland, TX)

Bike Path Plan

PACKET: 37.96 December 14, 2021



Section 11.0
Lighting Standards

PACKET
3.2.21
December 14, 2021

11.1 GENERAL INTENT

A) Street lights shall be decorative and blend with the architectural style of the buildings in the Oasis District. Exterior lighting in the Public right-of-way will be coordinated with the electric utility provider. Standards for exterior lighting of private development such as parking areas and public spaces shall be subject to the regulations below and enforced by the Master Developer.

B) Street lights and site lights shall provide adequate lighting, while minimizing adverse impacts, such as glare and upward oriented glow. House side shields shall be provided where abutting a residential use. 'Dark Sky' protocols shall be integrated to the greatest extent possible.

11.2 PLACEMENT

A) Along all commercial or mixed use streets, parking areas, sidewalks, walkways, courtyards, community greens, and common open spaces, twelve to fourteen foot high decorative light posts shall be provided at regular intervals. Post shall be spaced at no greater than 60 feet on center on both sides of a commercial or main street and at all street intersections. Lighting on residential streets should be confined to the intersections and corners. Lighting standards shall be consistent throughout each district.
   1) Lighting level along commercial streets shall be no less than one-half foot candle and shall be no greater than two foot candles.
   2) Lighting level at an intersection of two residential streets (excluding alleys or access easements) shall be no less than one foot candle and shall be no greater than three foot candles.
   3) Lighting level at an intersection of a commercial street and any other street (excluding alleys or access easements) shall be no less than one foot candle and shall be no greater than three foot candles.
   4) Lighting level in parking lots shall be no less than one foot candle and shall be no greater than two foot candles.

B) In parking lots, post heights may be extended to a maximum of 18 feet.

11.3 TYPES

A) Use of metal halide or color corrected LED light sources are required. High pressure and sodium and non-color corrected mercury vapor light sources may be considered in special circumstances.

B) Porch light and yard post lighting are encouraged in residential areas. Where yard post lighting is used post and luminaires shall be of compatible styles.



PACKET 37.98 December 14, 2021

12.1 INTENT

The following Standards address the number, location, size and types of allowable signs throughout the Oasis District. These signage standards take precedent over the Midland Signage Ordinance and shall be enforced by the Master Developer. Where this section is silent, the standards of the Midland Sign Ordinance, if any, shall apply.

12.2 TYPE AND PLACEMENT

12.2.1 SIGNS AND EXTERIORS

Signing should be designed to directly relate to the exterior design of the building. Signing should not cover important features or cross transitions between features. Signing should be at the first floor level, should not project above the cornice or facia line, and should be primarily oriented to the pedestrian with the exception of the commercial district. However, lettering on second story windows, to identify separate uses located there, is appropriate. Anchor tenants (10,000 sq. ft. or greater) may place signage to within two feet of highest point of facade.

12.2.2 PROJECTING SIGNS

Signs should generally be flush with the facade and not protrude more than eight (8) inches from the wall. Projecting signs may be considered when the sign does not conflict with the building's exterior design.

12.2.3 OTHER PERMITTED SIGNS

Under-canopy shingle type signs and signing painted on canopies or awnings are permitted. Symbolic three-dimensional signs, such as barber poles, are encouraged. Moving and rotating signs are not permitted.

12.2.4 FREESTANDING SIGNS

Freestanding signs are allowed to identify a district, or multiple-business complex. In a multiple business complex one permanent directory or freestanding master identification sign, not to exceed twenty-five (25) square feet per sign face, is allowed at each main entrance to a public street.

12.2.5 SHINGLE SIGN STANDARDS

A shingle sign, also known as blade or projecting signs, may be permitted to be placed on a building frontage only if all of the following Standards are met:

A) Context
The sign is historically accurate or appropriate for the building

B) Visibility
The sign does not impair the visibility of adjacent signs

C) Materials
The size, location and materials of the sign are compatible with the building and conform to the requirements of this section.

D) Height
The height of the sign does not extend above the cornice line of a one story building or the sill of a second floor window.

12.2.6 SIGN CONTENT

A permanent sign is limited to the name and graphic logo of the business, the type of service rendered, the principal brand names or classification of merchandise for sale, and street address. Street addresses are mandatory for each building. Brand names may occupy not more than twenty five percent (25%) of the allowable sign area, except for storefront window signs.

12.2.7 NEON SIGNS

Neon signs are permitted only when all of the following Standards are met:

A) Visibility
The sign does not impair the visibility of adjacent signs.

B) Materials
The sign, location and materials of the sign are compatible with the building and conform to the other requirements of this Section.

C) Associated Use
The sign is more appropriate than an otherwise illuminated sign because of its associated use (e.g. nightclub).

12.3 ALLOWABLE SIGN AREA

12.3.1 MAXIMUM SIGN AREA

A maximum area of one-half (1/2) square foot of signing may be permitted for each linear foot of a business on a primary frontage (facing a public street, public parking lot, or public space) not to exceed forty (40) square feet on any one frontage. A maximum of one-fourth (1/4) square foot of signing may be permitted for each linear foot of a business on a secondary frontage (facing an alley, private driveway, an adjacent building, private parking or service area) not to exceed twenty (20) square feet on any one frontage.

12.3.2 APPLICABILITY

The maximum area of signing noted above shall apply to all wall, window and projecting signs and signs painted on awnings. Further, shingle signs shall not exceed twenty (20) square feet per sign face and shall not project more than five (5) feet from the wall. Shingle signs located under canopies may be the width of the canopy.

12.3.3 FIRST FLOOR SIGNS

Each business with first floor frontage or direct sidewalk access may have a pedestrian-oriented sign attached below a canopy not exceeding five (5) square feet per sign face and with a minimum clearance of eight (8) feet above the sidewalk. Such a sign will not count as part of the maximum business sign allowance.

12.3.4 MULTIPLE TENANT SIGNS

Multiple business directories are intended to address situations where businesses have limited visibility from the adjacent street, and may be permitted when not exceeding two (2) square feet per tenant and twenty (20) square feet total per sign face. Such a sign will not count as part of the maximum business sign allowance.

12.4 MATERIALS

Signs should be painted and/or carved wood, wrought iron, cut out, non reflective metal lettering such as brass, or glass (including stained glass). Signs painted directly on plain surfaces, windows and canvas awnings are generally appropriate. Three dimensional metal "box" signs are not permitted. Decorative neon identification signs may be used as an accent or design feature, but shall not dominate the general appearance of the facade.

12.5 ILLUMINATION

12.5.1 INDIRECT ILLUMINATION

Illumination should generally be indirect such as that provided by "goose necked" light fixtures. In some instances, signs may be flood-lighted or may utilize exposed LED light bulbs.

12.5.2 ILLUMINATED SIGNS NOT PERMITTED

No interior-illuminated signs are permitted. Fluorescent, flashing, and intermittent illumination is not permitted.

12.5.3 ILLUMINATED SCHOOL SIGN

One exception will be allowed in the frontage type F5 to allow one internally lit school marque sign. The internally lit portion of the marque shall not exceed 40 square feet.

12.6 TEMPORARY SIGNS

12.6.1 STORE EVENTS

Temporary signs pertaining to special store events or sales lasting no more than thirty (30) days may be painted or affixed to display windows provided that their total area shall not exceed twenty-five percent (25%) of the window area.

12.6.2 TEMPORARY BANNERS

Banners or other promotional signs may be displayed for up to thirty (30) days. The same or similar signage shall not be replaced within thirty (30) days after removal.

12.7 NON-CONFORMING SIGNS

Non-conforming signs or sign structures shall be removed upon change in tenancy or ownership of the business identified by the sign. No change in copy and/or reuse of non-conforming sign or sign structure shall be permitted in order to identify a new business, product, tenant or occupant.

12.8 UNUSED SIGNS

12.8.1 UNUSED SIGNS

Any sign existing as of or after the effective date of these Standards, which no longer advertises a bona fide business conducted or a product available for purchase by the public, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or structure or land upon to do so.

12.8.2 SIGN REMOVAL BY CITY OR DEVELOPER

Upon failure to comply with such notice within the time specified in such order, the Developer is authorized to cause removal of such sign and any expense incident thereto shall be paid by the owner of the building or structure to which such sign is attached or, if the sign is not attached to a building, then such expense shall be paid by the owner of the sign.

12.9 ILLEGAL CONSTRUCTION

If the Developer finds that any sign has been constructed or erected, or is being maintained in violation of the provisions of this Section, they shall give written notice of such conditions to the permittee. In the event no valid permit exists, the owner will remove or alter the sign so as to comply with this section within thirty (30) days after such notice. Such signs may be removed or altered to comply at the expense of the permittee or the owner of the property upon which the sign is located.

12.10 STREET ADDRESS SIGNS

Building shall display a numerical address sign indicating the legal address in letters not less than four inches in height and clearly visible from the public street.

12.11 PROHIBITED SIGNS

All auto oriented pylon, pole mounted berm mounted, or off-premise identification signs are prohibited. Off-premise directional signs may be approved on a case-by-case basis by the Design Review Board or Town Architect.

Section 13.0

Amendment Procedure/Other Codes and Development Regulations Applicable

PACKET
3799
December 14, 2021

13.1 ADOPTION AND REVISION OF THE REGULATING PLAN

The Regulating Plan for the Oasis District shall be included in the ordinance zoning for the area as the Oasis District.

13.2 REVISION OF THE REGULATING PLAN

13.2.1 MINOR REVISIONS

The Director of Planning, or their designee, may administratively approve minor revisions to the Regulating Plan if the Director determines that there are no adverse effects on areas that are part of a final plat nor to the overall intent of the Regulating Plan. The following shall be considered minor revisions:

A) The size of a District Area, including its building or structures, may be revised if the size is increased or decreased by not more than 10% and (a) the Director determines that the basic layout of the District remains the same and (b) the Regulating Plan functions as well as before the revision.

B) The location of a Frontage Type may be revised if the Director determines that the revised location is appropriate.

C) The location or size of an open space may be revised if the overall amount of open space does not decrease by more than ten percent, and the Director determines that the quality and functionality of the revised open space is the same or better.

D) A construction phasing plan for open space improvements may be revised to extend a deadline for completion by not more than six months after the adjacent streets are completed.

E) The locations of major utility facilities and easements may be revised if the Director determines the revised locations are more functional or appropriate.

F) The location of a civic site may be revised if the Director determines that (a)the revised location is appropriate, and (b) the transportation network, the infrastructure, and the overall land use mix are not adversely affected.

13.2.2 MAJOR REVISIONS

All revisions other than those described above are major revisions. Major revisions must be approved by the City Council through a rezoning of the property.

13.3 PRIORITY

Requirements of these standards supersede any inconsistent provisions of the City's Development Codes and Ordinances.

13.4 OTHER PERMITS REQUIRED

A) Building Permit Required
A building permit issued by the City is required for a structure within the District.

B) Construction Permit Required
A construction permit is required for development of more than 1,000 sq. ft. of site area if a building permit is not otherwise required.

C) Site Plan
A site plan must be submitted with the building or construction permit application. A building or construction permit may not be issued unless a site plan complies with these Regulations. A site plan must provide the following information, if applicable:

1. Locations and types of easements;

2. The locations of proposed utility connections;

3. Building location and gross building square footage;

4. Proposed use that complies with the Regulating Plan;

5. Locations, quantity, and dimensions of sidewalks, pedestrian ramps, driveways, parking areas, parking spaces, and off-street loading areas;

6. Information that shows compliance with accessibility requirements;

7. Landscaping, screening, and fencing;

8. Locations of protected trees and significant tree clusters;

9. An erosion and sedimentation control plan;

10. Lot size, setbacks, build-to lines, building height and building coverage;

11. Other information that may be required by the Town Architect or Design Review Board.

D) Architectural Standards
A building or construction permit may not be issued unless the Design Review Board or the Town Architect has certified that the proposed development complies with the architectural standards. This requirement applies to other than single family housing intended for sale.

13.5 PROPERTY OWNERS' ASSOCIATIONS

A) Conditions, Covenants, and Restrictions for all single family residential property within the Oasis District must be filed in the county real property records by the owner before a final subdivision plat may be approved, a lot sold, or a building permit issued.

B) Conditions, Covenants, and Restrictions must be approved by the Master Developer, and they must:

1. Create a Property Owners' Association (or Home Owners' Association) with mandatory membership for each property owner;

2. Establish Design Review Board(DRB) if no Town Architect is hired by the master developer.

3. Establish architectural standards that are in conformity with the requirements of these standards;

4. Collaborate with the Town Architect or DRB to review projects for compliance with the architectural standards and issue certificates of approval;

5. Provide for the ownership, development, management, and maintenance of private open space (except plazas owned by individual property owners), community parking facilities, community meeting halls, and other common areas;

6.Provide for the maintenance of the landscaping and trees within the rigth-of-way;

7. Require the collection of assessments from members in an amount sufficient to pay for its functions;

8. Be effective for a term of not less than 50 years;

9. Require that the Property Owners' Association (or Home Owners' Association) obtain the approval of the Director regarding the disposition and management of private open space, community parking facilities, community meeting halls, and other common areas before it may be dissolved; and

10. Require the Property Owners' Association (or Home Owners' Association) obtain the approval of the Director for amendments to the Conditions, Covenants, and Restrictions which relate to provisions required by this chapter.

13.6 ARCHITECTURAL STANDARDS

The Property Owners Association may establish separate Architectural Standards for non commercial buildings in the District. If created those standards shall accomplish the following:

A) Conditions, Covenants, and Restrictions shall establish architectural standards for the property within the Oasis District. The standards must comply with this section.

B) The architectural standards must achieve the following objectives:

1. Architectural compatibility between residential and commercial buildings;

2. Human scale design;

3. Integration of uses;

3. Encouragement of pedestrian activity;

5. Buildings that relate to and are oriented toward the street and surrounding buildings;

6. Residential scale buildings in Mixed Residential Areas;

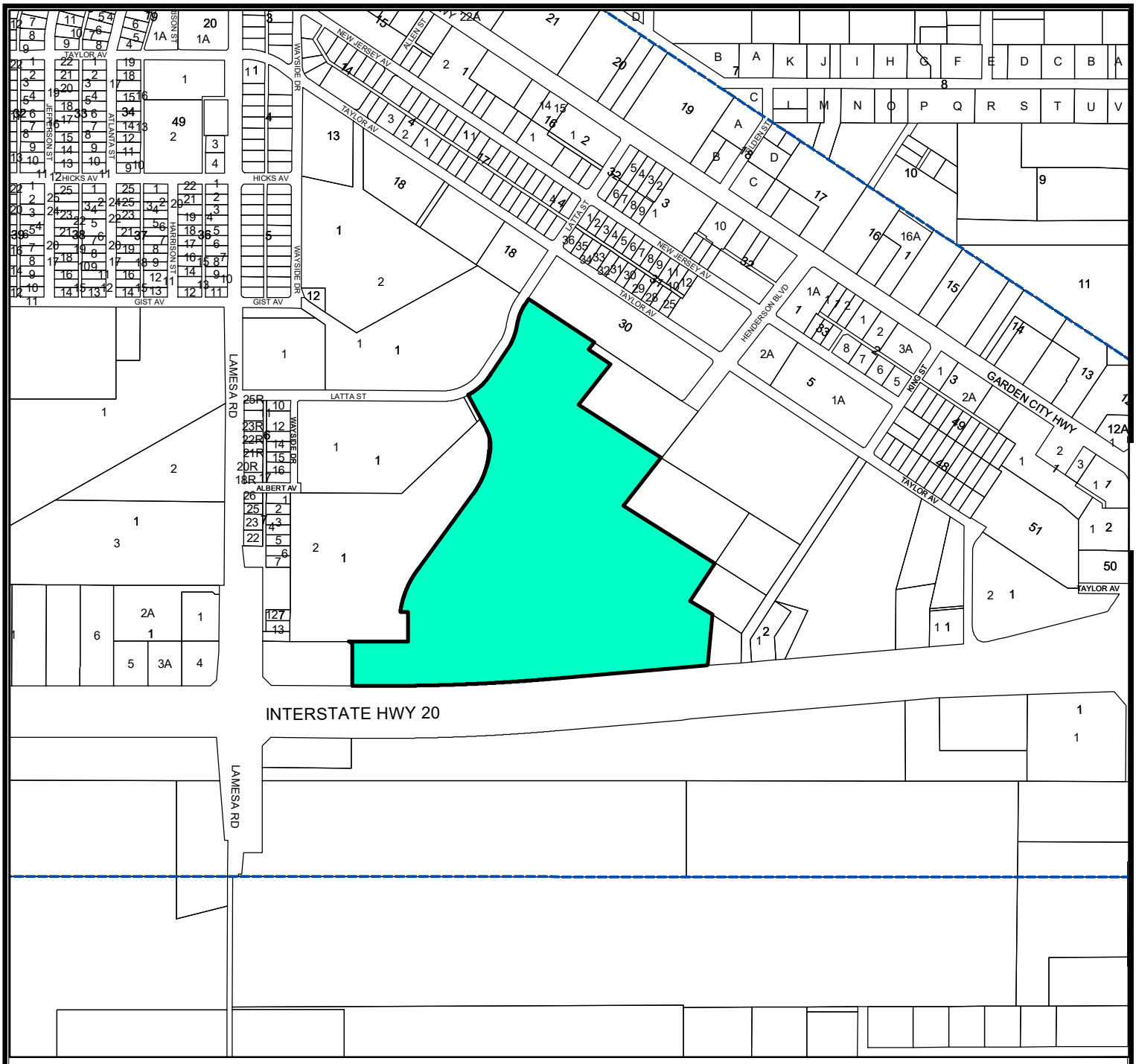
7. Buildings that contain special architectural features to signify entrances to the Neighborhood Center Area and important street intersections; and

8. Neighborhood Center Area buildings that focus activity on the neighborhood square.

13.7 LIFE SAFETY CODES

A) Due to the proximity of commercial to residential buildings, voluntary sprinkler compliance should be considered for all commercial buildings and residential buildings over 500 sq. ft. in the district.

B) NFPA Standards for commercial buildings in excess of 500 sq. ft. shall apply.



LOCATION MAP

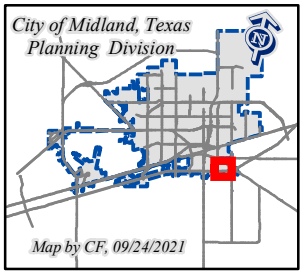
P-21-1196 **Scale: 1" = 833'**

Consider a request by Gary Bellomy for a zone change from a PD, Planned Development District for a Housing Development, Office Center, and Shopping Center to an amended PD, Planned Development District for a Housing Development, Office Center, and Shopping Center on a 57.55-acre tract of land located in Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland Texas .

Generally located on the north side of East Interstate 20, approximately 330 feet east of South Lamesa Road (Council District 2)

LEGEND

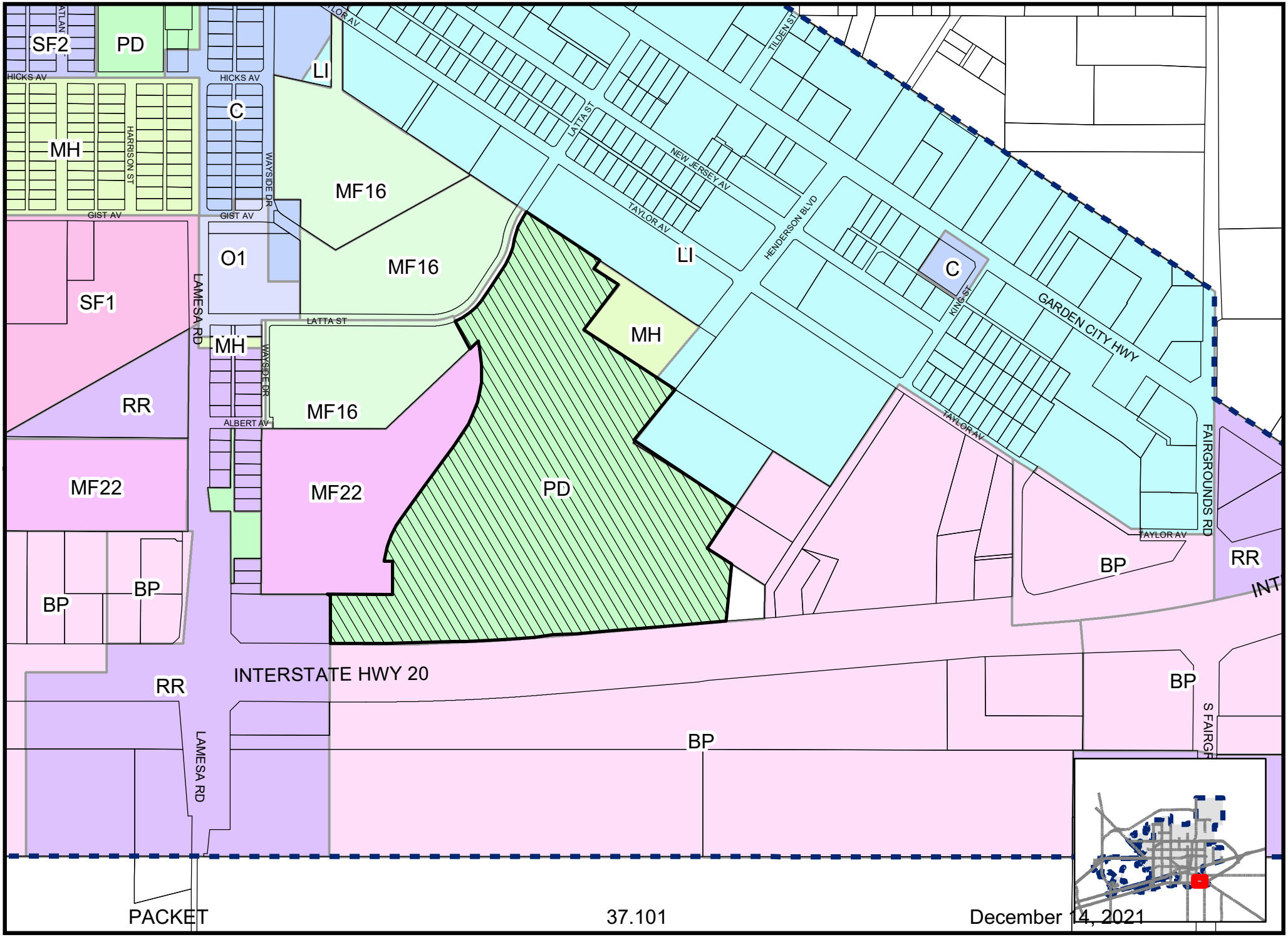
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By CF, 9/23/2021

Z-21-0266

Scale: 1" = 600'

ZONING MAP

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WEST
20
WEST
349
TEXAS


Lamesa
Road

City Council Meeting

Item Number: 38

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE 2020-2021 FISCAL YEAR BUDGET SO AS TO INCREASE AMOUNTS APPROPRIATED TO CERTAIN FUNDS (DISTRICT: NONE) (FINANCE)

Purpose:

Adopt budget amendments to three Special Revenue Funds in Fiscal Year 2021 due to unforeseen circumstances

Recommended City Council Action:

Approve

Fiscal Impact:

This ordinance will ratify expenditures made by certain governmental funds above their originally adopted budget. These funds are sometimes difficult to forecast, due to the nature of the requirements placed upon them. The total amount of proposed amendments is $225,370. All funds have a sufficient cash balance.

Discussion:

Please see the attached memo from the Finance Department for a further explanation of the funds affected and the financial details.

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE 2020-2021 FISCAL YEAR BUDGET SO AS TO INCREASE AMOUNTS APPROPRIATED TO CERTAIN FUNDS

WHEREAS, expenditures in certain governmental funds exceeded the original estimates in the budget for the 2020-2021 fiscal year; and

WHEREAS, the Council finds it to be in the public interest to amend the 2020-2021 budget as necessary to meet unforeseen conditions that could not by reasonably diligent thought and attention have been included in the original budget for the 2020-2021 fiscal year;

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

THAT in accordance with Texas Local Government Code section 102.009, the official municipal budget for the fiscal year 2020-2021 is hereby amended by increasing amounts appropriated to certain funds from the Unappropriated Fund Balance for the fiscal year ending September 30, 2021, as follows:

Increasing Budget Authority

Police Technology & Equipment Fund (075).. . . . . $94,641.00;

Parks Donation and Special Purpose Fund (077). $74,449.00;

Debt Service Fund (100).. . . . . $56,281.00.

Said budget schedule is on file with the office of the City Secretary referenced by the date and number of this Ordinance.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

TO: **The Honorable Mayor and Members of the City Council**

FROM: **Jamie Radcliff, Budget Manager**

SUBJECT: **Year End Budget Amendments**

DATE: **November 16, 2021**

Appropriations are needed for the following funds:

Fund#	Fund Name	Adopted Budget	FY21 Expenses	Budget Amendment	Cash Balance
075	Police Tech and Equip	$85,600	$180,241	$94,641	$280,197
077	Park Donation and Special Purpose	$170,000	$244,449	$74,449	$2,165,733
100	Debt Service	$11,801,520	$11,857,801	$56,281	$1,934,398

Police Technology & Equipment is used to account for funds received from private organizations or individuals specifically for law enforcement related technology and equipment. Such funds are used solely for law enforcement purposes. The funds were used for ballistic vests and rifles for police officers.

Park Donation & Special Purpose Fund is used to account for funds received from private organizations, individuals, and oil lease money generated from park land. Such funds are used solely for park related development. The funds used here were for the Community Services Department Irrigation and Sod Project, for irrigation design and sod evaluation for four city parks.

****Governmental Debt Service Fund** accumulates revenue from the property tax levy. The overage was due to costs of issuance for the 2021 Certificate of Obligation.

City Council Meeting

Item Number: 39

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Justine Ruff, Director

Subject: AN ORDINANCE AMENDING TITLE XIII, "AIRPORTS", CHAPTER 2, "AIRPORT REGULATIONS", OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 21, "CUSTOMER FACILITY CHARGE", SO AS TO AUTHORIZE THE IMPOSITION OF A CUSTOMER FACILITY CHARGE TO BE PAID BY EACH PERSON RENTING A MOTOR VEHICLE FROM AN ON-SITE VEHICLE RENTAL CONCESSIONAIRE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF FEBRUARY 1, 2022 (DISTRICT 4) (AIRPORTS)

Purpose:

AN ORDINANCE AMENDING TITLE XIII, "AIRPORTS", CHAPTER 2, "AIRPORT REGULATIONS" OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 21, "CUSTOMER FACILITY CHARGE" SO AS TO AUTHORIZE THE IMPOSITION OF A CUSTOMER FACILITY CHARGE TO BE PAID BY EACH PERSON RENTING A MOTOR VEHICLE FROM AN ON-SITE VEHICLE RENTAL CONCESSIONAIRE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF JANUARY 1, 2022.

Recommended City Council Action:

Approve

Fiscal Impact:

TBD

Discussion:

In the Spring of 2020, the Department of Airports began investigating the possibility of building a Consolidated Rental Car Facility (ConRAC) at MAF. ConRACs were developed in the mid-1980s in an effort to take advantage of financial, environmental, and land-use benefits associated with consolidating all of the rental car agencies' operations into one facility. ConRACs are an extension of the airport and the customer experience, and also serves as the gateway to the area as they are typically viewed as the first experience for the arriving customer and the last experience for the departing customer. ConRACs alleviate congestion and frustration at the airport by creating a consolidated operation that provides a high level of customer service through intuitive wayfinding and providing a safe and secure environment. Additional benefits include much improved rental car operational efficiencies which equate to improved service and increased revenue. The project now involves investigating the cost of a multi-story parking garage with a Consolidated Rental Car Facility on the bottom floors and additional public parking on the higher levels.

Many airports use a Customer Facility Charge to help with the maintenance and financing of such a facility. This Ordinance will collect a $3 per transaction/day Customer Facility Charge (CFC) from customers renting vehicles. The $3 per transaction/day fee will be collected by rental car companies on behalf of the City from Airport customers renting vehicles. The fees collected will initially be used to complete more analysis to determine the most appropriate steps to build a ConRAC at MAF. The $3 rate will be included and adjusted in the City of Midland Rates and Charges Ordinance.

