CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
January 11, 2022 - 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/85725824947?pwd=SWZlQ0dVR2lieDA4RFVBeWlwQ0gwQT09

Passcode: 598197

Or One tap mobile:

+13462487799,,85725824947# US (Houston)

+17207072699,,85725824947# US (Denver)

Or join by phone:

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

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

Webinar ID: 857 2582 4947

International numbers available: https://us06web.zoom.us/u/k62ulwNJ

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

OPENING ITEMS

1. Invocation – Pastor Roy Smith, True-Lite Christian 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 Christmas Parade Awards

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. SPECIAL SESSION OF NOVEMBER 16, 2021

   4b. REGULAR SESSION OF DECEMBER 14, 2021

5. 001-2022 – MOTION ACCEPTING A DONATION IN THE AMOUNT OF $71,750.00 FROM CHEVRON PRODUCTS COMPANY, A DIVISION OF CHEVRON U.S.A. INC.; SAID FUNDS TO BE USED FOR THE PURCHASE OF HAZMAT ID ELITE (DISTRICT: NONE) (FINANCE)

6. 2022-001 – RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST NOT TO EXCEED $4,670,020.95; AND AUTHORIZING PAYMENT (GENERAL SERVICES) (DISTRICT 2)

7. 2022-002 – RESOLUTION AWARDING A CONTRACT FOR THE CITYWIDE PAVEMENT MARKING PROJECT TO THE SOLE BIDDER, BARRICADES UNLIMITED OF LUBBOCK, TEXAS, AT A TOTAL COST NOT TO EXCEED $214,825.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

8. 2022-003 – RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER AGREEMENT WITH CINTAS CORPORATION FOR THE PURCHASE OF EMPLOYEE UNIFORMS FOR A TOTAL COST OF $224,667.00 (DISTRICT: NONE) (GENERAL SERVICES)

9. 2022-004 – RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 SLURRY SEAL PROJECT TO VIKING CONSTRUCTION, INC. OF GEORGETOWN, TEXAS, AT A TOTAL COST OF $1,484,100.62; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

10. 2022-005 – RESOLUTION AUTHORIZING THE PURCHASE OF HERBICIDE FOR THE PLANT FARM FROM HELENA AGRI-ENTERPRISES, LLC OF STANTON, TEXAS, AT A TOTAL COST OF $193,168.50 (DISTRICT 2) (GENERAL SERVICES)

11. 2022-006 – RESOLUTION AUTHORIZING THE EXECUTION OF 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 (DISTRICT: ALL) (GENERAL SERVICES)

12. 002-2022 – MOTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH TARRANT COUNTY, TEXAS, FOR COOPERATIVE PURCHASING SERVICES THROUGH THE TARRANT COUNTY COOPERATIVE PURCHASING

PROGRAM (DISTRICT: NONE) (GENERAL SERVICES)

13. 2022-007 – RESOLUTION APPROVING A CONTRACT WITH THYSSENKRUPP ELEVATOR CORPORATION, THROUGH SOURCEWELL, FOR THE REPLACEMENT OF FOUR (4) ELEVATORS AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF $334,493.84; APPROVING $33,451.16 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

14. 2022-008 – RESOLUTION APPROVING THE PURCHASE OF A FORD F-550 POTHOLE PATCHER FROM RUSH TRUCK CENTERS OF TEXAS, LP, THROUGH BUYBOARD FOR A TOTAL COST OF $186,723.00 (DISTRICT: NONE) (GENERAL SERVICES)

15. 003-2022 – MOTION RATIFYING THE CITY OF MIDLAND'S ACCEPTANCE OF CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATION ACT GRANT FUNDING THROUGH THE FEDERAL AVIATION ADMINISTRATION'S AIRPORT CORONAVIRUS RESPONSE GRANT PROGRAM IN THE AMOUNT OF $23,000.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION – AVIATION DIVISION (DISTRICT 4) (AIRPORTS)

16. 004-2022 – MOTION RATIFYING THE CITY OF MIDLAND'S ACCEPTANCE OF AIRPORT RESCUE GRANT FUNDING THROUGH THE AMERICAN RESCUE PLAN ACT IN THE AMOUNT OF $59,000.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION – AVIATION DIVISION (DISTRICT 4) (AIRPORTS)

17. 2022-009 – RESOLUTION ADOPTING AND APPROVING A METRIC SCALE FOR CONSIDERING AND GRANTING SALES TAX REFUND INCENTIVES FOR ECONOMIC DEVELOPMENT PROPOSALS PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT: ALL) (CITY MANAGER)

18. 2022-010 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO MCM OPERATING, LLC ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES)

SECOND READINGS

19. 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 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) (FIRST READING HELD DECEMBER 14, 2021)

20. 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) (FIRST READING HELD DECEMBER 14, 2021)

21. 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) (FIRST READING HELD DECEMBER 14, 2021)

PUBLIC HEARINGS

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

22. 005-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE OIL AND GAS WELL CM MIPA ALLOC #H105WA; SAID WELL BEING GENERALLY LOCATED 1,690 FEET WEST OF RANKIN HIGHWAY AND 605 FEET SOUTH OF I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

23. 006-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE OIL AND GAS WELL MUSTANG 110 MIPA UNIT #H110WB; SAID WELL BEING GENERALLY LOCATED 2,365 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

24. 10272 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,674-

SQUARE FOOT PORTION OF LOT 1-H, BLOCK 5, COLONY PLACE ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH GARFIELD STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BREWERY FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

25. 10273 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 15, BLOCK 10, KIMBER-LEA ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 210 FEET EAST OF NORTH MIDKIFF 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 3) (DEVELOPMENT SERVICES)

26. 10274 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOTS 9-12, BLOCK 37, COLLEGE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF WEST FRONT STREET AND CARLTON STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL 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 2) (DEVELOPMENT SERVICES)

27. 10275 – 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 PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (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)

28. 10276 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,241-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 605 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)

29. 10277 – AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 1, OVERSTREET ADDITION, AND LOTS 6, 23, 24, AND 25, BLOCK 33, UNRECORDED CAROL CREST ADDITION, SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 255 FEET SOUTH OF GARDEN CITY HIGHWAY AND APPROXIMATELY 261 FEET EAST OF HENDERSON BOULEVARD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $8,712.00; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 2) (DEVELOPMENT SERVICES)

30. 10278 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 19 AND 20, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST CALIFORNIA AVENUE AND SOUTH BUNCHE 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)

31. 10279 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,150-SQUARE FOOT PORTION OF LOT 10, BLOCK 56, PERMIAN ESTATES, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 670 FEET EAST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

(DISTRICT 1) (DEVELOPMENT SERVICES)

32. 10280 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 200-SQUARE FOOT PORTION OF LOT 3, BLOCK 1, POLO CLUB ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND BLUEBIRD LANE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; 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)

33. 10281 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,000-SQUARE FOOT PORTION OF LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

34. 10282 – AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 3, “FLOOD DAMAGE PREVENTION CODE”, SO AS TO REVISE CERTAIN STANDARDS FOR CONSTRUCTION IN FLOOD HAZARD AREAS WITHIN THE CITY OF MIDLAND; SETTING FORTH VARIANCE AND APPEAL PROCEDURES; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

MISCELLANEOUS

35. 007-2022 – MOTION GRANTING AUDEN CARRILLO’S APPEAL AND REVERSING THE BUILDING OFFICIAL’S DENIAL OF A SIGN PERMIT FOR LOT 3, BLOCK 33, CRESTGATE ADDITION, SECTION 20, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BLUEBIRD LANE, APPROXIMATELY 2,213 FEET EAST OF NORTH MIDLAND DRIVE) (DISTRICT 1) (DEVELOPMENT SERVICES)

36. 10283 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10223; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT 4) (ENGINEERING SERVICES)

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

PUBLIC COMMENT

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

EXECUTIVE SESSION

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

    a. Section 551.087, Deliberate Economic Development Negotiations

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

Respectfully Submitted,

Robert Patrick
City Manager

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

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 January 11, 2022.

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Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

MIDLAND CITY COUNCIL
MINUTES
December 14, 2021

DRAFT

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., December 14, 2021.

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

The meeting was called to order at 10:01 a.m.

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

Spencer Robnett moved to approve Consent Agenda items 4-30, excluding item(s) 11, 14, 19, 20, 22, 23, 24; 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

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)

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)

DRAFT

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)

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)

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)

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)

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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)

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

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)

Council Member Norman requested more information on the significance of the bridge. Transportation Manager, Gabe McClellan, reported that when the draw has water in it, it's hard to get to the school unless you cross the bridges that lead to Pease Elementary and De Zavala Elementary. Both bridges are outdated and show signs of distress.

John Norman moved to approve Resolution No. 2021-173; seconded by Jack Ladd.

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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

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)

Brent Drummond, 1702 Bedford, spoke on behalf of Mike Small and his landscape company. They submitted a bid. He shared pictures of weeds and grass spurs at the park on opening day of soccer. They had a lot of complaints from other teams.

Community Services Director, Cristina Odenborg, reported the evaluation team comprised of eight members including two Council Members, two parks and recreation members and four staff members. The previous speaker's bid, Lawn and Tree Tech, is a new company and even though their costs were lower, the committee had concerns about staffing and equipment. She added that the first round of bids were for a one year contract and they put it out to rebid for three years in hopes of generating more bidders. They would like the contract to mow to begin in February.

Discussion ensued about the City taking away money from Parks for grounds maintenance and the ending result being the condition that our parks are currently in. The current Council's priority is parks and that should be reflected in the contract. The need for performance clauses was discussed with staff responding that they were included in the contract. Assistant Community Services Director, Laurie Williams added that a new position of Construction Inspector has been added and they will oversee this contract.

Discussion ensued about Council's concern of implementing a three year contract.

Mike Small, 3612 Humble Avenue, reported he heard one of the reasons why Lawn and Tree Tech was not put in for consideration was because of lack of experience. He has 38 years of experience in landscape maintenance and he knows what he is doing. He has an awesome team that takes pride in their work. Council Member Norman asked if he currently has a team and the necessary equipment to take care of everything to do with parks. Mr. Small reported he has about 75% of the equipment. He will have to get a couple of bigger mowers and has already been in contact with his supplier. If he is awarded the contract, they can get the big mowers they need to fulfill the contract by the start date of February 1, 2022.

Dan Corrales, 5701 Sabine, thought the contract should go to the lowest bidder. City Attorney John Ohnemiller corrected that it was an RFP and that an RFP is awarded to the most advantageous bidder, noting they look at performance and other items.

City Manager Robert Patrick reported that it is not fair to hold a contractor to standards that were removed from a contract. He has full confidence in the committee and their

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recommendation. Deputy City Manager Morris Williams reported that he spoke with several members of the evaluation team and feels confident that they can hold whoever is selected to the expected standards.

Discussion ensued about the possibility of splitting the contract or other alternatives. Mayor Payton added that any quick fixes will likely cause more problems.

Jack Ladd moved to defer Resolution No. 2021-176; seconded by Michael Trost.

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

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)

Council Member Trost asked how many local firms bid. General Services Director, Regina Stephenson, reported they only received one bid from Grapevine. They are asking to reject the bid and put it back out to rebid.

Michael Trost moved to approve Motion No. 155-2021; 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

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)

Council Member Norman asked for more information. Assistant City Manager Tina Jauz reported they negotiated with American Momentum Bank because there were no games held in 2020 at the RockHounds due to COVID. American Momentum Bank requested a refund for their naming rights. Per the contract, we are required to host a certain number of events which we did not meet. They initially requested a full refund but staff negotiated to half of the payment to be spread out over five years. They will continue the naming rights agreement but it will be reduced by $11,500.00 for five years.

John Norman moved to approve Motion No. 156-2021; seconded by Lori Blong.

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

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)

Development Services Director Chuck Harrington gave a brief overview of the item noting this is a request on behalf of Sewell GMC for the development of a site south of FM 191. This is their preliminary plat for a 30-acre tract of land. Staff has reviewed the item and the ordinance contains a list of conditions if this is approved by Council.

Michael Trost moved to approve Motion No. 158-2021; 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

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)

Council Member Ladd asked how close this development is to their other development and if it is congruent with it. Development Services Director Chuck Harrington shared a map showing that they all abut each other. Council Member Ladd noted that this is their third or forth tract which was originally "experimental" and asked how many amenities are included in this area. Mr. Harrington reported there are two open spaces included as part of this plat. Staff has been working with the developer and they have revised their overall planned development to include more open spaces, walking trails and other amenities.

Council Member Blong reported that in a previous development there were concerns about the turn radius for trash trucks. Mr. Harrington noted no departments addressed any concerns in this development.

Jack Ladd moved to approve Motion No. 159-2021; seconded by John Norman.

The motion passed by the following vote:

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AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

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)

Council Member Norman asked for an explanation. CDBG Manager Isaac Garnett reported this report is a demonstration of their overall accomplishments over last year. Council Member Norman asked if we reached the goals. Mr. Garnett reported some goals have been reached.

John Norman moved to approve Motion No. 160-2021; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10251.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10251; 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

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

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(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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10257.

Lori Blong moved to approve the second and final reading of Ordinance No. 10257; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10258.

Michael Trost moved to approve the second and final reading of Ordinance No. 10258; seconded by Lori Blong.

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

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

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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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10259.

Michael Trost moved to approve the second and final reading of Ordinance No. 10259; seconded by Spencer Robnett.

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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10261.

Michael Trost moved to approve the second and final reading 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

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

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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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10262.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10262; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10263.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10263; 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

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)

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Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10265.

Michael Trost moved to approve the second and final reading of Ordinance No. 10265; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10266.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10266; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10267.

Michael Trost moved to approve the second and final reading 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

PUBLIC HEARINGS

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

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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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10260.

Development Services Director Chuck Harrington gave a brief overview of the item noting this item was previously brought before Council. Council asked for the applicant to be present. The applicant is requesting to reduce the side yard setback from 5 feet to 3 feet and is also requesting to reduce the rear yard setback from 10 feet to zero. Staff finds no hardship as the applicant has other land available to relocate the building. Staff recommends denial. He added that the applicant is available on the phone.

Mayor Payton opened the public hearing at 12:07 p.m. Benny Fehr was called on Zoom and asked to unmute but was not able to connect. There being no one else wishing to speak, the public hearing was closed at 12:09 p.m.

Lori Blong moved to defer the first of two readings of Ordinance No. 10260; 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

Michael Trost moved to reconsider agenda item number 41; 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

Mayor Payton re-opened the public hearing at 12:26 p.m.

Benny Fehr, 4307 Country Club Drive, reported he is the contractor. He is new to this special exception permit process. His customer wants the building on his property line and he would love to get it done. He asked what is needed to get the permit to go through.

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Development Services Director Chuck Harrington reported that from a staff standpoint what needs to happen is to comply with regulations and requirements for setbacks. No hardship has been exhibited. He suggested relocating the building and reducing the size. Mr. Fehr reported there is very limited space to move the building and making it smaller would make it not worth building. This is the whole reason for applying for a special exception. They are already close to the house. The current storage building will be removed and the new 20 x 20 building will replace it.

Council Member Norman reported the problem is the building is only 3 feet from the side yard and it needs to be 5 feet. Discussion ensued about the building having alley access and the need to create access to that building.

There being no one else wishing to speak, the public hearing was closed at 12:33 p.m.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10260 with the amendment to change the side yard setback to 5 feet; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10268.

Development Services Director Chuck Harrington gave a brief overview of the item noting the application is for an alcoholic beverage permit for a night club. The site does not meet the full parking requirements but they have entered into a shared parking agreement with an adjoining lot to make up the difference. Their hours of operation will be from 6:00 p.m to 2:00 a.m. Tuesday – Friday and from 12:00 p.m. to 2:00 a.m. Saturday - Sunday. There are no schools or churches within 300 feet. Staff recommends approval. This item meets all requirements.

Mayor Payton opened the public hearing at 12:12 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

DRAFT

Michael Trost moved to approve the first of two readings of Ordinance No. 10268; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10269.

Development Services Director Chuck Harrington gave a brief overview of this item noting it is for the development of a self storage facility. This item has been rezoned three times before and now they are asking for a C (commercial) district which would be considered spot zoning. Commercial zoning is an intense district and there is no guarantee it would remain a storage facility. The issue is that C district is required for self storage. Council Member Dufford asked if it could be changed to a PD (planned development). Mr. Harrington reported it could but it would have to go back through the process first. The application fee is about $300.00.

Mayor Payton opened the public hearing at 12:17 p.m.

Andrew Mellen, Maverick Engineering, 1909 W. Wall, reported they are not spot zoning. The previous owner, Mike Patel, no longer owns the property. The new owner is trying to put in self storage. All the engineering and architecture is done. A delay would be detrimental. They have developed a new plat turning the many properties into one. Council Member Dufford asked if they had a problem bringing this item back as a planned district. Mr. Mellen noted that the problem is time.

Mr. Harrington added the meetings could be made concurrent and back to back to lessen the time.

There being no one else wishing to speak, the public hearing was closed at 12:33 p.m.

Lori Blong moved to bring back the item as a planned development and to waive the fee; seconded by Spencer Robnett.

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

DRAFT

NAY: None
ABSTAIN: None
ABSENT: None

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10270.

Mayor Payton opened the public hearing at 12:35 p.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. 10270; 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

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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10271.

Development Services Director Chuck Harrington gave a brief overview of the item noting a request has been received to vacate a portion of Carrizo. This item came before Council six months ago but due to problems with that submission it never came back for the second reading. They are requesting to vacate a portion of the street, not the entire street, for the future development of their property. Staff received four letters of objection. Staff

DRAFT

recommends approval once all owners are in agreement. He clarified that Council cannot vacate just half of the street. The entire right-of-way needs to be vacated with half going to each of the adjoining property owners.

City Attorney John Ohnemiller clarified that the entire street must be vacated between Missouri and Wall and that it must go to the adjoining property owners. If someone else wants the property, they would have to deal with the adjoining property owners. He added that in the past Council never approved a vacation when one of the property owners did not want the vacation. Council Member Blong noted this would be functionally forcing the person on the other half to receive something they do not want. Mr. Harrington clarified that if this property is vacated, the street would be closed.

Mayor Payton opened the public hearing.

George Sosa, 1206 Story, reported he bought the building a while back but the refurbishment was delayed due to COVID-19. They are not trying to block the street in any way. They are trying to use half of the street while maintaining the easement for water. Council Member Robnett asked what the applicant wants to do with the other half of the street. Mr. Sosa reported they plan to build a patio and to make a path for people to walk through. Council Member Robnett asked if they had enough parking for their needs. Mr. Sosa confirmed they did. Council Member Ladd asked if any attempts have been made with the neighbors to try to work this out. Mr. Sosa reported that the neighbors are already parking on his property and he does not want to get in a ruckus with other people. Discussion ensued regarding parking in the area.

Council Member Norman asked if they have to pay for the land. City Manager Robert Patrick noted that when land is abandoned each adjoining property owner pays their portion using Midland Central Appraisal District (MCAD) values. Fees have only been waived when the applicant is a non-profit. The fair market value of this property is $36,000.00. Council Member Trost suggested the fee should be waived because this would remove the cost to the tax payers to keep up the property. Council Member Blong added that instead it would be forcing maintenance cost on the adjoining property owners and would increase their property tax.

Judy Farris, 4701 Centennial Parkway, reported she was representing businesses who own three of the four properties on the block. They all oppose this vacation for obvious reasons. She provided a history of the property and how traffic operates. She emphasized the closure of Carrizo would eliminate the drive through of Wall Street Cocina, and eliminate the parking in front of the Lone Star Bar. It would also affect the parking of all of the businesses in the area. The downtown entertainment boundary line ends at Carizzo so this property is not included in the entertainment district. They want Mr. Sosa to be successful but not at the expense of the surrounding businesses.

Trey Fuqua, 104 S. Pecos, reported he is with BTA Oil Producers. They see this vacation as all negative. He explained all of the negative consequences they have experienced throughout the years from patrons of their neighbors who illegally park in their parking lot.

Josh Box, 4725 Woodbar Court, reported he is also with BTA Oil Producers. They have a

DRAFT

multitude of cameras set up on the property. He explained what he has seen on his cameras and the damages that have been inflicted on their property. Shutting down this crucial street would cause more traffic issues in the area.