Tina Jaug

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XIII, "AIRPORTS", CHAPTER 2, "AIRPORT REGULATIONS", OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 21, "CUSTOMER FACILITY CHARGE", SO AS TO AUTHORIZE THE IMPOSITION OF A CUSTOMER FACILITY CHARGE TO BE PAID BY EACH PERSON RENTING A MOTOR VEHICLE FROM AN ON-SITE VEHICLE RENTAL CONCESSIONAIRE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF FEBRUARY 1, 2022

WHEREAS, the City of Midland (the "*City*") owns and operates the Midland International Air & Space Port (the "*Airport*") and may enter into agreements for the use of Airport facilities with certain entities ("*On-Site Vehicle Rental Concessionaires*") for the privilege of operating vehicle rental concessions at the Airport, and may place restrictions and establish certain fees and charges related to the use of Airport facilities; and

WHEREAS, the City seeks to study and investigate certain improvements to current facilities occupied by On-Site Vehicle Rental Concessionaires and the proposed construction of a Consolidated Rental Car Facility ("*ConRAC*") on City-owned land at the Airport for the purpose of combining all functional components of On-Site Vehicle Rental Concessionaire operations into a single facility; and

WHEREAS, the improvements to current Airport facilities and the construction of a ConRAC at the Airport (collectively, the "*Improvements*") will alleviate traffic congestion at the Airport, preserve Airport infrastructure, and expand beneficial and convenient vehicle rental services to users of the Airport; and

WHEREAS, the City intends to fund all or a portion of the study, design, construction, operations, management, and maintenance of the Improvements through the imposition of a Customer Facility Charge (the "*CFC*") to be paid by each person renting a motor vehicle from an On-Site Vehicle Rental Concessionaire at Midland International Air & Space Port, and which shall be collected by the On-Site Vehicle Rental Concessionaires and remitted to the City; and

WHEREAS, the Council finds it to be in the public interest to amend Title XIII, "Airports", Chapter 2, "Airport Regulations", of the City Code of Midland, Texas, in order to authorize the imposition of a Customer Facility Charge to be paid by each person renting a motor vehicle from an On-Site Vehicle Rental Concessionaire;

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

SECTION ONE. That Title XIII, "Airports", Chapter 2, "Airport Regulations", of the City Code of Midland, Texas, is hereby amended by adding Section 21, "Customer Facility Charge", which shall read as follows:

13-2-21. Customer Facility Charge.

(A) Definitions. As used in this Section:

1. *ConRAC* means a consolidated rental car facility.
2. *Customer Facility Charge (CFC)* means a user fee imposed on a transactional basis on a person renting a motor vehicle from an on-site vehicle rental concessionaire at Midland International Air & Space Port. The total CFC assessed per transaction shall be a product of the transaction days that are subject to agreement between the person and the on-site vehicle rental concessionaire. The CFC does not constitute income, revenue, or assets of the on-site vehicle rental concessionaire, and is, at all times, property of the City of Midland.
3. *On-Site Vehicle Rental Concessionaire* means any person, association, corporation, entity or other organization that enters into an agreement with the City of Midland for the purpose of occupying facilities located at Midland International Air & Space Port to offer motor vehicle rental concession services.
4. *Person* means any person, association, corporation, entity or organization that arrives at Midland International Air & Space Port and

enters into an agreement either (a) directly with an on-site vehicle rental concessionaire; or (b) with a third party, if such agreement with the third party was facilitated, arranged, or otherwise coordinated by an on-site vehicle rental concessionaire.

5. *Transaction Day* means a 24-hour period, or fraction thereof, that is subject to an agreement between a person and an on-site vehicle rental concessionaire.

(B) A Customer Facility Charge (CFC) is hereby established and shall be charged to each person renting a motor vehicle from an on-site vehicle concessionaire.

(C) Airport Manager; Powers and Duties.

1. The Airport Manager is authorized to implement and administer the CFC consistent with the provisions of this Ordinance and the City Code of Midland, Texas.

2. The Airport Manager may deem an on-site vehicle concessionaire that fails to comply with this Section in default of its agreement with the City of Midland, regardless of whether said agreement incorporates the provisions of this Section, and may recommend said agreement's termination to the City Council.

(D) On-Site Vehicle Concessionaire's Duties. An on-site vehicle concessionaire shall:

1. Charge and collect from each person the total amount of the CFC due under the agreement between the Person and the on-site vehicle concessionaire at the time the final number of transaction days are determined and shall list the CFC separately on the invoice, describing it as a "Customer Facility Charge";

2. Remit the total amount of the CFC to the City on a monthly basis, and not later than the 15th day of the month following the month in which

the CFC is paid by the person, along with supporting documentation in a format acceptable to the Airport Manager.

3. Maintain adequate records that account for the CFC charged to its customers and collected for the benefit of the City of Midland, in accordance with generally accepted accounting principles, and make said records available to the City of Midland upon the request of the Airport Manager.

(E) Permitted Uses of the Customer Facility Charge Funds. All funds collected from the imposition of the CFC shall be designated as such and used only for the study, design, construction, operations, management, and maintenance of:

1. Improvements to current facilities occupied by on-site vehicle rental concessionaires; and

2. A ConRAC to be located at Midland International Air & Space Port.

(F) Amount of Customer Facility Charge. The Customer Facility Charge shall be based on the rate found in the City of Midland Fee Ordinance.

SECTION TWO. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Midland hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The 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.

SECTION FIVE. The effective date of this Ordinance is February 1, 2022.

The above and foregoing Ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing Ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

_____

John Ohnemiller, City Attorney

City Council Meeting

Item Number: 40

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (DISTRICT: ALL) (FINANCE)

Purpose:

Adopt the Fee Schedule as Revised establishing regulatory and user fees collected by the City of Midland in order to adequately cover the costs and expenses incurred with providing the services.

Recommended City Council Action:

Approve

Fiscal Impact:

Regulatory and User fees generate revenue designed to cover the cost of service provided by the City of Midland. The Airport and Parks Department has additions/revisions to their user fees.

Discussion:

The Airport is implementing a $3.00 Customer Facility Charge to be collected daily by the rental car companies from vehicle rentals.

The Parks Department adjusted fees for the Whitehouse Rental. The cost for half day rentals is $200 (10 AM - 4 PM or 6 PM - midnight). The fee is $400 to reserve the Whitehouse All Day, with a $200 deposit.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to establish fees collected by the City of Midland in order to adequately cover the costs and expenses incurred by the City in connection with providing the services associated with said fees; and

WHEREAS, the City Manager's designees have prepared Exhibits "A" through "O", which are attached hereto and incorporated herein for all purposes, identifying said fees (collectively, the "Fee Schedule"); and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to adopt the Fee Schedule and to establish the fees identified therein as the fees to be collected by the City of Midland, said fees being reasonably related to the costs and expenses incurred by the City in connection with providing the services associated with said fees;

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

SECTION ONE. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are adopted as part of this ordinance for all purposes.

SECTION TWO. That the Fee Schedule is hereby approved and adopted. The fees identified in the Fee Schedule are hereby established as the fees to be collected by the City of Midland except for the following types of fees: a fee charged to a requestor who submits a request for information under the Texas Public Information Act; a fee assessed by the Municipal Court that is not identified in the Fee Schedule; a fee established by a contract, to the extent that the fee established by the contract conflicts with or is not identified in the Fee Schedule; a drainage charge; an impact fee; a fee prescribed by a state law, rule, or

regulation; or a fee for which a state law, rule, or regulation, or the City Charter requires a procedure to be followed to establish the fee other than the procedure that was followed to adopt the Fee Schedule.

To the extent that a fee identified in the Fee Schedule conflicts with a fee that was previously established by ordinance (including an ordinance that has been codified in the City Code), resolution, or other City of Midland instrument, this ordinance shall supersede such previous ordinance, resolution, or other instrument, and the fee identified in the Fee Schedule shall be the applicable fee.

To the extent that a fee identified in the Fee Schedule conflicts with a fee prescribed by a state law, rule, or regulation, the fee prescribed by the state law, rule, or regulation shall be the applicable fee.

To the extent that a fee identified in the Fee Schedule is a fee for which a state law, rule, or regulation, or the City Charter requires a procedure to be followed to establish the fee other than the procedure that was followed to adopt the Fee Schedule, such fee that was previously established by following the applicable procedure shall be the applicable fee.

SECTION THREE. Any person wishing to appeal the payment of a fee identified in the Fee Schedule may do so in accordance with the law, rule, regulation, or ordinance that established the procedure for appealing such fee. To the extent no such appeal procedure has been established for a fee identified in the Fee Schedule that is not a fee assessed by the Municipal Court, the following appeal procedure shall apply:

A. Any person may appeal in writing to the City Manager, or the City Manager's designee, prior to paying the fee or after paying the fee. Any person may appeal in writing to the City Manager, or the City Manager's designee, if the person believes that he or she cannot afford the fee. The person may seek an exemption from all or part of the fee. The City Manager, or the City Manager's designee, shall make certain that the fee is not paid under duress.

If a person wishes to appeal after payment of the fee, the person shall appeal in writing to the City Manager, or the City Manager's designee, within ten (10) calendar days of paying the fee.

B. The City shall not file criminal charges against any person related to non-payment of the fee if the fee is not paid. The City shall not file criminal charges against a person in an attempt to collect the fee.

C. The City Manager, or the City Manager's designee, shall provide a full and meaningful review process. The City Manager, or the City Manager's designee, shall provide a fair opportunity for a person to challenge the accuracy and legal validity of his or her fee obligation. The City Manager, or the City Manager's designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or the City Manager's designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors, such as ensuring that a person may continue the operation of his or her business.

D. The City Manager, or the City Manager's designee, shall make his or her decision within ten (10) days of receiving the written notice of appeal. The City Manager, or the City Manager's designee, shall ensure that a person has all rights under any applicable law. A person shall incur no financial hardship by exercising his or her right to appeal.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid

SECTION SIX. That this ordinance shall become effective immediately upon final passage and approval.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit A

City Secretary

	Fee
Business Regulations	
Junk and secondhand goods license	$25.00
Renewal of junk and secondhand good	$10.00
Alcoholic Beverage License Fee	1/2 of State Fee
Taxicab annual operating fee (each)	$200.00
Limo or Motorbus operating fee (each)	$100.00
Passports	
Execution Fee (DS-11)	$35.00
Renewal Mailing Fee (DS-82)	$10.00
Passport Photograph	$18.00
Expedited Shipping Fee (DS-11)	$26.40
Expedited Shipping Fee (DS-82)	$32.95
Notarization Fee	$10.00
Copies	$0.25

Exhibit B

Parks

	Fee
TEMP FENCING	
Deposit	$200.00
Rental Fee (per panel)	$10.00
SHOWMOBILE	
Deposit	$1,000.00
4 Hours	$250.00
8 Hours	$500.00
Extensions	$100.00
Show Lights	$200.00
PORTABLE BLEACHERS	
Deposit	$100.00
Rental Fee	$100.00
PORTABLE STAGE	
Deposit	$100.00
Rental Fee	$100.00
TRASH CANS	
Deposit	$100.00
Rental Fee (10 cans)	$50.00
PARK PAVILION RENTAL	
Deposit	$100.00
Rental Fee 9am-12am	$60.00
Rental Fee 9am-3pm	$30.00
Rental Fee 4pm-12am	$40.00
BEAL RANCH HOUSE	
Deposit no Alcohol	$300.00
Deposit w/Alcohol	$500.00
Rental Fee Per Hour	$50.00
GAZEBO RENTAL WADLEY	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
GAZEBO RENTAL BEAL	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
WHITEHOUSE RENTAL	
Deposit	$200.00
Rental Fee 10 am - 4 pm	$200.00
Rental Fee 6 pm - 12 am	$200.00
Rental Fee All Day	$400.00

Exhibit C

Recreation

		Fee
CITY POOL RATES		
Entry Fee		$3.00
Children under 2		Free
10 Punch Card		$15.00
25 Punch Card		$35.00
75 Punch Card		$75.00
Personal Cooler Admission		$10.00
Soda/Drinks		$2.00
Snacks		$1.00
Life Jacket Rental		$1.00
Life Jacket Deposit		$1.00
PRIVATE RENTALS		
DEPOSIT		$250.00
RENTAL		$700.00
POOL PAVILION RENTALS		
(Doug Russell Only)		
DEPOSIT		$100.00
RENTAL		$100.00
MARTIN LUTHER KING RECREATION CENTER	per hour	
Activity Room		
During Operation		$25.00
After Hours		$35.00
Deposit		$100.00
Activity Rm/with Gameroom	per hour	
During Operation		$35.00
After Hours		$70.00
Deposit		$300.00
Auditorium	per hour	
During Operation		$50.00
After Hours		$75.00
Deposit No Alcohol		$500.00
Deposit Alcohol		$750.00
Gymnasium	per hour	
Sporting Events ONLY		
During Operation		$25.00
After Hours		$50.00
Deposit		$200.00
Training Room	per hour	
Sporting Events ONLY		

Exhibit C

Recreation

	Fee
During Operation	$50.00
After Hours	$75.00
Deposit	$1,000.00
Daily	$1.00
Monthly Membership	$15.00
MLK Volleyball Net Setup Fee	$15.00
MOVIE SCREEN	
Deposit	$1,000.00
Fee	$500.00
BUBBLE SOCCER AT MLK Gym Only	
Deposit	$300.00
During Hrs	$100.00
After Hours	$125.00
Bubble Soccer at MLK Gym/Activity Rm	
Deposit	$300.00
During Hrs	$125.00
After Hours	$135.00
BUBBLE SOCCER AT MLK Gym/Act Rm/Game Rm	
Deposit	$300.00
During Hrs	Not Avaliable
After Hours	$170.00
BUBBLE SOCCER NOT @MLK	
Deposit	$500.00
Fee Per Hr (must be 2 hour rental)	$200.00
AUXILIARY FIELDS	
Per Hour	$50.00
Tournament (per game)	$30.00
Deposit	$100.00
Tournament Deposit ($125 non refundable)	$250.00
Field Marking	$75.00
Lights for Practice field (per field per hour)	$25.00

Exhibit D

Health and Senior Services

	Fee
Environmental Section	
Mobile Food Vendor	
Mobile Food Vendor	$175.00
Mobile Food (Seasonal)	$105.00
Temporary Permit	$70.00
Food Services Establishments	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Deli/Meat Market/Bakery	$75.00
Farmers Market	$50.00
Retail Food Store	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Temporary Permit	$70.00
Child Care Programs	
Day Care	$100.00
Foster Care	$50.00
Child Care Program for after School	$50.00
Swimming Pool, Spa, or Water Feature Permit	
Swimming Pool or Spa Permit	$100.00
Water Feature Permit	$100.00
Non-Profit Yearly	$30.00
Non-Profit Temporary	$30.00
Re-inspection (When Establishment is shut down)	$75.00
Septic System Inspections	
Septic System Residential	$150.00
Septic System Commercial	$210.00
Septic re-inspection (When fails initial inspection)	$50.00
Late Fee (When not paid by specified date)	25% of Permit Fee
Clinical Section	
Health Department Services	
DTaP	$45.00
Kinrix (DTaP & Polio)	$100.00
Pentacel (DTaP & Polio & Flu Type B)	$140.00
IPV (Polio)	$50.00
Pedi HEP A	$40.00
Pedi HEP B	$35.00
HIB (Flu Type B)	$40.00

Exhibit D

Health and Senior Services

	Fee
Vaxelis (DTaP, HIB, Polio & HEB B)	$150.00
Rototeq/Rotarix (Rotavirus)	$140.00
Proquad (MMR & Varicella)	$250.00
PCV 13 (Pneumococcal Conjugate)	$260.00
PPSV23 (Pneumococcal Conjugate)	$145.00
MMR	$90.00
Varicella	$150.00
TD (Tetanus & Diptheria)	$50.00
TDAP (Tetanus Diptheria and Pertussis)	$60.00
HPV 9	$240.00
MCV4 (Meningitis)	$150.00
Menqaudfi (Meningitis)	$200.00
Trumenba (Meningococcal Group B)	$140.00
Bexsero (Meningococcal Group B)	$130.00
Adult Hep A	$60.00
Adult Hep B	$65.00
Shingrix (Shingles)	$170.00
Infant flu	$25.00
Flu	$30.00
High Dose Flu	$65.00
Flublok	$60.00
Yellow Fever	$130.00
STD Testing	$10.00
HIV Testing	$10.00
STD Clinic Treatment	$10.00
STD Clinic Retreatment	$10.00
Pregnancy Test-Urine	$10.00
Pregnancy Test - Blood	$15.00
TB Test	$15.00
TB Clinic	$10.00
Administration Fees	
Insured	$25.00
TVFC 1=$10, 2=$20, >or= 3 = $30	
Refugee	$0.00
Medicaid/CHIP	$14.85
Medicare Flu or Pneumonia	$25.00

Exhibit E

Animal Services

	Fee
Adoption Fees	
Adoption Fees (includes micro chipping)	$35.00
Ducks, Rabbits, Other	$5.00
Humane Coalition Transfer Fee (with micro chipping) Range $17 to $25	$25.00
Animal Service Discount	$6.73
Impoundment Fees	
Impoundment - 1st Offense (altered)	$25.00
Impoundment - 1st Offense (unaltered)	$100.00
Impoundment - 2nd Offense (altered)	$50.00
Impoundment - 2nd Offense (unaltered)	$100.00
Impoundment - 3rd+ Offense (altered)	$60.00
Impoundment - 3rd+ Offense (unaltered)	$100.00
Livestock Impoundment	$100.00
Boarding & Quarantine	
Boarding (per day)	$6.00
Quarantine Fees ($8/day for 10 days)	$8.00
Home Quarantine Fees ($3/day for 10 days)	$30.00
Pick-up Fees	
Pickup Fee - Owner release	$15.00
Pickup Fee - Deceased	$10.00
Pickup Fee - Dead Small Livestock	$25.00
Pickup Fee- Deceased Livestock	$75.00
Transfer to Vet Fee	$15.00
Rabies Specimen Prep Fee	$15.00
Rabies Specimen Shipping	$45.00
Microchipping	
Microchips	$15.00
Pet Services	
Flea/Tick Dip	$15.00
Euthanasia	
Euthanasia	$15.00
Pet Licenses	
Pet License (yearly) ($7 reg, $10 Spec Event)	$7 or $10
Pet License (replacement)	$1.00
Wild Animal Permit	$25.00
Dangerous Dog Yearly Registration	$50.00
Off Leash Training Permit	$5.00
Pigeons	
Loft Permit for Pigeons	$3.00
Renewal of Loft Permit	$2.00

Exhibit F

Golf Course

	Fee
Green Fee - Weekday	$20.25
Green Fee - Weekdays after 4:00	$11.25
Green Fee - Weekend	$25.25
Green Fee - Weekend after 4:00	$15.00
Weekend AM - 9 Holes	$14.00
Green Fee - Senior	$15.25
Green Fee - Junior	$9.50
Cart Fee (90%)	$12.75

Exhibit G

Planning

	Fee
Preliminary Plat Application	
Sketch Plan Application (1st review)	$225.00
Sketch Plan Application (2nd review)	$100.00
Preliminary Plat Application (up to 50 acres)	$350.00
Preliminary Plat Application (over 50 acres)	$500.00
Final Plat Application	
Standard Plat or Residential Up to 50 acres	$350.00
Standard Plat or Residential over 50 acres Max	$500.00
Administrative Plat	$250.00
Digital File Conversion Fee	$50.00
Recording Fees- Plats up to 18"x24"	$61.00
Recording Fees- Plats over 18"x24"	$81.00
Related Documents	$26.00
Replat	
Replat with Public Hearing	$250.00
Replat without Public Hearing	$250.00
Annexation/Zone Change Application	
Standard Zone Change	$500.00
Planned District Zone Change	$650.00
Multiple PD Proposal Basic	$550.00
Multiple PD Proposal Per Additional District	$100.00
Additional PD Regulations	$75.00
Site Plan in PDF Format for City Council	$50.00
Application Fee	$500.00
Zoning Board of Appeal Fee	$600.00
Special Exception Application Fee	$500.00
Oil and Gas	
Application for Oil and Gas Permit	$4,000.00
Credit Access Businesses	
Application Fee	$50.00
Specific Use Permit (SUP) / Specific Use Designation (SUD)	
Application for SUP/SUD with Term for Alcoholic Beverage	$300.00
Application for General SUP/SUD	$400.00
Renewal SUP/SUD	$75.00
Temporary Mobile Home	
Special Temporary Permit for Manufactured Home App (Based on Genuine Hardship Condition)	$50.00
Special Temporary Permit for Manufactured Home App (For Occupancy by a Caretaker, Manager, or Guard)	$100.00
Temporary Land Use	
Application Fee	$300.00
For each additional event date	$25.00
Clean-Up Deposit	$500.00

Exhibit G

Planning

		Fee
	Damage Deposit	$500.00
	Outside sale of dogs	$20.00
Site Plan Review		
	Single PD Amendment	$550.00
	Multiple PD Amendment	$650.00
Dedications		
	Review Fee	$400.00
Vacation		
	Application Fee	$400.00
Creation of a Building Site		
	Application Fee	$400.00
Master Sign Plan		
	Application Fee	$300.00
Traffic Impact		
	Traffic Impact (Staff Study)	$350.00
	Traffic Impact (Review of Submittal)	$600.00
Portable Storage Containers		
Freight or Portable storage cont.- permit fee		$125.00
	Each add'l on same property	$25.00
90- day permit fee for storage container		$150.00
	Each add'l container	$25.00
45- day permit fee for storage container		$125.00
	Each add'l container	$25.00
30 day permit fee for storage container		$75.00
Certificate of occupancy and compliance		
Certificate of occupancy and compliance		$10.00

Exhibit H

Code Enforcement

	Fee
Building Permits	
Construction Permit Fee	31.5 cents per square foot
Sidewalk/ROW Residential (No building permit)	$50.00
Sidewalk/ROW Commercial (No building permit)	$200.00
Street Improvement Fee	23 cents per square foot
Fence Fee	$50.00
Manufactured Home	$200.00
Manufactured Home Skirting Deposit	$100.00
Moving Fee	$200.00
Non-Profit Residential	$150.00
Temporary Structure	$100.00
Detached Assessory (120Sq.ft or less)	$50.00
Detached Assessory (120Sq.ft to 200 sq.ft.)	$100.00
Demolition Permits	
Commercial Demo Fee - Building	$500.00
Commerical Demo Fee - Interior	$100.00
Residential or Accessory Bldg	$50.00
Temporary Sign Permits	
Permanent Sign Permits	$50.00
Temporary sign annual permit fee	$50.00
Failure to remove sign- hauling fee	$50.00
Failure to remove sign- daily storage fee	$10.00
Oil & Gas Drilling Permits	
Amendment Fee	$1,000.00
Certification Fee & Inspection	$300.00
Oil & Gas Application Fee	$4,000.00
Well Tranfer Fee	$500.00
***TX State HB-40 recognizes Ordinance 8769 including fees and may not be amended**	
Mobile Home Park Licenses	
Mobile Home Park Licenses	$25.00 plus $1 ea/addl
Certificate of Occupancy	
Certificate of Occupancy	$50.00
Lot Deposits	
Clearing Deposits (Floor & Foundation) Commercial	$2,000.00
Clearing Deposits (Floor & Foundation) Residential	$600.00
Clearing Deposits (Rubbish, Litter, Lot)	$200.00
Clearing Deposit (Accessory Bldg, Debris, Material	$200.00
Lot Clearing	
Administrative Fee	$100.00
Tree Removal	$70.00
Debris Charge	$110 per ton

Exhibit H

Code Enforcement

	Fee
Mow Vacant Lot	$0.05 per sq. yd.
Mow Lot with Structure	$0.055 per sq. yd.
Mow Acreage	$70 per acre
Mowing Fee	$0.10 per sq. yd.
Special Project	$165.00
Minimum Lot Charge	$45.00
Tires	Reimbursemt+$2.00/tire
Electrical Fees	
Minimum Fee	$50.00
Temporary Service	$50.00
Temporary Construction Pole	$50.00
Parking Lot Wiring	$50.00
Building Wiring	$0.05 per sq.ft
Service Change	$50.00
Sign Electrical Fee	$50.00
Electrical Fixture Fee (for first, $1.00 each after)	$15.00
Mobile Home Rewiring ($5 for each add'l)	$50.00
Clearance for Elec Connect/Disconnect Residential	$50.00
Reinspection (Red Tag)	$50.00
Mechanical Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Inspection for Heating, AC,Venting,Ductwork,Fridge ($5 for each add'l inspection)	$50.00
Fire Extinguishing Permit	$50.00
Boiler Inspections (33K to 1165 BTU)	$50.00
Boiler Inspections (1165K to 3300 BTU)	$50.00
Boiler Inspections (over 3300 BTU)	$50.00
Reinspection (Red Tag)	$50.00
Gas Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Floor Furnace, Boiler	$50.00
Vented Recessed Heater	$50.00
Gas line service	$50.00
Vented Appliance ($10 each add'l)	$50.00
Temporary Connection	$50.00
Reinspection (Red Tag)	$50.00
Plumbing Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Furnace, unit or wall heater ($10 each add'l)	$50.00
Water heater ($10 each add'l)	$50.00
Water softener	$50.00
Lawn Sprinkler	$50.00

Exhibit H

Code Enforcement

	Fee
Water Line Service	$50.00
Sewer Line Service	$50.00
Replumb Bldg	$0.05 Sq. Ft.
Fire Sprinker	$0.05 Sq. Ft.
Backflow Assembly Device ($10 each add'l)	$50.00
Reinspection (Red Tag)	$30.00
Vendor Permit	
Vendor Permit	$100.00
Water Well Fee	
Drill new well	$50.00
Reinspection Fee	
Reinspection (All Permits)	$100.00
Application to Board of Appeals	
Application	$200.00
Public Ways and Property	
House moving permit fee	$25.00
Network Nodes-5 in same application	$500.00
Each additional node in application	$250.00
Node Support Pole Application	$1,000.00
Fee to attach network node to public ROW pole	$20.00

Exhibit I

Engineering

	Fee
Traffic	
Street Name and Traffic Control Sign Fee	$500/intersection
Right of Way Use Permit Fee	$350.00

Exhibit J

Water & Sewer Fees

	Fee (as of July 1, 2020)
Water Rates Inside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$21.61
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$17.60
Rate per 1,000 gallons over base of 2,000 up to 10,000	$6.11
Rate per 1,000 gallons from 10,001 up to 25,000	$8.03
Rate per 1,000 gallons from 25,001 up to 50,000	$10.80
Irrigation)	$13.50
Sewer Rates Inside City:	
All Customers Base Rate (First 2,000 gallons)	$21.79
All Customers Rate per 1,000 after Base Rate	$0.88
Water Rates Outside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$32.42
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$26.40
Rate per 1,000 gallons over base of 2,000 up to 10,000	$9.17
Rate per 1,000 gallons from 10,001 up to 25,000	$12.05
Rate per 1,000 gallons from 25,001 up to 50,000	$16.20
Irrigation)	$20.25
Sewer Rates Outside City:	
Residential Base Rate (First 2,000 gallons)	$32.69
Residential Rate per 1,000 after Base Rate	$1.32
Miscellaneous:	
Septage waste hauler discharges and fees (per gallon)	$0.30

Exhibit K

Customer Service/Utility Billing

	Fee
Account Billing	
Residential Utility Deposit	$75.00
Re-read of Water Meter (2nd time)	$25.00
Test of Water Meter (2nd time)	$25.00
Non-sufficient fund check	$30.00
Reconnect-Disconnect fee	$30.00
Application Fee	$20.00
Transfer Fee	$20.00
Tampering/Straight Fee (1st time)	$200.00
Tampering/Straight Fee (2nd time)	$300.00
Water Meters & Tap Fees	
3/4" water meter-with existing meter box	$40.00
1" water meter-with existing meter box	$100.00
1" water meter tap (no paving cut or meter installation)	$390.00
1" service charge for tap and meter with meter box	$425.00
2" water meter- with existing meter box	$240.00
2" water meter tap (no paving cut or meter installation)	$564.00
2" service charge for tap and meter with meter box	$710.00
3" water meter	$375.00
4" water meter	$375.00
4" sewer tap	$350.00
6" sewer tap	$400.00
Replacement sewer tap (per line)	$300.00
Fee to abandon line for replacement	$150.00
Paving cut/Boring & Casing Fee	$400.00
Fire hydrant meter setting or moving	$200.00
Fire Hydrant meter deposit setting	$2,400.00
Drinking Water Testing- Total Coliform (Presence or absence)	$18.00
Non-Potable H2O testing- Total Coliform & E.Coli (MPN)	$25.00
Non-Potable H2O testing- Total Coliform & Fecal Coliform (MPN)	$25.00
Move a service line no more than 5 feet	$150.00

Exhibit L

Sanitation Fees

Inside City Limits

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$18.45			
0.5	$36.90			
0.75	$55.35			
1	$73.80			
Commercial				
0.25	$24.68	$37.02	$49.36	$61.70
0.5	$49.36	$74.04	$98.72	$123.40
0.75	$74.04	$111.06	$148.08	$185.10
1	$98.70	$148.05	$197.40	$246.75
2	$187.53	$281.30	$375.06	$468.83
3	$276.36	$414.54	$552.72	$690.90
4	$365.19	$547.79	$730.38	$912.98
5	$454.02	$681.03	$908.04	$1,135.05
6	$542.85	$814.28	$1,085.70	$1,357.13
7	$631.68	$947.52	$1,263.36	$1,579.20
8	$720.51	$1,080.77	$1,441.02	$1,801.28
9	$809.34	$1,214.01	$1,618.68	$2,023.35
10	$898.17	$1,347.26	$1,796.34	$2,245.43
11	$987.00	$1,480.50	$1,974.00	$2,467.50
12	$1,075.83	$1,613.75	$2,151.66	$2,689.58
13	$1,164.66	$1,746.99	$2,329.32	$2,911.65
14	$1,253.49	$1,880.24	$2,506.98	$3,133.73
15	$1,342.32	$2,013.48	$2,684.64	$3,355.80
16	$1,431.15	$2,146.73	$2,862.30	$3,577.88
17	$1,519.98	$2,279.97	$3,039.96	$3,799.95
18	$1,608.81	$2,413.22	$3,217.62	$4,022.03
19	$1,697.64	$2,546.46	$3,395.28	$4,244.10
20	$1,786.47	$2,679.71	$3,572.94	$4,466.18
21	$1,875.30	$2,812.95	$3,750.60	$4,688.25
22	$1,964.13	$2,946.20	$3,928.26	$4,910.33
23	$2,052.96	$3,079.44	$4,105.92	$5,132.40
24	$2,141.79	$3,212.69	$4,283.58	$5,354.48
25	$2,230.62	$3,345.93	$4,461.24	$5,576.55
Per Month				
Recycling fee	$0.50			
Litter Abatement Fee	$1.00			

Exhibit L

Sanitation Fees

Outside City Limits - Sanitation Fees

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$27.68			
0.5	$55.36			
0.75	$83.04			
1	$110.72			
Commercial				
0.25	$37.02	$55.53	$74.04	$92.55
0.5	$74.04	$111.06	$148.08	$185.10
0.75	$111.06	$166.59	$222.12	$277.65
1	$148.05	$222.08	$296.10	$370.13
2	$281.30	$421.94	$562.59	$703.24
3	$414.54	$621.81	$829.08	$1,036.35
4	$547.79	$821.68	$1,095.57	$1,369.46
5	$681.03	$1,021.55	$1,362.06	$1,702.58
6	$814.28	$1,221.41	$1,628.55	$2,035.69
7	$947.52	$1,421.28	$1,895.04	$2,368.80
8	$1,080.77	$1,621.15	$2,161.53	$2,701.91
9	$1,214.01	$1,821.02	$2,428.02	$3,035.03
10	$1,347.26	$2,020.88	$2,694.51	$3,368.14
11	$1,480.50	$2,220.75	$2,961.00	$3,701.25
12	$1,613.75	$2,420.62	$3,227.49	$4,034.36
13	$1,746.99	$2,620.49	$3,493.98	$4,367.48
14	$1,880.24	$2,820.35	$3,760.47	$4,700.59
15	$2,013.48	$3,020.22	$4,026.96	$5,033.70
16	$2,446.73	$3,220.09	$4,293.45	$5,366.81
17	$2,279.97	$3,419.96	$4,559.94	$5,699.93
18	$2,413.22	$3,619.82	$4,826.43	$6,033.04
19	$2,546.46	$3,819.69	$5,092.92	$6,366.15
20	$2,679.71	$4,019.56	$5,359.41	$6,699.26
21	$2,812.96	$4,219.43	$5,625.90	$7,032.38
22	$2,946.20	$4,419.29	$5,892.39	$7,365.49
23	$3,079.44	$4,619.16	$6,158.88	$7,698.60
24	$3,212.69	$4,819.03	$6,425.37	$8,031.71
25	$3,345.93	$5,018.90	$6,691.86	$8,364.83

Exhibit L

Sanitation Fees

Open Top/Compactor Fees	
One-time set up fee (Delivery fee)	$33.15 + Tax
Daily Rental	$6.63 + Tax
Haul Charge	$165.81 + Tax
Per Ton Disposal Fee (Landfill Charge)	$34.93 per

Removal of Garbage by Other Entity	
Garbage Hauler's Permit	$500.00

Landfill- Dumping and Unloading Charges	
Landfill Access Fee-	$25.00
Unlimited Landfill Access Fee-year	$500.00
Minimum Fee under 1 Ton	$17.46
Per ton Disposal Fee	$34.93
Materials not contained	$15.00
Pull off Fee	$75.00
Special Waste/Minor or TDH permit	
Special Waste Fee- Per Ton	$69.86
Minimum Fee under 1 Ton	$34.92

(1) Pursuant to Section 8-6-24 (A), Code of Ordinances, all Landfill Charges referenced in this Subsectioin (A) shall increase by two percent on February 1, 2017, and each February 1 thereafter, Unless otherwise modified by the City Council.

Exhibit M

Airport

	Fee
Landing Fees (per 1000 pounds of gross landing weight)	$0.70
Air carrier fees (per 1000 pounds of gross landing weight)	$0.70
Public Aircraft parking – locally based aircraft (month)	$25.00
Public Aircraft parking – transient aircraft (day)	$1.50
Customer Facility Charge - vehicle rentals (per transaction day)	$3.00
Public Parking – CI (Covered)	
0-30 minutes	Free
31-60 minutes	$3.00
Every additional hour	$2.00
Maximum per 24-hour period	$15.00
Public Parking – P1 & P3 (Close-In)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$12.00
Public Parking – P2 &P4 (Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$9.00
Public Parking – C2 (Remote Covered)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$11.00
Public Parking – P5 (Remote Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$7.00
Ground Transportation Permits -per month, per vehicle	
Taxicab	$25.00
Buses	$25.00
Courtesy vehicles for off-aiport hotel	$25.00
Courtesy vehicles for off-aiport car rental (plus 10% airport revenue)	$25.00
Courtesy vehicles for off-aiport parking lot (plus 10% airport revenue)	$25.00
Employee Parking	

Exhibit M

Airport

	Fee
Annual Employee Parking media (prorated monthly)	$40.00

Special assessments

1. Should any person upon driving a vehicle from the paid parking areas of the airport not be able to present an officially issued ticket indicating where that person's vehicle was parked and at what time, then the charge assessed for the parking of that vehicle shall be at least $12.00. In addition to that fee, there shall also be a fee assessed for the parking of that vehicle equal to the amount of the daily rate, times number of days, for the area in which that vehicle was parked as is indicated by the daily lot inventory taken by the airport administration.
2. Whenever a person or an entity shall pay for the parking fees assessed by this Section with a check or draft, and that check or draft is dishonored, then there shall be an additional $25.00 assessed against that person or entity.

Exhibit N

Sports Complex

	Fee
Grande Stadium - Football/Soccer Field-Events	
Schools that are Members of the Texas Association of Private and Parochial Schools	$500.00
Up to 3A Schools	$500.00
4A and 5A	$1,500.00
Per 5000+ attendees after	$500.00
Security Bank Ballpark - Baseball Field	
Baseball Events-Flat Rate	$500.00
Grande Stadium - Stadium Rental	
Non-profits Deposit	$500.00
Non-profits Daily Rate	$1,000.00
Commercial Deposit	$1,000.00
Commercial Daily Rate vs. 1.5% of gross gate receipts	$1,500.00
SSC - Parking Lot Rental	
Multiple Day Events- Deposit	$1,000.00
Multiple Day Events- Daily Rate	$1,000.00
Light Use- Single Day- Deposit	$500.00
Light Use- Single Day- Daily Rate	$500.00
SSC - Auxiliary Fields	
Field Per Hour	$50.00
Lights Per Hour	$25.00
Deposit	$100.00
Auxiliary Fields - Tournament Fee Per Game (Includes Lights)	
Game	$30.00
Depost/Clean Up Fee (per day per field. Half deposit is refundable is field is left in good condition)	$250.00
Field Alteration (per field)	$75.00

Exhibit O

Miscellaneous

	Fee
Court Fees	
Municipal Court Building Security Fee	$3.00
Municipal Court Technology Fee	$4.00
Municipal Court Copy Fee	$1.00 per page
Business Regulations	
Closing out sale license fees - 30 days	$100.00
Closing out sale license fees - 60 days	$125.00
Closing out sale license fees - 90 days	$150.00
Peddler license	$4.00
Mobile Home/Travel Trailer Park App Fee	$10.00
Mobile Home/Travel Trailer Park License	$25 plus $1 ea.space
Mobile Home Mini Park location app	$10.00
Mobile Home Mini Park revised site plan	$10.00
City Chauffeur's license app fee	$25.00
Airport Cabstand Permit fee (per month)	$25.00
Special police officer license fee (individual)	$10.00
Special police officer license fee (firm)	$50.00
Carnival operator's license	$50.00
Carnival employee's license	$6.00
Side walk sale application fee	$4.00
Police Regulations	
Ambulance Services- Basic Life Support	$650 + $10 per mile
Ambulance Services- Advanced Life Support	$750 + $10 per mile
Ambulance Services- Advanced Level II	$850 + $10 per mile
Ambulance Waiting Charge	$200 per hour
Ambulance Service- Outside Midland County	$100.00
Food Truck Fire Inspection	$50 per inspection annually
Alarm Permit Application Fee-Commercial	$25.00
Alarm Permit Application Fee-Residential	$20.00
Alarm Permit Renewal Fee -Commercial	$20.00
Alarm Permit Renewal Fee - Residential	$15.00
Alarm Permit Service fee	$50.00
Franchises	
Telecomm Carrier on public ROW Reg. Fee-	$25.00
Franchise application and review fee	$500.00
Franchise renewal application and review fee	$500.00

Exhibit A

City Secretary

	Fee
Business Regulations	
Junk and secondhand goods license	$25.00
Renewal of junk and secondhand good	$10.00
Alcoholic Beverage License Fee	1/2 of State Fee
Taxicab annual operating fee (each)	$200.00
Limo or Motorbus operating fee (each)	$100.00
Passports	
Execution Fee (DS-11)	$35.00
Renewal Mailing Fee (DS-82)	$10.00
Passport Photograph	$18.00
Expedited Shipping Fee (DS-11)	$26.40
Expedited Shipping Fee (DS-82)	$32.95
Notarization Fee	$10.00
Copies	$0.25

Exhibit B

Parks

	Fee
TEMP FENCING	
Deposit	$200.00
Rental Fee (per panel)	$10.00
SHOWMOBILE	
Deposit	$1,000.00
4 Hours	$250.00
8 Hours	$500.00
Extensions	$100.00
Show Lights	$200.00
PORTABLE BLEACHERS	
Deposit	$100.00
Rental Fee	$100.00
PORTABLE STAGE	
Deposit	$100.00
Rental Fee	$100.00
TRASH CANS	
Deposit	$100.00
Rental Fee (10 cans)	$50.00
PARK PAVILION RENTAL	
Deposit	$100.00
Rental Fee 9am-12am	$60.00
Rental Fee 9am-3pm	$30.00
Rental Fee 4pm-12am	$40.00
BEAL RANCH HOUSE	
Deposit no Alcohol	$300.00
Deposit w/Alcohol	$500.00
Rental Fee Per Hour	$50.00
GAZEBO RENTAL WADLEY	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
GAZEBO RENTAL BEAL	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
WHITEHOUSE RENTAL	
Deposit	$200.00

Rental Fee 10 am - 4 pm	$200.00
Rental Fee 6 pm - 12 am	$200.00
Rental Fee All Day	$400.00

Exhibit C

Recreation

		Fee
CITY POOL RATES		
Entry Fee		$3.00
Children under 2		Free
10 Punch Card		$15.00
25 Punch Card		$35.00
75 Punch Card		$75.00
Personal Cooler Admission		$10.00
Soda/Drinks		$2.00
Snacks		$1.00
Life Jacket Rental		$1.00
Life Jacket Deposit		$1.00
PRIVATE RENTALS		
DEPOSIT		$250.00
RENTAL		$700.00
POOL PAVILION RENTALS		
(Doug Russell Only)		
DEPOSIT		$100.00
RENTAL		$100.00
MARTIN LUTHER KING RECREATION CENTER	per hour	
Activity Room		
During Operation		$25.00
After Hours		$35.00
Deposit		$100.00
Activity Rm/with Gameroom	per hour	
During Operation		$35.00
After Hours		$70.00
Deposit		$300.00
Auditorium	per hour	
During Operation		$50.00
After Hours		$75.00
Deposit No Alcohol		$500.00
Deposit Alcohol		$750.00
Gymnasium	per hour	
Sporting Events ONLY		
During Operation		$25.00
After Hours		$50.00
Deposit		$200.00
Training Room	per hour	
Sporting Events ONLY		

Exhibit C

Recreation

	Fee
During Operation	$50.00
After Hours	$75.00
Deposit	$1,000.00
Daily	$1.00
Monthly Membership	$15.00
MLK Volleyball Net Setup Fee	$15.00
MOVIE SCREEN	
Deposit	$1,000.00
Fee	$500.00
BUBBLE SOCCER AT MLK Gym Only	
Deposit	$300.00
During Hrs	$100.00
After Hours	$125.00
Bubble Soccer at MLK Gym/Activity Rm	
Deposit	$300.00
During Hrs	$125.00
After Hours	$135.00
BUBBLE SOCCER AT MLK Gym/Act Rm/Game Rm	
Deposit	$300.00
During Hrs	Not Avaliable
After Hours	$170.00
BUBBLE SOCCER NOT @MLK	
Deposit	$500.00
Fee Per Hr (must be 2 hour rental)	$200.00
AUXILIARY FIELDS	
Per Hour	$50.00
Tournament (per game)	$30.00
Deposit	$100.00
Tournament Deposit ($125 non refundable)	$250.00
Field Marking	$75.00
Lights for Practice field (per field per hour)	$25.00

Exhibit D

Health and Senior Services

	Fee
Environmental Section	
Mobile Food Vendor	
Mobile Food Vendor	$175.00
Mobile Food (Seasonal)	$105.00
Temporary Permit	$70.00
Food Services Establishments	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Deli/Meat Market/Bakery	$75.00
Farmers Market	$50.00
Retail Food Store	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Temporary Permit	$70.00
Child Care Programs	
Day Care	$100.00
Foster Care	$50.00
Child Care Program for after School	$50.00
Swimming Pool, Spa, or Water Feature Permit	
Swimming Pool or Spa Permit	$100.00
Water Feature Permit	$100.00
Non-Profit Yearly	$30.00
Non-Profit Temporary	$30.00
Re-inspection (When Establishment is shut down)	$75.00
Septic System Inspections	
Septic System Residential	$150.00
Septic System Commercial	$210.00
Septic re-inspection (When fails initial inspection)	$50.00
Late Fee (When not paid by specified date)	25% of Permit Fee
Clinical Section	
Health Department Services	
DTaP	$45.00
Kinrix (DTaP & Polio)	$100.00
Pentacel (DTaP & Polio & Flu Type B)	$140.00
IPV (Polio)	$50.00
Pedi HEP A	$40.00
Pedi HEP B	$35.00
HIB (Flu Type B)	$40.00

Exhibit D

Health and Senior Services

	Fee
Vaxelis (DTaP, HIB, Polio & HEB B)	$150.00
Rototeq/Rotarix (Rotavirus)	$140.00
Proquad (MMR & Varicella)	$250.00
PCV 13 (Pneumococcal Conjugate)	$260.00
PPSV23 (Pneumococcal Conjugate)	$145.00
MMR	$90.00
Varicella	$150.00
TD (Tetanus & Diptheria)	$50.00
TDAP (Tetanus Diptheria and Pertussis)	$60.00
HPV 9	$240.00
MCV4 (Meningitis)	$150.00
Menqaudfi (Meningitis)	$200.00
Trumenba (Meningococcal Group B)	$140.00
Bexsero (Meningococcal Group B)	$130.00
Adult Hep A	$60.00
Adult Hep B	$65.00
Shingrix (Shingles)	$170.00
Infant flu	$25.00
Flu	$30.00
High Dose Flu	$65.00
Flublok	$60.00
Yellow Fever	$130.00
STD Testing	$10.00
HIV Testing	$10.00
STD Clinic Treatment	$10.00
STD Clinic Retreatment	$10.00
Pregnancy Test-Urine	$10.00
Pregnancy Test - Blood	$15.00
TB Test	$15.00
TB Clinic	$10.00
Administration Fees	
Insured	$25.00
TVFC 1=$10, 2=$20, >or= 3 = $30	
Refugee	$0.00
Medicaid/CHIP	$14.85
Medicare Flu or Pneumonia	$25.00

Exhibit E

Animal Services

	Fee
Adoption Fees	
Adoption Fees (includes micro chipping)	$35.00
Ducks, Rabbits, Other	$5.00
Humane Coalition Transfer Fee (with micro chipping) Range $17 to $25	$25.00
Animal Service Discount	$6.73
Impoundment Fees	
Impoundment - 1st Offense (altered)	$25.00
Impoundment - 1st Offense (unaltered)	$100.00
Impoundment - 2nd Offense (altered)	$50.00
Impoundment - 2nd Offense (unaltered)	$100.00
Impoundment - 3rd+ Offense (altered)	$60.00
Impoundment - 3rd+ Offense (unaltered)	$100.00
Livestock Impoundment	$100.00
Boarding & Quarantine	
Boarding (per day)	$6.00
Quarantine Fees ($8/day for 10 days)	$8.00
Home Quarantine Fees ($3/day for 10 days)	$30.00
Pick-up Fees	
Pickup Fee - Owner release	$15.00
Pickup Fee - Deceased	$10.00
Pickup Fee - Dead Small Livestock	$25.00
Pickup Fee- Deceased Livestock	$75.00
Transfer to Vet Fee	$15.00
Rabies Specimen Prep Fee	$15.00
Rabies Specimen Shipping	$45.00
Microchipping	
Microchips	$15.00
Pet Services	
Flea/Tick Dip	$15.00
Euthanasia	
Euthanasia	$15.00
Pet Licenses	
Pet License (yearly) ($7 reg, $10 Spec Event)	$7 or $10
Pet License (replacement)	$1.00
Wild Animal Permit	$25.00
Dangerous Dog Yearly Registration	$50.00
Off Leash Training Permit	$5.00
Pigeons	
Loft Permit for Pigeons	$3.00
Renewal of Loft Permit	$2.00

Exhibit F

Golf Course

	Fee
Green Fee - Weekday	$20.25
Green Fee - Weekdays after 4:00	$11.25
Green Fee - Weekend	$25.25
Green Fee - Weekend after 4:00	$15.00
Weekend AM - 9 Holes	$14.00
Green Fee - Senior	$15.25
Green Fee - Junior	$9.50
Cart Fee (90%)	$12.75

Exhibit G

Planning

	Fee
Preliminary Plat Application	
Sketch Plan Application (1st review)	$225.00
Sketch Plan Application (2nd review)	$100.00
Preliminary Plat Application (up to 50 acres)	$350.00
Preliminary Plat Application (over 50 acres)	$500.00
Final Plat Application	
Standard Plat or Residential Up to 50 acres	$350.00
Standard Plat or Residential over 50 acres Max	$500.00
Administrative Plat	$250.00
Digital File Conversion Fee	$50.00
Recording Fees- Plats up to 18"x24"	$61.00
Recording Fees- Plats over 18"x24"	$81.00
Related Documents	$26.00
Replat	
Replat with Public Hearing	$250.00
Replat without Public Hearing	$250.00
Annexation/Zone Change Application	
Standard Zone Change	$500.00
Planned District Zone Change	$650.00
Multiple PD Proposal Basic	$550.00
Multiple PD Proposal Per Additional District	$100.00
Additional PD Regulations	$75.00
Site Plan in PDF Format for City Council	$50.00
Application Fee	$500.00
Zoning Board of Appeal Fee	$600.00
Special Exception Application Fee	$500.00
Oil and Gas	
Application for Oil and Gas Permit	$4,000.00
Credit Access Businesses	
Application Fee	$50.00
Specific Use Permit (SUP) / Specific Use Designation (SUD)	
Application for SUP/SUD with Term for Alcoholic Beverage	$300.00
Application for General SUP/SUD	$400.00
Renewal SUP/SUD	$75.00
Temporary Mobile Home	
Special Temporary Permit for Manufactured Home App (Based on Genuine Hardship Condition)	$50.00
Special Temporary Permit for Manufactured Home App (For Occupancy by a Caretaker, Manager, or Guard)	$100.00
Temporary Land Use	
Application Fee	$300.00
For each additional event date	$25.00
Clean-Up Deposit	$500.00

Exhibit G

Planning

		Fee
	Damage Deposit	$500.00
	Outside sale of dogs	$20.00
Site Plan Review		
	Single PD Amendment	$550.00
	Multiple PD Amendment	$650.00
Dedications		
	Review Fee	$400.00
Vacation		
	Application Fee	$400.00
Creation of a Building Site		
	Application Fee	$400.00
Master Sign Plan		
	Application Fee	$300.00
Traffic Impact		
	Traffic Impact (Staff Study)	$350.00
	Traffic Impact (Review of Submittal)	$600.00
Portable Storage Containers		
Freight or Portable storage cont.- permit fee		$125.00
	Each add'l on same property	$25.00
90- day permit fee for storage container		$150.00
	Each add'l container	$25.00
45- day permit fee for storage container		$125.00
	Each add'l container	$25.00
30 day permit fee for storage container		$75.00
Certificate of occupancy and compliance		
Certificate of occupancy and compliance		$10.00

Exhibit H

Code Enforcement

	Fee
Building Permits	
Construction Permit Fee	31.5 cents per square foot
Sidewalk/ROW Residential (No building permit)	$50.00
Sidewalk/ROW Commercial (No building permit)	$200.00
Street Improvement Fee	23 cents per square foot
Fence Fee	$50.00
Manufactured Home	$200.00
Manufactured Home Skirting Deposit	$100.00
Moving Fee	$200.00
Non-Profit Residential	$150.00
Temporary Structure	$100.00
Detached Assessory (120Sq.ft or less)	$50.00
Detached Assessory (120Sq.ft to 200 sq.ft.)	$100.00
Demolition Permits	
Commercial Demo Fee - Building	$500.00
Commerical Demo Fee - Interior	$100.00
Residential or Accessory Bldg	$50.00
Temporary Sign Permits	
Permanent Sign Permits	$50.00
Temporary sign annual permit fee	$50.00
Failure to remove sign- hauling fee	$50.00
Failure to remove sign- daily storage fee	$10.00
Oil & Gas Drilling Permits	
Amendment Fee	$1,000.00
Certification Fee & Inspection	$300.00
Oil & Gas Application Fee	$4,000.00
Well Tranfer Fee	$500.00
***TX State HB-40 recognizes Ordinance 8769 including fees and may not be amended**	
Mobile Home Park Licenses	
Mobile Home Park Licenses	$25.00 plus $1 ea/addl
Certificate of Occupancy	
Certificate of Occupancy	$50.00
Lot Deposits	
Clearing Deposits (Floor & Foundation) Commercial	$2,000.00
Clearing Deposits (Floor & Foundation) Residential	$600.00
Clearing Deposits (Rubbish, Litter, Lot)	$200.00
Clearing Deposit (Accessory Bldg, Debris, Material	$200.00
Lot Clearing	
Administrative Fee	$100.00
Tree Removal	$70.00
Debris Charge	$110 per ton

Exhibit H

Code Enforcement

	Fee
Mow Vacant Lot	$0.05 per sq. yd.
Mow Lot with Structure	$0.055 per sq. yd.
Mow Acreage	$70 per acre
Mowing Fee	$0.10 per sq. yd.
Special Project	$165.00
Minimum Lot Charge	$45.00
Tires	Reimbursemt+$2.00/tire
Electrical Fees	
Minimum Fee	$50.00
Temporary Service	$50.00
Temporary Construction Pole	$50.00
Parking Lot Wiring	$50.00
Building Wiring	$0.05 per sq.ft
Service Change	$50.00
Sign Electrical Fee	$50.00
Electrical Fixture Fee (for first, $1.00 each after)	$15.00
Mobile Home Rewiring ($5 for each add'l)	$50.00
Clearance for Elec Connect/Disconnect Residential	$50.00
Reinspection (Red Tag)	$50.00
Mechanical Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Inspection for Heating, AC,Venting,Ductwork,Fridge ($5 for each add'l inspection)	$50.00
Fire Extinguishing Permit	$50.00
Boiler Inspections (33K to 1165 BTU)	$50.00
Boiler Inspections (1165K to 3300 BTU)	$50.00
Boiler Inspections (over 3300 BTU)	$50.00
Reinspection (Red Tag)	$50.00
Gas Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Floor Furnace, Boiler	$50.00
Vented Recessed Heater	$50.00
Gas line service	$50.00
Vented Appliance ($10 each add'l)	$50.00
Temporary Connection	$50.00
Reinspection (Red Tag)	$50.00
Plumbing Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Furnace, unit or wall heater ($10 each add'l)	$50.00
Water heater ($10 each add'l)	$50.00
Water softener	$50.00
Lawn Sprinkler	$50.00

Exhibit H

Code Enforcement

	Fee
Water Line Service	$50.00
Sewer Line Service	$50.00
Replumb Bldg	$0.05 Sq. Ft.
Fire Sprinker	$0.05 Sq. Ft.
Backflow Assembly Device ($10 each add'l)	$50.00
Reinspection (Red Tag)	$30.00
Vendor Permit	
Vendor Permit	$100.00
Water Well Fee	
Drill new well	$50.00
Reinspection Fee	
Reinspection (All Permits)	$100.00
Application to Board of Appeals	
Application	$200.00
Public Ways and Property	
House moving permit fee	$25.00
Network Nodes-5 in same application	$500.00
Each additional node in application	$250.00
Node Support Pole Application	$1,000.00
Fee to attach network node to public ROW pole	$20.00

Exhibit I

Engineering

	Fee
Traffic	
Street Name and Traffic Control Sign Fee	$500/intersection
Right of Way Use Permit Fee	$350.00

Exhibit J

Water & Sewer Fees

	Fee (as of July 1, 2020)
Water Rates Inside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$21.61
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$17.60
Rate per 1,000 gallons over base of 2,000 up to 10,000	$6.11
Rate per 1,000 gallons from 10,001 up to 25,000	$8.03
Rate per 1,000 gallons from 25,001 up to 50,000	$10.80
Irrigation)	$13.50
Sewer Rates Inside City:	
All Customers Base Rate (First 2,000 gallons)	$21.79
All Customers Rate per 1,000 after Base Rate	$0.88
Water Rates Outside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$32.42
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$26.40
Rate per 1,000 gallons over base of 2,000 up to 10,000	$9.17
Rate per 1,000 gallons from 10,001 up to 25,000	$12.05
Rate per 1,000 gallons from 25,001 up to 50,000	$16.20
Irrigation)	$20.25
Sewer Rates Outside City:	
Residential Base Rate (First 2,000 gallons)	$32.69
Residential Rate per 1,000 after Base Rate	$1.32
Miscellaneous:	
Septage waste hauler discharges and fees (per gallon)	$0.30