Council Member Robnett asked if a portion of the right-of-way could be vacated while maintaining two-way access. Engineering Services Director Jose Ortiz reported they considered making this a one-way street but there is physically not enough room to keep it. If any portion is vacated, it all has to be vacated. They can not function with the remaining portion.

Michael Trost moved to approve the first of two readings of Ordinance No. 10271; seconded by John Norman.

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

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)

Brian DePalma, Grapevine, reported they did a briefing session last month and the only thing that has changed is their incentive package request. They are now only asking for sales tax rebates for construction items. He briefly reviewed their brand and program.

Mark Dabney, Ft. Worth, reported he is with the architecture design firm and reviewed the types of materials they will use in the building and interior.

Larry Goodwin, Odessa, reported he has been with DePalma Resorts for 15 years and is excited to be a part of this project as well.

Shafik Tejania, owner of the downtown Double Tree, reported their business has been down about 80 points over the last two years. A lot of downtown businesses are suffering and if the City is handing out incentives, he would also like to request incentives for his building.

Spencer Robnett moved to approve Motion No. 164-2021; 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

Council Member Ladd asked if the agreement will come back to Council for approval. It was reported it would.

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PUBLIC COMMENT

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

    There were no citizens present wishing to speak.

All the business at hand having been completed, the meeting adjourned at 12:37 p.m.

PASSED AND APPROVED January 11, 2022.

_____

Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: Motion accepting a donation in the amount of $71,750.00 from Chevron Products Company, a division of Chevron U.S.A. Inc.; said funds to be used for the purchase of HazMat ID Elite (DISTRICT: NONE) (FINANCE)

Purpose:

Motion accepting a donation in the amount of $71,750 from Chevron; said funds to be used for the purchase of HazMat ID Elite; and appropriating the sum of $71,750 in the Fire Tech and Equipment Fund (076).

Recommended City Council Action:

Approve

Fiscal Impact:

The 2021 donation from Chevron in the amount of $71,750 is received, accepted and appropriated in the Fire Tech and Equipment Fund (076).

Discussion:

The Midland Fire Department will use the donated funds for the purchase of HazMat ID Elite equipment.

Morris Williams Jr.

City Manager's Office

Chevron Products Company
A Division of Chevron U.S.A. Inc.
P.O. Box 6042
SAN RAMON CA 94583

CHECK DATE: 11/23/2021
CHECK NO. 0024212876
PAYEE REF: 0010011802
COMPANY NO: 0061
REMIT CONFIRMING

2100158 01 SD T 8225 20EA0 -P00158 C07

CITY OF MIDLAND
CUSTOMER SERVICE
PO BOX 1152
MIDLAND TX 79702-1152

ADDRESS INQUIRES TO: P.O. Box 6042, San Ramon, CA 94583-1934
PHONE CONTACT: 925-827-7741 FAX CONTACT: 925-680-3534

INVOICE DATE	INVOICE #	OUR REFERENCE #	GROSS AMT.	DISC. AMT.	NET AMT.
					$71,750.00
11/19/2021	CHESIT202840	0090053404	$71,750.00	$0.00	$71,750.00
		TOTAL	$71,750.00		

4076115 47200

SD3100158-0001_01_0001 8225-0000160 (F12S)

DETACH AND RETAIN THIS STUB FOR YOUR RECORDS

CHECK # 0024212876 ATTACHED BELOW

Chevron

Chevron Products Company
A Division of Chevron U.S.A. Inc.
P.O. Box 6042
San Ramon CA 94583

62-20
311

No. 0024212876

11/23/2021

$$$$$$$$$$71,750.00

NOT VALID AFTER 1 YEAR

PAY TO ORDER OF CITY OF MIDLAND
CUSTOMER SERVICE
PO BOX 1152
MIDLAND TX 79702-1152

Chevron
AUTHORIZED SIGNATURE

Seventy-one Thousand Seven Hundred Fifty and 00/100 Dollars

CITIBANK, N.A.
ONE PENN'S WAY, NEW CASTLE, DE 19720

⑈00 24 21 28 76⑈ ⑆031100209⑆ 3869646 1⑈

Chevron

Kayleigh Dunn
Policy, Government and Public Affairs
Tel 432-687-7233
Kdunn@chevron.com

December 14, 2021

Brian McGary
Operations Chief
Midland Fire Department
1500 W. Wall Street
Midland, TX 79701

Dear Chief McGary,

I am pleased to enclose Chevron's 2021 support in the amount of $71,750 for the Midland Fire Department's purchase of the HazMat ID Elite. We are thrilled to partner with you all to bring this capability to Midland Fire Department and other responding agencies in the region.

Also enclosed is a contribution acknowledgement that will assist us in complying with the Internal Revenue Service regulations. Please have it completed and returned to the address on the form.

We appreciate the services MFD performs for the community and wish you continued safe operations.

Sincerely,

Kayleigh Dunn

Enclosures

Mid-Continent Business Unit
North America Exploration and Production
6301 Deauville Blvd.
Midland, Texas 79706

City Council Meeting

Item Number: 6

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST NOT TO EXCEED $4,670,020.95; AND AUTHORIZING PAYMENT (GENERAL SERVICES) (DISTRICT 2)

Purpose:

Resolution authorizing the execution of a contract for the Fiscal Year 2022 Mill and Inlay Project for the Transportation Division.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds available in the FY22 General Fund Operating Budget.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the Fiscal Year 2022 Mill and Inlay Project. Bid requests were issued to thirty-eight (38) contractors. We received four (4) bids. Staff recommends awarding the base bid items to the lowest responsive bidder, Jones Bros. Dirt & Paving Contractors, Inc. Please see the attached memo from Abe Langston, Transportation Manager, for further information.

Therefore, please consider a resolution awarding the contract for the Fiscal Year 2022 Mill and Inlay Project to Jones Bros. Dirt & Paving Contractors, Inc. of Odessa, Texas for a cost of $4,670,020.95. Staff also recommends authorizing the City Manager to execute change orders up to the contingency amount of $233,501.05. The total cost for this project should not exceed

$4,903,522.00.

Tina Gaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: Fiscal Year 2022 Mill and Inlay Project
Bid# 22001007; Recommend Award

DATE: December 3, 2021

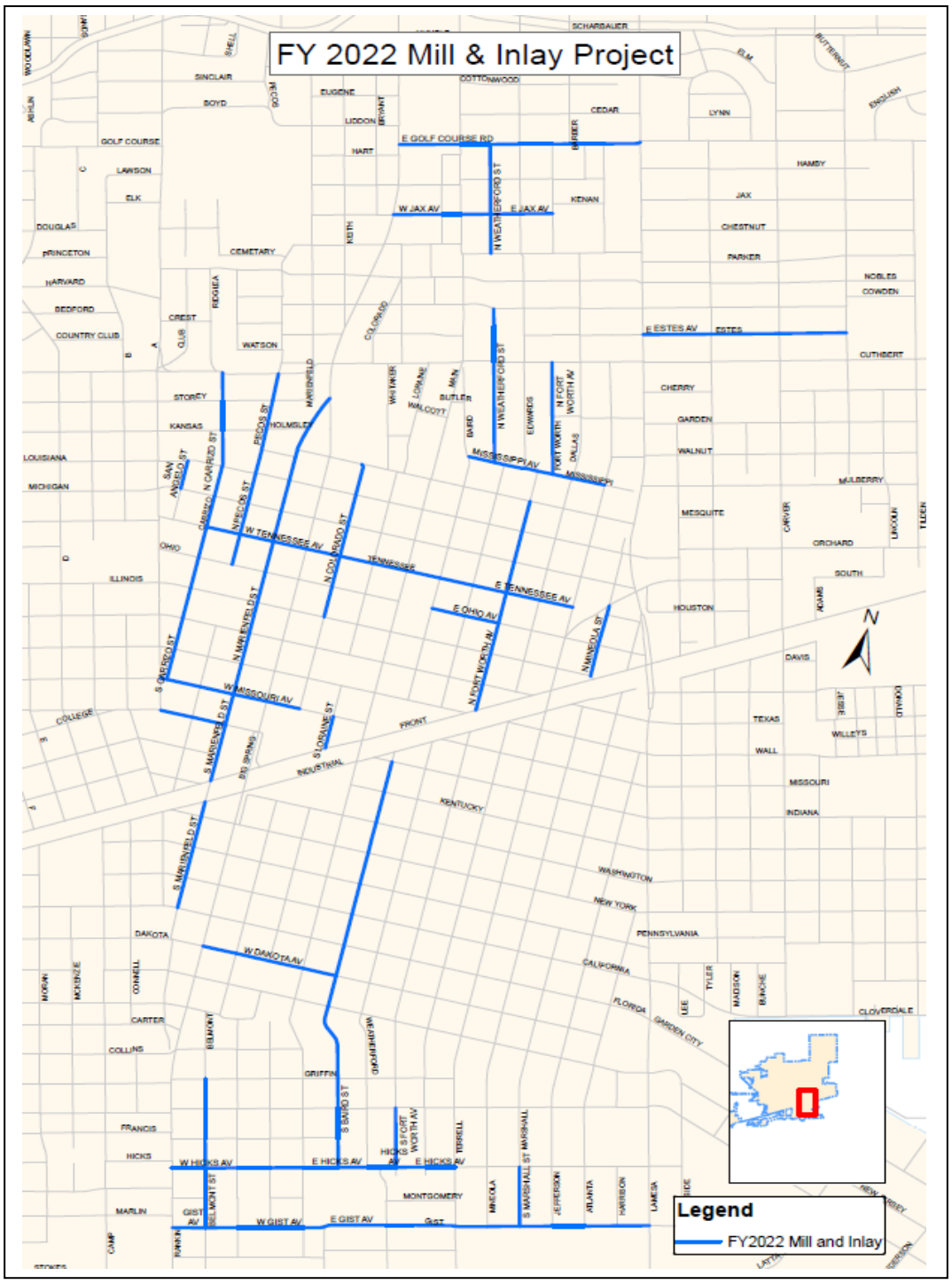
CC: Gabe McClelland, Senior Engineering Manager

Mill and Inlay includes removing all the existing distressed asphalt and replacing it with new pavement. The existing asphalt is removed, stockpiled, and often reused by the City of Midland Transportation Division for street and alley maintenance, or it is blended and reused to make new hot mix asphalt. The FY 2022 Mill and Inlay Project includes streets generally located in east and southeast Midland, or Maintenance Area 6. Please see the map on page 2.

We have reviewed the bid tabulation for the FY 2022 Mill and Inlay Project. Jones Brothers Dirt and Paving Contractors, Inc. is the apparent low bidder and 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 trends. Therefore, we are recommending award of the FY 2022 Mill and Inlay Project to Jones Brothers Dirt and Paving Contractors, Inc. in the amount of $4,903,522.00 (Base Bid + 5% Contingency).

Funding Source (001085 57005 – Infrastructure)

Base Bid:	$4,670,020.95
Contingency 5%:	$233,501.05
Total Contract Amount: (001085 57005—Infrastructure)	**$4,903,522.00**


FY 2022 Mill & Inlay Project
E GOLF COURSE RD
W JAX AV
E JAX AV
E ESTES AV
W TENNESSEE AV
E TENNESSEE AV
E OHIO AV
W MISSOURI AV
W DAKOTA AV
W HICKS AV
E HICKS AV
W GIST AV
E GIST AV
N WEATHERFORD ST
S MARIENFELD ST
S LORAINE ST
N COLORADO ST
N PECOS ST
N CARRIZO ST
S GRANT ST
N MINNESOTA ST
N FORT WORTH AV
S MARSHALL ST
S BOWIE ST
Legend
FY2022 Mill and Inlay

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST NOT TO EXCEED $4,670,020.95; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the plans and specifications and advertised for competitive bids for the Fiscal Year 2022 Mill and Inlay Project (the "Project"); and

WHEREAS, Bid No. 22001007 was opened on December 1, 2021, with the lowest responsible bidder being Jones Bros. Dirt & Paving Contractors, Inc. of Odessa, Texas ("Contractor"), having submitted a bid of $4,670,020.95 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 $4,670,020.95; 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 $4,670,020.95, 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 $233,501.05.

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 $4,903,522.00 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., 2022, 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 #	22001007 FY 2022 Mill/Inlay Project			CD King Construction LLC dba JD King PO BOX 1254 Seminole, TX 79360 estimating@jdkingcorp.com		Jones Bros Dirt & Paving 1401 S Grandview Odessa, TX r.chitty@jonesdp.com		Price Construction 5020 SE Loop 286 Paris, TX 75460 paul.chevalier@priceconstruction.com		Reece Albert Inc PO BOX 3238 Midland, TX 79702 mikeh@reecealbertinc.com	
OPENED	December 1, 2021										
ITEM	QTY	UNIT	DESCRIPTION	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
1	1	LS	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	$265,472.64	$265,472.64	$67,068.76	$67,068.76	$377,500.00	$377,500.00	$187,673.29	$187,673.29
2	790	SY	Unclassified Excavation	$7.66	$6,051.40	$8.30	$6,557.00	$9.00	$7,110.00	$22.90	$18,091.00
3	262,515	SY	Cold Milling Pavement (Nominal 2"-3")	$2.47	$648,412.05	$2.27	$595,909.05	$2.85	$748,167.75	$2.08	$546,031.20
4	52,503	GAL	Prime Coat	$4.22	$221,562.66	$3.73	$195,836.19	$7.50	$393,772.50	$4.68	$245,714.04
5	43,315	TON	2" Minimum Ty. D Asphalt Paving Surface Course (City Mix Design)	$95.81	$4,150,010.15	$83.00	$3,595,145.00	$111.00	$4,807,965.00	$87.50	$3,790,062.50
6	790	SY	6" Rock Base Repair (City Base)	$10.84	$8,563.60	$7.78	$6,146.20	$54.00	$42,660.00	$56.39	$44,548.10
7	7,875	LF	Full Depth Sawcut (Asphalt)	$1.49	$11,733.75	$0.89	$7,008.75	$3.10	$24,412.50	$1.16	$9,135.00
8	58	EA	Adjust Manhole	$996.01	$57,768.58	$1,575.00	$91,350.00	$2,300.00	$133,400.00	$2,186.92	$126,841.36
9	200	EA	Adjust Water Valve Box	$974.08	$194,816.00	$525.00	$105,000.00	$200.00	$40,000.00	$1,021.16	$204,232.00
			TOTAL PROPOSAL		$5,564,390.83		$4,670,020.95		$6,574,987.75		$5,172,328.49

Bidding Summary:

38 **Bid requests were issued.**

4 **Bids listed above**

0 **NO BIDS were received.**

34 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID #	22001007 FY 2022 Mill/Inlay Project		CD King Construction LLC dba JD King PO BOX 1254 Seminole, TX 79360 estimating@jdkingcorp.com		Jones Bros Dirt & Paving 1401 S Grandview Odessa, TX r.chitty@jonesdp.com		Price Construction 5020 SE Loop 286 Paris, TX 75460 paul.chevalier@priceconstruction.com		Reece Albert Inc PO BOX 3238 Midland, TX 79702 mikeh@reecealbertinc.com	
OPENED	December 1, 2021									
ITEM	QTY	UNIT	DESCRIPTION	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
1	1	LS	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	$265,472.64	$265,472.64	$67,068.76	$67,068.76	$377,500.00	$377,500.00	$187,673.29	$187,673.29
2	790	SY	Unclassified Excavation	$7.66	$6,051.40	$8.30	$6,557.00	$9.00	$7,110.00	$22.90	$18,091.00
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6	790	SY	6" Rock Base Repair (City Base)	$10.84	$8,563.60	$7.78	$6,146.20	$54.00	$42,660.00	$56.39	$44,548.10
7	7,875	LF	Full Depth Sawcut (Asphalt)	$1.49	$11,733.75	$0.89	$7,008.75	$3.10	$24,412.50	$1.16	$9,135.00
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9	200	EA	Adjust Water Valve Box	$974.08	$194,816.00	$525.00	$105,000.00	$200.00	$40,000.00	$1,021.16	$204,232.00
			TOTAL PROPOSAL		$5,564,390.83		$4,670,020.95		$6,574,987.75		$5,172,328.49

Bidding Summary:

38 **Bid requests were issued.**

4 **Bids listed above**

0 **NO BIDS were received.**

34 **Bidders did not respond.**

THE CITY OF MIDLAND

CONTRACT

Contract No. 22001007

THIS CONTRACT, effective the 11th day of January 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Jones Brothers Dirt and Paving Contractors, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 4,670,020.95 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the Mill and Inlay project labor, material, equipment, and supervision for fiscal year 2022 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 90 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

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

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

16. **Payment; 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 Jones Brothers Dirt and Paving Contractors, 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

MIDLAND
Purchasing Division

CITY OF MIDLAND

PURCHASING DIVISION DATE: 11/9/2021

BID REQUEST PAGE: 1

(THIS IS NOT AN ORDER) **BID NO: 22001007**

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 Office of the City Secretary, Suite 330, Midland, TX UNTIL 2:00 P.M. 12/1/2021 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:

Various locations, Midland, TX

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ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, material, equipment, and supervision necessary for the FY2022 Mill/Inlay Project in accordance with the attached specifications and contract.	$4,670,020.95	
				TOTAL	$4,670,020.95

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: Jones Bros. Dirt & Paving Contractors, Inc.
ADDRESS 1401 S. Grandview
CITY Odessa ST Texas ZIP 79762
PHONE NO. 432-332-0721 FAX NO. 432-332-0721
EMAIL: r.chitty@jonesdp.com

CASH DISCOUNT: N/A % N/A DAYS
DELIVERY CAN BE MADE
AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

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 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.

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.

BID SCHEDULE

FY2022-Mill & Inlay 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 construction of the various items of the FY 2022 Mill and Inlay 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. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished. The roadway sections to be paved are shown on the attached FY 2022 Mill and Inlay Project map and more fully described on the attached summary of said roadway sections.

The Bidder hereby agrees to commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within ninety (90) calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

Base Bid – FY2022 Mill & Inlay Program

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	LS	1	$67,068.76	$67,068.76
2	Unclassified Excavation	SY	790	$8.30	$6,557.00
3	Cold Milling Pavement (Nominal 2" - 3")	SY	262,515	$2.27	$595,909.05
4	Prime Coat	GAL	52,503	$3.73	$195,836.19
5	2" Minimum Ty. D Asphalt Paving Surface Course (City Mix Design)	TON	43,315	$83.00	$3,595,145.00
6	6" Rock Base Repair (City Base)	SY	790	$7.78	$6,146.20
7	Full Depth Sawcut (Asphalt)	LF	7,875	$0.89	$7,008.75
8	Adjust Manhole	EA	58	$1,575.00	$91,350.00
9	Adjust Water Valve Box	EA	200	$525.00	$105,000.00

TOTAL BASE BID: 4,670,020.95

X

Contractor

Date: December 1, 2021

FY 2022 Mill and Inlay Street List

Name	From	To	Standard Width	SY	MH	WV
Baird	Indiana	Hicks	33'	19,950	0	6
Bellmont	Griffin	Gist	31'	6,886	0	7
Bellmount	Longview	Crump	33'	1,373	0	1
Carrizo	Cuthbert	Tennessee	36'	7,500	0	13
Carrizo	Ohio	Missouri	42'	6,970	0	2
Colorado	Kansas	Illinois	53'	10,915	0	3
Crump	Rankin	Bellmount	33'	1,052	0	1
Dakota	Big Spring	Baird	37'	6,462	2	6
Estes	Lamesa	Jackson	33'	8,231	0	3
Ft Worth	Cuthbert	Mississippi	33'	4,823	1	0
Ft Worth	Kansas	Front St	42'	12,864	0	4
Ft Worth	Taylor	Hicks	33'	2,482	0	0
Gist	Rankin	Lamesa	34'	20,340	10	17
Golf Course	Big Spring	Lamesa	38'	11,887	3	16
Hicks	Rankin	Terrell	35'	13,195	5	9
Indiana	A Street	Marienfeld	36'	3,040	0	4
Jax	Big Spring	Ft Worth	37'	7,392	1	14
Loraine	Missouri	Front St	57'	2,115	1	2
Marienfeld	Big Spring	Front St	50'	25,540	2	14
Marienfeld	Industrial	Florida	60'	8,936	1	10
Marshall	Hicks	Gist	33'	2,434	0	1
Mineola	South	Front St	33'	3,743	2	4
Mississippi	Baird	Terrell	32'	5,696	4	9
Missouri	A Street	Colorado	55'	9,600	4	8
Ohio	Baird	Ft Worth	33'	3,126	2	0
Pecos	Cuthbert	Ohio	38'	9,750	3	13
San Angelo	Louisiana	Michigan	33'	1,176	0	0
Tenessee	Carizo	Terrell	38'	18,450	13	14
Weatherford	Cowden	Mississippi	28'	6,033	1	2
Weatherford	Golf Course	Parker	37'	5,487	0	7
TOTAL				**247,448**	**55**	**190**

FY 2022 Mill and Inlay Project

Special Provisions

1. General

Work shall include milling the existing asphaltic pavement to a nominal depth of between 2 - 3 inches depth, blading and/or cleaning the underlying surface, spraying a tack-coat, repaving the roadway with 2 inches minimum of Ty. D HMAC, applying new reflectorized pavement markings, and the work zone traffic control necessary to complete all phases of the project. Work shall also include the adjustment of water valve covers and manhole lids to the surface elevation and installing concrete collars. All work shall be completed according to the City of Midland Standard Specifications and Design & Construction Standards, unless otherwise noted. The streets to be paved are shown on the attached FY 2022 Mill and Inlay Project map.