Exhibit K

Customer Service/Utility Billing

	Fee
Account Billing	
Residential Utility Deposit	$75.00
Re-read of Water Meter (2nd time)	$25.00
Test of Water Meter (2nd time)	$25.00
Non-sufficient fund check	$30.00
Reconnect-Disconnect fee	$30.00
Application Fee	$20.00
Transfer Fee	$20.00
Tampering/Straight Fee (1st time)	$200.00
Tampering/Straight Fee (2nd time)	$300.00
Water Meters & Tap Fees	
3/4" water meter-with existing meter box	$40.00
1" water meter-with existing meter box	$100.00
1" water meter tap (no paving cut or meter installation)	$390.00
1" service charge for tap and meter with meter box	$425.00
2" water meter- with existing meter box	$240.00
2" water meter tap (no paving cut or meter installation)	$564.00
2" service charge for tap and meter with meter box	$710.00
3" water meter	$375.00
4" water meter	$375.00
4" sewer tap	$350.00
6" sewer tap	$400.00
Replacement sewer tap (per line)	$300.00
Fee to abandon line for replacement	$150.00
Paving cut/Boring & Casing Fee	$400.00
Fire hydrant meter setting or moving	$200.00
Fire Hydrant meter deposit setting	$2,400.00
Drinking Water Testing- Total Coliform (Presence or absence)	$18.00
Non-Potable H2O testing- Total Coliform & E.Coli (MPN)	$25.00
Non-Potable H2O testing- Total Coliform & Fecal Coliform (MPN)	$25.00
Move a service line no more than 5 feet	$150.00

Exhibit L

Sanitation Fees

Inside City Limits

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$18.45			
0.5	$36.90			
0.75	$55.35			
1	$73.80			
Commercial				
0.25	$24.68	$37.02	$49.36	$61.70
0.5	$49.36	$74.04	$98.72	$123.40
0.75	$74.04	$111.06	$148.08	$185.10
1	$98.70	$148.05	$197.40	$246.75
2	$187.53	$281.30	$375.06	$468.83
3	$276.36	$414.54	$552.72	$690.90
4	$365.19	$547.79	$730.38	$912.98
5	$454.02	$681.03	$908.04	$1,135.05
6	$542.85	$814.28	$1,085.70	$1,357.13
7	$631.68	$947.52	$1,263.36	$1,579.20
8	$720.51	$1,080.77	$1,441.02	$1,801.28
9	$809.34	$1,214.01	$1,618.68	$2,023.35
10	$898.17	$1,347.26	$1,796.34	$2,245.43
11	$987.00	$1,480.50	$1,974.00	$2,467.50
12	$1,075.83	$1,613.75	$2,151.66	$2,689.58
13	$1,164.66	$1,746.99	$2,329.32	$2,911.65
14	$1,253.49	$1,880.24	$2,506.98	$3,133.73
15	$1,342.32	$2,013.48	$2,684.64	$3,355.80
16	$1,431.15	$2,146.73	$2,862.30	$3,577.88
17	$1,519.98	$2,279.97	$3,039.96	$3,799.95
18	$1,608.81	$2,413.22	$3,217.62	$4,022.03
19	$1,697.64	$2,546.46	$3,395.28	$4,244.10
20	$1,786.47	$2,679.71	$3,572.94	$4,466.18
21	$1,875.30	$2,812.95	$3,750.60	$4,688.25
22	$1,964.13	$2,946.20	$3,928.26	$4,910.33
23	$2,052.96	$3,079.44	$4,105.92	$5,132.40
24	$2,141.79	$3,212.69	$4,283.58	$5,354.48
25	$2,230.62	$3,345.93	$4,461.24	$5,576.55

Per Month	
Recycling fee	$0.50
Litter Abatement Fee	$1.00

Exhibit L

Sanitation Fees

Outside City Limits - Sanitation Fees

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$27.68			
0.5	$55.36			
0.75	$83.04			
1	$110.72			
Commercial				
0.25	$37.02	$55.53	$74.04	$92.55
0.5	$74.04	$111.06	$148.08	$185.10
0.75	$111.06	$166.59	$222.12	$277.65
1	$148.05	$222.08	$296.10	$370.13
2	$281.30	$421.94	$562.59	$703.24
3	$414.54	$621.81	$829.08	$1,036.35
4	$547.79	$821.68	$1,095.57	$1,369.46
5	$681.03	$1,021.55	$1,362.06	$1,702.58
6	$814.28	$1,221.41	$1,628.55	$2,035.69
7	$947.52	$1,421.28	$1,895.04	$2,368.80
8	$1,080.77	$1,621.15	$2,161.53	$2,701.91
9	$1,214.01	$1,821.02	$2,428.02	$3,035.03
10	$1,347.26	$2,020.88	$2,694.51	$3,368.14
11	$1,480.50	$2,220.75	$2,961.00	$3,701.25
12	$1,613.75	$2,420.62	$3,227.49	$4,034.36
13	$1,746.99	$2,620.49	$3,493.98	$4,367.48
14	$1,880.24	$2,820.35	$3,760.47	$4,700.59
15	$2,013.48	$3,020.22	$4,026.96	$5,033.70
16	$2,446.73	$3,220.09	$4,293.45	$5,366.81
17	$2,279.97	$3,419.96	$4,559.94	$5,699.93
18	$2,413.22	$3,619.82	$4,826.43	$6,033.04
19	$2,546.46	$3,819.69	$5,092.92	$6,366.15
20	$2,679.71	$4,019.56	$5,359.41	$6,699.26
21	$2,812.96	$4,219.43	$5,625.90	$7,032.38
22	$2,946.20	$4,419.29	$5,892.39	$7,365.49
23	$3,079.44	$4,619.16	$6,158.88	$7,698.60
24	$3,212.69	$4,819.03	$6,425.37	$8,031.71
25	$3,345.93	$5,018.90	$6,691.86	$8,364.83

Exhibit L

Sanitation Fees

Open Top/Compactor Fees	
One-time set up fee (Delivery fee)	$33.15 + Tax
Daily Rental	$6.63 + Tax
Haul Charge	$165.81 + Tax
	$34.93 per ton
Per Ton Disposal Fee (Landfill Charge)	

Removal of Garbage by Other Entity	
Garbage Hauler's Permit	$500.00

Landfill- Dumping and Unloading Charges	
Landfill Access Fee-	$25.00
Unlimited Landfill Access Fee-year	$500.00
Minimum Fee under 1 Ton	$17.46
Per ton Disposal Fee	$34.93
Materials not contained	$15.00
Pull off Fee	$75.00
Special Waste/Minor or TDH permit	
Special Waste Fee- Per Ton	$69.86
Minimum Fee under 1 Ton	$34.92

(1) Pursuant to Section 8-6-24 (A), Code of Ordinances, all Landfill Charges referenced in this Subsectioin (A) shall increase by two percent on February 1, 2017, and each February 1 thereafter, Unless otherwise modified by the City Council.

Exhibit M

Airport

	Fee
Landing Fees (per 1000 pounds of gross landing weight)	$0.70
Air carrier fees (per 1000 pounds of gross landing weight)	$0.70
Public Aircraft parking – locally based aircraft (month)	$25.00
Public Aircraft parking – transient aircraft (day)	$1.50
Customer Facility Charge - vehicle rentals	$3.00
Public Parking – CI (Covered)	
0-30 minutes	Free
31-60 minutes	$3.00
Every additional hour	$2.00
Maximum per 24-hour period	$15.00
Public Parking – P1 & P3 (Close-In)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$12.00
Public Parking – P2 &P4 (Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$9.00
Public Parking – C2 (Remote Covered)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$11.00
Public Parking – P5 (Remote Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$7.00
Ground Transportation Permits -per month, per vehicle	
Taxicab	$25.00
Buses	$25.00
Courtesy vehicles for off-aiport hotel	$25.00
Courtesy vehicles for off-aiport car rental (plus 10% airport revenue)	$25.00
Courtesy vehicles for off-aiport parking lot (plus 10% airport revenue)	$25.00
Employee Parking	

Exhibit M

Airport

	Fee
Annual Employee Parking media (prorated monthly)	$40.00

Special assessments

1. Should any person upon driving a vehicle from the paid parking areas of the airport not be able to present an officially issued ticket indicating where that person's vehicle was parked and at what time, then the charge assessed for the parking of that vehicle shall be at least $12.00. In addition to that fee, there shall also be a fee assessed for the parking of that vehicle equal to the amount of the daily rate, times number of days, for the area in which that vehicle was parked as is indicated by the daily lot inventory taken by the airport administration.

2. Whenever a person or an entity shall pay for the parking fees assessed by this Section with a check or draft, and that check or draft is dishonored, then there shall be an additional $25.00 assessed against that person or entity.

Exhibit N

Sports Complex

	Fee
Grande Stadium - Football/Soccer Field-Events	
Schools that are Members of the Texas Association of Private and Parochial Schools	$500.00
Up to 3A Schools	$500.00
4A and 5A	$1,500.00
Per 5000+ attendees after	$500.00
Security Bank Ballpark - Baseball Field	
Baseball Events-Flat Rate	$500.00
Grande Stadium - Stadium Rental	
Non-profits Deposit	$500.00
Non-profits Daily Rate	$1,000.00
Commercial Deposit	$1,000.00
Commercial Daily Rate vs. 1.5% of gross gate receipts	$1,500.00
SSC - Parking Lot Rental	
Multiple Day Events- Deposit	$1,000.00
Multiple Day Events- Daily Rate	$1,000.00
Light Use- Single Day- Deposit	$500.00
Light Use- Single Day- Daily Rate	$500.00
SSC - Auxiliary Fields	
Field Per Hour	$50.00
Lights Per Hour	$25.00
Deposit	$100.00
Auxiliary Fields - Tournament Fee Per Game (Includes Lights)	
Game	$30.00
Depost/Clean Up Fee (per day per field. Half deposit is refundable is field is left in good condition)	$250.00
Field Alteration (per field)	$75.00

Exhibit O

Miscellaneous

	Fee
Court Fees	
Municipal Court Building Security Fee	$3.00
Municipal Court Technology Fee	$4.00
Municipal Court Copy Fee	$1.00 per page
Business Regulations	
Closing out sale license fees - 30 days	$100.00
Closing out sale license fees - 60 days	$125.00
Closing out sale license fees - 90 days	$150.00
Peddler license	$4.00
Mobile Home/Travel Trailer Park App Fee	$10.00
Mobile Home/Travel Trailer Park License	$25 plus $1 ea.space
Mobile Home Mini Park location app	$10.00
Mobile Home Mini Park revised site plan	$10.00
City Chauffeur's license app fee	$25.00
Airport Cabstand Permit fee (per month)	$25.00
Special police officer license fee (individual)	$10.00
Special police officer license fee (firm)	$50.00
Carnival operator's license	$50.00
Carnival employee's license	$6.00
Side walk sale application fee	$4.00
Police Regulations	
Ambulance Services- Basic Life Support	$650 + $10 per mile
Ambulance Services- Advanced Life Support	$750 + $10 per mile
Ambulance Services- Advanced Level II	$850 + $10 per mile
Ambulance Waiting Charge	$200 per hour
Ambulance Service- Outside Midland County	$100.00
Food Truck Fire Inspection	$50 per inspection annually
Alarm Permit Application Fee-Commercial	$25.00
Alarm Permit Application Fee-Residential	$20.00
Alarm Permit Renewal Fee -Commercial	$20.00
Alarm Permit Renewal Fee - Residential	$15.00
Alarm Permit Service fee	$50.00
Franchises	
Telecomm Carrier on public ROW Reg. Fee-	$25.00
Franchise application and review fee	$500.00
Franchise renewal application and review fee	$500.00

City Council Meeting

Item Number: 41

Meeting Date: November 16, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 2, BECKLAND TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF COUNTRY CLUB DRIVE, APPROXIMATELY 312 FEET WEST OF DELMAR STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT AND A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Benny Fehr, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart*, concerning the minimum side and rear yard setback for an interior lot to add a metal building on the property.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 4307 Country Club, which is zoned SF-2, Single Family Dwelling

District.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

SF-2, Single Family Dwelling District
Lot dimensions
Minimum Side Yard Setback:
Interior Lot: 5 Feet
Minimum Rear Yard Setback:
Where an alley adjoins the rear lot line: 5 feet any structure(garage, carport) with alley access.

The property is an interior lot and would have to meet the required minimum 5-foot side yard setback for an interior lot. The property owner intends to have rear entry access from the alley; therefore, they would have to meet the required minimum 5-foot rear yard setback as listed in the zoning ordinance.

The applicant is requesting to reduce the required minimum side yard setback for an interior lot to be three (3) feet and the minimum rear yard setback to be zero (0) feet to be able to proceed with the addition of a 20' x 20' (400 sq. ft.) metal building. However, this property faces no hardships. There are other alternatives to accommodate the proposed addition without a special exception. For example, the metal building can be relocated to the southeast side of the property and maintain the required minimum side and rear yard setback. Another option would be to reduce the size and scale of the proposed metal building. Therefore, this request does not constitute a lack of reasonable use.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues.

Building: (Approved with Conditions)

No objections. Building must be a minimum of 10 feet away from any dwellings on or off the property. Must also be a minimum of 5 feet from any other detached accessory building including pools or canopies

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart* concerning the minimum side and rear yard setback for an interior lot.

Should the City Council approve this request, the property shall be subject to conditions A and C:

Conditions:

A. That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the minimum side yard setback for the proposed addition on the western side of the property shall be three (3) feet.

C. That the minimum rear yard setback of the proposed addition shall be zero (0) feet.

Letters of Objection:

As of November 10, 2021, staff has not received any letters of objection

Attachments:

Proposed Site Plan (Exhibit A)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 2, BECKLAND TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF COUNTRY CLUB DRIVE, APPROXIMATELY 312 FEET WEST OF DELMAR STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT AND A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE

CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as Lot 3, Block 2, Beckland Terrace, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the west side of the lot and a reduced minimum rear yard setback.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum side yard setback on the west side of the lot shall be three feet.

B. That the minimum rear yard setback shall be zero feet.

C. That the property shall significantly conform to Exhibit "A", which is attached hereto and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this

ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

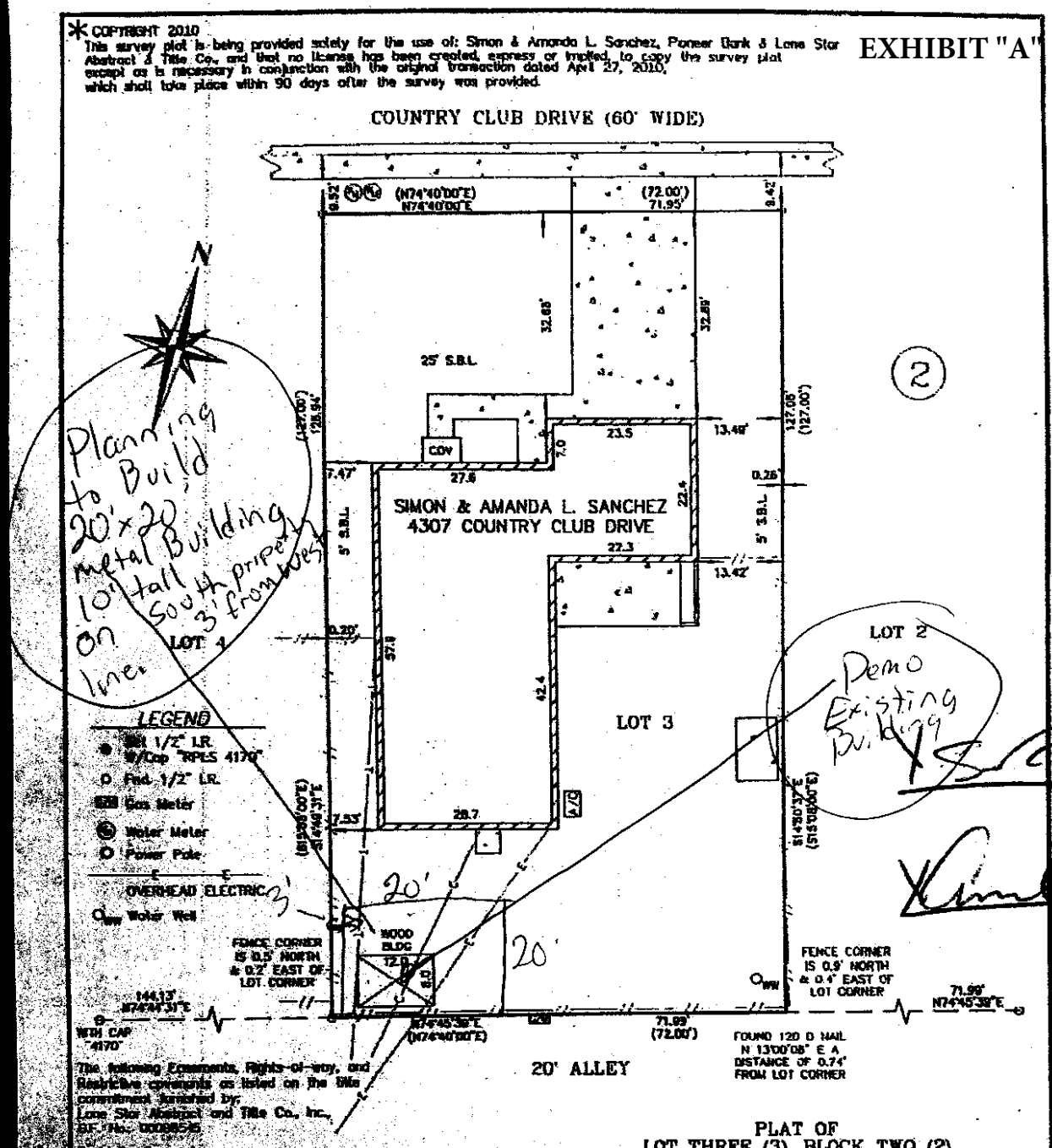
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

* COPYRIGHT 2010
This survey plat is being provided solely for the use of: Simon & Amanda L. Sanchez, Pioneer Bank & Lone Star Abstract & Title Co., and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated April 27, 2010, which shall take place within 90 days after the survey was provided.



The following Easements, Rights-of-way, and Restrictive covenants as listed on the title commitment furnished by:
Lone Star Abstract and Title Co., Inc.,
GF No. 0000836

Restrictive Covenants
Vol. 276, Pg. 453,

Easement to:
For: Pole Lines
Recorded: Vol. 223, Pg. 223, Deed Records, Midland Co., Texas

Mutual Right-of-Way Deed
South Plains Pipeline Co.
Vol. 42, Pg. 439,
Deed Records,
Midland Co., Texas

Blanket Easement & Right-of-Way
T.E.S.Co.
Vol. 87, Pg. 345,
Deed Records,
Midland Co. Texas

PLAT OF
LOT THREE (3), BLOCK TWO (2),
BECKLAND TERRACE,
AN ADDITION TO THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS
ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 7, PLAT RECORDS, MIDLAND COUNTY, TEXAS

According to Zone "X" as shown on the Flood Insurance Rate Map, Dated [illegible] Federal Emergency Management Agency Flood Map

[illegible] and this survey was this day made on the ground of [illegible] there are no visible [illegible] encroachments, [illegible] as shown hereon, and [illegible]

Basis of Bearings:
NORTH Line of this Lot

Bearings and Distances Shown Inside ( ) Indicate Record Information

20 10 0 20

SCALE: 1" = 20'

STATE OF TEXAS
REGISTERED
BRUCE A. PERRELL
4170
PROFESSIONAL
LAND SURVEYOR

[illegible] 14, 2021

MIDLAND Planning Division

Special Exception Application

Project Number: E-21-0061

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Benny Fehr		Phone (806) 215-9155 Email benny@schmittexteriors.com	
Address 197 CR 700-J	City Seminole	State TX	Zip 79360

Property Owner Printed Name: Simon Sanchez		Phone (432) 553 1103 Email ssanchez20@ups.com	
Address 4307 Country Club Dr	City Midland	State TX	Zip 79703

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4307 Country Club

Legal Description
Lot: Block: ✓ Subdivision: Beckland Terrace

Current Zoning: SF2

This property qualifies as an exception to the City Code because:

- ☑ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Home owner wants building to be on the property line due to limited space

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature): Benny Fehr	Date: 10-7-21
Applicant (printed): Benny Fehr	
Property Owner (signature): [signature]	Date: 10-7-21
Property Owner (printed): Simon Sanchez	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Benny Fehr who, being by me duly sworn, upon oath says: That (s)he is authorized by Simon Sanchez, 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 7th day of October, 20 21, to certify which witness my hand and seal of office.

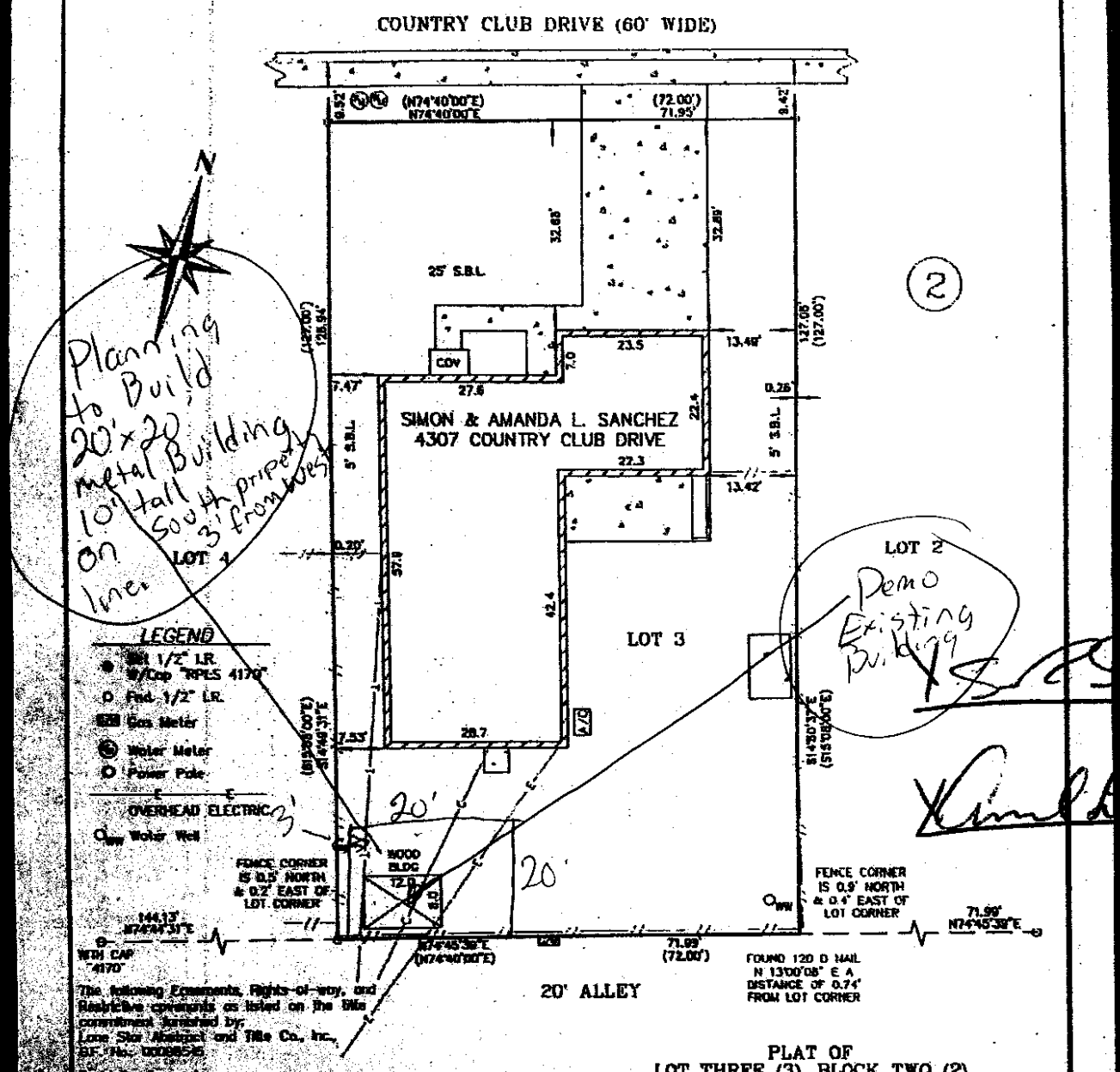
Margarita Wall Friesen
My Commission Expires
8/5/2025
Notary ID
133252870

NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, TEXAS
Gaines

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.****

* COPYRIGHT 2010
This survey plat is being provided solely for the use of: Simon & Amanda L. Sanchez, Pioneer Bank & Lone Star Abstract & Title Co., and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated April 27, 2010, which shall take place within 90 days after the survey was provided.



Planning to Build 20'x20' metal Building 10' tall on South property line 3' from West

(2)

LEGEND
- 3/8" I.R.
- W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- Gas Meter
- Water Meter
- Power Pole
- OVERHEAD ELECTRIC
- Water Well

The following Easements, Rights-of-way, and Restrictive covenants as listed on the title commitment furnished by:
Lone Star Abstract and Title Co., Inc.,
GF No. 0000836

Restrictive Covenants	Blanket Easement & Right-of-Way	
Vol. 2295, Pg. 153,	T.E.S.Co.	
Real Property Records,	Vol. 87, Pg. 345,	
Midland Co., Texas	Deed Records,	
	Midland Co., Texas	
Easement & Right-of-Way	Blanket Right-of-Way Deed	
Vol. 2295, Pg. 153,	South Plains Pipeline Co.,	
Real Property Records,	Vol. 42, Pg. 439,	
Midland Co., Texas	Deed Records,	
	Midland Co., Texas	

PLAT OF
LOT THREE (3), BLOCK TWO (2), BECKLAND TERRACE, AN ADDITION TO THE CITY OF MIDLAND MIDLAND COUNTY, TEXAS

ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 7, PLAT RECORDS, MIDLAND COUNTY, TEXAS

Basis of Bearings:
NORTH Line of this Lot

Bearings and Distances Shown
Inside ( ) Indicate Record Information

20 10 0 20

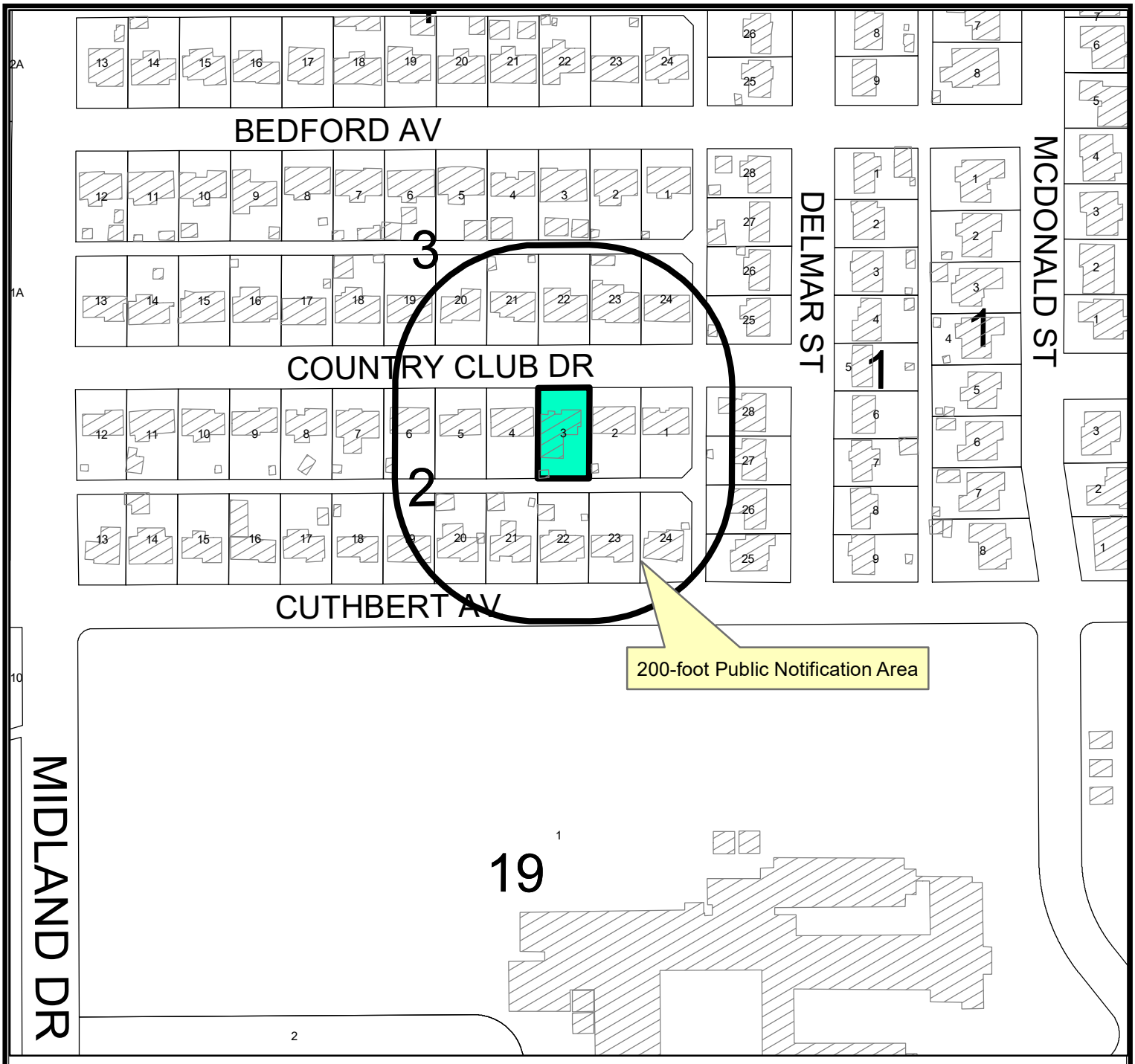
SCALE: 1" = 20'

Flood Zone "X", as shown on the Flood Insurance Rate Map, Dated
Federal Emergency Management Agency Flood Map

...and this survey and this day made on the ground of ... there are no visible ... encroachments, ... hereon, and ...

STATE OF TEXAS
REGISTERED
BRUCE S. POWELL
4170
PROFESSIONAL
LAND SURVEYOR

...14, 2021



LOCATION MAP

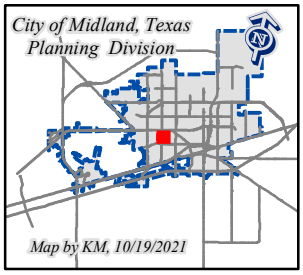
E-21-0061 **Scale: 1" = 200'**

Consider a request by Benny Fehr for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side and rear yard setback for an interior lot on Lot 3, Block 2, Beckland Terrace, City and County of Midland, Texas.

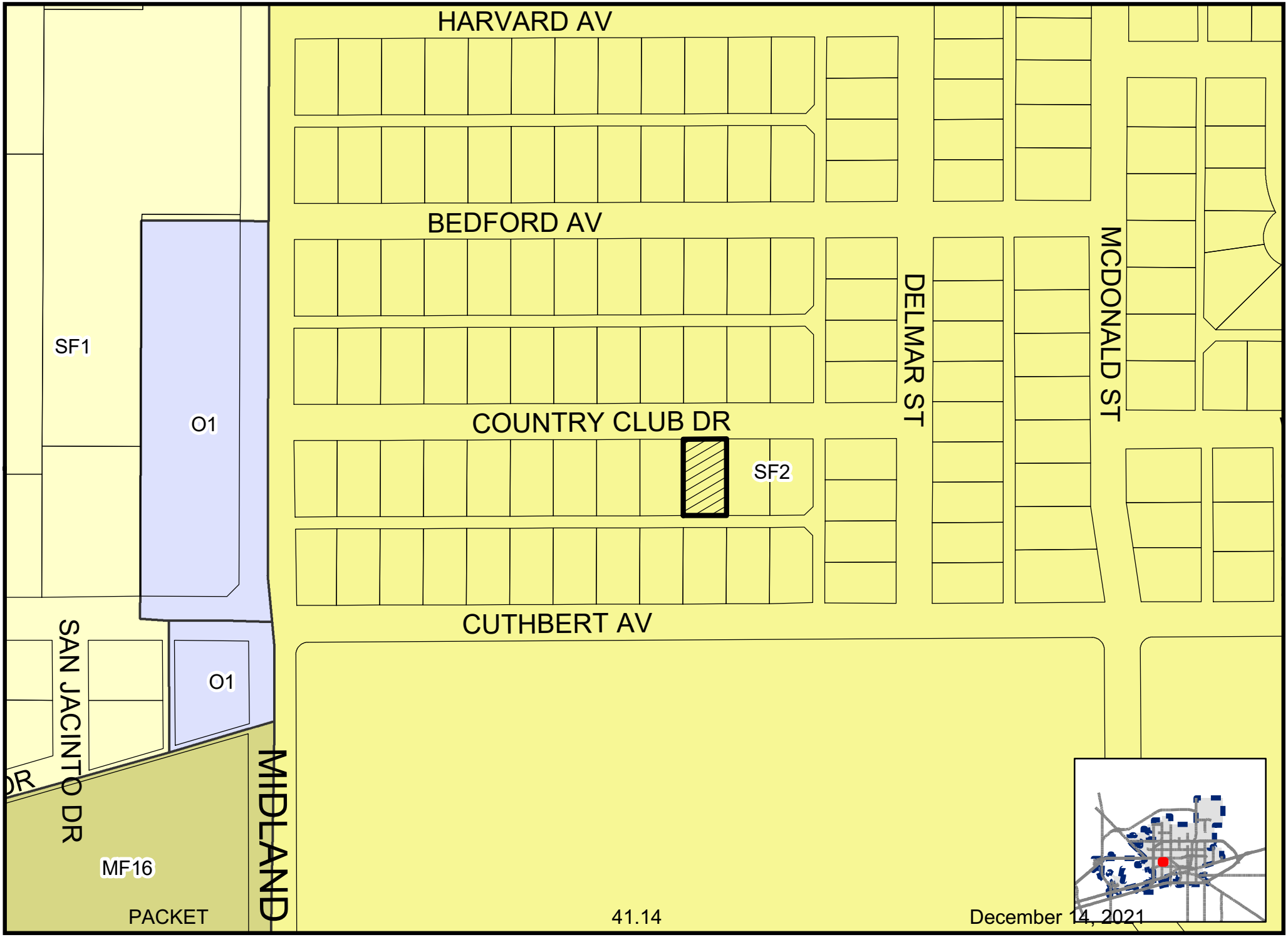
Generally located on the south side of Country Club, approximately 312 feet west of Delmar Street. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ITS PRIOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 10/19/2021

E-21-0061

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.








MIDLAND

City Council Meeting

Item Number: 42

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,000-SQUARE FOOT PORTION OF LOT 31, BLOCK 10, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND WEST WALL STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Terictika Deary, is requesting a Specific Use Designation with term for the sale of alcoholic beverages for on-premises consumption in a nightclub at 3402 Thomason Drive, Midland, Texas 79705.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned Development District and is the location of storage units. The property to the east is zoned RR, Regional Retail District and is the location of an antique shop. The property to the south across Wall Street is zoned C, Commercial District and the location of a car dealership. The properties to the west are zoned RR, Regional Retail District and is the location of a dance studio, loan office, and a liquor store.

Discussion:

The applicant is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a nightclub. The property is zoned RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

The Rose Midland is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as “Exhibit A” illustrates that the establishment will have a total square footage of 4,000 square feet, with an alcohol serviceable area of 2,160 square feet. This site does not meet the parking requirement of 10 parking spaces. However, this property has a shared parking agreement (Exhibit B) with the adjacent property located at 3400 Thomason Drive. This allows the site to have adequate parking. This site also has the required restroom facilities.

The nightclub will have the following hours of operation and alcohol service:

Tuesday through Friday from 6:00 p.m. to 2:00 a.m. (the following day)

Saturday and Sunday from 12:00 p.m. (noon) to 2:00 a.m. (the following day)

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches or schools within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

The SUD for The Rose is acceptable. The property must adhere to the maximum occupant load of 140. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 4-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) The Rose Midland is an establishment that promotes a environment where Midland residents can gather and socialize.

This request was approved at the November 1, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a nightclub, subject to Condition A through G.

Conditions:

A. **That the alcoholic serviceable area of the nightclub shall be limited to approximately 2,160 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

    Tuesday through Friday from 6:00 p.m. to 2:00 a.m. (the following day)

    Saturday and Sunday from 12:00 p.m. (noon) to 2:00 a.m. (the following day)

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 9.07.E.3 of the zoning ordinance, the nightclub shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of December 8, 2021, staff has received one letter of objection.

Attachments:

Application
Floor Plan (Exhibit A)
Parking Agreement (Exhibit B)
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,000-SQUARE FOOT PORTION OF LOT 31, BLOCK 10, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND WEST WALL STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 4,000-square foot portion of Lot 31, Block 10, Permian Estates, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a nightclub (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 2,160 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Tuesday through Friday from 6:00 p.m. to 2:00 a.m. of the following day; and Saturday and Sunday from 12:00 p.m. (noon) to 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

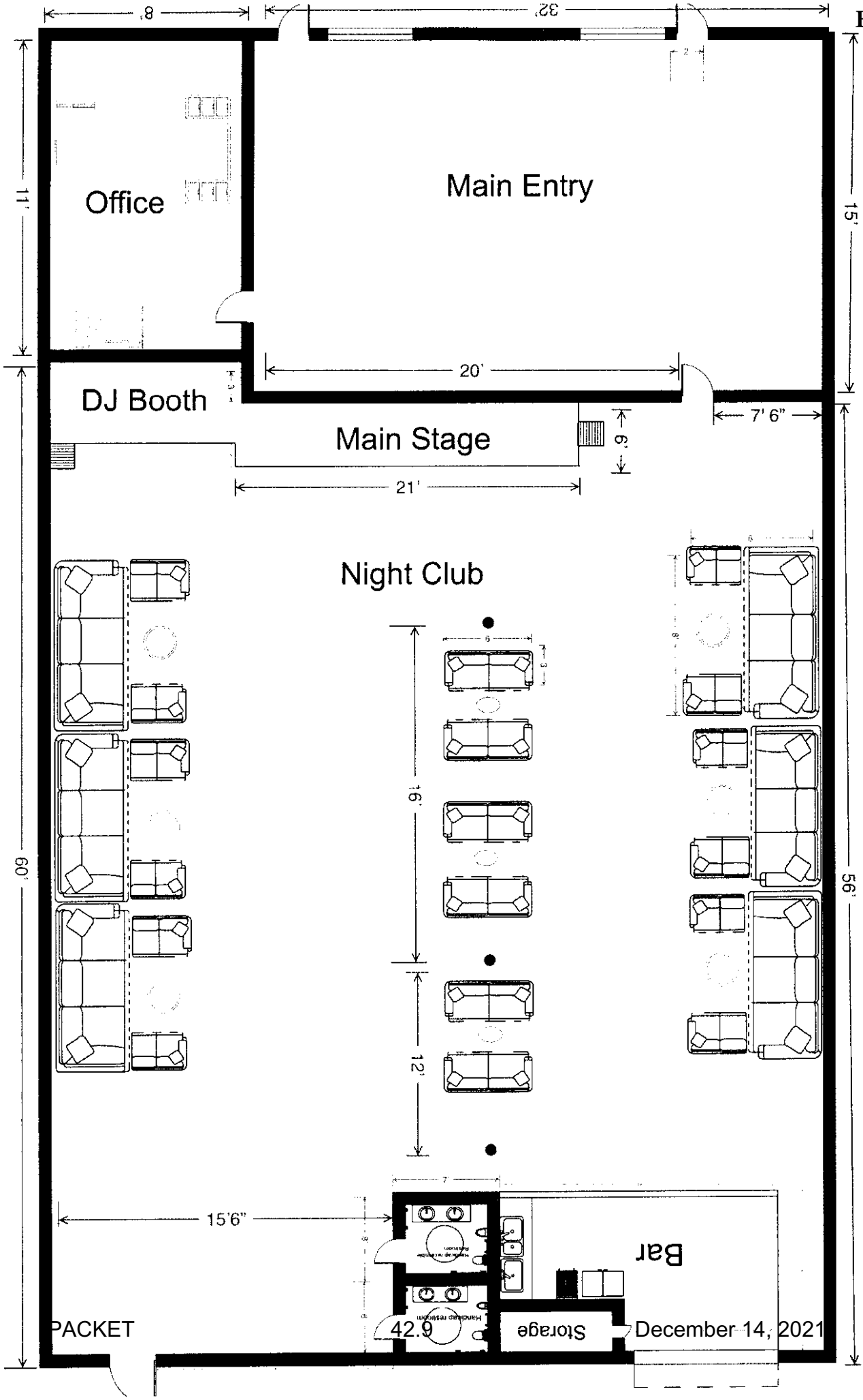
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney


8'
32'
Office
Main Entry
11'
15'
20'
DJ Booth
Main Stage
7' 6"
6'
21'
Night Club
16'
12'
60'
56'
15'6"
Bar
Storage

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0113

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Terichka Deary		Phone (432) 8476878 Email tdeary18@gmail.com	
Address 1405 E 18th St	City Odessa	State Tx	Zip 79761
Property Owner Printed Name: RABIH Alsouleh		Phone (201) 841-9853 Email	
Address 605 CENTRAL AVE	City RULE	State Tx	Zip 79547
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 3402 Thomason Dr. Midland, TX 79703

Business Name: The Rose Midland

Legal Description
Lot: ✓ Block: Subdivision:

Current Zoning: RR Zoning

Reason for Request: _____

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: nightclub

Proposed/Current Days and Hours of Operation: Tuesday - Sunday open. Tuesday - Friday 6pm - 2AM, Saturday & Sunday 12PM - 2AM

Proposed Days and Hours of Alcohol Service: Tuesday - Friday 6pm - 2AM Saturday and Sunday 12PM - 2AM

Total Square Footage of Business: 4,000 SQ ft.

Square Footage of Alcohol Serviceable Area: 2,160 SQ. ft

Restroom Fixtures: *Men*	**Toilets/Urinals:** 2 / 0	**Bathroom Sinks:** 2
Women	**Toilets:** 2	**Bathroom Sinks:** 2

RECEIVED
AUG 06 2021
BY: DR

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 8-6-21
Applicant (printed): Terichka Deary	
Property Owner (signature): R. ALSOUFH	Date: 8-6-21
Property Owner (printed): RABIH ALSOUFH	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

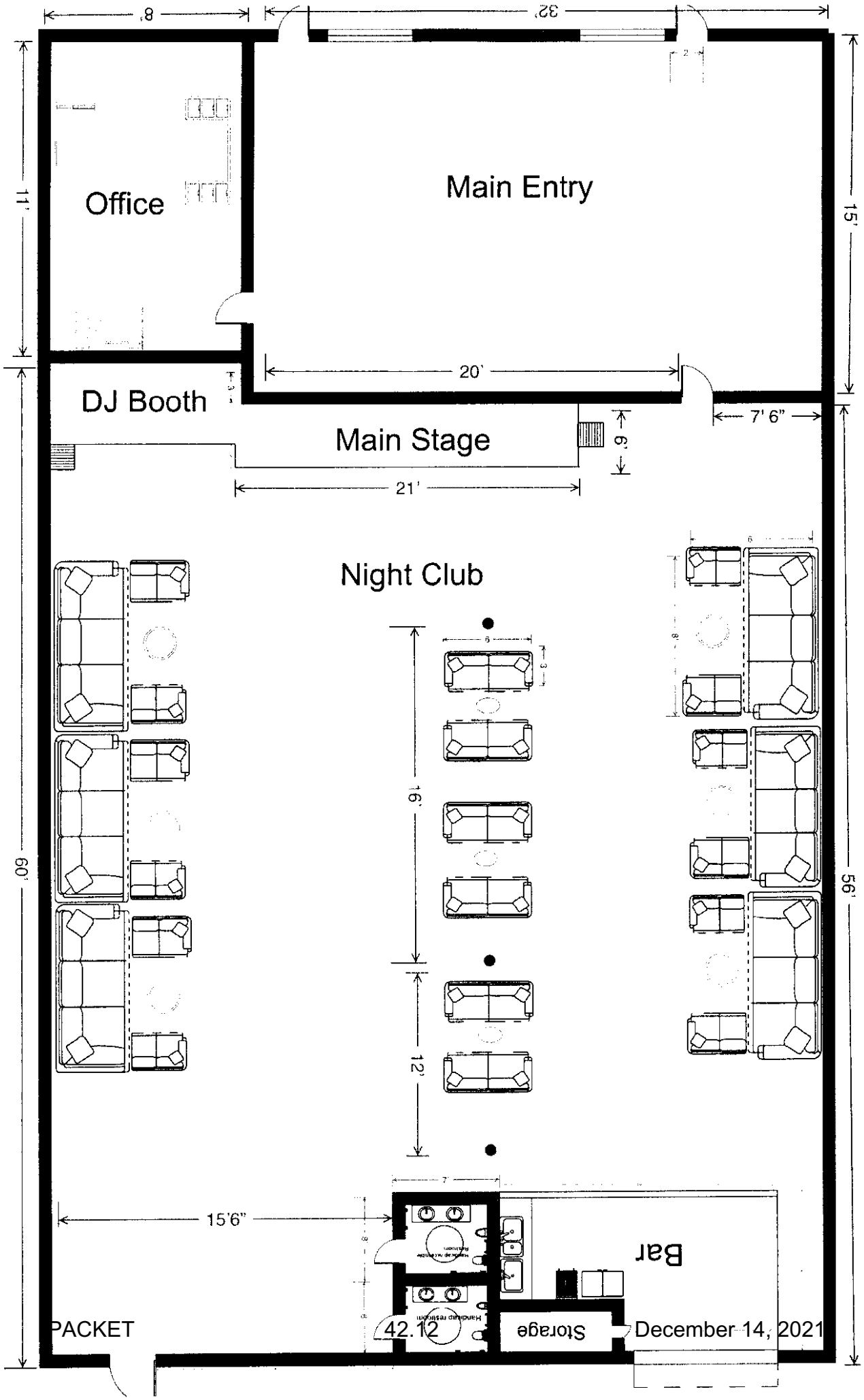
_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

RECEIVED
AUG 0 6 2021
BY: .....

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****


8'
32'
11'
Office
Main Entry
15'
20'
DJ Booth
Main Stage
7' 6"
6'
21'
Night Club
16'
12'
60'
56'
15'6"
Bar
Storage

PRIVATE RECIPROCAL ACCESS EASEMENT

STATE OF TEXAS *
*
COUNTY OF MIDLAND *

THIS Private Reciprocal Access Easement is made as of ~~September~~ October 8th, 2021 by the **RABIH ALSOULEH** (hereinafter Grantor) **and ANNA MARGRET PALKO & THE MIDLAND ROSE, LLC** (hereinafter Grantees) for the benefit of the real property (hereinafter described) and the present and subsequent owners, successors, agents and assigns of the said real property hereinafter described.

WITNESSETH:

WHEREAS Grantor owns all the certain real property described as follows, to wit:

ALSOULEH TRACT

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES; and

WHEREAS Grantees own all that certain real property described as follows, to wit:

MIDLAND ROSE TRACT

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES; and

WHEREAS Grantor intends to lease and/or operate businesses on the said tract of land and desire to ensure adequate access for pedestrian and vehicular traffic, parking, ingress, and egress on, about and around the real property described above for tenants, owners, customers, and guests; and

WHEREAS Grantors desire to ensure that Grantees (as Tenants of Grantor) as well as Grantor of the above-described properties and any portion or portions thereof, will also have reasonable and adequate access to and from all public roadways and thoroughfares abutting on or along the above-described property; and

WHEREAS in conjunction with this Private Reciprocal Access Easement the Grantees further will provide for the maintenance, upkeep, and use of the said easement areas by mutual agreement between Grantor and Grantee.

NOW, THEREFORE, BE IT RESOLVED BY THE GRANTORS HEREIN:

Section 1. That in consideration of the Grantors and Grantees desire to preserve and protect the rights of the present and future owners needs for access, ingress, and egress between the tracts (see above) and to achieve access to local thoroughfares or dedicated roadways, Grantors do hereby

GRANT and CONVEY unto Grantees, their successors, agents and assigns a nonexclusive reciprocal access easement over and about all of the parking lot areas located on the real property described in Exhibit "A" for vehicular, pedestrian, and parking purposes traffic for the benefit of Grantees, their customers and invitees, and their successors, agents and assigns. Said easement shall not be an exclusive easement conveyed to Grantees but shall be subject to the use by Grantor or Grantors' successors, heirs, and assigns. No structures or barricades may be placed or erected along or in the said easement areas.

Section 2. The said reciprocal easement granted herein shall constitute a covenant running with the land and shall be forever binding on and inure to the benefit of Grantors, their successors, agents, representatives, heirs, assigns, and said easement shall be of perpetual duration.

IN WITNESS WHEREOF, the Grantors hereto have executed this Private Reciprocal Access Easement on the date above first written at Midland, Midland County, Texas.

GRANTOR

R. AlsouIEH
RABIH ALSOULEH

GRANTEE

ANNA MARGARET PALKO

THE MIDLAND ROSE, LLC

By: _____
Terictika Deary, Manager

By: _____
Anna Margaret Palko, Manager

STATE OF TEXAS *
*
COUNTY OF MIDLAND *

This instrument was acknowledged before me on this the 8th day of ~~September~~ October by Rabih Alsouleh.

SARAH M. SUBIA
Notary Public, State of Texas
Comm. Expires 09-06-2022
Notary ID 455183-5

_____
NOTARY PUBLIC, STATE OF TEXAS
My Commission Expires:

Exhibit "A"

Property (including any improvements):

BEING 0.42 ACRES OF LAND OUT OF THE SOUTH POR
(30) AND THIRTY-ONE (31), BLOCK TEN (10), PERMIAN E
City of Midland, Midland County, Texas, according to the map
Cabinet A, Page 63, Plat Records of Midland County, Texas, and
by metes and bounds as follows:

BEGINNING at an iron pin, the SOUTH corner of Lot 31, Block
SOUTH corner of this tract;

THENCE N. 49° 41' W. with the SOUTHWEST line of said Lot
to an iron pin set for the WEST corner of this tract;

THENCE N. 39° 52' 30" E. parallel to and with outside of the
Bowen Drive-In Grocery building, a distance of 156.2 feet to an
corner of this tract;

THENCE S. 49° 41' E. parallel to and 12.6 feet NORTHEAST o
30 and 31, a distance of 127.5 feet to an iron pipe set in the NO
line of West U.S. Highway 80, for the EAST corner of this tract

THENCE S. 40° 51' 30" W. with said NORTHWEST Right-of-W
feet to the PLACE OF BEGINNING;

ALSO:

THE EAST 27 FEET OF THE WEST 39.6 FEET OF THE SO
THIRTY (30), BLOCK TEN (10), PERMIAN ESTATES,
Midland, Midland County, Texas according to the map or pl.
Cabinet A, Page 63, Plat Records of County, Texas.

Exhibit "B"

Parcel 1: (Fee Simple)
Being a 0.0974 acre tract of land (more or less) out of LOTS 30 AND 31, BLOCK 10, PERMIAN ESTATES, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Plat Cabinet A, Page 63, Plat Records of Midland County, Texas. Said 0.0974 acre tract described more fully by metes and bounds as follows:
BEGINNING at a 1/2" reinf. bar set for the East corner of this tract, from which the South corner of said Lot 30 and the East corner of said Lot 31, bears S. 39° 52' 30" W. 27.25 feet and S. 49° 41' 00" E. 127.50 feet;
THENCE S. 39° 31' 42" W. 95.58 feet (record S. 39° 52' 30" W. 95.00 feet) to a building corner found for the South corner of this tract;
THENCE N. 50° 07' 30" W. 44.40 feet (record N. 50° 07' 30" W. 44.50 feet) to a building corner found for the West corner of this tract;
THENCE N. 39° 31' 42" E. 95.58 feet (record N. 39° 52' 30" E. 95.00 feet) to a 1/2" reinf. bar found for the North corner of this tract;
THENCE S. 50° 07' 30" E. 44.40 feet (record S. 50° 07' 30" E. 44.50 feet) to the PLACE OF BEGINNING.

Parcel 2: (Easement Estate)
Easement Estate created within that certain Private Right of Way Access Easement (Non Exclusive) to Leslie E. Kelso and wife Barbara J. Bowen Kelso as recorded in County Clerk's File Number 2009-15400, Official Records of Midland County, Texas.


C-2
PD
RR
3420
3416
3414
3412
3410
3406
3402
3400
3712
3708
THOMASON
W WALL
W WALL

MIDLAND CENTRAL APPRAISAL DISTRICT

Home Return to Search Print

Property Year 2021 Tax Summary Map/Gis

Information Updated 8/8/2021

Property ID: R000037213 Geo ID: 00069600.010.0314

< Previous Property 1 / 218 Next Property >

Property Details

Ownership

ALSOULEH RABIH

605 CENTRAL AVE
RULE, TX 79547

Ownership Interest: 1.0000000

L35D

Available Actions

Qualified Exemptions

Not Applicable

Legal Information

Legal: Acres: 0.097, BLK: 010, TRACT II (0.097 AC, ADDN: PERMIAN ESTATES, TR O/O LOTS 30 & 31)

Situs: THOMASON DR 3402

Property Valuation History

Values by Year		2021	2020	2019	2018	2017	n/a
Improvements	+	$55,520	$52,970	$52,970	$52,970	$52,970	$0
Land	+	$2,110	$2,110	$2,110	$2,110	$2,110	$0
Production Market	+	$0	$0	$0	$0	$0	$0
Personal	+	$0	$0	$0	$0	$0	$0
Mineral	+	$0	$0	$0	$0	$0	$0
Total Market	=	$57,630	$55,080	$55,080	$55,080	$55,080	$0
Agricultural Loss	-	$0	$0	$0	$0	$0	$0
Homestead Cap Loss	-	$0	$0	$0	$0	$0	$0
Total Assessed	=	$57,630	$55,080	$55,080	$55,080	$55,080	$0

Improvement / Buildings *Improvement Value: $55,520*

Group Sequence	Code	Building Description	Year Built	Square Footage	Perimeter Footage
101	COMM	COMM BLDG	1956	3,520	248

Land Details *Market Value: $2,110* *Production Market Value: $0* *Production Value: $0*

Land Code	Acres	Sq. Ft.	Front Ft.	Rear Ft.	Depth	Mkt. Value	Prd. Value
CQ00L	0.097	4,228	0	0		2,114	0

Deed History

Sold By	Volume	Page	Deed Date	Instrument
n/a			n/a	
SAVAGE JOHN			9/19/2014	2014-21870
KELSO LESLIE E			6/21/2011	2011-11924
TGAAR PROPERTIES INC	2105	0080	1/22/2003	1477
SEALE LARRY	2056	0662	10/8/2002	20430
n/a	0787	0159	6/27/1983	

Property Tax Estimation by Entity / Jurisdiction

Code	Description	Taxable Value	Tax Rate per $100	Tax Factor applied to Taxable Value	Estimated Tax
165	MIDLAND COUNTY	57,630	$0.128844	0.00128844	$74.25
CTM	CITY OF MIDLAND	57,630	$0.358928	0.00358928	$206.85
HOS	MIDLAND HOSPITAL	57,630	$0.099634	0.00099634	$57.42
RDC	MIDLAND COLLEGE	57,630	$0.092208	0.00092208	$53.14
SCM	MIDLAND ISD	57,630	$1.0266	0.010266	$591.63
	Total Estimation		**$1.706214**	**0.01706214**	**$983.29**

The above property tax estimation is not a tax bill. Do not pay.
Click here to view actual Property Tax Bill.

Southwest Data Solutions provides this information "as is" without warranty of any kind.
Southwest Data Solutions is not responsible for any errors or omissions.

MIDLAND CENTRAL APPRAISAL DISTRICT

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Property Year 2021 Tax Summary **Map/Gis**

Information Updated 8/8/2021

Property ID: R000037213 Geo ID: 00069600.010.0314

< Previous Property 1 / 218 Next Property >



I Am RABIH AlsouIEH THE owNER
OF PROPERTy LOCATED AT 3400 ThomASON DR
And 3402 ThomASON DR midlAnd, Tx 79703
I AllowED ANNA PALKO to US ThE
PARKING Lot my conTACTs
PHONE NUMBER IS 201-841-9853

R. AlsouIEH

MIDLAND CENTRAL APPRAISAL DISTRICT
PO BOX 908002
MIDLAND, TX 79708-0002

MIDLAND CENTRAL APPRAISAL DISTRICT
PHONE: 432-699-4991 FAX: 432-689-7185
ARB@MIDCAD.ORG
PHYSICAL ADDRESS:
4631 ANDREWS HWY.
MIDLAND, TX 79703

 MAY 18, 2021

2021 NOTICE OF APPRAISED VALUE

Date Sensitive Material Please Read Carefully

Protest Deadline: 6/18/2021

ALSOULEH RABIH
605 CENTRAL AVE
RULE, TX 79547

Dear Property Owner,
We have appraised the property for the 2021 tax year. Based on the appraisal date of January 1 of this year, this appraisal is for the following property. Please refer to the account numbers below when inquiring about this property.