The Contractor shall commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within 90 calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

Testing—it is the Contractor's responsibility to perform all required testing for any and all materials and workmanship performed or installed as part of the project's work. The cost of all such testing shall be borne solely by the Contractor. The cost of testing rework resulting from a failed test will also be borne by the Contractor. Contractor's cooperation will be required for material sampling by the City's material testing consultant.

Contractor shall share all testing results with the Project Manager (Rick Brown: rbrown@midlandtexas.gov).

Required Testing and Proof of Reporting Will Include:

BASE—all base surfaces shall be proof rolled in accordance with City of Midland standards with a City employee present at all times. All areas identified as failing during proof rolling shall be repaired in a method approved by the Project Manager. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced.

Asphalt Hot-Mix—a Nuclear Gage Density Test will be required for every 250 linear feet of asphalt pass. The acceptable field density range for construction of this project shall be 93% - 98% with a target density of 96.5%. Test results shall be given to the Project Manager upon completion of each test.

Qualification of Material Sources—tack coat, material used for underseal, hot mix asphalt concrete, and any reinforced concrete material used for the project shall conform to The City of Midland's Standard Specifications, unless otherwise noted. In addition, producers of hot mix asphalt concrete are to have a proven record of acceptance by the Texas Department of Transportation.

OSHA requirements and all other applicable federal, state, or City of Midland safety requirements are to be followed and complied with at all times.

Any issues, conflicts, or discrepancies encountered in the field that conflict with the planned progress of the project are to be brought to the attention of the Project Manager prior to making any changes in the field.

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.

Notifications

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 dates for milling operations and then paving operations; if necessary include a map showing closed-off areas.
- Provide the name of the company and the phone number of a person of authority on site who represents 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 after the notices have been distributed, the contractor shall issue an updated notice.
- A copy of the notice shall be submitted to the Transportation Division prior to the beginning of the project for approval.
- 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.

2. Construction Methods

Construction Schedule—it shall be the responsibility of the contractor to provide a project schedule to City staff prior to construction. The schedule should outline the anticipated start and end dates for each phase of the mill and Inlay project.

The phasing plan shall be submitted within 14 days after the notice of award and shall be approved by the City of Midland Transportation Division before the notice to proceed will be executed. The phasing plan shall meet the following requirements:

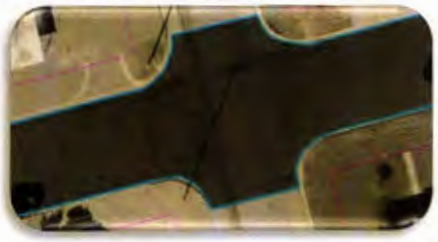
1. The proposed sequence of work shall be divided into distinct phases. The number and order of the phases shall be at the discretion of the Contractor;

2. Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed within 21 calendar days. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, applying tack coat, HMAC overlay, backfill, fine grading and cleanup;

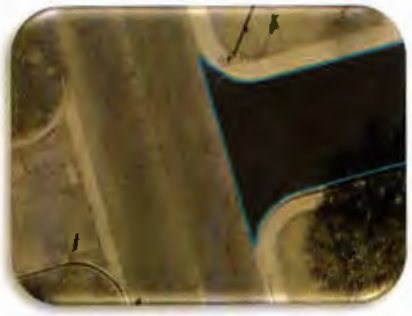
3. No phase shall be started until the previous phase is complete, unless approved by the City of Midland Engineering Department.

4. Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Engineering Department prior to beginning work.

Intersections—except where concrete valley gutters are in place (or unless otherwise specified), paving at all intersecting streets will be through the end of radius (ER).



City and TXDot/County Street Intersections—Contractor shall pave to the curb line of any intersecting state or county roads (unless otherwise specified).



Traffic Control—proper traffic control is the sole responsibility of the contractor and shall be in accordance with the TMUTCD. Care shall be used to create a safe work area, with minimal impact on the flow of traffic. Access to properties adjacent to the work zone shall be maintained at all times unless

otherwise directed by City staff. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets. If the milled area is opened to traffic, it will be the contractor's responsibility to provide and place temporary flexible-reflective road marker tabs designating lane lines.

The contractor shall place ramps, as directed by City staff, to provide for a smooth transition from existing pavement to the milled surface.

Residential streets and minor collectors may be closed when workers are present; however, access to properties adjacent to the work zone shall be maintained at all times. No more than two consecutive adjacent roadways shall be closed during the Mill and Inlay Project. Streets receiving Mill and Inlay shall be opened to local traffic when workers are not present.

For the entire Mill/Inlay project, the maximum length under construction at any time shall not exceed one mile, or the distance between two arterials.

A traffic control plan for each phase of the mill and Inlay 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.

If the contractor elects to remove the cast iron features at water valves and sewer manholes prior to the removal of pavement, two-way traffic shall be maintained, and all holes shall be filled with material suitable for vehicular traffic. The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase. Construction cannot begin without a traffic control plan approved by the City of Midland's Transportation and Traffic Operations Divisions.

Stop equipment for traffic when crossing any traffic lanes. Lane closures in accordance with TMUTCD shall be used at arterial roadways adjacent to streets receiving Mill and Inlay when needed.

Place orange fencing around sidewalk, wheelchair ramps, and other pedestrian areas that pose a hazard to pedestrian traffic.

Existing Infrastructure—all existing manholes and valves shall be adjusted to finished roadway elevation, matching the finished cross-slope including concrete collars as per standard details.

It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the Project Manager, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.

Two-way traffic shall be maintained while adjustments are being made to cast iron features. All holes resulting from the initial lowering of manholes and valves shall be filled with material suitable for vehicular traffic. **The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase.**

Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around valve boxes shall be at least 2'x2'.

Milling and Cleaning of Existing Pavement—mill designated area to a depth of 2" – 3" using a self-propelled asphalt planer. Care should be taken to ensure that the specified depth and cross-slope is maintained. Perform milling operation, including removal of the milled material, in a manner that prevents dust and other particulate matter from escaping into the air. Millings will become the property of the Contractor and hauled away. Removal of pavement millings shall be the responsibility of the Contractor. This work shall be incidental to the work.

Ensure that the milled area is free from gouges, continuous grooves, ridges, and delaminated areas and has a uniform texture. Correct deviations greater than ¼ inch in 16 ft. measured longitudinally or greater than ¼ inch over the entire width of the cross-section. Correct by loosening, adding, or removing material and recompact, as necessary. If pavement below the specified milling level becomes dislodged or delaminated, remove and replace. When the underlying rock base is exposed after milling, the surface shall be finished to a smooth surface by blading, watering, and compacting. All milled surfaces shall be proof – rolled in accordance with City of Midland Standards prior to the application of a tack coat. All areas identified as failing during proof – rolling shall be repaired prior to paving.

Except where concrete valley gutters exist, saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

When the milled surface is opened to traffic a "wedge" of material shall be placed longitudinally between lanes, at intersections, and at driveways. The "wedge" shall be removed and properly disposed of prior to paving operations. Material will be approved by the Project Manager. This work will not be paid for directly but is subsidiary to various bid items. At transverse edges of milled areas, provide a smooth transition from the milled surface to the existing pavement.

Tack Coat—uniformly spray tack coat using materials and methods outlined in the City of Midland's Standard Specifications. Uniformly apply tack coat to all longitudinal and transverse joints. Correct uncoated or lightly coated areas. Blot areas showing an excess of tack coat with sand or other similar material and remove blotting material before paving.

Tack coat will be subsidiary to hot-mix paving items.

Prime Coat—prime coat shall be placed as per City Standard Specifications on top of all prepared base course surfaces. Prime coat shall be measured by the gallon **before** dilution. Water will not be included in the measurement for payment.

Paving with Hot Mix Asphaltic Concrete—install a 2 inch minimum Ty. D hot mix asphaltic concrete surface course according to the City of Midland's Standard Specifications and Design and Construction Standards, unless otherwise noted.

Before paving, the existing surface shall be saw cut at least 6 inches beyond all sides of the milled area, or the limits of broken or undermined pavement. Square off edges of the surface pavement to a 90 degree angle to the underlying surface. Offset the joint in the surface course from the lane lines by 6 inches. When constructing a joint between lanes of opposing traffic, offset the joint by 6 inches into either lane.

At crowned roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage to the curb flowline. At inverted roadway sections, the proposed pavement elevation shall also be flush with the existing curb to allow for positive drainage.

After paving, the contractor shall place temporary flexible-reflective road marker tabs designating lane lines.

Joints—all longitudinal pavement joints shall be offset from any traffic wheel paths. Transverse pavement joints shall only be permitted at intersections.

Contractor shall seal all concrete and pavement joints with Texas Department of Transportation (TxDOT) DMS-6310 SL-2 seal and, an American Society for Testing and Materials (ASTM) D 1190 hot-applied single component joint sealant, or a City of Midland approved equal. This does not include pedestrian access ramps or sidewalks.

If applicable, Contractor shall use and place approved expansion joint material between the existing curb and any proposed new curb.

Reflectorized Pavement Markings—if required to remove existing pavement markings and markers, Contractor is to repair excessive damage to the pavement with an approved material at the Contactor's expense. When required, removed pavement markers will be disposed of properly. The Contractor shall be responsible for the maintenance of temporary marker tabs while applied. The Contractor shall also be responsible for the removal and proper disposal of temporary marker tabs from the project in coordination with the placement of new permanent markings.

Non-removable work zone pavement markings will be paint in accordance with Item 666, Type II, or other approved materials of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Apply thermoplastic Type I reflectorized pavement markings for long-line markings in accordance with Item 666 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition. Short-line and symbol markings shall be thermoplastic in accordance with item 666, Type I, or Item 668 of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Thermoplastic pavement markings shall be placed no sooner than 30 days, and no later than 90 days, after hot mix asphaltic concrete is installed. The contractor shall replace temporary road marker tabs as necessary throughout the project until permanent pavement markings are installed, and shall remove all tabs with installation of permanent markings.

Final Cleanup—Contractor shall make all reasonable effort to clean and restore project site to original or better condition at the conclusion of construction activity. This includes but is not limited to street sweeping and other sediment removal, and the removal of construction material and debris.

After construction, restore adjacent surfaces to a condition approved by the Project Manager. This work is subsidiary to mobilization.

3. Additional Notes

The intent of the Mill and Overlay Project at all adjacent street and intersections includes surface improvements and drainage improvements. The contractor shall ensure positive surface drainage in the mill and inlay areas with special attention to surface drainage within all intersections. At the intersections, do not simply repeat the longitudinal slope.

Contractor should provide and place erosion control protection at gutter locations at the limits of the work zone, including applicable intersections adjacent to the work zone. Erosion control protection shall also be placed at storm drain inlets in the work zone. All BMPs shall be installed in accordance with industry standards and regulations.

If concrete is used as a part of this contract, the Contractor shall have an approved concrete washout location within the work zone.

4. Pay Item Notes

1. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

2. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).

3. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 2" - 3"

- Street width may vary ± in the field. Payment for this item will be based upon the standard street width provided in these bid documents.
- Exceptions: variations at intersections, turn lanes, bulbs, cul-de-sacs, etc.

4. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.20 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.

5. Shall include the necessary equipment, labor and material to install the asphalt overlay on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative.

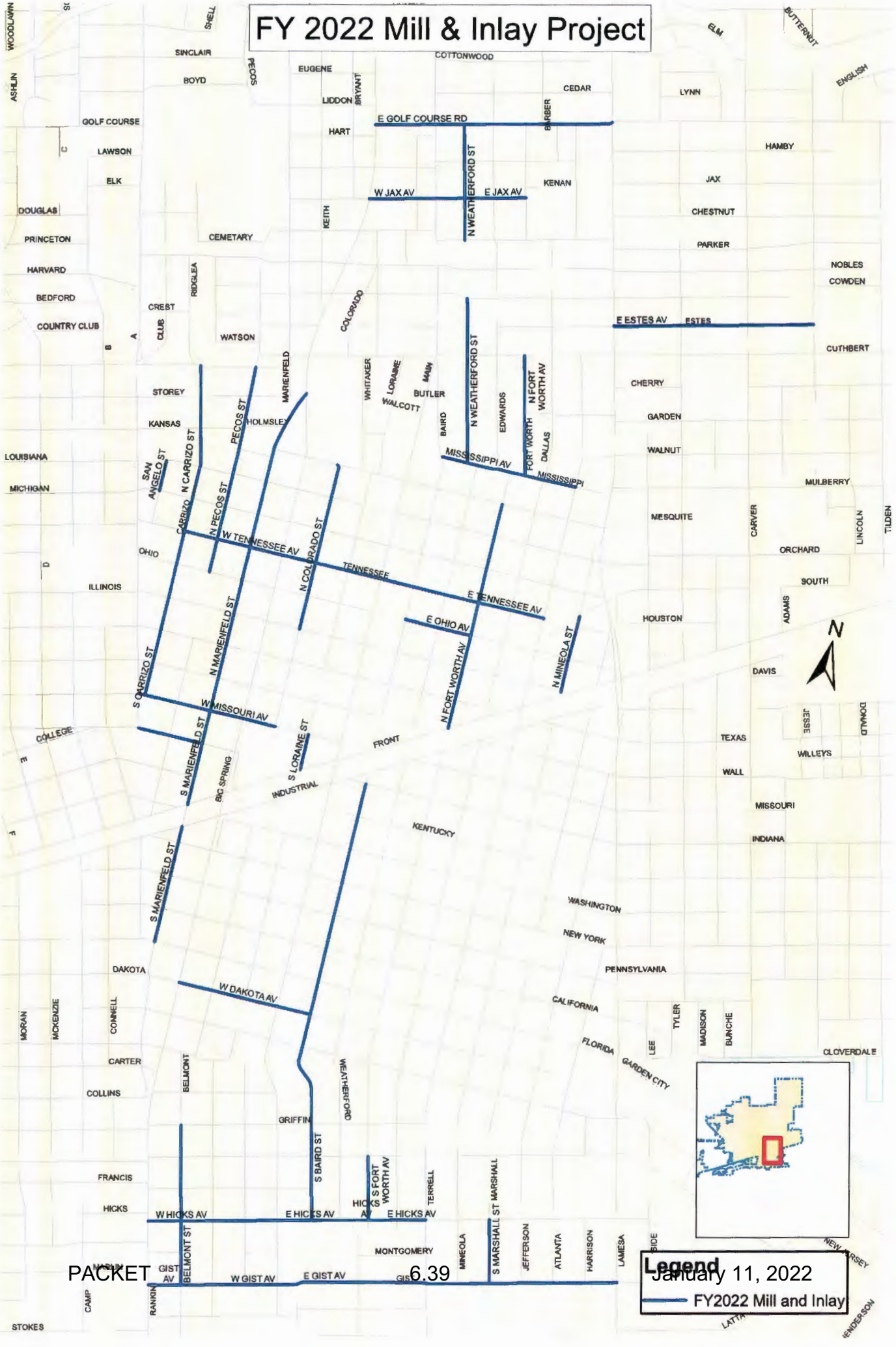
6. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.

7. Shall include the necessary equipment, labor and material to saw cut asphalt to full depth for removal and replacement in pay items 2 & 6. Unit payment shall be linear foot. All other saw cuts are subsidiary to Item # 5.

8-9. Shall include the necessary equipment, labor and material to provide traffic control, remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.


FY 2022 Mill & Inlay Project
E GOLF COURSE RD
W JAX AV
E JAX AV
N WEATHERFORD ST
E ESTES AV
W TENNESSEE AV
TENNESSEE
E TENNESSEE AV
E OHIO AV
W MISSOURI AV
MISSISSIPPI AV
MISSISSIPPI
N CARRIZO ST
N PECOS ST
N COLORADO ST
N MARIENFELD ST
N FORT WORTH AV
N MINEOLA ST
S CARRIZO ST
S MARIENFELD ST
S LORAINE ST
S BAIRD ST
S FORT WORTH AV
W DAKOTA AV
W HICKS AV
E HICKS AV
W GIST AV
E GIST AV
S MARSHALL ST
BELMONT ST
GRIFFIN
INDUSTRIAL
FRONT
BIG SPRING
COLLEGE
SAN ANGELO ST
CARRIZO
HOLMSLEY
MARIENFELD
WHITAKER
LORAINE
WALCOTT
BUTLER
MAIN
BAIRD
EDWARDS
FORT WORTH
DALLAS
COLORADO
RIDGLEA
CLUB
CREST
WATSON
CEMETARY
KEITH
BARBER
KENAN
HART
LIDDON
BRYANT
EUGENE
COTTONWOOD
SINCLAIR
BOYD
SHELL
PECOS
ELM
BUTTERNUT
ENGLISH
LYNN
CEDAR
HAMBY
JAX
CHESTNUT
PARKER
NOBLES
COWDEN
CUTHBERT
ESTES
CHERRY
GARDEN
WALNUT
MULBERRY
MESQUITE
CARVER
LINCOLN
TILDEN
ORCHARD
SOUTH
ADAMS
HOUSTON
DAVIS
JESSE
DONALD
TEXAS
WILLEYS
WALL
MISSOURI
INDIANA
KENTUCKY
WASHINGTON
NEW YORK
PENNSYLVANIA
CALIFORNIA
FLORIDA
TYLER
MADISON
BUNCHE
LEE
GARDEN CITY
CLOVERDALE
NEW JERSEY
GOLF COURSE
LAWSON
ELK
DOUGLAS
PRINCETON
HARVARD
BEDFORD
COUNTRY CLUB
STOREY
KANSAS
LOUISIANA
MICHIGAN
OHIO
ILLINOIS
DAKOTA
CARTER
COLLINS
FRANCIS
HICKS
MONTGOMERY
GIST
STOKES
WOODLAWN
ASHLIN
MORAN
MCKENZIE
CONNELL
CAMP
RANKIN
MASON
HENDERSON
LATTA
JEFFERSON
ATLANTA
HARRISON
LAMESA
TERRELL
WHITEHOUSE
N
Legend
FY2022 Mill and Inlay

Jones Bros Dirt & Paving Contractors Inc.
Vendor Name

INSTRUCTIONS TO BIDDERS

Bid # 22001007

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.

Jones Bros. Dirt & Paving Contractors, Inc.
Company Name

December 1, 2021
Date

Authorized Signature

Rex Chitty
Print Above Name

432-332-0721
Phone

432-332-0724
Fax

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. 4227839

KNOW ALL MEN BY THESE PRESENTS, THAT Jones Bros. Dirt & Paving Contractors, Inc.