Account Numbers: PROPERTY ID: R37209 / GEO ID: 00069600.010.0306

Street Address: 3400 THOMASON DR

Legal Description: BLK: 010, LOT: 030 W.39.6 OF, ADDN PERMIAN ESTATES, S.127.55 & SW 125 X, 143.6 OF LOT 31 ACRES: 0.530

Property Valuation	Last Year	Proposed This Year
LAND MARKET	57,690	57,690
STRUCTURE MARKET	53,730	72,790
TOTAL MARKET	111,420	130,480
TOTAL APPRAISED	111,420	130,480

Taxing Entities	Last Year's Exemptions	Last Year's Taxable Value	This Year's Exemptions	This Year's Taxable Value	Last Year's Rate Per $100	Ceiling Information
165 - MIDLAND COUNTY	0	111,420	0	130,480	0.1288440	
SCM - MIDLAND ISD	0	111,420	0	130,480	1.0266000	
RDC - MIDLAND COLLEGE	0	111,420	0	130,480	0.0922080	
CTM - CITY OF MIDLAND	0	111,420	0	130,480	0.3589280	
HOS - MIDLAND HOSPITAL	0	111,420	0	130,480	0.0996340	

Percent Market Change From 2016 is 0.01%

The above tax is based on last year's tax rates for the taxing units. The governing body of each unit - school board, county commissioners, and so on - decides whether property taxes increase. The appraisal district only determines your property's value. The taxing units will set tax rates later this year. *The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials.*

If you are 65 or older and received the $10,000 school tax exemption on your home last year from the school listed in the taxing entities above, your school taxes for this year will not be higher than when you first received the exemption on this home. If you improved your property (by adding rooms or buildings), your school tax ceiling may increase for improvements. If you are a surviving spouse age 55 or older, you may retain the school tax ceiling as long as the owner occupies the residence.

Contact the appraisal office if you disagree with this year's proposed value for your property, or if you have any problems with the property description or address information. If the problem cannot be resolved, you have a right to appeal to the appraisal review board (ARB). To appeal, you must file a WRITTEN protest with the ARB before **6/18/2021**. Enclosed is a protest form to send the appraisal district office. Before you send this form to the appraisal district, please contact them to determine if your question can be answered first. After your protest has been processed, you will be notified of the date, time, and place of your scheduled ARB hearing. Enclosed also is information to help you in preparing your protest. You do not need to use the enclosed form to file your protest.

You may protest online at WWW.MIDCAD.ORG or by letter, if it includes your name, your property's account numbers, legal description, and the facts and evidence surrounding your protest.

If you have any additional questions concerning the value of your property, please contact the appraisal office at the phone number or address listed above and have the account number or parcel number available.

Office Use: M

Quick Link:

THIS IS NOT A BILL. DO NOT PAY.

MIDLAND CENTRAL APPRAISAL DISTRICT
PO BOX 908002
MIDLAND, TX 79708-0002

MIDLAND CENTRAL APPRAISAL DISTRICT
PHONE: 432-699-4991 FAX: 432-689-7185
ARB@MIDCAD.ORG
PHYSICAL ADDRESS:
4631 ANDREWS HWY.
MIDLAND, TX 79703

2/2 MAY 18, 2021

2021 NOTICE OF APPRAISED VALUE

Date Sensitive Material Please Read Carefully

Protest Deadline: 6/18/2021

ALSOULEH RABIH
605 CENTRAL AVE
RULE, TX 79547

Dear Property Owner,
We have appraised the property for the 2021 tax year. Based on the appraisal date of January 1 of this year, this appraisal is for the following property. Please refer to the account numbers below when inquiring about this property.

Account Numbers: PROPERTY ID: R37213 / GEO ID: 00069600.010.0314
Street Address: 3402 THOMASON DR
Legal Description: BLK: 010, TRACT II (0.097 AC, ADDN: PERMIAN ESTATES, TR O/O LOTS 30 & 31) ACRES: 0.097

Property Valuation	Last Year	Proposed This Year
LAND MARKET	2,110	2,110
STRUCTURE MARKET	52,970	55,520
TOTAL MARKET	55,080	57,630
TOTAL APPRAISED	55,080	57,630

Taxing Entities	Last Year's Exemptions	Last Year's Taxable Value	This Year's Exemptions	This Year's Taxable Value	Last Year's Rate Per $100	Ceiling Information
165 - MIDLAND COUNTY	0	55,080	0	57,630	0.1288440	
SCM - MIDLAND ISD	0	55,080	0	57,630	1.0266000	
RDC - MIDLAND COLLEGE	0	55,080	0	57,630	0.0922080	
CTM - CITY OF MIDLAND	0	55,080	0	57,630	0.3589280	
HOS - MIDLAND HOSPITAL	0	55,080	0	57,630	0.0996340	

Percent Market Change From 2016 is 5.53%

The above tax is based on last year's tax rates for the taxing units. The governing body of each unit - school board, county commissioners, and so on - decides whether property taxes increase. The appraisal district only determines your property's value. The taxing units will set tax rates later this year. *The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials.*

If you are 65 or older and received the $10,000 school tax exemption on your home last year from the school listed in the taxing entities above, your school taxes for this year will not be higher than when you first received the exemption on this home. If you improved your property (by adding rooms or buildings), your school tax ceiling may increase for improvements. If you are a surviving spouse age 55 or older, you may retain the school tax ceiling as long as the owner occupies the residence.

Contact the appraisal office if you disagree with this year's proposed value for your property, or if you have any problems with the property description or address information. If the problem cannot be resolved, you have a right to appeal to the appraisal review board (ARB). To appeal, you must file a WRITTEN protest with the ARB before **6/18/2021**. Enclosed is a protest form to send the appraisal district office. Before you send this form to the appraisal district, please contact them to determine if your question can be answered first. After your protest has been processed, you will be notified of the date, time, and place of your scheduled ARB hearing. Enclosed also is information to help you in preparing your protest. You do not need to use the enclosed form to file your protest.

You may protest online at WWW.MIDCAD.ORG or by letter, if it includes your name, your property's account numbers, legal description, and the facts and evidence surrounding your protest.

If you have any additional questions concerning the value of your property, please contact the appraisal office at the phone number or address listed above and have the account number or parcel number available.

Office Use: M

Quick Link:

THIS IS NOT A BILL. DO NOT PAY.

Warranty Deed With Vendor's Lien

"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."

Date: July 2, 2009

Grantor: Elbert D. O'Neil and Betty G. O'Neil

Grantee: Rabih Alsouleh

Grantees' Mailing Address:

3400 Thomason
Midland, Midland County, Texas 79703

Consideration:

A note of even date executed by Grantee and payable to the order of Grantor, in the principal amount of TWO HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS ($225,000.00). The note is secured by a first and superior vendor's lien and superior title retained in this deed in favor of Grantor and by a first-lien deed of trust of even date from Grantee to G. Lance Holland, Trustee.

Property (including any improvements):

BEING 0.42 ACRES OF LAND OUT OF THE SOUTH PORTION OF LOTS THIRTY (30) AND THIRTY-ONE (31), BLOCK TEN (10), PERMIAN ESTATES, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof, recorded in Cabinet A, Page 63, Plat Records of Midland County, Texas, and more particularly described by metes and bounds as follows:

BEGINNING at an iron pin, the SOUTH corner of Lot 31, Block 10, of said addition for the SOUTH corner of this tract;

THENCE N. 49° 41' W. with the SOUTHWEST line of said Lot 31, a distance of 124.8 feet to an iron pin set for the WEST corner of this tract;

THENCE N. 39° 52' 30" E. parallel to and with outside of the NORTHWEST wall of the Bowen Drive-In Grocery building, a distance of 156.2 feet to an iron pin set for the NORTH corner of this tract;

THENCE S. 49° 41' E. parallel to and 12.6 feet NORTHEAST of the line between said Lots 30 and 31, a distance of 127.5 feet to an iron pipe set in the NORTHWEST Right-of-Way line of West U.S. Highway 80, for the EAST corner of this tract;

THENCE S. 40° 51' 30" W. with said NORTHWEST Right-of-Way line a distance of 156.2 feet to the PLACE OF BEGINNING;

Lone Star
Abstract & Title Co., Inc.
600 N. Loraine
Midland, Texas 79701

PRESIDENT: JACK W. CAMPBELL
EXEC. VICE PRESIDENT: JOSEPH W. CAMPBELL
SR. V.P. & COUNSEL: J. BRIAN MARTIN
V.P. & ABSTRACT MANAGER: TROY McKAY
V.P. & ESCROW OFFICERS: DEBORA K. BLACKALLER
ROSE ROMERO
RACHEL EVANS

P.O. DRAWER 1490 MIDLAND, TEXAS 79702 (432) 683-1818 FAX (432) 683-2217
Lsatc@LoneStarAbstract.com www.LoneStarAbstract.com

November 3, 2014

Rabih Alsouleh
3400 Thomason Dr
Midland, TX 79703

Re: Our GF No.: 204131DKB
Property: 3402 Thomason Dr, Midland, TX 79703
Parties: Rabih Alsouleh

Sir:

We thank you for giving us the opportunity of assisting you in the purchase of the above referenced property. In connection with the above referenced transaction, we are enclosing the following:

☒ Owner's Title Policy issued through Chicago Title Insurance Company

☒ The original Recorded Deed.

☐ Other:

This policy should be kept by you even past the time when you may transfer this property. In the event a sale, refinance or construction loan should become necessary, please remember that we have your file on this property and will happily assist you in your new transaction.

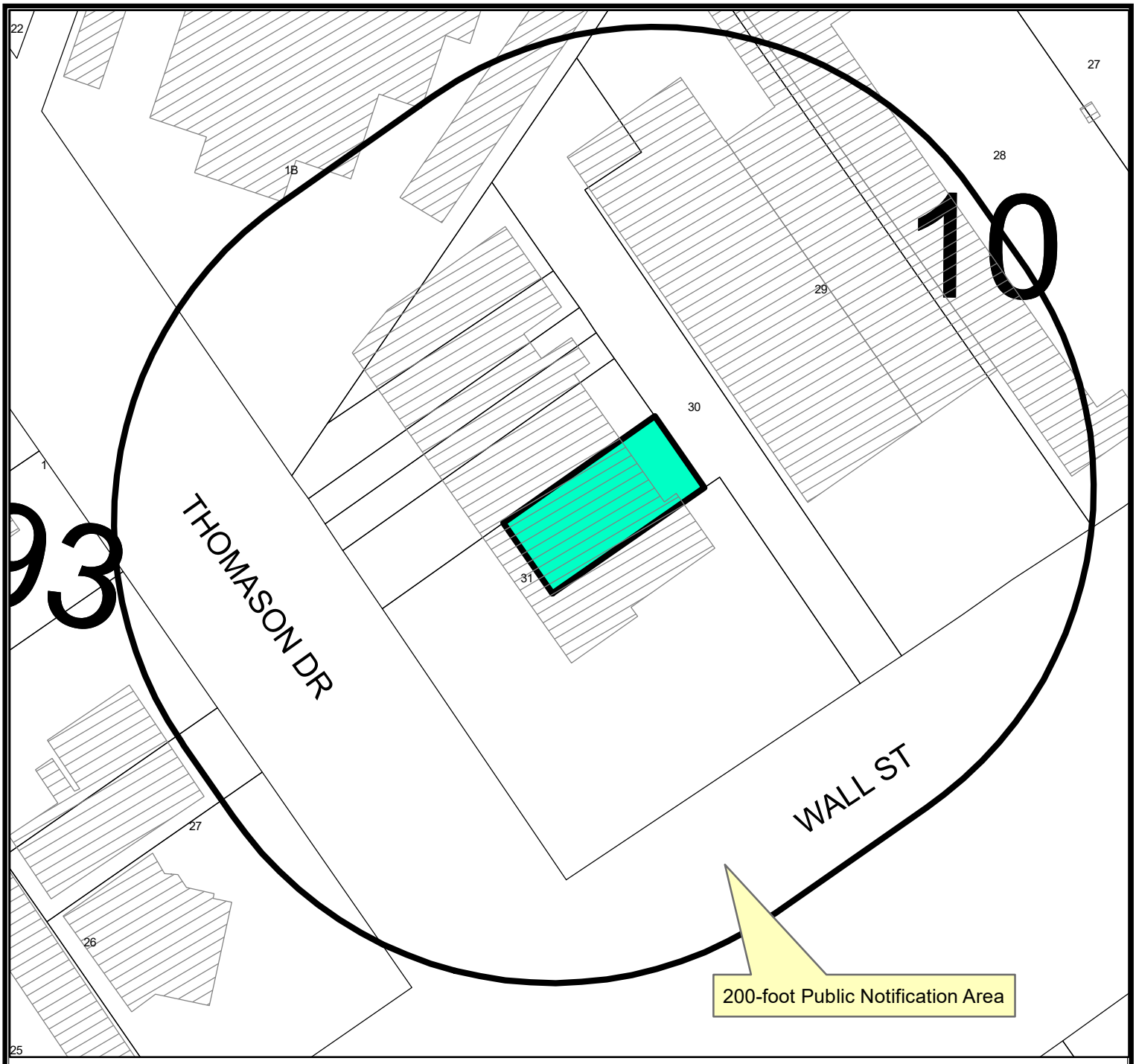
You should render this property for taxes between January 1st and April 1st.

Please contact us if you have any questions or need any additional information.

Sincerely,

Debora K Blackaller

Debora K. Blackaller
Escrow Officer
(432) 262-1339
Debbie@LoneStarAbstract.com



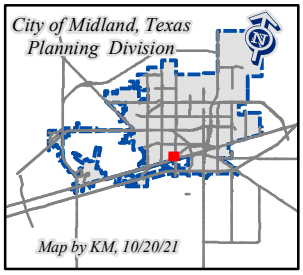
LOCATION MAP

SUD-21-0113 **Scale: 1" = 200'**

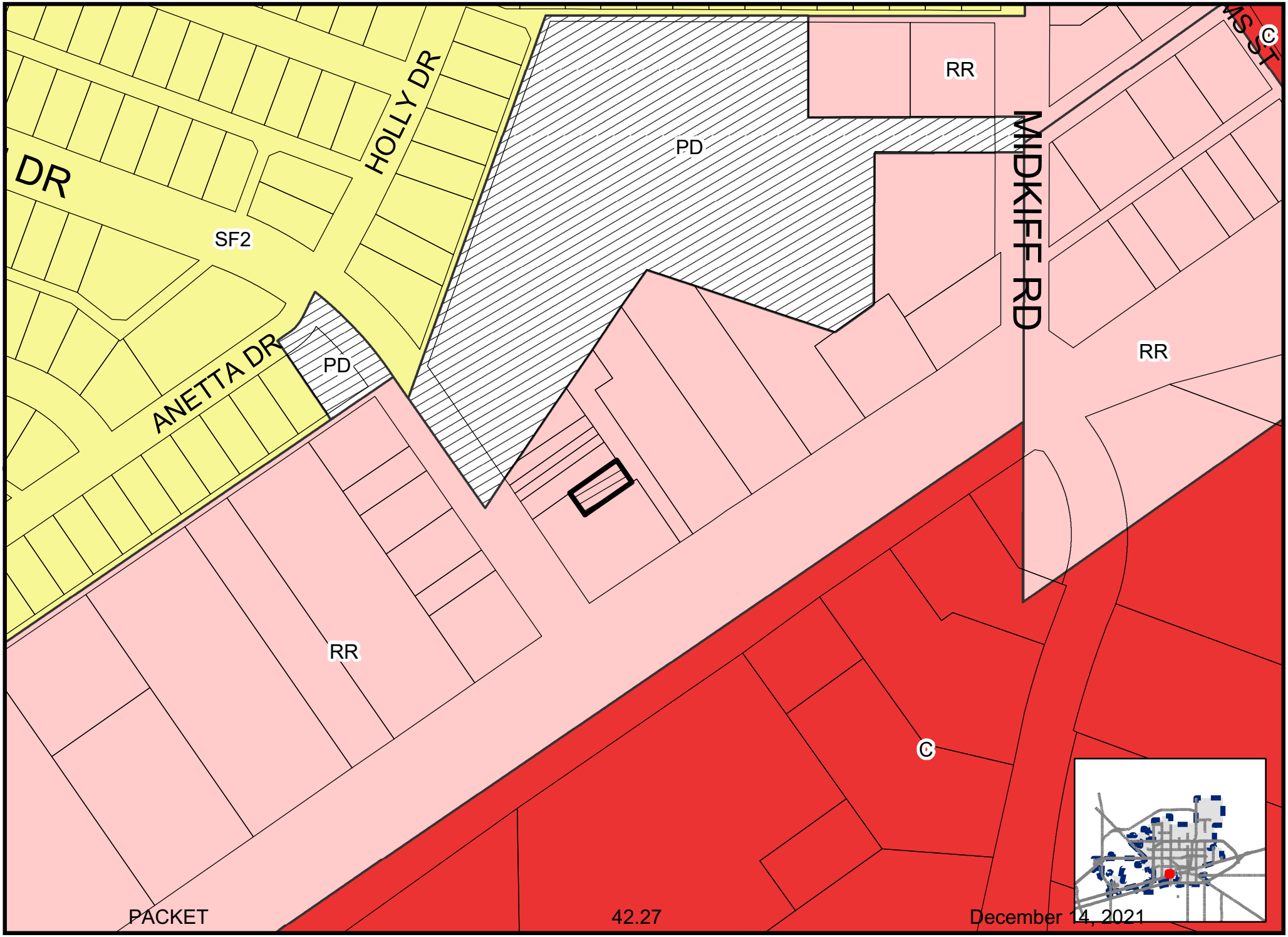
Consider a request by Terictika Deary, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a nightclub, on a 4,000 square foot portion of Lot 31, Block 10, Permian Estates, City and County of Midland, Texas.
Generally located on the northeast corner of the intersection of Thomason Drive and W Wall Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By KM, 10/20/21

SUD-21-0113

Scale: 1" = 200'

ZONING MAP

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Sunflowers
Antiques
AFFORDABLE SELF STORAGE
AFFORDABLE SELF STORAGE
TOP RENTALS
BOAT STORAGE
STORAGE
SPEED LIMIT 30
2214


3406




MOTEL

City Council Meeting

Item Number: 43

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1-28 AND THE WEST 28 FEET OF LOT 29, BLOCK 168, WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-2, OFFICE DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH LOOP 250 AND GRACELAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Mahendra Patel, is requesting to rezone the property on Lots 1-28 and the west 28-feet of Lot 29, Wilshire Park Addition, Section 11, City and County of Midland, Texas, for the development of a self-storage facility.

Recommended City Council Action:

Deny

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

O-2, Office District

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned Development District for a Housing Development, and the location of an apartment complex. The properties to the east are zoned TH, Townhouse District, and 2F-Two-Family Dwelling District and the location of single-family homes and duplexes. The property to the South is zoned PD, Planned Development District for a Shopping Center, and the location of a nursing home. The property to the west across Loop 250 is zoned ETJ, Extraterritorial Jurisdiction and the location of vacant land.

Analysis:

The property is currently vacant and located on Lots 1-29R, Wilshire Park Addition, Section 11, City and County of Midland, Texas. The applicant, Mahendra Patel, is requesting this zone change to allow for the development of a self-storage facility since the current zoning district (O-2, Office District) does not allow for this type of development.

This vacant property was originally zoned and platted for single-family development. It has since then been rezoned twice with the last rezone being O-2, Office District with the intention of a church being developed in this area. The property is located around other residential properties ranging from single-family to multi-family. The development of storage facility would not follow the characteristics of the existing neighborhood. The intent of any new development should be able to maintain the existing development patterns, provide capable fill in development, and enhance and stabilize the existing neighborhood. Furthermore, this rezone is considered spot zoning. Spot zoning is the process of singling out a small parcel of land for use classification different from and inconsistent with that of the surrounding area for the benefit of the owner of such property. If the property is rezoned to commercial, it could be used for any commercial activity allowed in the zoning district. Thus, the biggest concern would be the number of activities that could eventually go into the site as commercial zoning. This is not guaranteed to be self-storage. It has rezoned before and those proposals never came to fruition.

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)

Proposed occupancy must meet all requirements of IFC 2015 ed. and local ordinances.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change. [For the 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 the Applicant's information only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

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).]

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 request is not compliant with the *Tall City Tomorrow Comprehensive Plan, Chapter 3-An Integrated Land Use Vision.* This area calls for urban-residential medium, a designation that incorporates a mix of housing types, including single-family detached, single-family attached and townhouse uses. The development of a self-storage facility would not follow the recommendations of the Tall City Tomorrow nor any of the uses allowed in the proposed commercial district.

This request was recommended for approval at the November 15, 2021, Planning and Zoning Commission meeting.

Staff recommends denial of this request. However, if this request is approved, then staff recommends the zone change from O-2, Office District to C, Commercial District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the C, Commercial District.

Letters of Objection:

Staff has not received any letters of objection as of December 8, 2021.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1-28 AND THE WEST 28 FEET OF LOT 29, BLOCK 168, WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-2, OFFICE DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH LOOP 250 AND GRACELAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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 Lots 1-28 and the west 28 feet of Lot 29, Block 168, Wilshire Park Addition, Section 11, City and County of Midland, Texas (the "Property") to C, Commercial District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from O-2, Office District to C, Commercial District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby

expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0271

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Mahendra Patel		Phone ( ) Email	
Address 3904 W Wall St	City Midland	State TX	Zip 79703

Property Owner Printed Name: See Applicant		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Paladin Huckaba		Phone (432) 262-0999 Email phuckaba@maverick-eng.com	
Address 1909 W Wall St Ste K	City Midland	State TX	Zip 79701

Street Address: Tract One: Being Lots 1-28 and the West 28' of Lot 29, Block 168, Wilshire Park, Section 11

Legal Description Tract Two: Being the 20' Alley Adjacent to Lots L-17, and a 0.57 Acre Portion of Blue Haven Court Right of Way Adjacent to Lots 7-29, Block 168, Wilshire Park, Section 11, an Addition to the City and County of Midland, Texas
Lot: Block: Subdivision:

Current Zoning: O2	**Proposed Zone:** C *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To develop a self-storage facility

Present Use of Property: Vacant

Proposed Use of Property: Storage units

How would this zone change affect the public health, safety and welfare? No adverse affect

Describe how conditions affecting the property have changed since present zoning designation: No change

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Mpatel.	Date: 10/20/21
Property Owner (printed) : Mahendra Patel.	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Mahendra Patel, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 20th day of October, 2021, to certify which witness my hand and seal of office.

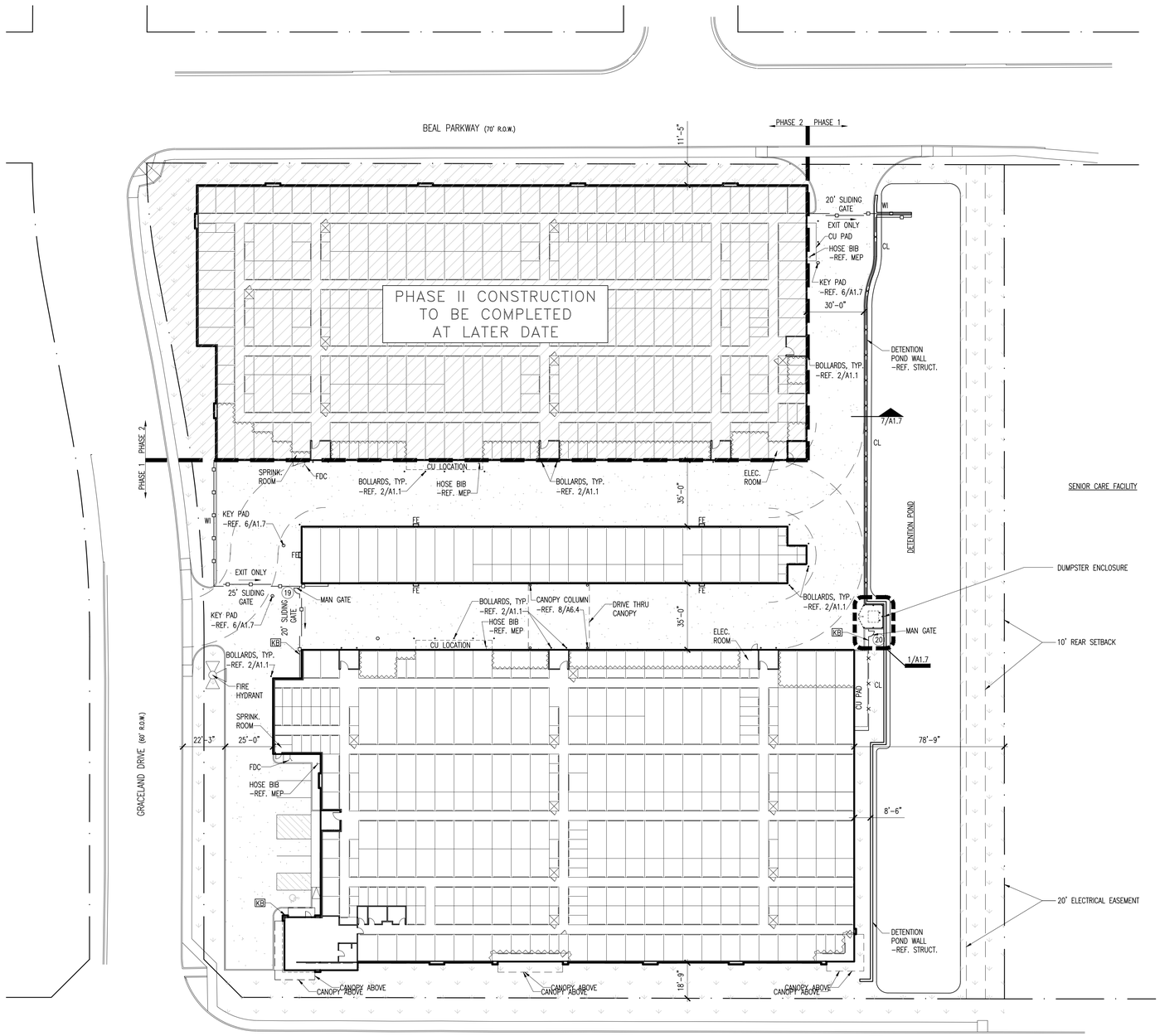
Kelsey Ann Stine
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456388

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☒ Dimensioned Site Plan
☑ Application Fee	☒ Plans in Digital Format (PDF/JPEG) (Not provided)
Check # 3610	
Received By: DS	Date:

RECEIVED
OCT 20 2021

****Application will not be considered for scheduling until reviewed by a planner.****



1 SITE PLAN
SCALE: 1" = 30'-0"

TRUE NORTH

PLAN NORTH

SITE PLAN LEGEND	
	BUFFERS/ EASEMENTS
	PROPERTY LINES
× — × CL	6'-0" HIGH, CHAIN LINK FENCE, VINYL WRAPPED
WI	6'-0" HIGH, ORNAMENTAL IRON FENCE W/ SLIDING GATE -REF. 4/A1.7
	CONCRETE PAVING -REF. CIVIL DWGS.
	LANDSCAPE AREA
●	6" STEEL PIPE BOLLARD -REF. 2/A1.1
FE	FIRE EXTINGUISHER
	4" STRIPES PAINTED ON PAVING AT 2'-0" O.C. -PARKING LOT STRIPING TO BE WHITE

SITE PLAN NOTES

1. REFER CIVIL DRAWINGS FOR RECORDED PLAT/SURVEY FOR PROPERTY BOUNDARIES, EASEMENTS, SETBACKS, ETC. REPORT ANY DISCREPENCIES TO ARCHITECT PRIOR TO CONSTRUCTION.
2. REFER CIVIL DRAWINGS FOR ALL DRIVE, PARKING, AND CURB LOCATIONS, DETAILS, AND DIMENSIONAL INFORMATION.
3. REFER LANDSCAPE DRAWINGS FOR EXTENTS OF REQUIRED LANDSCAPING.
4. PROVIDE CONCRETE FILLED STEEL TUBE BOLLARD AT BUILDING CORNERS AND BUILDING ENTRIES AT DRIVE AREAS (REF. DETAIL 2/A1.1 FOR LOCATIONS, CIVIL FOR DETAIL).
5. PROVIDE MANUAL FAIL SAFE OPERATION, KEY BOX, AND 20'-0" GATE OPENING FOR ELECTRICAL GATE PER FIRE MARSHALL REQUIREMENTS.