(hereinafter called the Principal), as Principal, and National Fire Insurance Company of Hartford

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of Five Percent (5%) of the Largest Possible Lump Sum Bid DOLLARS ($ 5%), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to Bid No: 22001007 - FY2022 Mill/Inlay Project Various locations, Midland, TX.

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 1st day of December, 20 21.

Jones Bros. Dirt & Paving Contractors, Inc.
Principal

By _____

Address 1401 South Grandview Ave.
Odessa, TX 79761

National Fire Insurance Company of Hartford
Surety

By _____
Linda K. Edwards, Attorney-in-Fact

Address 2900 Marquita Dr.
Fort Worth, TX 76116

APPROVED AS TO FORM:

_____
City Attorney

NOTE: ATTACH POWER OF ATTORNEY

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Linda K Edwards, Steven B Siddons, Shirong Chen, Lorrie E Scott, Individually

of Fort Worth, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 12th day of July, 2021.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat — Vice President

State of South Dakota, County of Minnehaha, ss:

On this 12th day of July, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.

M. BENT
NOTARY PUBLIC
SOUTH DAKOTA

My Commission Expires March 2, 2026

M. Bent — Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 1st day of DECEMBER, 2021.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson — Assistant Secretary

Form F6853-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of Continental Casualty Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers")to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. "

ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of National Fire Insurance Company of Hartford.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers")to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. "

ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of American Casualty Company of Reading, Pennsylvania.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers")to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. "

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/13/2021

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 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 Frank Siddons Insurance Agency Fort Worth Inc. Member: K & S Group 2900 Marquita Drive Fort Worth TX 76116-4016	CONTACT NAME: Lorrie Scott PHONE (A/C, No, Ext): (817)737-4943 FAX (A/C, No): (817)737-4947 E-MAIL ADDRESS: lscott@fsifw.com
INSURED Jones Bros. Dirt & Paving Contractors, Inc. 1401 South Grandview Ave Odessa TX 79761-7144	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: Starr Indemnity & Liability Co. — 38318 INSURER B: Great American Ins. Companies — 16691 INSURER C: Texas Mutual Insurance Company — 22945 INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** ALOB 21-22 **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC			10000025606211	5/1/2021	5/1/2022	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 $ 300,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS [X] MCS 90			10000198569211	5/1/2021	5/1/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP-Basic	$ 1,000,000 $ $ $ $ 2,500
B	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			Follow Form TUU033270311	5/1/2021	5/1/2022	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		TSF-0001185649	5/1/2021	5/1/2022	[X] WC STATU-TORY LIMITS [ ] 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 (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The general liability and auto policies include blanket automatic additional insured endorsements that provide additional insured status to the certificate holder on a primary and non-contributory basis only when there is a written contract between the named insured and the certificate holder that requires such status. The general liability, auto & workers compensation policies include blanket automatic waiver of subrogation endorsements that provide this feature only when there is a written contract between the named insured and the certificate holder that requires it.

CERTIFICATE HOLDER

SAMPLE

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

Steven Siddons/TPAYNE

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CERTIFICATE OF LIABILITY INSURANCE

8/20/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
MIKE BOWDEN AGENCY 3303 N Midkiff Rd #148 Midland, TX 79705	PHONE (A/C, No, Ext): (432)694-1737	FAX (A/C, No): (432)694-0238
	E-MAIL ADDRESS: mikebowdenagency@gmail.com	
	INSURER(S) AFFORDING COVERAGE	NAIC#
	INSURER A : WESTCHESTER	
INSURED JONES BROS. DIRT & PAVING CONTRACTORS, INC. 1401 S. Grandview ODESSA, TX 79761 432-332-0721	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐ N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	POLLUTION LIABILITY			G7146636A	12/04/2018	12/04/2021	GENERAL AGG EACH OCCUR	3,000,000 1,000,000

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

DIRT AND PAVING WORK

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Mike Bowden

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The ACORD name and logo are registered marks of ACORD

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 – 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.**

Jones Bros. Dirt & Paving Contractors, Inc.

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 _____ December 1, 2021

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

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 as specified in the procurement document(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

15. **Public Information.** To the extent that Company is submitting a bid for 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

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

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

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

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

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

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

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

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

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

25. 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.

This form is available in a Word Form fill in document. If desired please contact the Purchasing office for a copy by e-mail

No-Bid
Response
For
Request #: 22001007

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

Office of the Purchasing Agent
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: 7

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE CITYWIDE PAVEMENT MARKING PROJECT TO THE SOLE BIDDER, BARRICADES UNLIMITED OF LUBBOCK, TEXAS, AT A TOTAL COST NOT TO EXCEED $214,825.00; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for FY 2022 Citywide Pavement Marking.

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 a FY 2022 Citywide Pavement Marking Contract. Eighty-three (83) request for bids were issued. We received a sole bid from Barricades Unlimited. Staff recommends awarding a contract to Barricades Unlimited. Please see the attached memo from Michael Pacelli, City Traffic Engineer, for additional information.

Therefore, please consider a resolution awarding a contract to Barricades Unlimited of Lubbock, Texas for a FY 2022 Citywide Pavement Marking Contract for an amount not to exceed $214,825.00 plus $53,456.25 in contingencies for a total cost of $268,281.25.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz, Purchasing Manager

FROM: Michael Pacelli, P.E., PTOE, City Traffic Engineer

SUBJECT: Citywide Pavement Marking Contract – Award Recommendation

DATE: December 9, 2021

The Traffic Operations Division requested issuance of the Citywide Pavement Marking Contract to allow for the maintenance replacement of thermoplastic pavement markings on City streets and for the installation of new pavement markings following Transportation's surface treatment projects, such as micro-surfacing or mill-and-inlay asphalt paving.

The estimated quantities in the contract are based on the past several years' experience. The contractor will be assigned individual tasks throughout the contract term and payment for each task will be based on the quantities of individual items actually used and the unit prices in the contract.

The sole bidder was Barricades Unlimited of Lubbock, Texas. This contractor performs most pavement marking work in Midland and has successfully completed numerous past projects. Therefore, staff recommends award to Barricades Unlimited for an amount not to exceed $214,825.00.

The resolution also includes pre-approval of contingency of up to 25% of the contract amount to accommodate variations in workload that may occur this year as compared to past years ($53,456.25 contingency for a total authorization of $268,281.25).

Funds are available in the Engineering Services / Transportation operating budget.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE CITYWIDE PAVEMENT MARKING PROJECT TO THE SOLE BIDDER, BARRICADES UNLIMITED OF LUBBOCK, TEXAS, AT A TOTAL COST NOT TO EXCEED $214,825.00; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the plans and specifications and advertised for competitive bids for the Citywide Pavement Marking Project (the "Project"); and

WHEREAS, Bid No. 22000540 was opened on December 8, 2021, with the sole bidder and the lowest responsible bidder being Barricades Unlimited, of Lubbock, Texas ("Contractor"), having submitted a bid of $214,825.00 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 plans and specifications and the unit prices in Exhibit "A", shall not exceed $214,825.00; 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 $214,825.00, 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 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 $53,456.25.

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 $268,281.25 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., 2022, 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 #	22000540			Barricades Unlimited	
	City Wide Pavement Marking			2002 Clovis Rd	
				Lubbock, TX 79415	
OPENED	December 8, 2021			806-744-1520	
				jkerl@barricadesunlimited.com	
ITEM	QTY	UNIT	DESCRIPTION	COST EA.	TOTAL
1	100,000	LF	Thermoplastic Pavement Marking, TXDot Item 666 Type 1 - White Long Line, 4" Wide	$0.45	$45,000.00
2	200,000	LF	Thermoplastic Pavement Marking, TXDot Item 666 Type 1 - Yellow Long Line, 4" Wide	$0.45	$90,000.00
3	1,000	LF	Thermoplastic Pavement Marking, TXDot Item 666 Type 1 - White Short Line, 24" Wide	$8.00	$8,000.00
4	500	LF	Thermoplastic Pavement Marking, TXDot Item 666 Type 1 - Yellow Short Line, 24" Wide	$8.00	$4,000.00
5	400	LF	Thermoplastic Pavement Marking, TxDOT Item 668 Prefabricated Tape, Type B White/ Black Contrast Lane Line, 7" wide, per TxDOT Detail CPM(1)-14	$13.50	$5,400.00
6	1,600	LF	Thermoplastic Pavement Marking TXDot Item 668 Prefabricated Tape, Type B, Yellow Line, 4" wide	$4.00	$6,400.00
7	800	LF	Thermoplastic Pavement Marking, TxDot Item 668, Prefabricated Tape, Type B, White Line, 8" Wide	$8.00	$6,400.00
8	800	LF	Thermoplastic Pavement Marking, TxDOT Item 668 Prefabricated, Type B, White Line 24" Wide (for use as stop bar, Crosswalk, or hatch)	$22.00	$17,600.00
9	25	EA	Thermoplastic Pavement Marking, TxDot Item 668 Prefabricated, Type B, White Pavement Arrow	$400.00	$10,000.00
10	25	EA	Thermoplastic Pavement Marking, TxDot Item 668 Prefabricated, White Pavement Arrow	$300.00	$7,500.00
11	5	EA	Thermoplastic Pavement Marking, TxDot Item 666 Type I or 668 Prefabricated, White Railroad Crossing Symbol, per TMUTCD Figure 88-7 Part A	$600.00	$3,000.00
12	30	EA	Thermoplastic Pavement Marking, TxDOT Item 666 Type I or 668 Prefabricated, White Bicycle Lane Symbol, per TMUTCD Figure 9C-3 Part B	$300.00	$9,000.00
13	1,600	LF	Work Zone Pavement Markings, TxDOT Item 662 Type II, 4" equivalent width, to be used as a sealer for Type I or Prefabricated markings when placed on concrete surfaces	$0.25	$400.00
14	100	EA	Retroreflective Raised Pavement Marker, TxDot Item 672,Type I-A, I-C, II-A-A, or II-C-R as per plans or City Instruction	$5.00	$500.00
15	500	LF	Eliminate Existing Pavement Markings and Markers, TXDot Item 677, Linear Markings,4" equivalent width, Remove by Construction Methods 4.2 (burn), 4.3 (blasting, or 4.4 Mechanical Only	$1.25	$625.00
16	10	EA	Eliminate Existing Pavement Markings and Markers, TXDot Item 677, Arrow, Symbol or Word, Remove by Construction Methods 4.2 (burn), 4.3 (blasting, or 4.4 Mechanical Only	$100.00	$1,000.00
			TOTAL PROPOSAL		$214,825.00

Bidding Summary:

83 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

82 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID #	22000540			Barricades Unlimited	
	City Wide Pavement Marking			2002 Clovis Rd	
				Lubbock, TX 79415	
OPENED	December 8, 2022			806-744-1520	
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9	25	EA	Thermoplastic Pavement Marking, TxDot Item 668 Prefabricated, Type B, White Pavement Arrow	$400.00	$10,000.00
10	25	EA	Thermoplastic Pavement Marking, TxDot Item 668 Prefabricated, White Pavement Arrow	$300.00	$7,500.00
11	5	EA	Thermoplastic Pavement Marking, TxDot Item 666 Type I or 668 Prefabricated, White Railroad Crossing Symbol, per TMUTCD Figure 88-7 Part A	$600.00	$3,000.00
12	30	EA	Thermoplastic Pavement Marking, TxDOT Item 666 Type I or 668 Prefabricated, White Bicycle Lane Symbol, per TMUTCD Figure 9C-3 Part B	$300.00	$9,000.00
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			TOTAL PROPOSAL		$214,825.00

Bidding Summary:

83 **Bid requests were issued.**

1 **Bids listed above**

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THE CITY OF MIDLAND

CONTRACT

Contract No. 22000540

THIS CONTRACT, effective the 12th day of January 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Barricades Unlimited, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost: Not to Exceed**: $ 214,825.00 DOLLARS

2. **Scope of Work:** COMPANY shall furnish materials and labor and perform all work described for the City Wide Pavement Marking 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 City and Contractor agree in writing, the company 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 the amount shown in Section 1 above. 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. 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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 365 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

13.2. Claims 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 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 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 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 Barricades Unlimited, 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: 10/26/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000540**

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. 12/1/2021 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 City Wide Pavement Marking Contract, together with other miscellaneous and appurtenant work for the City of Midland in accordance with the attached general notes and city and/or state specifications.		
				TOTAL	214,825.00

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: Barricades Unlimited
ADDRESS 2002 Clovis Rd
CITY Lubbock ST TX ZIP 79415
PHONE NO. 806-744-1520 FAX NO. 806-744-7148
EMAIL: jkerl@barricadesunlimited.com

CASH DISCOUNT: 0 % 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 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		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 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.

PROPOSAL

TO: Honorable Mayor and City Council
City of Midland
Midland, Texas

Ladies and Gentlemen: The undersigned bidder, having examined the drawings, specifications and contract documents, the location of the proposed work, and being fully advised as to the extent and character of the work, proposes to furnish all material, equipment, and to perform all labor and work necessary for the completion of the construction of the work described by and in accordance with the attached drawings, specifications, and contract, for the following prices, to wit:

Item	Quantity	Description	Unit	Unit Price	Total Amount
1	100,000	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I, **White Long Line, 4" equivalent width** Zero dollars and Forty-Five cents per linear foot	LF	$ 0.45	$45,000.00
2	200,000	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I, **Yellow Long Line, 4" equivalent width** Zero dollars and Forty-Five cents per linear foot	LF	$ 0.45	$ 90.000.00
3	1,000	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I, **White Short Line, 24" wide** Eight dollars and Zero cents per linear foot.	LF	$ 8.00	$ 8,000.00
4	500	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I, **Yellow Short Line, 24" wide** Eight dollars and Zero cents per linear foot.	LF	$ 8.00	$ 4,000.00
5	400	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated Tape, **Type B, White/Black Contrast Lane Line, 7" wide**, per TxDOT Detail CPM(1)-14 Thirteen dollars and Fifty cents per linear foot.	LF	$ 13.50	$ 5,400.00
6	1,600	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated Tape, **Type B, Yellow Line, 4" wide** Four dollars and Zero cents per linear foot.	LF	$ 4.00	$ 6,400.00
7	800	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated Tape, **Type B, White Line, 8" wide** Eight dollars and Zero cents per linear foot.	LF	$ 8.00	$ 6,400.00
8	800	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated, **Type B, White Line, 24" wide** (for use as stop bar, crosswalk, or hatch) Twenty-Two dollars and Zero cents per linear foot.	LF	$ 22.00	$ 17,600.00

PACKET
7.24
January 11, 2022

Item	Quantity	Description	Unit	Unit Price	Total Amount
9	25	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated, **Type B, White Pavement Arrow** _____Four Hundred _____dollars and _____Zero_____ cents per each.	EA	$ 400.00	$ 10,000.00
10	25	**Thermoplastic Pavement Marking**, TxDOT Item 668 Prefabricated, **Type C, White Pavement Arrow** _____Three Hundred_____ dollars and _____Zero_____ cents per each.	EA	$ 300.00	$ 7,500.00
11	5	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I or 668 Prefabricated, **White Railroad Crossing Symbol**, per TMUTCD Figure 8B-7 Part A _____Six Hundred_____ dollars and _____Zero_____ cents per each.	EA	$ 600.00	$ 3,000.00
12	30	**Thermoplastic Pavement Marking**, TxDOT Item 666 Type I or 668 Prefabricated, **White Bicycle Lane Symbol**, per TMUTCD Figure 9C-3 Part B _____Three Hundred_____ dollars and _____Zero_____ cents per each.	EA	$ 300.00	$ 9,000.00
13	1,600	**Work Zone Pavement Markings**, TxDOT Item 662 Type II, **4" equivalent width**, to be used as a sealer for Type I or prefabricated markings when placed on concrete surfaces _____Zero_____ dollars and _____Twenty-Five_____ cents per linear foot.	LF	$ .25	$ 400.00
14	100	**Retroreflective Raised Pavement Marker**, TxDOT Item 672, Type I-A, I-C, II-A-A, or II-C-R as per plans or City instruction _____Five_____ dollars and _____Zero_____ cents per each.	EA	$ 5.00	$ 500.00
15	500	**Eliminate Existing Pavement Markings and Markers**, TxDOT Item 677, **Linear Markings, 4" equivalent width**, remove by Construction Methods 4.2 (Burn), 4.3 (Blasting), or 4.4 (Mechanical) only _____One_____ dollars and _____Twenty-Five_____ cents per linear foot.	LF	$ 1.25	$ 625.00
16	10	**Eliminate Existing Pavement Markings and Markers**, TxDOT Item 677, **Arrow, Symbol or Word**, remove by Construction Methods 4.2 (Burn), 4.3 (Blasting), or 4.4 (Mechanical) only _____One Hundred_____ dollars and _____Zero_____ cents per each.	EA	$ 100.00	$ 1,000.00
TOTAL BID AMOUNT		(add Total Amounts for Items 1 through 16)		$ 214,825.00	

NOTE 1: All equipment, materials, installation, and testing for all items shall be per the Texas Department of Transportation (TxDOT) publication *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* (11/2014) and the applicable, most recently published TxDOT Traffic Standard Drawings, unless otherwise noted or approved by the City.

NOTE 2: Mobilization, layout on new surfaces, and temporary traffic control shall be incidental to all other pay items.

NOTE 3: Surface preparation in accordance with TxDOT specifications and manufacturer recommendations shall be incidental to all other pay items, except as noted under Pay Item 13.

SPECIAL PROVISIONS

1. SCOPE OF WORK:

The project includes a mix of removal, new placement, and maintenance replacement of various thermoplastic pavement markings on streets throughout the City of Midland.

Bids will be received on a unit price basis and the contract will be awarded for the total bid amount for all items. Bidders are advised that quantities of individual items may be adjusted as needed to meet the needs of the City, subject to all applicable procurement rules and regulations.

The City reserves the right to abandon, without obligation to the Contractor, any task, or the entire project, at any time before the Contractor begins work authorized by the City. No minimum amount of work is guaranteed.

The initial term of the contact shall be from the date of award until September 30, 2022. If the City and Contractor agree in writing, the contract may be renewed for up to two (2) additional one-year terms (October 1, 2022 to September 30, 2023; and October 1, 2023 to September 30, 2024).

The Traffic Operations 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 proposed tasks. The City's intent is to group tasks so that a sufficient quantity of work is assigned at one time to allow for cost-effective mobilization of the crew and equipment.

With the assignment of each work task, the City shall provide maps, plans, details, lists, schematics, and/or other documents as necessary for the Contractor to fully understand the proposed scope of the task.

All equipment, materials, installation, and testing for all items shall be per the Texas Department of Transportation publication Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges (Nov. 2014) unless otherwise noted or approved by the City or modified by these Special Provisions.

2. PAYMENT:

Payment will be made only for material installed and complete in place, and not for material delivery or materials on hand.

3. TRAFFIC CONTROL:

All temporary traffic control shall be in general conformance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD) (latest edition as adopted by the Texas Department of Transportation), except as specifically directed by the City.

4. WARRANTY PERIOD:

There is a one (1) year calendar warranty period on this project for all work performed or materials installed effective immediately upon acceptance of the improvements by the Owner.

Barricades Unlimited
Vendor Name

INSTRUCTIONS TO BIDDERS

Bid # 22000540

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.

Barricades Unlimited		
Company Name		Date
Authorized Signature		Phone 806-744-1520
Chris Boutwell		806-744-7148
Print Above Name		Fax

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.

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

(hereinafter called the Principal), as Principal, and _____

_____

_____

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____

_____ DOLLARS

($_____), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to_____

_____.

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this _____ day of _____, 20____.

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:
(Name, legal status and address)

West Texas Barricades LLC d/b/a Barricades Unlimited
2002 Clovis Road
Lubbock, TX 79415

SURETY:
(Name, legal status and principal place of business)
United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07960
Mailing Address for Notices

OWNER:
(Name, legal status and address)

City of Midland
300 North Loraine
Midland, TX 79702

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: 5% Five Percent of Amount Bid

PROJECT:
(Name, location or address, and Project number, if any)

City wide pavement marking

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner 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. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 8th day of December, 2021.

(Witness)

West Texas Barricades LLC d/b/a Barricades Unlimited
(Principal) *(Seal)*

By:
(Title) President

(Witness)

United States Fire Insurance Company
(Surety) *(Seal)*

By:
(Title) Laurie Pflug, Attorney-in-Fact

S-0054/AS 8/10

POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Laurie Pflug

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office.

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

Surety Bond No.: Bid Bond
Principal: West Texas Barricades LLC d/b/a Barricades Unlimited
Obligee: City of Midland

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on March 25th, 2024.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 25th day of March, 2019.

UNITED STATES FIRE INSURANCE COMPANY

A. R. S

Anthony R. Slimowicz, Executive Vice President

State of New Jersey}
County of Morris }

On this 25th day of March 2019, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

SONIA SCALA
NOTARY PUBLIC STATE OF NEW JERSEY
NO. 2163686
MY COMMISSION EXPIRES 3/25/2024

Sonia Scala

Sonia Scala (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 8th day of December, 2021.

UNITED STATES FIRE INSURANCE COMPANY

Al Wright, Senior Vice President

CRUM & FORSTER
A FAIRFAX COMPANY

TEXAS COMPLAINT NOTICE
AVISO DE QUEJA DE TEXAS

IMPORTANT NOTICE

To obtain Information or make a complaint:

You may call Crum & Forster's toll-free number for information or to make a complaint at:

1-888-890-1500

You may write to Crum & Forster at:

Crum & Forster
305 Madison Avenue
Morristown, NJ 07962

Web: www.cfins.com
E-mail: info@cfins.com

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

PO Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007

Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.tx.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de Crum & Forster's para obtener información o para presentar una queja al:

1-888-890-1500

Usted también puede escribir a Crum & Forster:

Crum & Forster
305 Madison Avenue
Morristown, NJ 07962

Sitio web: www.cfins.com
E-mail: info@cfins.com

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007

Sitio web: www.tdi.texas.gov
E-mail: ConsumerProtection@ tdi.tx.gov

DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, usted debe comunicarse con el agente primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

ADJUNTE ESTE AVISO A SU PÓLIZA: Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

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

PayB 2

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

PerfB 2

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.**

Barricades Unlimited

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.**

N/A

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.**

N/A

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

11/30/21

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.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2021-826582

Date Filed:
11/23/2021

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Barricades Unlimited
Lubbock, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Midland

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
22000540
City Wide Pavement Marking

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 UNSWORN DECLARATION

My name is Chris Boutwell, and my date of birth is 6/12/74.

My address is 2002 Clovis Rd (street), Lubbock (city), TX (state), 79415 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Lubbock County, State of Texas, on the ____ day of _____ (month), 20____ (year).

Signature of authorized agent of contracting business entity
(Declarant)

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: Barricades Unlimited

Local Address (must be within the City limits): 2902 W Gist, 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? 30
3. Year your business was established in the City of Midland: 2014
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:
   Reseller Permit Number: 32-048739927
   Company Name and Address (as it appears on permit):
   West Texas Barricades, LLC.
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:
   2002 Clovis Rd, Lubbock, TX 79415
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: 11/30/21

Printed Name and Title: Chris Bostwell President

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.

CITY OF MIDLAND

ADDENDUM

BID # 22000540

TO ALL BIDDERS ON THE SUBJECT BID: Citywide Pavement Marking

ADDENDUM # 01

DATE: November 23, 2021

The bid date for this has changed from 12/1/21 at 2:00 PM to 12/8/21 at 2:00 PM
Also, please see the attached pages showing changes made to the original Bid Proposal:

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

All other terms and conditions shall remain the same.

___Barricades Unlimited_____
Company Name

_____ ____12-6-2021_____
Bidder Authorized Signature — Date

_____Jake Karl_____ ___806-744-1520_____
Please Print Above Name — Phone

No-Bid
Response
For
Request #: 22000540

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: 8

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER AGREEMENT WITH CINTAS CORPORATION FOR THE PURCHASE OF EMPLOYEE UNIFORMS FOR A TOTAL COST OF $224,667.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a master agreement for two (2) years for employee uniforms for various City of Midland departments and divisions.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY22 operating budgets of the General Fund, Water & Sewer Fund, Sanitation Fund, Golf Course Fund, Airport Fund, and Garage Fund.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for a master agreement for two (2) years for employee uniforms for various City of Midland departments and divisions. Bid request notifications were sent to sixty-four (64) vendors. We received three (3) bids. The apparent overall low bidder is Cintas Corporation. The clothing samples from Cintas appear to meet specifications, thus, the recommendation is to award a master agreement for employee uniforms to Cintas Corporation.

Therefore, please consider a resolution awarding a two (2) year master agreement for the purchase of employee uniforms from Cintas Corporation of Midland, Texas for an estimated two (2) year cost of $224,667.00.

Tina Jaug

City Manager's Office

Master Agreement
22000157
For
Employee Uniforms

This Master Agreement (the "*Agreement*"), is entered into this 12th day of January, 2022, by and between the City of Midland, Texas, a home-rule municipal corporation ("*City*"), and Cintas Corporation No.2 dba Cintas Corporation No.2 Loc 440 ("*Company*").

1. Company agrees to sell the employee uniforms 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: $224,667.00.

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

2. The employee uniforms 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 employee uniforms 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 2 years, commencing on January 12, 2022 and terminating on January 12, 2024, 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 *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.

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 Cintas Corporation No.2 dba Cintas Corporation No.2 Loc 440, 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: 9/20/2021

BID REQUEST PAGE: 1

(THIS IS NOT AN ORDER) **BID NO: 22000157**

OPENING TIME: 2:00 PM **CLOSING DATE: 10/27/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330 UNTIL 2:00 P.M. on 10/27/2021
FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various City Locations

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Master Agreement for the purchase of Uniforms for City of Midland, Texas employees for a period of two (2) years with an option to renew for a period of one additional year, in accordance with the attached cost summary, specifications 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.
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: Cintas Corporation
ADDRESS 2029 S Loop 250 W
CITY Midland ST TX ZIP 79703
PHONE NO. 432-681-3751 FAX NO. 432-520-3246
EMAIL: Roberts13@cintas.com

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE _____

AUTHORIZED SIGNATURE Juanita Roberts

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		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 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
Purchasing Division

THE CITY OF MIDLAND

DETAIL SHEET

FOR

22000157

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
1	Shirts – Long Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		2,000	$12.50	$25,000.00
2	Shirts – Short Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		1,200	$11.50	$13,800.00
3	Shirts – Supervisor Long Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$17.00	$1,020.00
4	Shirts – Supervisor Short Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
5	Shirts – Welder Long Sleeve – 100% Cotton Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
6	Shirts – Button Down Dress Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$22.00	$1,760.00
7	Blouse – Button Down Dress Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$22.00	$1,760.00
8	Shirts – T Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		500	$6.00	$3,000.00
9	Shirts – Unisex Golf Jersey Knit Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
10	Shirts – Golf Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		220	$16.50	$3,630.00

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
11	Pants – Standard, Full Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$14.00	$ 2800.00
12	Pants – Cotton, Full Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$23.00	$4600.00
13	Pants – Jeans, Denim, Contractor Brand Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$18.00	$3,600.00
14	Pants – Jeans, Denim, Wranglers Brand Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$29.00	$5,800.00
15	Pants – Women's Standard Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$18.00	$1,440.00
16	Shorts – Men's		170	$14.00	$2,380.00
17	Shorts – Women's Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		100	$18.00	$1,800.00
18	Coveralls – 100% Cotton Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$42.99	$2,579.40
19	Coveralls – Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$37.99	$2,279.40
20	Coveralls – Insulated Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$49.00	$8,820.00
21	Overalls – Cotton		180	$42.99	$7,738.20
22	Overalls – Insulated		80	$52.00	$4,160.00

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
23	Smocks Extra cost for: XXL1.00 3X 2.00 4X 3.00 5X 4.00		20	$18.00	$360.00
24	Lab Coats Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		20	$16.00	$320.00
25	Jacket – Perma Lined Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$26.00	$4,680.00
26	Jacket – Hooded Duck, Dickies Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$44.00	$7,920.00
27	Jacket – Wind Breaker Extra Cost For: XXL1.00 3X 2.00 4X 3.00 5X4 .00		180	$27.00	$4,860.00
28	Jacket – Tundra System Outer Only Extra Cost For: XXL1.00 3X2.00 4X3.00 5X4.00		100	$44.00	$4,400.00
29	Jacket – Tundra System Inner Only Extra Cost For: XXL1.00 3X2.004X3.00 5X4.00		100	$44.00	$4,400.00

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:
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.

Cintas Corporation	10/26/2021
Company Name	Date
Authorized Signature	432-681-3750
Janice Roberts	Phone
Print Above Name	432-520-3246
	Fax

CITY OF MIDLAND

SPECIFICATION

Employee Uniforms

1. SCOPE:

This specification is for the purchase of the City of Midland's uniform needs for a two year period. No other specification other than the bid document, purchase agreement or this document shall be applicable unless specifically approved in writing by the Purchasing Division.

2. INTENT:

The City furnishes uniforms for its employees to use for a two year period. Materials and dyes used are expected to last through this period under normal use and proper maintenance. At the end of this period the employee is allowed to keep his issued uniforms.

3. 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

Email: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel or other means (i.e. Verbal) shall not be considered binding.

4. DEFINITIONS:

4.1. VENDOR

Company who sells a product or service wishing to provide same to the City.

4.2. CONTRACTOR

The vendor who was successful in their efforts to provide a bid considered to be most advantageous to the City and subsequently awarded the purchase Agreement.

4.3. REGULAR UNIFORMS (SHIRTS):

Those which are to be worn by the general worker.

4.4. SUPERVISOR UNIFORMS (SHIRTS):

Consists of the same type of pants and shirts, except that shirt colors will be different from the regular uniforms.

4.5. WELDERS UNIFORMS:

Those that will be worn by personnel performing welding operations. These uniforms will be of essentially the same description as the regular uniforms except that the material shall be 100% cotton.

5. REQUIREMENTS

Bidders shall indicate to the right of each requirement whether the bidder meets or exceeds the requirement. Explain how the requirement is exceeded. Supply an additional sheet if necessary, numbering each explanation with the requirement number being referenced.

	REQUIREMENT	COMMENT
5.1. GENERAL:		
5.1.1.	Pricing shall be provided for the initial purchase, firm for ninety days and firm pricing for the balance of the two year contract to allow for additional uniforms to be purchased due to employee turnover and loss through wear or size change.	Meets
5.1.2.	All measurements are the responsibility of the Vendor.	Meets
5.1.3.	The Contractor must be able to provide measurement and other services in Midland at the user department location. Performance of this requirement by a third party is strictly prohibited.	Meets
5.1.4.	All prices shall be quoted F.O.B. Midland, Texas, freight included.	Meets
5.1.5.	Bidder shall state the number of calendar days following the initial purchase that will be required to deliver new uniforms.	Meets
5.1.6.	A sample of each type and/or style of garment which is being bid must accompany the bid. *Each uniform sample must be clearly labeled with the vendor's name and the corresponding item number from the Detail Sheet.* These samples will be returned as follows:	Meets
5.1.6.1.	Unsuccessful bidders – at the time of execution of the agreement all samples can be picked up or they will be returned freight collect.	Meets
5.1.6.2.	Successful bidder (Contractor) – Sixty days following final delivery of all uniforms and expiration or termination of the Agreement, All samples submitted by the Contractor will be available for pick-up, or they will be shipped to the Contractor, freight Collect.	Meets
5.1.7.	The Contractor shall maintain sufficient inventories of the styles, types and colors of garments purchased to allow for minimal turnaround time for replacement of damaged or outsized uniforms and supply of uniforms for new employees.	Meets
5.2. CONTRACT ADMINISTRATION:		
5.2.1.	The ensuing contract will take form as a master agreement (see enclosed document) which outlines the contractual terms and conditions. Each user Division will be SOLELY responsible for the City's role in making the actual purchases for each individual employee.	Meets
5.2.2.	The instrument that will be used by the City to execute these acquisitions will be the Delivery Order (D.O., or In the future.the City may begin using purchasing cards for their purchases. Each D.O. shall have only ONE employee's uniform order. (See paragraph 5.2.2.6 below. unless	Meets

otherwise approved in writing by the Purchasing Office.

5.2.2.1. The employee's preference of colors(As applicable) — Meets

5.2.2.2. The employee's shirt style (as dictated by position/supervisor). PRODUCT NUMBER, ITEM NO. and whether short or long sleeves are desired. — Meets

5.2.2.3. The employee's choice of pants style. ITEM NO. and PRODUCT NUMBER. — Meets

5.2.2.4. The employee's measurements as obtained by the Contractor's representative.

5.2.2.5. The City department/division will make necessary arrangements with the Contractor to measure each employee, then issue the D.O.'s to cover those uniforms at that time.

5.2.2.6. AS AN ALTERNATE to #5.2.2 above, the City will consider the use of an order form provided by the supplier as long as there is only one person's uniforms on the order form and the purchase is made with a city purchasing Card. The form shall be identified with a unique number for tracking purposes. This may be a vendor number or a combination of the user division number and employee ID. The format of the form and its contents are subject to approval by the Purchasing Division prior to implementation.

6. QUALITY ASSURANCE:

The quality and workmanship shall be equal to or better than that of the samples that are submitted with the bids. Uniforms shall be new with no loose hems or stitches. Any uniform received exhibiting less quality will be rejected and returned to the Contractor for full replacement or credit. The minimum standards for the uniforms are as follows:

7. DETAIL REQUIREMENTS:

7.1. UNIFORM SHIRTS:

7.1.1. SHIRTS, Regular Long Sleeve –

65% Polyester/35% Cotton, 4.2 oz. Minimum, with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 935 OR Equal meeting the following specification.

7.1.1.1. PLACKET – Minimum of seven matching buttons

7.1.1.2. COLLARS will have permanent collar stays.

7.1.1.3. SLEEVES – Long Sleeves, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.1.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.1.1.5. POCKETS - (2) Button through without Flaps

7.1.1.6. COLORS –solids. All uniforms within a division shall be the same color.

7.1.1.7. PATCHES – See Paragraph "B"

7.1.2. SHIRTS, Regular Short Sleeve –

65% Polyester/35% Cotton, 4 2 oz. minimum poplin with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 935 OR Equal meeting the following specification.

7.1.2.1. COLLARS will have permanent collar stays.

7.1.2.2. PLACKET – Minimum of seven matching buttons

7.1.2.3. SLEEVES – vendor standard length.

7.1.2.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.1.2.5. POCKETS - (2) Button through without flaps

7.1.2.6. COLORS –solids. All uniforms within a division shall be the same color.

7.1.2.7. PATCHES – See Paragraph "B"

7.1.3. SHIRTS, Supervisor Long Sleeve –

65% Polyester/35% Cotton, 4.5 oz. Minimum with permanent press and treated for easy soil release. Bar tacked at stress points. Cintas Item Number 831 OR Equal meeting the following specification.

7.1.3.1. COLLARS will have permanent collar stays.

7.1.3.2. PLACKET – Minimum of seven matching buttons

7.1.3.3. SLEEVES – with placket and a minimum of one button: vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.3.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, and 4XL.

7.1.3.5. POCKETS - (2) w/ minimum of one functional button down flap

7.1.3.6. COLORS –Solid or Pinstripes. All uniforms within a division shall be the same color.

7.1.3.7. PATCHES – See Paragraph "B"

7.1.4. SHIRTS, Supervisor Short Sleeve –

65% Polyester/35% Cotton, 4.5 oz. minimum poplin with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 831 OR Equal meeting the following specification.

7.1.4.1. COLLARS will have permanent collar stays.

7.1.4.2. PLACKET – Minimum of seven matching buttons

7.1.4.3. SLEEVES – vendor standard length; single needle stitching at hem.

7.1.4.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, and 4XL

7.1.4.5. POCKETS - (2) w/ minimum of one functional button down flap

7.1.4.6. COLORS –solids or pinstripes. All uniforms within a division shall be the same color.

7.1.4.7. PATCHES – See Paragraph "B"

7.1.5. SHIRTS, Denim – Short Sleeve

100% Cotton. 6oz. Minimum. Permanent Press, full cut, two-piece back yoke. Cintas Item Number 65415 OR Equal meeting the following specification.

7.1.5.1. COLLARS will have permanent collar stays.

7.1.5.2. PLACKET – Minimum of seven matching buttons

7.1.5.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.5.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL, 4XL and 4XL.

7.1.5.5. POCKETS - (2)

7.1.5.6. COLORS –Denim.

7.1.5.7. PATCHES – See Paragraph "B"

7.1.6. SHIRTS, Denim – Long Sleeve

100% Cotton. 6oz. Minimum, Permanent Press, full cut, two-piece back yoke. Cintas Item Number 65415 OR Equal meeting the following specification.

7.1.6.1. COLLARS will have permanent collar stays.

7.1.6.2. PLACKET – Minimum of seven matching buttons

7.1.6.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.6.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL, 4XL and 4XL.

7.1.6.5. POCKETS - (2)

7.1.6.6. COLORS –Denim.

7.1.6.7. PATCHES – See Paragraph "B"

7.1.7. SHIRTS, Welder Uniforms (or for areas requiring cotton for safety) –

100% Cotton. 6oz. Minimum, Permanent Press, full cut, two-piece back yoke. Cintas Item Number 330 w/o pocket flap and 1393 with pocket flap, OR Equal meeting the following specification.

7.1.7.1. COLLARS will have permanent collar stays.

7.1.7.2. PLACKET – Minimum of seven matching buttons

7.1.7.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.7.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL.

7.1.7.5. POCKETS - (2) button through

7.1.7.6. COLORS –Solid or Pinstripes. All uniforms within a division shall be the same color.

7.1.7.7. PATCHES – See Paragraph "B"

7.1.8. SHIRTS, Button Down Dress –

60% Cotton, 40% Polyester, 4.2oz. Minimum, full cut, two piece back yoke with box pleat, and bottom scalloped hem. Cintas Item Number 374 OR Equal meeting the following specification.

7.1.8.1. COLLARS will have one button collar band, lined, top stitched.

7.1.8.2. PLACKET – Minimum of six matching buttons

7.1.8.3. SLEEVES –minimum of two button adjustable cuff; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.8.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL

7.1.8.5. POCKETS - (1) Left chest

7.1.8.6. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.8.7. PATCHES – See Paragraph "B"

7.1.9. BLOUSE, Button Down Dress –

60% Cotton, 40% Polyester, 4.2oz. Minimum, full cut, two piece back yoke with box pleat, and bottom scalloped hem. Cintas Item Number 528 OR Equal meeting the following specification.

7.1.9.1. COLLARS will have one button collar band, lined, top stitched.

7.1.9.2. PLACKET – Minimum of six matching buttons

7.1.9.3. SLEEVES –minimum of two button adjustable cuff; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.9.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL.

7.1.9.5. POCKETS - (1) Left chest

7.1.9.6. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.9.7. PATCHES – See Paragraph "B"

7.1.10. SHIRTS, T –

100% cotton, Preshrunk, 5.4 oz Minimum. Cintas Item Number 119 OR Equal meeting the following specification.

7.1.10.1. COLLARS – Crew neck, Rib Knit

7.1.10.2. SLEEVES – Set in and Hemmed with double stitching. SIZES: S through

XXL shall be in the base bid. Bidder to supply an adder for 3XL.

7.1.10.3. POCKETS – none

7.1.10.4. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.10.5. PATCHES – See Paragraph "B"

7.1.11. UNISEX GOLF JERSEY KNIT SHIRTS –

60% Cotton/40% Polyester, jersey knit, ribbed collar, breast pocket, hemmed short sleeves. Cintas Item Number 69148 OR Equal meeting the following specification.

7.1.11.1. COLLARS –Rib Knit

7.1.11.2. SLEEVES – Hemmed short with double stitching. SIZES: S through XXL shall be in the base bid. Bidder to supply an adder for 3XL.

7.1.11.3. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.11.4. PATCHES – See Paragraph "B"

7.1.12. GOLF SHIRTS –

60% Cotton/40% Polyester, jersey knit, ribbed collar, breast pocket, hemmed short sleeves. Cintas Item Number 259 OR Equal meeting the following specification.