DALLENBACH·COLE
ARCHITECTURE
1203S COLWICK - SUITE 200
SAN ANTONIO, TEXAS 78216
WWW.DALLENBACHCOLE.COM
P 210.495.1234

NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION

JEFFREY S. ALLEN
10.07.2021
REGISTERED ARCHITECT
ALLEN
TEXAS REGISTRATION NUMBER 24

JUST-A-CLOSET SELF STORAGE #10

GRACELAND DRIVE
MIDLAND, TX 79703

PROJECT NO. 2130

DATE : 10.07.2021

DRAWN : CAH

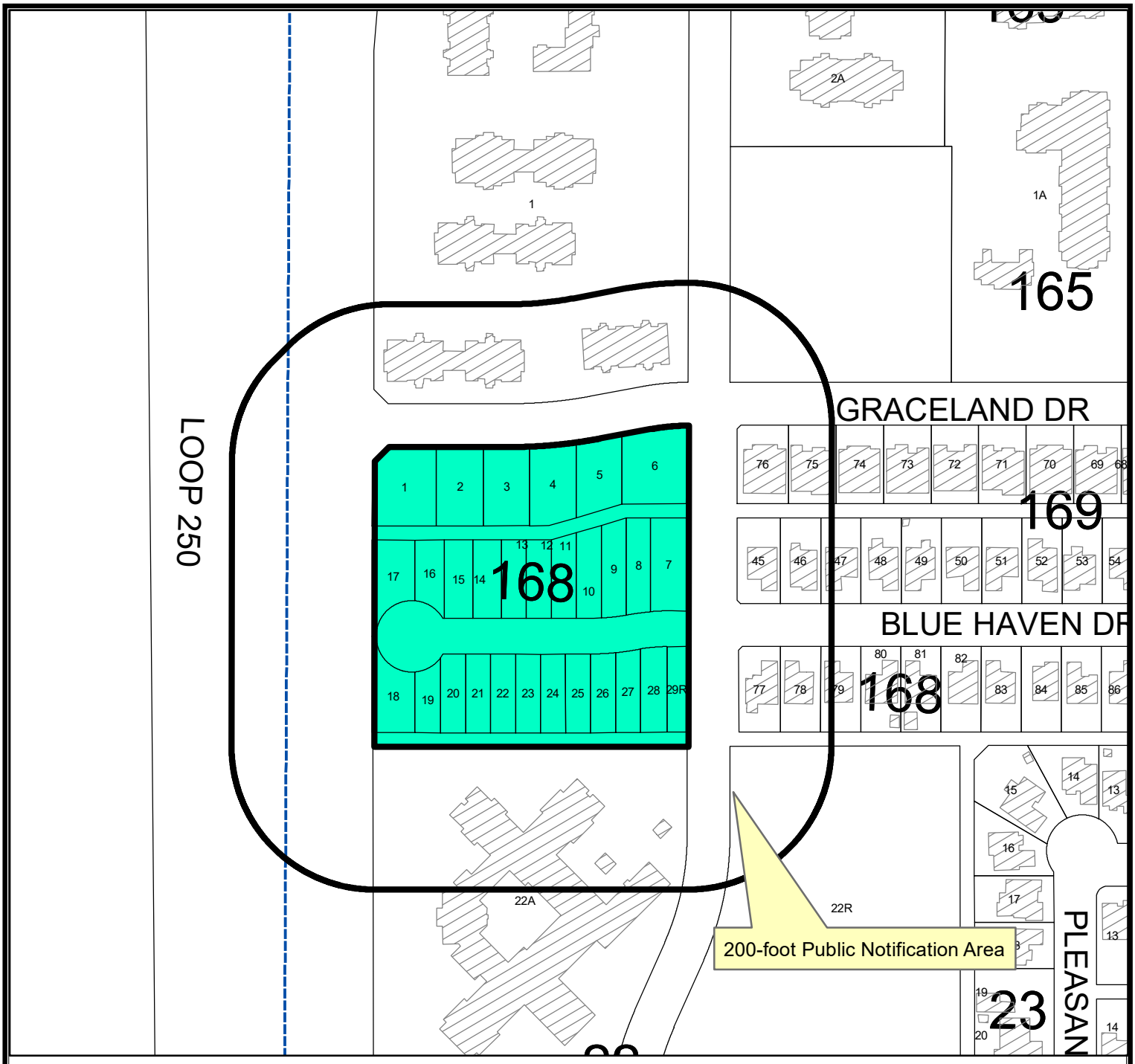
REVISIONS:

PHASE I SITE PLAN

SHEET NO.

A1.2


STORAGE
STORAGE
5700
JUSTACLOSET
SELF STORAGE
JUSTACLOSET
SELF STORAGE



LOCATION MAP

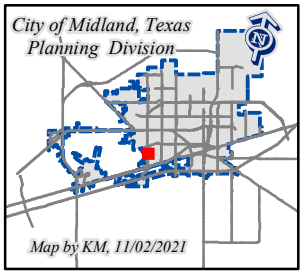
Z-21-0271 **Scale: 1" = 200'**

Consider a request by Mahendra Patel for a zone change from O-2, Office District to C, Commercial District on Lots 1-28 and the west 28-feet of Lot 29, including a previously vacated 20-foot alley, and a previously vacated 0.57-acre portion of Blue Haven Court Right-of-Way, all out of Block 168, Wilshire Park Addition, Section 11, City and County of Midland, Texas.

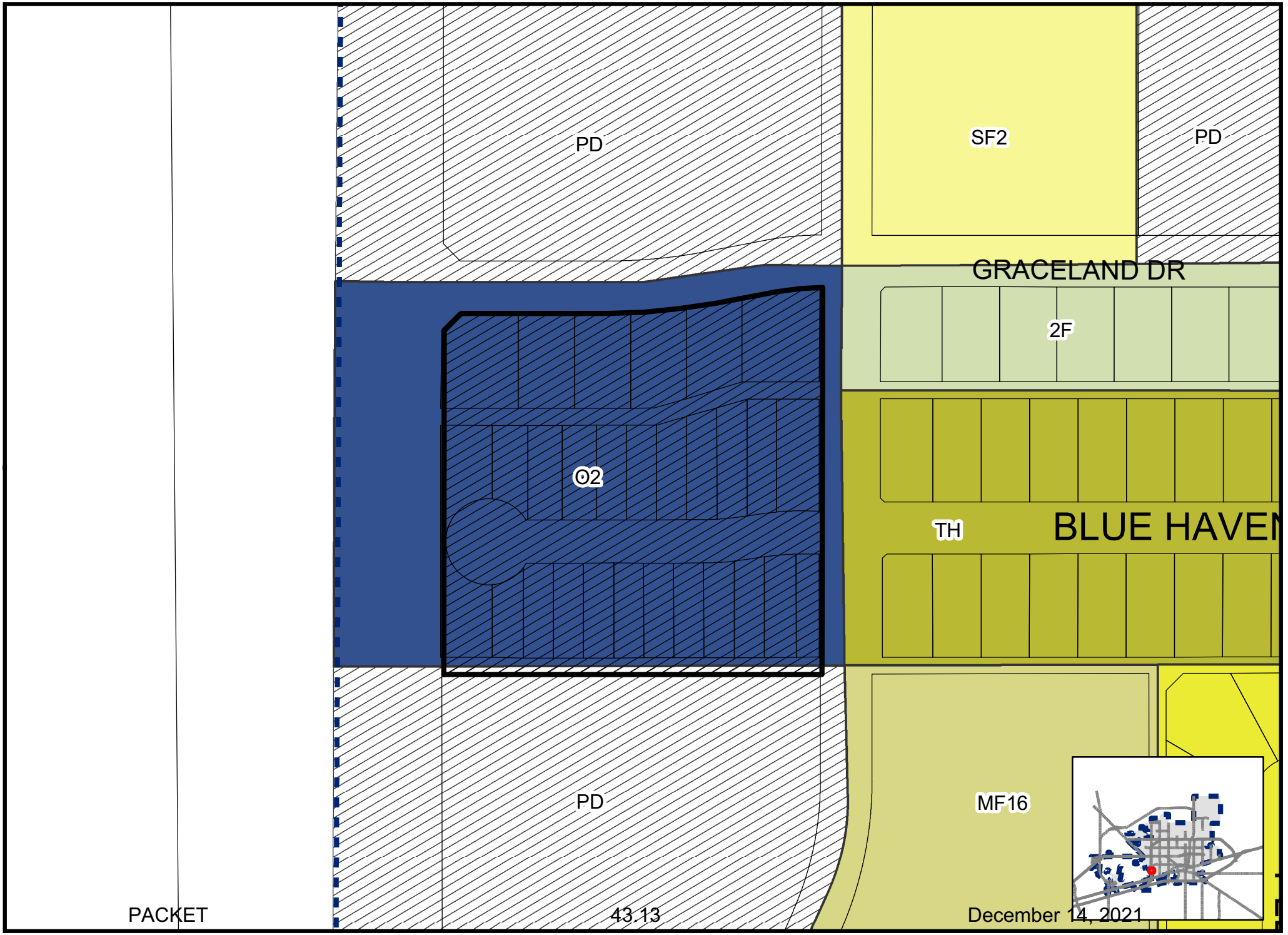
Generally located on the southeast corner of the intersection of S. Loop 250 and Graceland Drive. (Council District 4)

L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By KM, 11/02/2021

Z-21-0271

Scale: 1" = 200'

ZONING MAP

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2214
MIDLAND


STOP





City Council Meeting

Item Number: 44

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Cole Furqueron, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 3 AND 4, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 100 FEET SOUTH OF ORCHARD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Schumann Engineering, is requesting a Zone Change from HI, Heavy Industrial District to SF-3 Single-Family Dwelling District at 605 & 607 North Madison Street, to construct a single-family residence on each lot.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

HI, Heavy Industrial

Surrounding Zoning and Land Use:

The properties to the north, east, south, and west are also zoned HI, Heavy Industrial District and the location of vacant land and single-family residences, respectively.

The properties located at 605 & 607 N. Madison Avenue and are currently vacant. The applicant is proposing the development of a single-family home. Per the previous zoning code, the current zoning district would have allowed for the construction of a residential home, as it allowed for cumulative zoning. Under the new zoning code adopted in 2019, residential uses became more specific to single-family zoning districts. The property meets the minimum lot size requirements in the SF-3, Single-Family Dwelling District.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

This proposed development fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, Future Land Use Map as this area calls for urban residential-medium. This designation calls for a mix of housing types, including single-family, townhouse, and two-family dwelling uses. In addition, this zone change fits the surrounding land uses in this area.

This request was approved at the October 4th Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from HI, Heavy Industrial District to SF-3, Single Family Dwelling District, subject to condition A.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of December 8, 2021.

Attachments:

Property survey (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 3 AND 4, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 100 FEET SOUTH OF ORCHARD LANE); 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 Lots 3 and 4, Block 50, East Midland Addition, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from HI, Heavy Industrial District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-21-0270

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Gilberto Lopez & Zenaida Flores		Phone (432) 210-2741 Email	
Address 607 N. Madison	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: Schumann Engineering Printed Name: Eduardo L. Aleman		Phone (432) 684-5548 Email ealeman@schumann online.net	
Address 800 N Marienfeld, Suite 100	City Midland	State Tx	Zip 79705

Street Address: 605 N. Madison & 607 N. Madison

Legal Description
Lot: 4 & 3 Block: 50 Subdivision: East Midland

Current Zoning: HI

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To build a house

Present Use of Property: Vacant Lot - Not in use

Proposed Use of Property: Residential

How would this zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
OCT 19 2021
BY: CF

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Zenaida Flores	Date: 10-6-2021
Property Owner (printed) : Zenaida Flores	

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 Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Zenaida, 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 G Aleman
Authorized Agent *(signature)*

Subscribed and sworn to before me, this 7th day of October, 20 21, to certify which witness my hand and seal of office.

HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-05-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☐ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 1695	
Received By: Ale Fuentes	Date: 10-19-21

RECEIVED
OCT 19 2021
BY CC

****Application will not be considered for scheduling until reviewed by a planner.****

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Eduardo L Aleman	Date: 10-7-21
Applicant (printed): Eduardo L. Aleman	
Property Owner (signature): X Gilberto Lopez	Date: 10-6-21
Property Owner (printed) : X Gilberto Lopez	10-6-21

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 Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Gilberto, 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 L Aleman
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 7th day of October, 20 21, to certify which witness my hand and seal of office.

HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-05-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

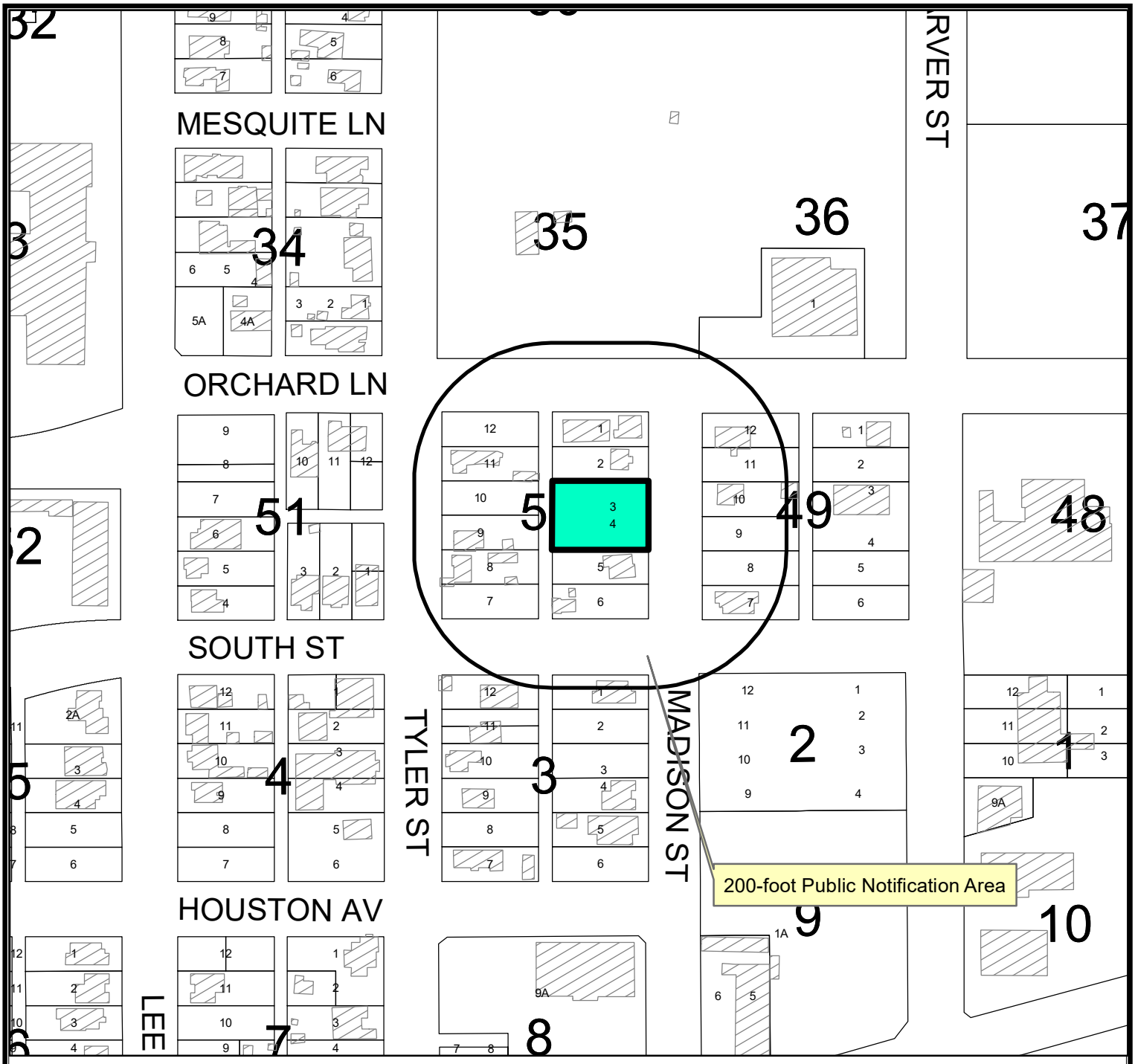
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 1695	

Received By: Cole Ferguson Date: 10-19-21

RECEIVED
OCT 19 2021
BY: CF

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

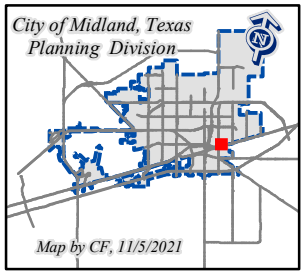
Z-21-0270 **Scale: 1" = 200'**

Consider a request by Schumann Engineering for a Zone Change from HI, Heavy Industrial District to SF-3 Single-Family Dwelling District, on Lots 3 & 4, Block 50, East Midland Addition, City and County of Midland, Texas.

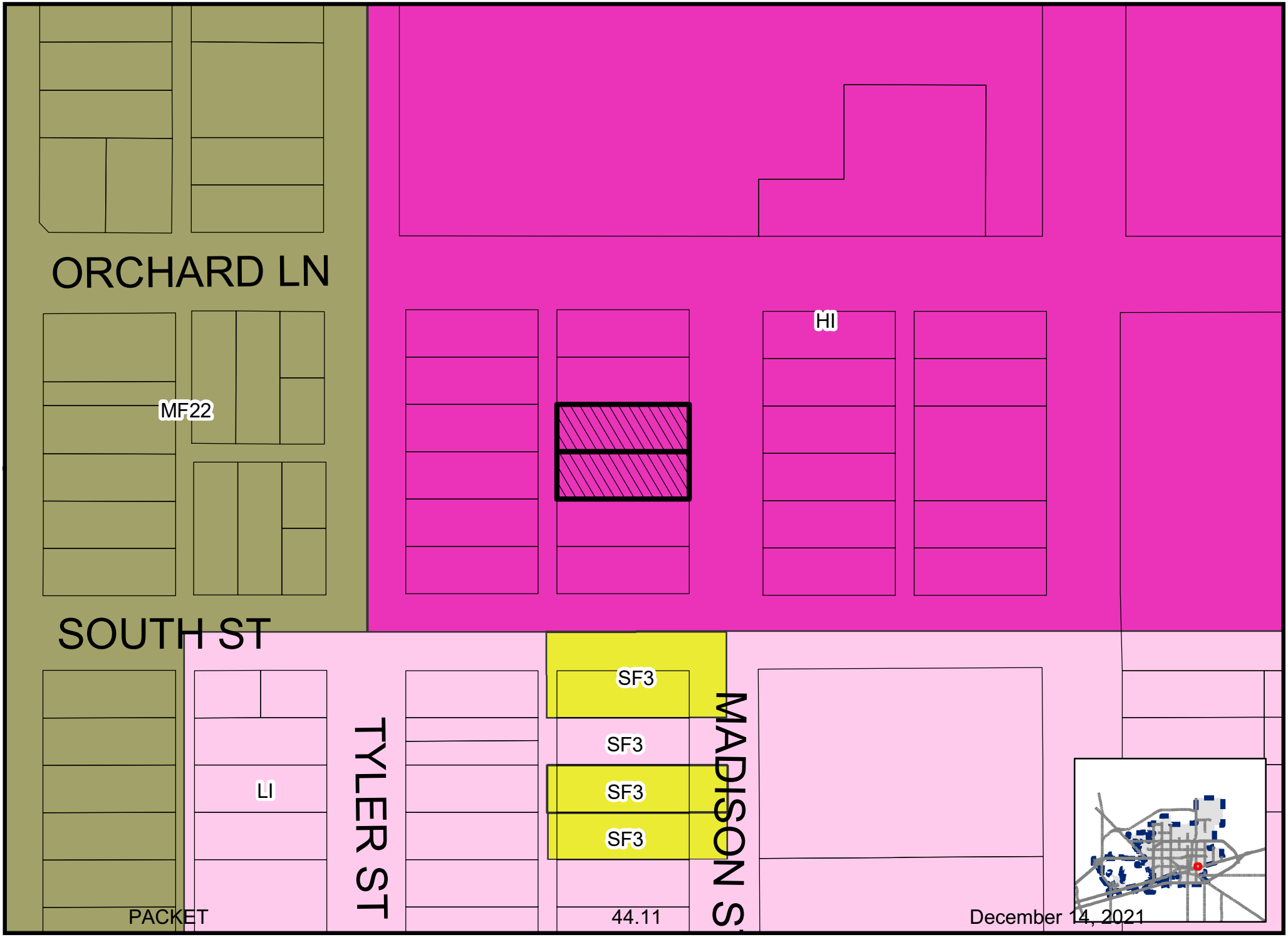
Generally located on the west side of N. Madison Street, Approximately 100 feet south of Orchard Lane (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ITS NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By CF, 11/10/2021

Z-21-0270

Scale: 1" = 100'

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.



RECEIVED
OCT 19 2021
BY: CF

DATED THIS 12TH DAY OF OCTOBER, 2021

RJ DAUM
TEXAS RPLS 4826

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

ZONE CHANGE EXHIBIT

LOTS 3 & 4

BLOCK 50

EAST MIDLAND ADDITION

AN ADDITION TO THE CITY OF MIDLAND,
AS PER PLAT OF RECORD IN
VOLUME 1, PAGE 52, PLAT RECORDS,

MIDLAND COUNTY, TEXAS

SCALE: 1" = 40'

PROJECT: 78116
JOB NO.: 78116

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING – LAND SURVEYING
TEXAS FIRM No. F1880 – TEXAS FIRM No. 10149500
800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701
Office (432) 684-5548






STOP
MIDLAND



City Council Meeting

Item Number: 45

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE VACATING AND ABANDONING A 0.41-ACRE PORTION OF SOUTH CARRIZO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 60 AND LOTS 7-12, BLOCK 61, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON SOUTH CARRIZO STREET, BETWEEN WEST WALL STREET AND WEST MISSOURI AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $36,094.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant George Sosa is requesting to vacate a 0.41-acre (18,047-sq.ft.) portion of the S. Carrizo Street right-of-way, adjacent to all of Block 60 and Lots 7 through 12, Block 61, Original Town, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

The appraised value of the alley right-of-way is $2.00 per square feet or $36,094.00.

Discussion:

Discussion:

The applicant George Sosa is requesting to vacate the 0.41-acre portion of the S. Carrizo Street right-of-way, adjacent to all of Block 60 and Lots 7 through 12, Block 61, Original Town, City and County of Midland, Texas.

The Midland Central's Appraisal District's appraisal of the land is $2.00 per square foot, for a total value of $36,094.00.
The applicants will need to retain an easement for all affected utilities.

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 and Gas issues.

Engineering: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Fire: (Approved)

No objections.

Transportation: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Code Administration: (Approved)

No objection.

AT&T:

AT&T doesn't have anything in that ROW, I am good with vacating.

Atmos:

Atmos Energy has no objection to the above referenced changes proposed to the Carrizo Street right of way located between Wall and Missouri. We currently have no gas lines or facilities located within this section of right of way. Please let me know if you have any further questions.

Grande:

We have aerial plant running east and west on Missouri, but nothing on the marked area on Carrizo.

Midland Central Appraisal District:

The current value for the vacated land will be at $ 2.00 per square foot or $ 36,094.00

Oncor:

Oncor Electric Delivery has no objection to the vacation of the above referenced right-of-way along the platted alley way located at Carrizo St, lots 3 & 4, in Block 60, Original Old Town in the City of Midland. Oncor Electric has no overhead or underground electric facilities located in the area noted to vacate on the indicated plat.

Suddenlink:

We have two underground fiber tubes in the ROW as I have notated on the pic. 1 - 12 Ct. 1- 24 Ct. Nonetheless, are ok with the vacation if an easement is left in place in case, we they get damage or have to replace any fibers.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved it with the condition that a utility easement is retained.

Therefore, staff recommends approval for the vacation once the adjacent property owners have agreed with the vacation of the 0.41-acre portion of the S. Carrizo Street right-of-way, adjacent to all of Block 60 and Lots 7 through 12, Block 61, Original Town, City and County of Midland, Texas, subject to conditions A and D.

Conditions:

A. **That the City of Midland has received from the property owner the sum of $36,094.00;**

B. **That an accessible, nonexclusive utility easement is retained; and**

C. **Authorizing City Manager to execute a quit claim deed.**

D. **That a re-plat of the subject property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County.**

Letters of Objection:

As of December 8, 2021, staff has received no letters of objection to this request.

Attachments:

Application
Maps
Metes and Bounds (Exhibit A)
Vacation Survey (Exhibits B)
Responses from Franchise Utility Companies and Midland Central Appraisal District

Morris Williams Jr.

City Manager's Office

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: GEORGE SOSA		Phone (432) 528-5902 Email georgesosa3@yahoo.com	
Address 1206 STOREY AV	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: _____

Reason for Request: TO OBTAIN THE WEST 10 FEET OF THE 60 FOOT RIGHT OF WAY

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: ACCORDING TO A RECENT PRE-DEVELOPMENT MEETING, THE ROW WIDTH OF CARRIZO STREET WENT FROM 80 FEET TO 60.

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.

RECEIVED
MAY 07 2021
BY: .....

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.41-ACRE PORTION OF SOUTH CARRIZO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 60 AND LOTS 7-12, BLOCK 61, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON SOUTH CARRIZO STREET, BETWEEN WEST WALL STREET AND WEST MISSOURI AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $36,094.00; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A QUITCLAIM DEED CONVEYING THE AFOREMENTIONED RIGHT-OF-WAY TO THE OWNER OF THE ABUTTING PROPERTY, FROM WHICH THE CITY RESERVES AND EXCEPTS A NON-EXCLUSIVE UTILITY EASEMENT UNTIL EACH EXISTING EASEMENT USER ABANDONS ITS USE OF SAID EASEMENT; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE SAID CONVEYANCE; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.41-acre portion of South Carrizo Street right-of-way located adjacent to Block 60 and Lots 7-12, Block 61, Original Town Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the Property at $36,094.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate

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 purposes. Provided, however, that the City is hereby abandoning only the public interest in the Property, and this ordinance in no way affects any private easement or access easement which abutting property owners may have in the Property.

SECTION TWO. That this Ordinance shall not be effective until:

A. the City of Midland has received the sum of $36,094.00 from the owner of the abutting property;

B. a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas; and

C. a quitclaim deed, as described in Section Four hereof, has been executed and delivered to the owner of the abutting property.

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 Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, a quitclaim deed conveying the City of Midland's right, title and interest in the Property to the owner of the abutting property and reserving and excepting 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 FIVE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, any documents necessary or appropriate to effectuate the conveyance described in this Ordinance.