7.1.12.1. COLLARS –Rib Knit

7.1.12.2. SLEEVES – Hemmed short with double stitching. SIZES: S through XXL shall be in the base bid. Bidder to supply an adder for 3 & 4XL or XS as applicable.

7.1.12.3. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.12.4. PATCHES – See Paragraph "7.2"

7.2. PATCHES

7.2.1. **Preferred and included as the base price:** A City of Midland Embroidered LOGO patch will be placed over the Left breast pocket and an embroidered patch with the Division Name and Employee Name placed on the right breast (over the pocket if one is present). A list of the Division Names and Colors will be supplied at the time a contract is executed. The division name will replace "Feel the Energy". The skyline and division name will be in the division color.

MIDLAND
Feel the Energy!

7.2.1.1. Direct Embroidery

7.2.1.1.1. Where appropriate a direct embroidery LOGO may be applied. When direct embroidered on shirts such as a dress shirt or a polo shirt, the logo shall be made as small as practical.

7.2.1.2. A City of Midland patch (embroidered) is required over the left pocket. The patch will contain the following information: Bidder shall provide a deduct per garment for this method.



7.3. PANTS

7.3.1. PANTS, Standard, Full –

65% Polyester/35% Cotton, 7-: oz min. twill, permanent press, relaxed fit with hemmed cuffless bottoms and 2" belt loops. Bar tacks at stress points. Cintas Item Number 945 OR Equal meeting the following specifications.

7.3.1.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.1.2. POCKETS - two (2) back and two (2) front.

7.3.1.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.1.4. COLORS - Navy, Brown, or Khaki. All uniforms within a division shall be the same color.

7.3.2. PANTS, Cotton, Full –

100% Cotton, 8.5 oz min., soil and wrinkle resistant. Cintas Item Number 340 OR Equal meeting the following specifications.

7.3.2.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.2.2. POCKETS - two (2) back, left to have button closure, and two (2) front.

7.3.2.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched

7.3.2.4. COLORS - Navy or Khaki. All uniforms within a division shall be the same color.

7.3.3. PANTS, Jeans, Denim –

100% Cotton, 14 oz, regular fit, metal button closure, Cintas Item Number 394 OR Equal meeting the following specifications.

7.3.3.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.3.2. POCKETS – five (5) Including watch pocket

7.3.3.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.3.4. COLORS – Blue or Black. All uniforms within a division shall be the same color.

7.3.4. PANTS, Jeans Denim alternate.

Wrangler's Brand Denim jeans

7.3.4.1. All uniforms within a division shall be the same color

7.3.5. PANTS, Women's Standard

65% Polyester/35% Cotton, 7-: oz min. twill, permanent press, relaxed fit with hemmed cuffless bottoms and 5 belt loops. Bar tacks at stress points. Cintas Item Number 945 OR Equal meeting the following specifications.

7.3.5.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.5.2. POCKETS - two (2) back and two (2) front.

7.3.5.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.5.4. COLORS - Navy, Brown, or Khaki. All uniforms within a division shall be the same color.

7.4. SHORTS

7.4.1. SHORTS, Men's –

65% Polyester, 35% Cotton, 7.5 oz. min., pleated front, (2) rear darts, relaxed fit, button closure, 8" inseam, and 2" belt loops. (As an alternate where job requirements permit, shorts may be substituted for pants) Cintas Item Number 945 OR Equal meeting the following specifications.

7.4.1.1. ZIPPER will be brass, ratcheting, heavy duty.

7.4.1.2. POCKETS – two (2) slack style front and two (2) rear hip

7.4.1.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.4.1.4. COLORS – Navy or Khaki. All uniforms within a division shall be the same color.

7.4.2. SHORTS, Women's –

65% Polyester, 35% Cotton, 7.5 oz. min., pleated front, (2) rear darts, relaxed fit, Hook Eye Closure, 7-1/2" inseam, and 2" belt loops. (As an alternate where job requirements permit, shorts may be substituted for pants) Cintas Item Number 945 OR Equal meeting the following specifications.

7.4.2.1. ZIPPER will be brass, ratcheting, heavy duty.

7.4.2.2. POCKETS – two (2) slack style front

7.4.2.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.4.2.4. COLORS – Navy or Khaki. All uniforms within a division shall be the same color.

7.5. COVERALLS/ OVERALLS –

7.5.1. COVERALLS, Cotton –

100% Cotton, preshrunk twill, 8.5oz Minimum, durable press, two-way zipper, and

Side entry slashes, Cintas Item Number 910 OR Equal meeting the following specifications.

7.5.1.1. COLLARS – Fold down

7.5.1.2. PLACKET – Extra wide front

7.5.1.3. CLOSURE – Concealed front gripper

7.5.1.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.1.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.1.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.1.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.1.8. PATCHES – Included. See Paragraph "7.2"

7.5.2. COVERALLS, Blend –

65% Polyester, 35% Cotton, Permanent press 7-1/2oz. Minimum twill, two-way zipper, and Side entry slashes, Cintas Item Number 912 OR Equal meeting the following specifications.

7.5.2.1. COLLARS – Fold down

7.5.2.2. PLACKET – Extra wide front

7.5.2.3. CLOSURE – Concealed front gripper

7.5.2.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.2.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.2.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.2.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.2.8. PATCHES – included. See Paragraph "7.2"

7.5.3. COVERALLS, Cotton – Insulated

100% Cotton. Duck twill, 8.5oz Minimum, durable press, two-way zipper, and Side entry slashes, Cintas Item Number 910 OR Equal meeting the following specifications.

7.5.3.1. COLLARS – Fold down

7.5.3.2. PLACKET – Extra wide front

7.5.3.3. CLOSURE – Concealed front gripper

7.5.3.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.3.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder

for XXL, 3XL, 4XL and 5XL.

7.5.3.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.3.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.3.8. PATCHES – Included. See Paragraph "7.2"

7.5.3.9. 11 3/4 oz. Fine Weave Denim (100% Cotton)

7.5.3.10. BACK – Cross over, high back, self suspenders

7.5.3.11. SEAMS – Triple Stitched

7.5.3.12. FLY - Zippered

7.5.3.13. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.3.14. POCKETS – Large bib pocket, pencil pocket, watch pocket, double rule pocket, hammer loop, Reinforced back pockets, minimum

7.5.3.15. COLORS –solids. All uniforms within a division shall be the same color.

7.5.3.16. PATCHES – included. See Paragraph "7.2"

7.5.4. BIB OVERALLS, Insulated, –

Dickies 82325 INDIGO BIB OVERALL or equal meeting the following requirements:

7.5.4.1. 11 3/4 oz. Fine Weave Denim (100% Cotton)

7.5.4.2. BACK – Cross over, high back, self suspenders

7.5.4.3. SEAMS – Triple Stitched

7.5.4.4. FLY - Zippered

7.5.4.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.4.6. POCKETS – Large bib pocket, pencil pocket, watch pocket, double rule pocket, hammer loop, Reinforced back pockets, minimum

7.5.4.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.4.8. PATCHES – included. See Paragraph "7.2"

7.6. SMOCKS

7.6.1. SMOCK, Blend –

80% Polyester, 20% Cotton 5-1/4 oz durable press poplin, full button or snap front, notched collar, treated for easy soil release, fitted waste, belt back, two button adjustable sleeve, two front pockets. All uniforms within a division shall be the same color. Cintas Item Number 964 OR Equal

7.7. LAB COAT

7.7.1. **LAB COATS –**

80% Polyester, 20% Cotton 5-1/4 oz durable press poplin, full 5 button or 5 snap front, two piece notched collar, treated for easy soil release, length approximately 40" minimum straight bottom: minimum of one breast pocket with pencil stall and two lower pockets, seam in back of sleeve. All uniforms within a division shall be the same color. Cintas Item Number 925 OR Equal

7.8. JACKETS

7.8.1. JACKET, Perma Lined

65% Polyester, 35% Cotton, 7-1/2, 100% nylon lining, 1/8" foam insulation, non woven back, two slash pockets, heavy duty brass zipper, two button adjustable cuff, and fold down collar, Cintas Item Number 970 OR Equal.

7.8.2. JACKET, Dickies 760 or equal meeting the following requirements.

This 100% cotton duck jacket, quilted-lined with Hollofil insulation, safety-stitched seams for added durability and generous sizing for maximum comfort. With ribbed-knit cuffs and waist, plus a versatile lined hood.

7.8.3. JACKET, WindBreaker, Cintas Item Number 80600 OR Equal

7.8.4. PARKA – Tundra System, Complete

Cintas Item Number 80175/80178 OR Equal.

7.8.5. PARKA – Tundra System Outer only

Outer shell made of 228 Taslan® nylon for wind and water resistance. Heavy-duty zipper with ripstop nylon stormflap placket. Concealed zip-off hood. Side entry and lower chest pockets with zipper closures. Loose fitting ripstop nylon shoulder yoke. Cintas Item Number 80178 OR Equal

7.8.6. PARKA - Tundra System Inner only

Cintas Item Number 80175 OR Equal

Uniform Delivery Locations

Building Name	Address	Zip code
Animal Services	1200 N. Fairgrounds	79706
City Hall	300 N. Loraine	79701
Facility Services /Transportation	1800 E. Orchard Lane (Bldg 3)	79701
Fire Station 1	1500 W. Wall	79701
Fire Station 2	701 E. Florida	79701
Fire Station 3	1707 N. Lamesa Rd	79701
Fire Station 4	5100 N. Big Spring	79705
Fire Station 5	2210 W. Golf Course	79701
Fire Station 6	4315 Thomason	79703
Fire Station 7	2507 Pliska Drive	79706
Fire Station 8	3301 Haynes	79707
Fire Station 9	6005 Midland Drive	79707
Fire Station 10	4543 Sinclair Ave.	79703
Fire Station 11	6600 Briarwood Ave.	79707
Firing Range	4214 FM307	79706
Garage	1701 E. Orchard Lane	79701
Harris Field	3215 FM307	79706
Health & Senior Services	3303 W. Illinois	79703
Hogan Buildings	3600 N. Fairgrounds	79705
Kingsway Senior Center	3303 W. Illinois	79703
Landfill	7904 S. Garden City Hwy	79701
Midland International Airport	9506 LaForce Blvd.	79706
Martin Luther King Jr Center	2300 Butternut Lane	79705
Municipal Court	406 E. Illinois	79701
Parks	2701 W. Elizabeth	79701
Police & Communication Bldg	601 N. Loraine	79701
Scharbauer Sports Complex	5514 Champions Dr	79703
Solid Waste	600 N. Carver (Bldg 5)	79701
Southeast Senior Center	1803 E. Indiana	79701
Spraberry Farm	11501 FM 1379	79701
Transportation/Traffic Operations	1602 Orchard Lane (Bldg 3)	79701
Vehicle Services	600 N. Carver (Bldg 1)	79701
Warehouse/Meter Shop	1602 Orchard Lane (Bldg 4)	79701
Water Pollution Control Plant	3600 FM 307	79701
Water Purification Plant	5006 N. Midland Dr	79707
Water & Wastewater	1602 Orchard Lane (Bldg 2)	79701

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.

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: Cintas Corporation

Local Address (must be within the City limits): 2029 S Loop 250 W, Midland, TX 79703

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? 66
3. Year your business was established in the City of Midland: October 2006
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: Juanice Roberts Date: 10/26/21

Printed Name and Title: Juanice Roberts

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.

No-Bid
Response
For
Request #: 22000157

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 OF MIDLAND

ADDENDUM

BID # 22000157

TO ALL BIDDERS ON THE SUBJECT BID: Employee Uniforms

ADDENDUM # 01

DATE: October 21, 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: Does the garment price need to include the cost of logo and shipping or can we list those charges separately?

A1: Per the RFB documents the garment pricing needs to include all charges as one price. Separate pricing will not be allowed.

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

All other terms and conditions shall remain the same.

Cintas Corporation
Company Name

Bidder Authorized Signature

10/26/2021
Date

Juanice Roberts
Please Print Above Name

432-681-3750
Phone

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER AGREEMENT WITH CINTAS CORPORATION FOR THE PURCHASE OF EMPLOYEE UNIFORMS FOR A TOTAL COST OF $224,667.00

WHEREAS, the City Manager approved the plans and specifications and authorized the advertisement for bids for the purchase of employee uniforms for various City of Midland departments and divisions; and

WHEREAS, Bid No. 22000157 was opened on October 27, 2021, with the lowest bid being submitted from Cintas Corporation, as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount of $224,667.00 proposed by Cintas Corporation to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a master agreement to Cintas Corporation for the purchase of employee uniforms;

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 master agreement with Cintas Corporation for the purchase of employee uniforms. Said agreement being in a form substantially similar to Exhibit B, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Cintas Corporation, according to the terms of said master agreement, from funds available in the in the FY22 operating budgets of the General Fund, Garage Fund, Water & Sewer Fund, Sanitation Fund, Golf Course Fund, and Airport Fund 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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

Exhibit A

City of Midland - Bid Tabulation

BID # 22000157 Employee Uniforms OPENED October 27, 2021			Cintas Corporation 2029 Loop 250 Midland, TX 79703 Juanice Roberts robertsj3@cintas.com			Aramark Uniform 115 N First Street Burbank, CA 91502 Warren Simon warren-simon@aramark.com			Prudential Overall Supply 1661 Alton Pkwy Irvine, CA 92606 Mike Ray MikeRay@prudentialuniforms.com		
ITEM	QTY	DESCRIPTION	PRODUCT CODE	COST EACH	TOTAL	PRODUCT CODE	COST EACH	TOTAL	PRODUCT CODE	COST EACH	TOTAL
1	2000	Shirts-Long Sleeve-65/35 Blend		$12.50	$25,000.00	101	$15.99	$31,980.00	SP14	$14.83	$29,660.00
		Extra Cost for : XXL		$13.50			$17.99			$16.87	
		3XL		$14.50			$17.99			$16.87	
		4XL		$17.50			$17.99			$16.87	
		5XL					$17.99			$16.87	
2	1200	Shirts-Short Sleeve-65/35 Blend		$11.50	$13,800.00	102	$12.99	$15,588.00	SP24	$13.14	$15,768.00
		Extra Cost for : XXL		$12.50			$14.99			$14.84	
		3XL		$13.50			$14.99			$14.84	
		4XL		$14.50			$14.99			$14.84	
		5XL		$15.50			$14.99			$14.84	
3	60	Shirts-Supervisor Long Sleeve- 65/35 Blend		$17.00	$1,020.00	101	$15.99	$959.40	SP14	$14.83	$889.80
		Extra Cost for : XXL		$18.00			$17.99			$16.87	
		3XL		$19.00			$17.99			$16.87	
		4XL		$20.00			$17.99			$16.87	
		5XL		$24.00			$17.99			$16.87	
4	120	Shirt-Supervisor Short Sleeve-65/35 Blend		$16.00	$1,920.00	102	$12.99	$1,558.80	SP24	$13.14	$1,576.80
		Extra Cost for : XXL		$17.00			$14.99			$14.84	
		3XL		$18.00			$14.99			$14.84	
		4XL		$19.00			$14.99			$14.84	
		5XL		$20.00			$14.99			$14.84	
5	120	Shirts-Welder Long Sleeve-100% Cotton		$16.00	$1,920.00	1221	$15.99	$1,918.80	SC30	$18.37	$2,204.40
		Extra Cost for : XXL		$17.00			$17.99			$21.10	
		3XL		$18.00			$17.99			$21.10	
		4XL		$19.00			$17.99			$21.10	
		5XL		$20.00			$17.99			$21.10	
6	80	Shirts- Button Down Dress		$22.00	$1,760.00	1401	$17.99	$1,439.20	SR70-71	$20.28	$1,622.40
		Extra Cost for : XXL		$23.00			$19.99			$23.27	
		3XL		$24.00			$19.99			$23.27	
		4XL		$25.00			$19.99			$23.27	
		5XL		$26.00			$19.99			$23.27	
7	80	Blouse- Button Down Dress		$22.00	$1,760.00	1406	$17.99	$1,439.20	SR60/61	$20.28	$1,622.40
		Extra Cost for : XXL		$23.00			$19.99			$23.27	
		3XL		$24.00			$19.99			$23.27	
		4XL		$25.00			$19.99			$23.27	
		5XL		$26.00			$19.99			$23.27	
8	500	Shirts- T		$6.00	$3,000.00	GN8000	$7.99	$3,995.00	5000	$8.04	$4,020.00
		Extra Cost for : XXL		$7.00			$9.99			$11.29	
		3XL		$8.00			$9.99			$13.28	
		4XL		$9.00			$9.99			$13.28	
		5XL		$10.00			$9.99			$13.28	
9	120	Unisex Golf Jersey Knit		$16.00	$1,920.00	11138	$15.99	$1,918.80	K100P	$16.16	$1,939.20
		Extra Cost for : XXL		$17.00			$17.99			$17.69	
		3XL		$18.00			$17.99			$20.73	
		4XL		$19.00			$17.99			$22.28	
		5XL		$20.00						$29.16	
10	220	Shirts- Golf		$16.50	$3,630.00	11138	$15.99	$3,517.80	88181P	$18.89	$4,155.80
		Extra Cost for : XXL		$17.50			$17.99			$20.47	
		3XL		$18.50			$17.99			$22.05	
		4XL		$19.50			$17.99			$23.62	
		5XL		$20.50			$17.99			$26.78	
11	200	Pants- Standard, Full		$14.00	$2,800.00	201	$14.99	$2,998.00	PT20	$12.64	$2,528.00
		Extra Cost for : XXL		$15.00			$16.99			$15.17	
		3XL		$16.00			$16.99			$15.17	
		4XL		$17.00			$16.99			$15.17	
		5XL		$18.00			$16.99			$15.17	
12	200	Pants- Cotton, Full		$23.00	$4,600.00	2015	$15.99	$3,198.00	PC20	$15.45	$3,090.00
		Extra Cost for : XXL		$24.00			$17.99			$18.54	
		3XL		$25.00			$17.99			$18.54	
		4XL		$26.00			$17.99			$18.54	
		5XL		$27.00			$17.99			$18.54	
13	2200	Pants- Jeans, Denim, Contractor Brand		$18.00	$39,600.00	217	$18.99	$41,778.00	PD60	$17.72	$38,984.00
		Extra Cost for : XXL		$19.00			$20.99			$21.27	
		3XL		$20.00			$20.99			$21.27	
		4XL		$21.00			$20.99			$21.27	
		5XL		$22.00			$20.99			$21.27	
14	2200	Pants- Jeans, Denim, Wranglers Brand		$29.00	$63,800.00	5521	$25.99	$57,178.00	PT20	$12.64	$27,808.00
		Extra Cost for : XXL		$30.00			$27.99			$15.17	
		3XL		$31.00			$27.99			$15.17	
		4XL		$32.00			$27.99			$15.17	
		5XL		$33.00			$27.99			$15.17	
15	80	Pants- Women's Standard		$18.00	$1,440.00	236	$14.99	$1,199.20	PT21	$18.18	$1,454.40
		Extra Cost for : XXL		$19.00			$16.99			$21.81	
		3XL		$20.00			$16.99			$21.81	