SECTION SIX. That upon the City's receipt of the sum set forth in Section Two hereof, 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., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

BEING A 0.41 ACRE TRACT BEING A PORTION OF CARRIZO STREET NORTH OF WEST MISSOURI AVENUE AND SOUTH OF WEST WALL STREET, SAID 0.41 ACRES IS DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THIS TRACT FROM WHICH THE SOUTHWEST CORNER OF LOT 7, BLOCK 59, ORIGINAL TOWN BEARS SOUTH 89°40'33" EAST 10.00 FEET;

THENCE SOUTH 89°40'33" WEST 60.00 FEET ALONG SAID NORTH RIGHT OF WAY LINE OF WEST MISSOURI AVENUE TO A PONT IN THE WEST RIGHT OF WAY LINE OF SAID CARRIZO STREET AND THE SOUTHEAST CORNER OF LOT 3, BLOCK 60, ORIGINAL TOWN FOR THE SOUTHWEST CORNER OF THIS TRACT FROM WHICH AN "X" ON CONC BEARS SOUTH 30°40'21" EAST 1.26 FEET;

THENCE NORTH 00°33'32" EAST 300.78 FEET ALONG THE WEST RIGHT OF WAY LINE OF CARRIZO STREET AND THE EAST LINE OF BLOCK 60 ORIGINAL TOWN TO A POINT IN THE SOUTH RIGHT OF WAY LINE OF WEST WALL STREET AND THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 89°40'33" EAST 60.00 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF WEST WALL STREET TO THE NORTHEAST CORNER OF THIS TRACT;

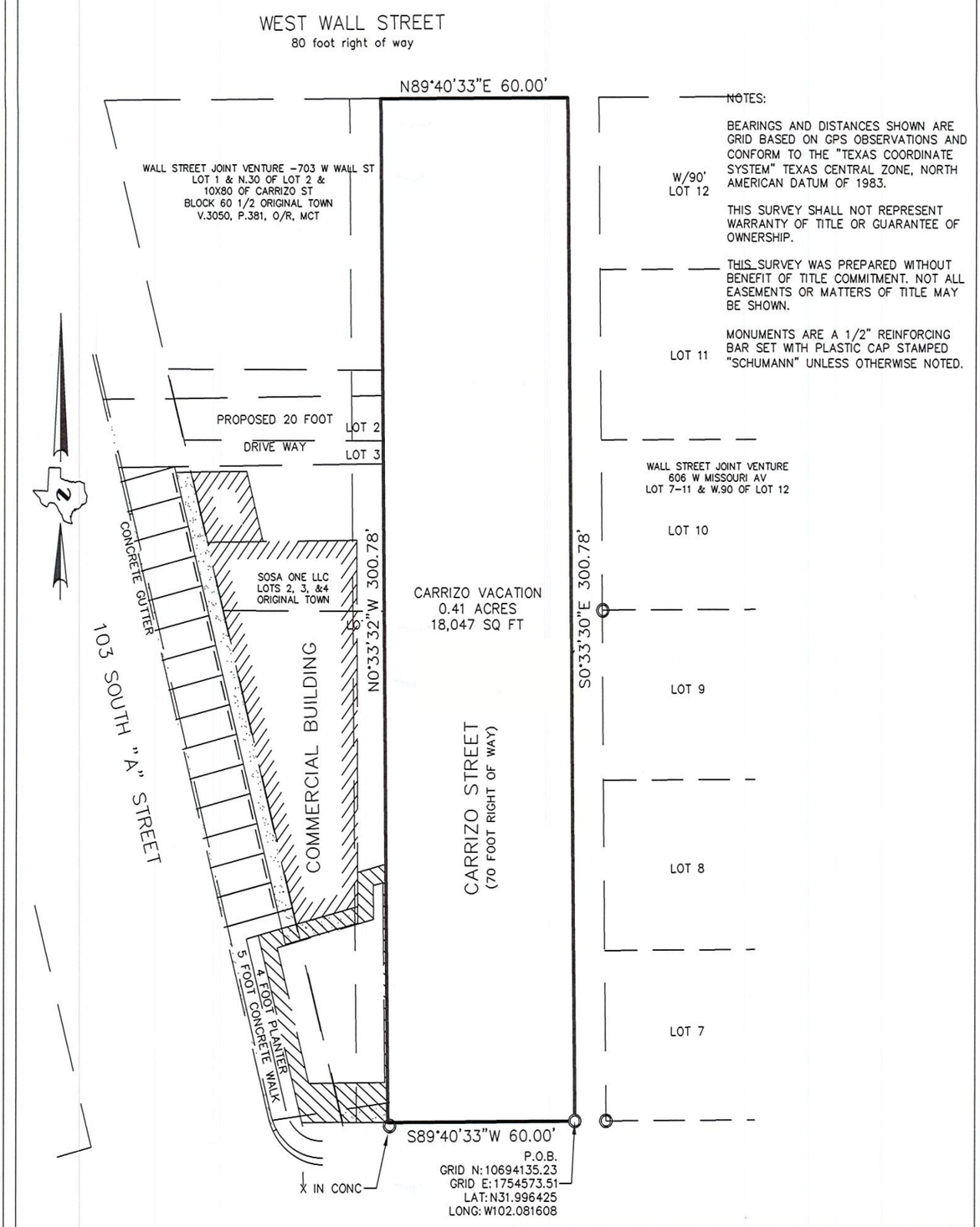
THENCE SOUTH 00°33'30" WEST 300.78 FEET TO THE POINT OF BEGINNING.

Jn 77081

RJ Daum RPLS
Schumann Engineering
800 North Marienfeld Street, Suite 100
Midland, Texas 79701
http://www.schumannonline.net
rjdaum@schumannonline.net

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

EXHIBIT "A" (cont'd)



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY SHALL NOT REPRESENT WARRANTY OF TITLE OR GUARANTEE OF OWNERSHIP.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

DATED THIS 30TH DAY OF NOVEMBER, 2021

RJ DAUM
TEXAS RPLS 4826

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

REV 12.1.2021

EXHIBIT

STREET VACATION

OF CARRIZO STREET

IN ORIGINAL TOWN ADDITION

AN ADDITION TO THE CITY OF MIDLAND,
AS PER DEED OF RECORD IN
VOLUME 3, PAGE 232, DEED RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1" = 40'

PROJECT: 77081GS
JOB NO.: 77,081

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING – LAND SURVEYING
TEXAS FIRM No. F1880 – TEXAS FIRM No. 10149500
800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701
Office (432) 684-5548

MIDLAND
Feel the Energy!

Office of the City Manager

December 3, 2021

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.41-acre portion of South Carrizo Street right-of-way located adjacent to Block 60 and Lots 7-12, Block 61, Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is $36,094.00. Upon the City's receipt of this sum from the adjoining property owner, the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Robert Patrick
City Manager

EXHIBIT "B"

300 N. Loraine, Midland TX 79701 * 432-685-7202 * Fax 432-686-1600

BEING A 0.41 ACRE TRACT BEING A PORTION OF CARRIZO STREET NORTH OF WEST MISSOURI AVENUE AND SOUTH OF WEST WALL STREET, SAID 0.41 ACRES IS DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

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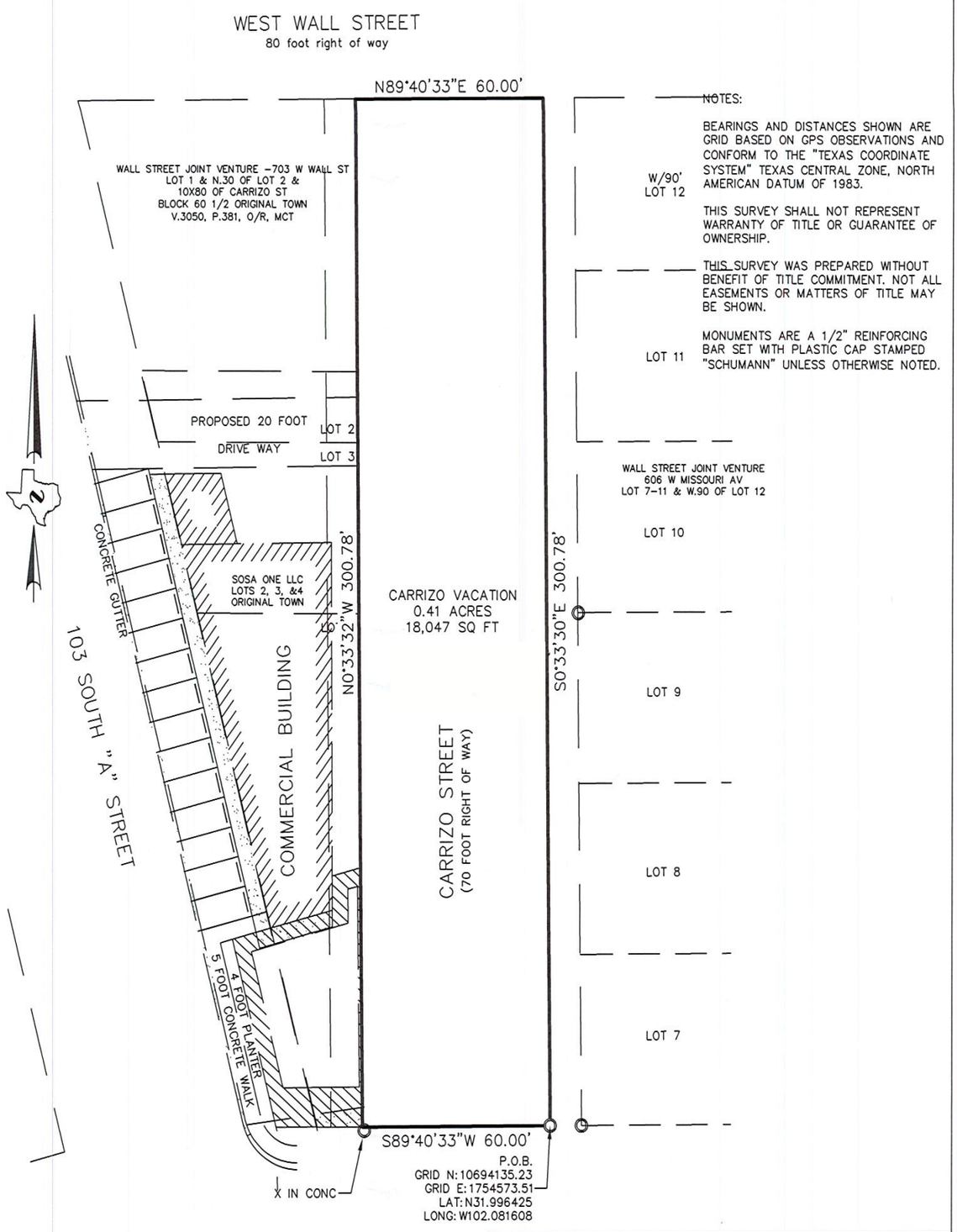
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Jn 77081

RJ Daum RPLS
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800 North Marienfeld Street, Suite 100
Midland, Texas 79701
http://www.schumannonline.net
rjdaum@schumannonline.net





NOTES:

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MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

WEST MISSOURI AVENUE
80 foot right of way

DATED THIS 30TH DAY OF NOVEMBER, 2021

RJ DAUM
TEXAS RPLS 4826

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

REV 12.1.2021

EXHIBIT

STREET VACATION

OF CARRIZO STREET

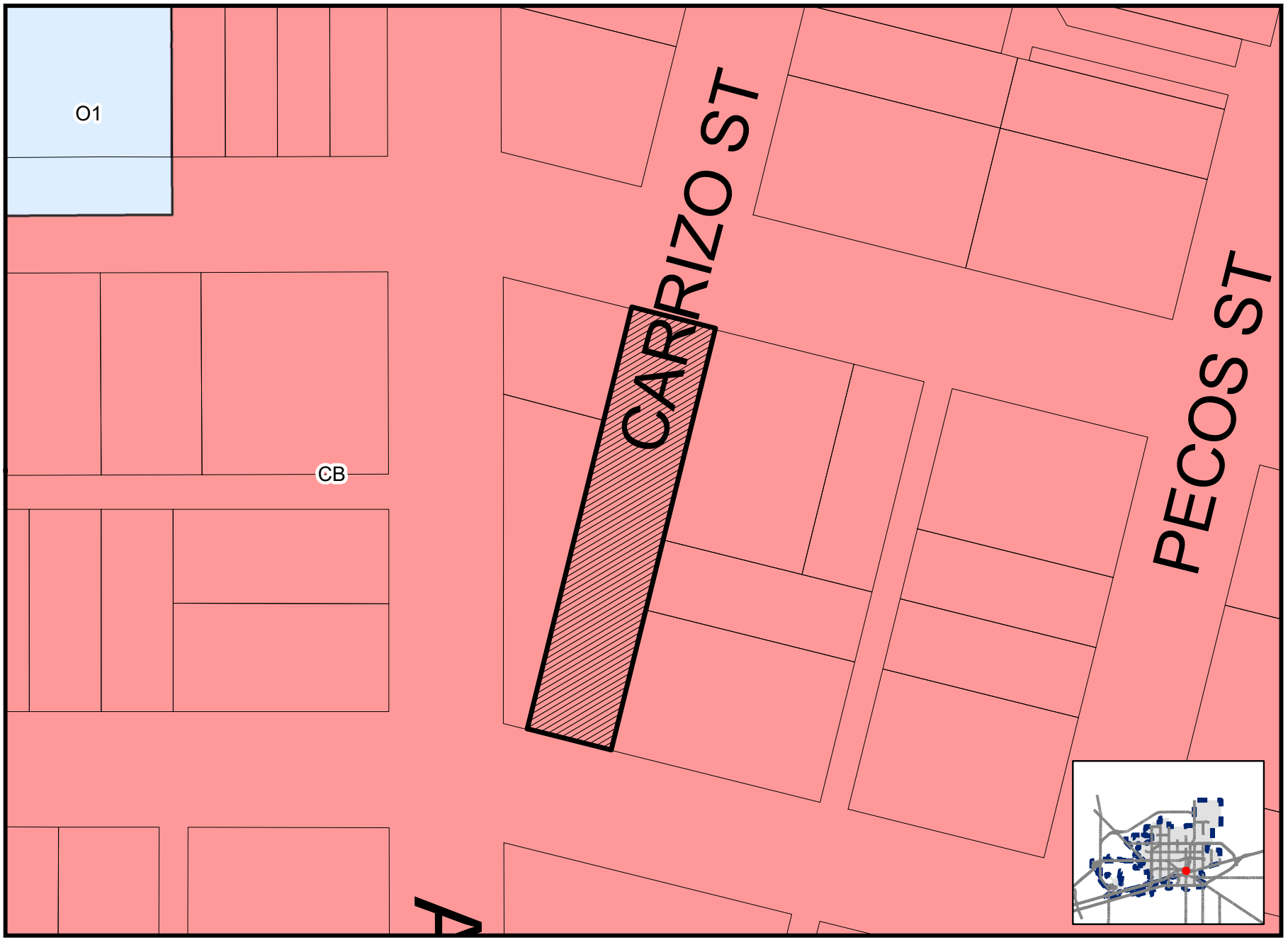
IN ORIGINAL TOWN ADDITION

AN ADDITION TO THE CITY OF MIDLAND,
AS PER DEED OF RECORD IN
VOLUME 3, PAGE 232, DEED RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1" = 40'

PROJECT: 77081GS
JOB NO.: 77,081

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
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TEXAS FIRM No. F1880 - TEXAS FIRM No. 10149500
800 N. MARIENFELD STREET
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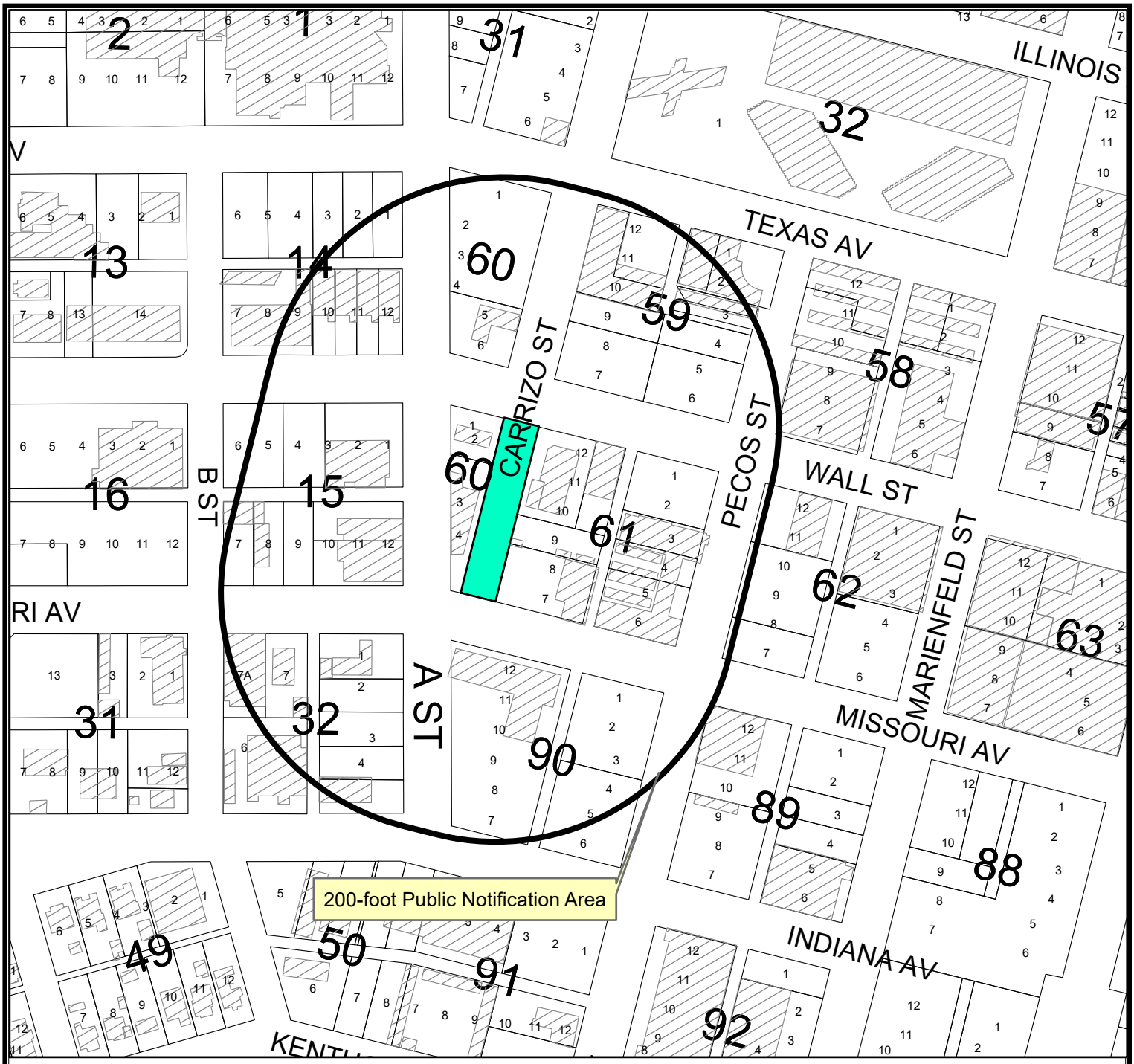
Map By ES, 12/1/2021

V-21-0032

Scale: 1" = 200'

ZONING MAP

NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.



LOCATION MAP

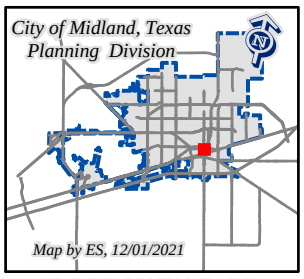
V-21-0032 **Scale: 1" = 200'**

Consider a request for a vacation of a 0.41-acre portion of the S. Carrizo Street right-of-way, adjacent to all of Block 60 and Lots 7 through 12, Block 61, Original Town, City and County of Midland, Texas.

Generally located on the full width of the right-of-way of S. Carrizo Street, between W. Wall Street and W. Missouri Avenue. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



December 14, 2021


STOP


W Missouri Ave
Gulf




Mid-Tex Parts & Service
STOP
W Missouri Ave

Elizabeth Shaughnessy

From: Luis Montez <Luis.Montez@AlticeUSA.com>
Sent: Monday, May 24, 2021 12:38 PM
To: Elizabeth Shaughnessy
Cc: Bradley Ritter
Subject: RE: External E-mail - FW: Vacation Request of George Sosa

Yes we would need the easement, in case we get damaged or have to replace any fibers.

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Monday, May 24, 2021 9:36 AM
To: Luis Montez <Luis.Montez@AlticeUSA.com>
Cc: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: RE: External E-mail - FW: Vacation Request of George Sosa

[External Email]

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Are you ok if they leave an easement?

From: Luis Montez <Luis.Montez@AlticeUSA.com>
Sent: Monday, May 24, 2021 9:35 AM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Cc: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: RE: External E-mail - FW: Vacation Request of George Sosa

We have two underground fiber tubes in the ROW as I have notated on the pic. 1 - **12 Ct**. 1- **24 Ct**. have any locates been requested?
We cannot vacate unless someone pays to relocate the fibers.

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Monday, May 24, 2021 8:50 AM
To: Luis Montez <Luis.Montez@AlticeUSA.com>
Cc: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: RE: External E-mail - FW: Vacation Request of George Sosa

[External Email]

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Morning Luis,

Please see the attach document because what they are vacating is only 10 feet from the buildi8nt onto the street of Carizzo, please refer to the drawing. I am not sure if that affects you. If it does then are you saying you are not ok with the vacation?

Respectfully,

Elizabeth Shaughnessy
Senior Planner|Development Services
O. 432-685-7400
E. eshaughnessy@midlandtexas.gov

MIDLAND
Feel the Energy!

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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From: Luis Montez <Luis.Montez@AlticeUSA.com>
Sent: Sunday, May 23, 2021 2:03 PM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Cc: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: RE: External E-mail - FW: Vacation Request of George Sosa

Ms. Shaughnessy,
We have coax plant in the alley west of Carrizo St. it provides services to both those businesses as shown on my screenshot.
We do have 2 fiber runs, 1-12 ct. fiber & 1- 24 ct. fiber that is buried on the north side of the ROW on Missouri Ave. I have attached another screenshot that shows the routes in green.

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Wednesday, May 19, 2021 6:44 PM
To: Luis Montez <Luis.Montez@AlticeUSA.com>
Subject: External E-mail - FW: Vacation Request of George Sosa

[External Email]

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From: Elizabeth Shaughnessy
Sent: Tuesday, May 11, 2021 1:31 PM
To: Luis Montez <luis.montez@suddenlink.com>
Subject: Vacation Request of George Sosa

Dear Mr. Montez:

The George Sosa has submitted a request to vacate the above described Right of Way (see attached exhibits). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to eshaughnessy@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Senior Planner|Development Services
O. 432-685-7400
E. eshaughnessy@midlandtexas.gov





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Elizabeth Shaughnessy

From: UNDERWOOD, JERRY D <ju1659@att.com>
Sent: Tuesday, May 11, 2021 1:43 PM
To: Elizabeth Shaughnessy
Subject: RE: Vacation Request of George Sosa

Good afternoon,

I don't show that AT&T has anything in that easement, I am good with vacating it.

Thanks,
Jerry

From: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Sent: Tuesday, May 11, 2021 1:33 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: Vacation Request of George Sosa

Dear Mr. Underwood:

The George Sosa has submitted a request to vacate the above described Right of Way (see attached exhibits). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to eshaughnessy@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Senior Planner|Development Services
O. 432-685-7400
E. eshaughnessy@midlandtexas.gov

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Elizabeth Shaughnessy
300 N. Loraine
Midland, Texas 79701

May 20, 2021

Re: Case Name: George Sosa
Case Number: V-21-0032

Elizabeth,

Atmos Energy has no objection to the above referenced changes proposed to the Carrizo Street right of way located between Wall and Missouri. We currently have no gas lines or facilities located within this section of right of way.
Please let me know if you have any further questions.

Sincerely,

Mark Lieb

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-617-3447 office
432-967-0370 cell
mark.lieb@atmosenergy.com

Elizabeth Shaughnessy

From: Vicki Byler <vicki.byler@mygrande.com>
Sent: Thursday, May 20, 2021 9:36 AM
To: Elizabeth Shaughnessy
Subject: Re: Vacation Request George Sosa

yes

On Thu, May 20, 2021 at 9:17 AM Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov> wrote:

> Morning Vicki,
>
> Just to be clear you are ok with the vacation?
>
> Respectfully,
>
> Elizabeth Shaughnessy
>
> Senior Planner|Development Services
>
> O. 432-685-7400
>
> E. eshaughnessy@midlandtexas.gov
>
> MIDLAND
> Feel the Energy!
>
> 300 N. Loraine | P.O. Box 1152 | Midland, TX 79702
>
> ATTENTION ELECTED OFFICIALS:

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From: Vicki Byler <vicki.byler@mygrande.com>
Sent: Thursday, May 20, 2021 7:24 AM
To: Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
Subject: Re: Vacation Request George Sosa

We have aerial plant running east and west on Missouri, bu nothing on the marked area on Carizzo.

On Wed, May 19, 2021 at 6:40 PM Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov> wrote:

> Hi Vicki,
>
> Just checking in on any updates.
>
> Thank you!
>
> Respectfully,
>
> Elizabeth Shaughnessy
>
> Senior Planner|Development Services
>
> O. 432-685-7400
>
> E. eshaughnessy@midlandtexas.gov

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From: Elizabeth Shaughnessy
Sent: Tuesday, May 11, 2021 1:28 PM
To: Vicki Byler <vicki.byler@mygrande.com>
Subject: Vacation Request George Sosa

Dear Mrs. Byler:

The George Sosa has submitted a request to vacate the above described Right of Way (see attached exhibits). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to eshaughnessy@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy

Senior Planner|Development Services

O. 432-685-7400

E. eshaughnessy@midlandtexas.gov





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Elizabeth Shaughnessy

From: drambo@midcad.org
Sent: Thursday, May 13, 2021 8:31 AM
To: Elizabeth Shaughnessy
Subject: Re: Vacation Request for George Sosa

George Sosa's vacation request on Carrizo. The land value is $2.00 per square foot

I am not sure as to the size of the vacation...0.1 acre or 0.05 acre or 2000 sf.

The letter gives all three areas:

0.1 acre is 4356 sf valued at $ 8,712.00

2000 sf area is valued at $ 4,000.00

0.05 acre (2178 sf) is valued at $ 4,356.00

Dennis Rambo
Assistant Chief Appraiser
Midland Central Appraisal District
432 699 4991 ext 3030
432 689 7185 fax

From:	Elizabeth Shaughnessy <eshaughnessy@midlandtexas.gov>
To:	Dennis Rambo <drambo@midcad.org>
Date:	05/11/2021 05:41 PM
Subject:	Vacation Request for George Sosa

Dear Mr. Rambo:

George Sosa has submitted a request to vacate the above described Right of Way (see attached exhibits). Please advise if your company has utilities within this right-of-way. We would appreciate any comments you may have concerning this requested vacation returned to us within 5-7 days. You may reach me at (432) 685-7407 if you have any questions. You can send your response via email to eshaughnessy@midlandtexas.gov.

Thank you for your assistance.

Respectfully,

Elizabeth Shaughnessy
Senior Planner|Development Services
O. 432-685-7400
E. eshaughnessy@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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[attachment "V-21-0032, Location Map.pdf" deleted by Dennis Rambo/MCAD] [attachment "V-21-0032, Plat.pdf" deleted by Dennis Rambo/MCAD] [attachment "V-21-0032, TaxVacMCAD vac ltr.pdf" deleted by Dennis Rambo/MCAD]

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Jeffrey R. Henderson
New Construction Manager Sr.



Oncor Electric Delivery
2401 West Industrial
Midland, Texas 79701

May 28th, 2021

City of Midland Texas
Elizabeth Shaughnessy
Planner, Development Services
300 North Loraine St. # 440
Midland, TX 79701

RE: George Sosa – V-21-0032

Ms. Shaughnessy,

Oncor Electric Delivery has no objection to the vacation of the above referenced right-of-way along the right of way located at Carrizo St, lots 3 & 4, in Block 60, Original Old Town in the City of Midland. Oncor Electric has no overhead or underground electric facilities located in the area noted to vacate on the included plat.

Please let me know if you have any questions.

Sincerely,

Jeffrey R. Henderson

Oncor Electric Delivery Company

City Council Meeting

Item Number: 46

Meeting Date: December 14, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: Motion authorizing the City Manager to negotiate a development agreement with DePalma Hotels and Resorts regarding a potential hotel in downtown Midland (DISTRICT 2) (CITY MANAGER)

Purpose:

Motion authorizing the City Manager to negotiate a development agreement with DePalma Hotels and Resorts regarding a potential hotel in downtown Midland.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

During the November 16, 2021, city council briefing session, Brian DePalma, with DePalma Hotels and Resorts, provided an overview of a potential development project in downtown Midland. In order to engage with the company further, staff is seeking city council approval to negotiate a development agreement. The final agreement would be presented to the city council for approval during a future meeting.

Morris William Jr.