		4XL		$21.00			$16.99			$21.81	
		5XL		$22.00			$16.99			$21.81	
16	170	Shorts- Men's		$14.00	$2,380.00	227	$12.99	$2,208.30	PT26	$11.03	$1,875.10
		Extra Cost for : XXL					$14.99			$13.24	
		3XL					$14.99			$13.24	
		4XL					$14.99			$13.24	
		5XL					$14.99			$13.24	
17	100	Shorts-Women's		$18.00	$1,800.00	20261	$12.99	$1,299.00	PT27	$14.91	$1,491.00
		Extra Cost for : XXL		$19.00			$14.99			$17.90	
		3XL		$20.00			$14.99			$17.90	
		4XL		$21.00			$14.99			$17.90	
		5XL		$22.00			$14.99			$17.90	
18	60	Coveralls-100% Cotton		$42.99	$2,579.40	314	$25.99	$1,559.40	CC16	$40.55	$2,433.00
		Extra Cost for : XXL		$43.99			$27.99			$47.71	
		3XL		$44.99			$27.99			$47.71	
		4XL		$45.99			$27.99			$47.71	
		5XL		$46.99			$27.99			$47.71	
19	60	Coveralls- Blend		$37.99	$2,279.40	316	$23.99	$1,439.40	CT10	$29.76	$1,785.60
		Extra Cost for : XXL		$38.99			$25.99			$34.78	
		3XL		$39.99			$25.99			$34.78	
		4XL		$40.99			$25.99			$34.78	
		5XL		$41.99			$25.99			$34.78	
20	180	Coveralls-Insulated		$49.00	$8,820.00	3358	$85.99	$15,478.20	CT30	$60.66	$10,918.80
		Extra Cost for : XXL		$50.00			$87.99			$74.04	
		3XL		$51.00			$87.99			$74.04	
		4XL		$52.00			$87.99			$74.04	
		5XL		$53.00						$74.04	
21	180	Overalls-Cotton		$42.99	$7,738.20	3357	$70.99	$12,778.20	CC16	$40.55	$7,299.00
		Extra Cost for : XXL					$80.99			$47.71	
		3XL					$80.99			$47.71	
		4XL					$80.99			$47.71	
		5XL					$80.99			$47.71	
22	80	Overalls- Insulated		$52.00	$4,160.00	3357	$70.99	$5,679.20	CC16	$40.55	$3,244.00
		Extra Cost for : XXL					$80.99			$47.71	
		3XL					$80.99			$47.71	
		4XL					$80.99			$47.71	
		5XL					$80.99			$47.71	
23	20	Smocks		$18.00	$360.00	3059	$9.99	$199.80	KP10	$14.49	$289.80
		Extra Cost for : XXL		$19.00			$11.99			$17.39	
		3XL		$20.00			$11.99			$17.39	
		4XL		$21.00			$11.99			$17.39	
		5XL		$22.00			$11.99			$17.39	
24	20	Lab Coats		$16.00	$320.00	380	$18.99	$379.80	KP14	$15.95	$319.00
		Extra Cost for : XXL		$17.00			$21.99			$19.14	
		3XL		$18.00			$21.99			$19.14	
		4XL		$19.00			$21.99			$19.14	
		5XL		$20.00			$21.99			$19.14	
25	180	Jacket-Perma Lined		$26.00	$4,680.00	300	$22.99	$4,138.20	JT50	$27.35	$4,923.00
		Extra Cost for : XXL		$27.00			$24.99			$32.83	
		3XL		$28.00			$24.99			$32.83	
		4XL		$29.00			$24.99			$32.83	
		5XL		$30.00			$24.99			$32.83	
26	180	Jacket-Hooded Duck, Dickies		$44.00	$7,920.00	3355	$55.99	$10,078.20	J763H	$51.87	$9,336.60
		Extra Cost for : XXL		$45.00			$65.99			$53.36	
		3XL		$46.00			$65.99			$56.32	
		4XL		$47.00			$65.99			$57.81	
		5XL		$48.00			$65.99			$60.77	
27	180	Jacket-Wind Breaker		$27.00	$4,860.00	1993	$24.99	$4,498.20	JST73	$25.24	$4,543.20
		Extra Cost for : XXL		$28.00			$26.99			$26.81	
		3XL		$29.00			$26.99			$29.97	
		4XL		$30.00			$26.99			$31.55	
		5XL		$31.00			$26.99			$34.71	
28	100	Jacket-Tundra System Outer Only		$44.00	$4,400.00	82002	$75.99	$7,599.00	88205	$76.42	$7,642.00
		Extra Cost for : XXL		$45.00			$85.99			$81.01	
		3XL		$46.00			$85.99			$83.30	
		4XL		$47.00			$85.99			$85.60	
		5XL		$48.00			$85.99			$87.89	
29	100	Jacket-Tundra System Inner Only		$44.00	$4,400.00	2943	$27.99	$2,799.00	88205		NO BID
		Extra Cost for : XXL		$45.00			$30.99				NO BID
		3XL		$46.00			$30.99				NO BID
		4XL		$47.00			$30.99				NO BID
		5XL		$48.00			$30.99				NO BID
		Direct Embroidered Logo							DE Logo	$4.50	
		Direct Embroidered Name							DE Name	$2.00	
		Freight								Included	
		TOTALS:			$224,667.00			$240,800.10			$193,423.30

Bidding Summary:

64 **Bid requests were issued.**

3 **Bids listed above**

1 **NO BIDS were received.**

60 **Bidders did not respond.**

0 **Incomplete Proposals**

Master Agreement
22000157
For
Employee Uniforms

This Master Agreement (the "*Agreement*"), is entered into this 12th day of January, 2022, by and between the City of Midland, Texas, a home-rule municipal corporation ("*City*"), and Cintas Corporation No.2 dba Cintas Corporation No.2 Loc 440 ("*Company*").

1. Company agrees to sell the employee uniforms 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: $224,667.00.

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

2. The employee uniforms 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 employee uniforms 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 2 years, commencing on January 12, 2022 and terminating on January 12, 2024, 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 *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.

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 Cintas Corporation No.2 dba Cintas Corporation No.2 Loc 440, 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: 9/20/2021

BID REQUEST PAGE: 1

(THIS IS NOT AN ORDER) **BID NO: 22000157**

OPENING TIME: 2:00 PM **CLOSING DATE: 10/27/2021**

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330 UNTIL 2:00 P.M. on 10/27/2021
FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various City Locations

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Master Agreement for the purchase of Uniforms for City of Midland, Texas employees for a period of two (2) years with an option to renew for a period of one additional year, in accordance with the attached cost summary, specifications 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.
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: Cintas Corporation
ADDRESS 2029 S Loop 250 W
CITY Midland ST TX ZIP 79703
PHONE NO. 432-681-3751 FAX NO. 432-520-3246
EMAIL: Roberts13@cintas.com

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE _____

AUTHORIZED SIGNATURE Juanita Roberts

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		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 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
Purchasing Division

THECITY OF MIDLAND

DETAIL SHEET

FOR

22000157

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
1	Shirts – Long Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		2,000	$12.50	$25,000.00
2	Shirts – Short Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		1,200	$11.50	$13,800.00
3	Shirts – Supervisor Long Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$17.00	$1,020.00
4	Shirts – Supervisor Short Sleeve – 65/35 Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
5	Shirts – Welder Long Sleeve – 100% Cotton Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
6	Shirts – Button Down Dress Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$22.00	$1,760.00
7	Blouse – Button Down Dress Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$22.00	$1,760.00
8	Shirts – T Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		500	$6.00	$3,000.00
9	Shirts – Unisex Golf Jersey Knit Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		120	$16.00	$1,920.00
10	Shirts – Golf Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		220	$16.50	$3,630.00

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
11	Pants – Standard, Full Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$14.00	$ 2800.00
12	Pants – Cotton, Full Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$23.00	$4600.00
13	Pants – Jeans, Denim, Contractor Brand Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$18.00	$3,600.00
14	Pants – Jeans, Denim, Wranglers Brand Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		200	$29.00	$5,800.00
15	Pants – Women's Standard Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		80	$18.00	$1,440.00
16	Shorts – Men's		170	$14.00	$2,380.00
17	Shorts – Women's Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		100	$18.00	$1,800.00
18	Coveralls – 100% Cotton Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$42.99	$2,579.40
19	Coveralls – Blend Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		60	$37.99	$2,279.40
20	Coveralls – Insulated Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$49.00	$8,820.00
21	Overalls – Cotton		180	$42.99	$7,738.20
22	Overalls – Insulated		80	$52.00	$4,160.00

ITEM	DESCRIPTION	Prod. Code	QTY	COST EA.	TOTAL
23	Smocks Extra cost for: XXL1.00 3X 2.00 4X 3.00 5X 4.00		20	$18.00	$360.00
24	Lab Coats Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		20	$16.00	$320.00
25	Jacket – Perma Lined Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$26.00	$4,680.00
26	Jacket – Hooded Duck, Dickies Extra cost for: XXL 1.00 3X 2.00 4X 3.00 5X 4.00		180	$44.00	$7,920.00
27	Jacket – Wind Breaker Extra Cost For: XXL1.00 3X 2.00 4X 3.00 5X4 .00		180	$27.00	$4,860.00
28	Jacket – Tundra System Outer Only Extra Cost For: XXL1.00 3X2.00 4X3.00 5X4.00		100	$44.00	$4,400.00
29	Jacket – Tundra System Inner Only Extra Cost For: XXL1.00 3X2.004X3.00 5X4.00		100	$44.00	$4,400.00

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:
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.

Cintas Corporation	10/26/2021
Company Name	Date
Authorized Signature	432-681-3750
Janice Roberts	Phone
Print Above Name	432-520-3246
	Fax

CITY OF MIDLAND

SPECIFICATION

Employee Uniforms

1. SCOPE:

This specification is for the purchase of the City of Midland's uniform needs for a two year period. No other specification other than the bid document, purchase agreement or this document shall be applicable unless specifically approved in writing by the Purchasing Division.

2. INTENT:

The City furnishes uniforms for its employees to use for a two year period. Materials and dyes used are expected to last through this period under normal use and proper maintenance. At the end of this period the employee is allowed to keep his issued uniforms.

3. 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

Email: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel or other means (i.e. Verbal) shall not be considered binding.

4. DEFINITIONS:

4.1. VENDOR

Company who sells a product or service wishing to provide same to the City.

4.2. CONTRACTOR

The vendor who was successful in their efforts to provide a bid considered to be most advantageous to the City and subsequently awarded the purchase Agreement.

4.3. REGULAR UNIFORMS (SHIRTS):

Those which are to be worn by the general worker.

4.4. SUPERVISOR UNIFORMS (SHIRTS):

Consists of the same type of pants and shirts, except that shirt colors will be different from the regular uniforms.

4.5. WELDERS UNIFORMS:

Those that will be worn by personnel performing welding operations. These uniforms will be of essentially the same description as the regular uniforms except that the material shall be 100% cotton.

5. REQUIREMENTS

Bidders shall indicate to the right of each requirement whether the bidder meets or exceeds the requirement. Explain how the requirement is exceeded. Supply an additional sheet if necessary, numbering each explanation with the requirement number being referenced.

	REQUIREMENT	COMMENT
5.1. GENERAL:		
5.1.1.	Pricing shall be provided for the initial purchase, firm for ninety days and firm pricing for the balance of the two year contract to allow for additional uniforms to be purchased due to employee turnover and loss through wear or size change.	Meets
5.1.2.	All measurements are the responsibility of the Vendor.	Meets
5.1.3.	The Contractor must be able to provide measurement and other services in Midland at the user department location. Performance of this requirement by a third party is strictly prohibited.	Meets
5.1.4.	All prices shall be quoted F.O.B. Midland, Texas, freight included.	Meets
5.1.5.	Bidder shall state the number of calendar days following the initial purchase that will be required to deliver new uniforms.	Meets
5.1.6.	A sample of each type and/or style of garment which is being bid must accompany the bid. *Each uniform sample must be clearly labeled with the vendor's name and the corresponding item number from the Detail Sheet.* These samples will be returned as follows:	Meets
5.1.6.1.	Unsuccessful bidders – at the time of execution of the agreement all samples can be picked up or they will be returned freight collect.	Meets
5.1.6.2.	Successful bidder (Contractor) – Sixty days following final delivery of all uniforms and expiration or termination of the Agreement, All samples submitted by the Contractor will be available for pick-up, or they will be shipped to the Contractor, freight Collect.	Meets
5.1.7.	The Contractor shall maintain sufficient inventories of the styles, types and colors of garments purchased to allow for minimal turnaround time for replacement of damaged or outsized uniforms and supply of uniforms for new employees.	Meets
5.2. CONTRACT ADMINISTRATION:		
5.2.1.	The ensuing contract will take form as a master agreement (see enclosed document) which outlines the contractual terms and conditions. Each user Division will be SOLELY responsible for the City's role in making the actual purchases for each individual employee.	Meets
5.2.2.	The instrument that will be used by the City to execute these acquisitions will be the Delivery Order (D.O., or In the future.the City may begin using purchasing cards for their purchases. Each D.O. shall have only ONE employee's uniform order. (See paragraph 5.2.2.6 below. unless	Meets

otherwise approved in writing by the Purchasing Office.

5.2.2.1. The employee's preference of colors(As applicable) — Meets

5.2.2.2. The employee's shirt style (as dictated by position/supervisor). PRODUCT NUMBER, ITEM NO. and whether short or long sleeves are desired. — Meets

5.2.2.3. The employee's choice of pants style. ITEM NO. and PRODUCT NUMBER. — Meets

5.2.2.4. The employee's measurements as obtained by the Contractor's representative.

5.2.2.5. The City department/division will make necessary arrangements with the Contractor to measure each employee, then issue the D.O.'s to cover those uniforms at that time.

5.2.2.6. AS AN ALTERNATE to #5.2.2 above, the City will consider the use of an order form provided by the supplier as long as there is only one person's uniforms on the order form and the purchase is made with a city purchasing Card. The form shall be identified with a unique number for tracking purposes. This may be a vendor number or a combination of the user division number and employee ID. The format of the form and its contents are subject to approval by the Purchasing Division prior to implementation.

6. QUALITY ASSURANCE:

The quality and workmanship shall be equal to or better than that of the samples that are submitted with the bids. Uniforms shall be new with no loose hems or stitches. Any uniform received exhibiting less quality will be rejected and returned to the Contractor for full replacement or credit. The minimum standards for the uniforms are as follows:

7. DETAIL REQUIREMENTS:

7.1. UNIFORM SHIRTS:

7.1.1. SHIRTS, Regular Long Sleeve –

65% Polyester/35% Cotton, 4.2 oz. Minimum, with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 935 OR Equal meeting the following specification.

7.1.1.1. PLACKET – Minimum of seven matching buttons

7.1.1.2. COLLARS will have permanent collar stays.

7.1.1.3. SLEEVES – Long Sleeves, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.1.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.1.1.5. POCKETS - (2) Button through without Flaps

7.1.1.6. COLORS –solids. All uniforms within a division shall be the same color.

7.1.1.7. PATCHES – See Paragraph "B"

7.1.2. SHIRTS, Regular Short Sleeve –

65% Polyester/35% Cotton, 4 2 oz. minimum poplin with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 935 OR Equal meeting the following specification.

7.1.2.1. COLLARS will have permanent collar stays.

7.1.2.2. PLACKET – Minimum of seven matching buttons

7.1.2.3. SLEEVES – vendor standard length.

7.1.2.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.1.2.5. POCKETS - (2) Button through without flaps

7.1.2.6. COLORS –solids. All uniforms within a division shall be the same color.

7.1.2.7. PATCHES – See Paragraph "B"

7.1.3. SHIRTS, Supervisor Long Sleeve –

65% Polyester/35% Cotton, 4.5 oz. Minimum with permanent press and treated for easy soil release. Bar tacked at stress points. Cintas Item Number 831 OR Equal meeting the following specification.

7.1.3.1. COLLARS will have permanent collar stays.

7.1.3.2. PLACKET – Minimum of seven matching buttons

7.1.3.3. SLEEVES – with placket and a minimum of one button: vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.3.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, and 4XL.

7.1.3.5. POCKETS - (2) w/ minimum of one functional button down flap

7.1.3.6. COLORS –Solid or Pinstripes. All uniforms within a division shall be the same color.

7.1.3.7. PATCHES – See Paragraph "B"

7.1.4. SHIRTS, Supervisor Short Sleeve –

65% Polyester/35% Cotton, 4.5 oz. minimum poplin with permanent press and treated for easy soil release. Bar tacked at stress points, Cintas Item Number 831 OR Equal meeting the following specification.

7.1.4.1. COLLARS will have permanent collar stays.

7.1.4.2. PLACKET – Minimum of seven matching buttons

7.1.4.3. SLEEVES – vendor standard length; single needle stitching at hem.

7.1.4.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, and 4XL

7.1.4.5. POCKETS - (2) w/ minimum of one functional button down flap

7.1.4.6. COLORS –solids or pinstripes. All uniforms within a division shall be the same color.

7.1.4.7. PATCHES – See Paragraph "B"

7.1.5. SHIRTS, Denim – Short Sleeve

100% Cotton. 6oz. Minimum. Permanent Press, full cut, two-piece back yoke. Cintas Item Number 65415 OR Equal meeting the following specification.

7.1.5.1. COLLARS will have permanent collar stays.

7.1.5.2. PLACKET – Minimum of seven matching buttons

7.1.5.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.5.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL, 4XL and 4XL.

7.1.5.5. POCKETS - (2)

7.1.5.6. COLORS –Denim.

7.1.5.7. PATCHES – See Paragraph "B"

7.1.6. SHIRTS, Denim – Long Sleeve

100% Cotton. 6oz. Minimum, Permanent Press, full cut, two-piece back yoke. Cintas Item Number 65415 OR Equal meeting the following specification.

7.1.6.1. COLLARS will have permanent collar stays.

7.1.6.2. PLACKET – Minimum of seven matching buttons

7.1.6.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.6.4. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL, 4XL and 4XL.

7.1.6.5. POCKETS - (2)

7.1.6.6. COLORS –Denim.

7.1.6.7. PATCHES – See Paragraph "B"

7.1.7. SHIRTS, Welder Uniforms (or for areas requiring cotton for safety) –

100% Cotton. 6oz. Minimum, Permanent Press, full cut, two-piece back yoke. Cintas Item Number 330 w/o pocket flap and 1393 with pocket flap, OR Equal meeting the following specification.

7.1.7.1. COLLARS will have permanent collar stays.

7.1.7.2. PLACKET – Minimum of seven matching buttons

7.1.7.3. SLEEVES –minimum of one button; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.7.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL.

7.1.7.5. POCKETS - (2) button through

7.1.7.6. COLORS –Solid or Pinstripes. All uniforms within a division shall be the same color.

7.1.7.7. PATCHES – See Paragraph "B"

7.1.8. SHIRTS, Button Down Dress –

60% Cotton, 40% Polyester, 4.2oz. Minimum, full cut, two piece back yoke with box pleat, and bottom scalloped hem. Cintas Item Number 374 OR Equal meeting the following specification.

7.1.8.1. COLLARS will have one button collar band, lined, top stitched.

7.1.8.2. PLACKET – Minimum of six matching buttons

7.1.8.3. SLEEVES –minimum of two button adjustable cuff; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.8.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL

7.1.8.5. POCKETS - (1) Left chest

7.1.8.6. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.8.7. PATCHES – See Paragraph "B"

7.1.9. BLOUSE, Button Down Dress –

60% Cotton, 40% Polyester, 4.2oz. Minimum, full cut, two piece back yoke with box pleat, and bottom scalloped hem. Cintas Item Number 528 OR Equal meeting the following specification.

7.1.9.1. COLLARS will have one button collar band, lined, top stitched.

7.1.9.2. PLACKET – Minimum of six matching buttons

7.1.9.3. SLEEVES –minimum of two button adjustable cuff; vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.1.9.4. SIZES: S through XL shall be in the base bid. Bidder to supply an adder for XXL and 3XL.

7.1.9.5. POCKETS - (1) Left chest

7.1.9.6. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.9.7. PATCHES – See Paragraph "B"

7.1.10. SHIRTS, T –

100% cotton, Preshrunk, 5.4 oz Minimum. Cintas Item Number 119 OR Equal meeting the following specification.

7.1.10.1. COLLARS – Crew neck, Rib Knit

7.1.10.2. SLEEVES – Set in and Hemmed with double stitching. SIZES: S through

XXL shall be in the base bid. Bidder to supply an adder for 3XL.

7.1.10.3. POCKETS – none

7.1.10.4. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.10.5. PATCHES – See Paragraph "B"

7.1.11. UNISEX GOLF JERSEY KNIT SHIRTS –

60% Cotton/40% Polyester, jersey knit, ribbed collar, breast pocket, hemmed short sleeves. Cintas Item Number 69148 OR Equal meeting the following specification.

7.1.11.1. COLLARS –Rib Knit

7.1.11.2. SLEEVES – Hemmed short with double stitching. SIZES: S through XXL shall be in the base bid. Bidder to supply an adder for 3XL.

7.1.11.3. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.11.4. PATCHES – See Paragraph "B"

7.1.12. GOLF SHIRTS –

60% Cotton/40% Polyester, jersey knit, ribbed collar, breast pocket, hemmed short sleeves. Cintas Item Number 259 OR Equal meeting the following specification.

7.1.12.1. COLLARS –Rib Knit

7.1.12.2. SLEEVES – Hemmed short with double stitching. SIZES: S through XXL shall be in the base bid. Bidder to supply an adder for 3 & 4XL or XS as applicable.

7.1.12.3. COLORS –Solid. All uniforms within a division shall be the same color.

7.1.12.4. PATCHES – See Paragraph "7.2"

7.2. PATCHES

7.2.1. **Preferred and included as the base price:** A City of Midland Embroidered LOGO patch will be placed over the Left breast pocket and an embroidered patch with the Division Name and Employee Name placed on the right breast (over the pocket if one is present). A list of the Division Names and Colors will be supplied at the time a contract is executed. The division name will replace "Feel the Energy". The skyline and division name will be in the division color.

MIDLAND
Feel the Energy!

7.2.1.1. Direct Embroidery

7.2.1.1.1. Where appropriate a direct embroidery LOGO may be applied. When direct embroidered on shirts such as a dress shirt or a polo shirt, the logo shall be made as small as practical.

7.2.1.2. A City of Midland patch (embroidered) is required over the left pocket. The patch will contain the following information: Bidder shall provide a deduct per garment for this method.



7.3. PANTS

7.3.1. PANTS, Standard, Full –

65% Polyester/35% Cotton, 7-: oz min. twill, permanent press, relaxed fit with hemmed cuffless bottoms and 2" belt loops. Bar tacks at stress points. Cintas Item Number 945 OR Equal meeting the following specifications.

7.3.1.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.1.2. POCKETS - two (2) back and two (2) front.

7.3.1.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.1.4. COLORS - Navy, Brown, or Khaki. All uniforms within a division shall be the same color.

7.3.2. PANTS, Cotton, Full –

100% Cotton, 8.5 oz min., soil and wrinkle resistant. Cintas Item Number 340 OR Equal meeting the following specifications.

7.3.2.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.2.2. POCKETS - two (2) back, left to have button closure, and two (2) front.

7.3.2.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched

7.3.2.4. COLORS - Navy or Khaki. All uniforms within a division shall be the same color.

7.3.3. PANTS, Jeans, Denim –

100% Cotton, 14 oz, regular fit, metal button closure, Cintas Item Number 394 OR Equal meeting the following specifications.

7.3.3.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.3.2. POCKETS – five (5) Including watch pocket

7.3.3.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.3.4. COLORS – Blue or Black. All uniforms within a division shall be the same color.

7.3.4. PANTS, Jeans Denim alternate.

Wrangler's Brand Denim jeans

7.3.4.1. All uniforms within a division shall be the same color

7.3.5. PANTS, Women's Standard

65% Polyester/35% Cotton, 7-: oz min. twill, permanent press, relaxed fit with hemmed cuffless bottoms and 5 belt loops. Bar tacks at stress points. Cintas Item Number 945 OR Equal meeting the following specifications.

7.3.5.1. ZIPPER will be brass, ratcheting, heavy duty.

7.3.5.2. POCKETS - two (2) back and two (2) front.

7.3.5.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.3.5.4. COLORS - Navy, Brown, or Khaki. All uniforms within a division shall be the same color.

7.4. SHORTS

7.4.1. SHORTS, Men's –

65% Polyester, 35% Cotton, 7.5 oz. min., pleated front, (2) rear darts, relaxed fit, button closure, 8" inseam, and 2" belt loops. (As an alternate where job requirements permit, shorts may be substituted for pants) Cintas Item Number 945 OR Equal meeting the following specifications.

7.4.1.1. ZIPPER will be brass, ratcheting, heavy duty.

7.4.1.2. POCKETS – two (2) slack style front and two (2) rear hip

7.4.1.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.4.1.4. COLORS – Navy or Khaki. All uniforms within a division shall be the same color.

7.4.2. SHORTS, Women's –

65% Polyester, 35% Cotton, 7.5 oz. min., pleated front, (2) rear darts, relaxed fit, Hook Eye Closure, 7-1/2" inseam, and 2" belt loops. (As an alternate where job requirements permit, shorts may be substituted for pants) Cintas Item Number 945 OR Equal meeting the following specifications.

7.4.2.1. ZIPPER will be brass, ratcheting, heavy duty.

7.4.2.2. POCKETS – two (2) slack style front

7.4.2.3. STITCHING - All loops, pockets and strain joints shall be bar tacked. All pockets and seams shall be double row stitched.

7.4.2.4. COLORS – Navy or Khaki. All uniforms within a division shall be the same color.

7.5. COVERALLS/ OVERALLS –

7.5.1. COVERALLS, Cotton –

100% Cotton, preshrunk twill, 8.5oz Minimum, durable press, two-way zipper, and

Side entry slashes, Cintas Item Number 910 OR Equal meeting the following specifications.

7.5.1.1. COLLARS – Fold down

7.5.1.2. PLACKET – Extra wide front

7.5.1.3. CLOSURE – Concealed front gripper

7.5.1.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.1.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.1.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.1.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.1.8. PATCHES – Included. See Paragraph "7.2"

7.5.2. COVERALLS, Blend –

65% Polyester, 35% Cotton, Permanent press 7-1/2oz. Minimum twill, two-way zipper, and Side entry slashes, Cintas Item Number 912 OR Equal meeting the following specifications.

7.5.2.1. COLLARS – Fold down

7.5.2.2. PLACKET – Extra wide front

7.5.2.3. CLOSURE – Concealed front gripper

7.5.2.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.2.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.2.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.2.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.2.8. PATCHES – included. See Paragraph "7.2"

7.5.3. COVERALLS, Cotton – Insulated

100% Cotton. Duck twill, 8.5oz Minimum, durable press, two-way zipper, and Side entry slashes, Cintas Item Number 910 OR Equal meeting the following specifications.

7.5.3.1. COLLARS – Fold down

7.5.3.2. PLACKET – Extra wide front

7.5.3.3. CLOSURE – Concealed front gripper

7.5.3.4. SLEEVES – Adjustable, snap cuffs, vendor standard length. Any extra cost for shorter or longer lengths shall be stated in the bid cost detail.

7.5.3.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder

for XXL, 3XL, 4XL and 5XL.

7.5.3.6. POCKETS – two (2) Chest and two (2) hip, thigh pocket

7.5.3.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.3.8. PATCHES – Included. See Paragraph "7.2"

7.5.3.9. 11 3/4 oz. Fine Weave Denim (100% Cotton)

7.5.3.10. BACK – Cross over, high back, self suspenders

7.5.3.11. SEAMS – Triple Stitched

7.5.3.12. FLY - Zippered

7.5.3.13. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.3.14. POCKETS – Large bib pocket, pencil pocket, watch pocket, double rule pocket, hammer loop, Reinforced back pockets, minimum

7.5.3.15. COLORS –solids. All uniforms within a division shall be the same color.

7.5.3.16. PATCHES – included. See Paragraph "7.2"

7.5.4. BIB OVERALLS, Insulated, –

Dickies 82325 INDIGO BIB OVERALL or equal meeting the following requirements:

7.5.4.1. 11 3/4 oz. Fine Weave Denim (100% Cotton)

7.5.4.2. BACK – Cross over, high back, self suspenders

7.5.4.3. SEAMS – Triple Stitched

7.5.4.4. FLY - Zippered

7.5.4.5. SIZES: XS through XL shall be in the base bid. Bidder to supply an adder for XXL, 3XL, 4XL and 5XL.

7.5.4.6. POCKETS – Large bib pocket, pencil pocket, watch pocket, double rule pocket, hammer loop, Reinforced back pockets, minimum

7.5.4.7. COLORS –solids. All uniforms within a division shall be the same color.

7.5.4.8. PATCHES – included. See Paragraph "7.2"

7.6. SMOCKS

7.6.1. SMOCK, Blend –

80% Polyester, 20% Cotton 5-1/4 oz durable press poplin, full button or snap front, notched collar, treated for easy soil release, fitted waste, belt back, two button adjustable sleeve, two front pockets. All uniforms within a division shall be the same color. Cintas Item Number 964 OR Equal

7.7. LAB COAT

7.7.1. **LAB COATS –**

80% Polyester, 20% Cotton 5-1/4 oz durable press poplin, full 5 button or 5 snap front, two piece notched collar, treated for easy soil release, length approximately 40" minimum straight bottom: minimum of one breast pocket with pencil stall and two lower pockets, seam in back of sleeve. All uniforms within a division shall be the same color. Cintas Item Number 925 OR Equal

7.8. JACKETS

7.8.1. JACKET, Perma Lined

65% Polyester, 35% Cotton, 7-1/2. 100% nylon lining, 1/8" foam insulation, non woven back, two slash pockets, heavy duty brass zipper, two button adjustable cuff, and fold down collar, Cintas Item Number 970 OR Equal.

7.8.2. JACKET, Dickies 760 or equal meeting the following requirements.

This 100% cotton duck jacket, quilted-lined with Hollofil insulation, safety-stitched seams for added durability and generous sizing for maximum comfort. With ribbed-knit cuffs and waist, plus a versatile lined hood.

7.8.3. JACKET, WindBreaker, Cintas Item Number 80600 OR Equal

7.8.4. PARKA – Tundra System, Complete

Cintas Item Number 80175/80178 OR Equal.

7.8.5. PARKA – Tundra System Outer only

Outer shell made of 228 Taslan® nylon for wind and water resistance. Heavy-duty zipper with ripstop nylon stormflap placket. Concealed zip-off hood. Side entry and lower chest pockets with zipper closures. Loose fitting ripstop nylon shoulder yoke. Cintas Item Number 80178 OR Equal

7.8.6. PARKA - Tundra System Inner only

Cintas Item Number 80175 OR Equal

Uniform Delivery Locations

Building Name	Address	Zip code
Animal Services	1200 N. Fairgrounds	79706
City Hall	300 N. Loraine	79701
Facility Services /Transportation	1800 E. Orchard Lane (Bldg 3)	79701
Fire Station 1	1500 W. Wall	79701
Fire Station 2	701 E. Florida	79701
Fire Station 3	1707 N. Lamesa Rd	79701
Fire Station 4	5100 N. Big Spring	79705
Fire Station 5	2210 W. Golf Course	79701
Fire Station 6	4315 Thomason	79703
Fire Station 7	2507 Pliska Drive	79706
Fire Station 8	3301 Haynes	79707
Fire Station 9	6005 Midland Drive	79707
Fire Station 10	4543 Sinclair Ave.	79703
Fire Station 11	6600 Briarwood Ave.	79707
Firing Range	4214 FM307	79706
Garage	1701 E. Orchard Lane	79701
Harris Field	3215 FM307	79706
Health & Senior Services	3303 W. Illinois	79703
Hogan Buildings	3600 N. Fairgrounds	79705
Kingsway Senior Center	3303 W. Illinois	79703
Landfill	7904 S. Garden City Hwy	79701
Midland International Airport	9506 LaForce Blvd.	79706
Martin Luther King Jr Center	2300 Butternut Lane	79705
Municipal Court	406 E. Illinois	79701
Parks	2701 W. Elizabeth	79701
Police & Communication Bldg	601 N. Loraine	79701
Scharbauer Sports Complex	5514 Champions Dr	79703
Solid Waste	600 N. Carver (Bldg 5)	79701
Southeast Senior Center	1803 E. Indiana	79701
Spraberry Farm	11501 FM 1379	79701
Transportation/Traffic Operations	1602 Orchard Lane (Bldg 3)	79701
Vehicle Services	600 N. Carver (Bldg 1)	79701
Warehouse/Meter Shop	1602 Orchard Lane (Bldg 4)	79701
Water Pollution Control Plant	3600 FM 307	79701
Water Purification Plant	5006 N. Midland Dr	79707
Water & Wastewater	1602 Orchard Lane (Bldg 2)	79701

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.

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: Cintas Corporation

Local Address (must be within the City limits): 2029 S Loop 250 W, Midland, TX 79703

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? 66
3. Year your business was established in the City of Midland: October 2006
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: Juanice Roberts Date: 10/26/21

Printed Name and Title: Juanice Roberts

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.

No-Bid
Response
For
Request #: 22000157

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 OF MIDLAND

ADDENDUM

BID # 22000157

TO ALL BIDDERS ON THE SUBJECT BID: Employee Uniforms

ADDENDUM # 01

DATE: October 21, 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: Does the garment price need to include the cost of logo and shipping or can we list those charges separately?

A1: Per the RFB documents the garment pricing needs to include all charges as one price. Separate pricing will not be allowed.

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

All other terms and conditions shall remain the same.

Cintas Corporation
Company Name

Bidder Authorized Signature

10/26/2021
Date

Juanice Roberts
Please Print Above Name

432-681-3750
Phone

City of Midland - Bid Tabulation

			Cintas Corporation			Aramark Uniform			Prudential Overall Supply		
BID # 22000157			2029 Loop 250			115 N First Street			1661 Alton Pkwy		
Employee Uniforms			Midland, TX 79703			Burbank, CA 91502			Irvine, CA 92606		
OPENED October 27, 2021			Juanice Roberts			Warren Simon			Mike Ray		
			robertsj3@cintas.com			warren-simon@aramark.com			MikeRay@prudentialuniforms.com		
ITEM	QTY	DESCRIPTION	PRODUCT CODE	COST EACH	TOTAL	PRODUCT CODE	COST EACH	TOTAL	PRODUCT CODE	COST EACH	TOTAL
1	2000	Shirts-Long Sleeve-65/35 Blend		$12.50	$25,000.00	101	$15.99	$31,980.00	SP14	$14.83	$29,660.00
		Extra Cost for : XXL		$13.50			$17.99			$16.87	
		3XL		$14.50			$17.99			$16.87	
		4XL		$17.50			$17.99			$16.87	
		5XL					$17.99			$16.87	
2	1200	Shirts-Short Sleeve-65/35 Blend		$11.50	$13,800.00	102	$12.99	$15,588.00	SP24	$13.14	$15,768.00
		Extra Cost for : XXL		$12.50			$14.99			$14.84	
		3XL		$13.50			$14.99			$14.84	
		4XL		$14.50			$14.99			$14.84	
		5XL		$15.50			$14.99			$14.84	
3	60	Shirts-Supervisor Long Sleeve- 65/35 Blend		$17.00	$1,020.00	101	$15.99	$959.40	SP14	$14.83	$889.80
		Extra Cost for : XXL		$18.00			$17.99			$16.87	
		3XL		$19.00			$17.99			$16.87	
		4XL		$20.00			$17.99			$16.87	
		5XL		$24.00			$17.99			$16.87	
4	120	Shirt-Supervisor Short Sleeve-65/35 Blend		$16.00	$1,920.00	102	$12.99	$1,558.80	SP24	$13.14	$1,576.80
		Extra Cost for : XXL		$17.00			$14.99			$14.84	
		3XL		$18.00			$14.99			$14.84	
		4XL		$19.00			$14.99			$14.84	
		5XL		$20.00			$14.99			$14.84	
5	120	Shirts-Welder Long Sleeve-100% Cotton		$16.00	$1,920.00	1221	$15.99	$1,918.80	SC30	$18.37	$2,204.40
		Extra Cost for : XXL		$17.00			$17.99			$21.10	
		3XL		$18.00			$17.99			$21.10	
		4XL		$19.00			$17.99			$21.10	
		5XL		$20.00			$17.99			$21.10	
6	80	Shirts- Button Down Dress		$22.00	$1,760.00	1401	$17.99	$1,439.20	SR70-71	$20.28	$1,622.40
		Extra Cost for : XXL		$23.00			$19.99			$23.27	
		3XL		$24.00			$19.99			$23.27	
		4XL		$25.00			$19.99			$23.27	
		5XL		$26.00			$19.99			$23.27	
7	80	Blouse- Button Down Dress		$22.00	$1,760.00	1406	$17.99	$1,439.20	SR60/61	$20.28	$1,622.40
		Extra Cost for : XXL		$23.00			$19.99			$23.27	
		3XL		$24.00			$19.99			$23.27	
		4XL		$25.00			$19.99			$23.27	
		5XL		$26.00			$19.99			$23.27	
8	500	Shirts- T		$6.00	$3,000.00	GN8000	$7.99	$3,995.00	5000	$8.04	$4,020.00
		Extra Cost for : XXL		$7.00			$9.99			$11.29	
		3XL		$8.00			$9.99			$13.28	
		4XL		$9.00			$9.99			$13.28	
		5XL		$10.00			$9.99			$13.28	
9	120	Unisex Golf Jersey Knit		$16.00	$1,920.00	11138	$15.99	$1,918.80	K100P	$16.16	$1,939.20
		Extra Cost for : XXL		$17.00			$17.99			$17.69	
		3XL		$18.00			$17.99			$20.73	
		4XL		$19.00			$17.99			$22.28	
		5XL		$20.00						$29.16	
10	220	Shirts- Golf		$16.50	$3,630.00	11138	$15.99	$3,517.80	88181P	$18.89	$4,155.80
		Extra Cost for : XXL		$17.50			$17.99			$20.47	
		3XL		$18.50			$17.99			$22.05	
		4XL		$19.50			$17.99			$23.62	
		5XL		$20.50			$17.99			$26.78	
11	200	Pants- Standard, Full		$14.00	$2,800.00	201	$14.99	$2,998.00	PT20	$12.64	$2,528.00
		Extra Cost for : XXL		$15.00			$16.99			$15.17	
		3XL		$16.00			$16.99			$15.17	
		4XL		$17.00			$16.99			$15.17	
		5XL		$18.00			$16.99			$15.17	
12	200	Pants- Cotton, Full		$23.00	$4,600.00	2015	$15.99	$3,198.00	PC20	$15.45	$3,090.00
		Extra Cost for : XXL		$24.00			$17.99			$18.54	
		3XL		$25.00			$17.99			$18.54	
		4XL		$26.00			$17.99			$18.54	
		5XL		$27.00			$17.99			$18.54	
13	2200	Pants- Jeans, Denim, Contractor Brand		$18.00	$39,600.00	217	$18.99	$41,778.00	PD60	$17.72	$38,984.00
		Extra Cost for : XXL		$19.00			$20.99			$21.27	
		3XL		$20.00			$20.99			$21.27	
		4XL		$21.00			$20.99			$21.27	
		5XL		$22.00			$20.99			$21.27	
14	2200	Pants- Jeans, Denim, Wranglers Brand		$29.00	$63,800.00	5521	$25.99	$57,178.00	PT20	$12.64	$27,808.00
		Extra Cost for : XXL		$30.00			$27.99			$15.17	
		3XL		$31.00			$27.99			$15.17	
		4XL		$32.00			$27.99			$15.17	
		5XL		$33.00			$27.99			$15.17	
15	80	Pants- Women's Standard		$18.00	$1,440.00	236	$14.99	$1,199.20	PT21	$18.18	$1,454.40
		Extra Cost for : XXL		$19.00			$16.99			$21.81	
		3XL		$20.00			$16.99			$21.81	

		4XL		$21.00			$16.99			$21.81	
		5XL		$22.00			$16.99			$21.81	
16	170	Shorts- Men's		$14.00	$2,380.00	227	$12.99	$2,208.30	PT26	$11.03	$1,875.10
		Extra Cost for : XXL					$14.99			$13.24	
		3XL					$14.99			$13.24	
		4XL					$14.99			$13.24	
		5XL					$14.99			$13.24	
17	100	Shorts-Women's		$18.00	$1,800.00	20261	$12.99	$1,299.00	PT27	$14.91	$1,491.00
		Extra Cost for : XXL		$19.00			$14.99			$17.90	
		3XL		$20.00			$14.99			$17.90	
		4XL		$21.00			$14.99			$17.90	
		5XL		$22.00			$14.99			$17.90	
18	60	Coveralls-100% Cotton		$42.99	$2,579.40	314	$25.99	$1,559.40	CC16	$40.55	$2,433.00
		Extra Cost for : XXL		$43.99			$27.99			$47.71	
		3XL		$44.99			$27.99			$47.71	
		4XL		$45.99			$27.99			$47.71	
		5XL		$46.99			$27.99			$47.71	
19	60	Coveralls- Blend		$37.99	$2,279.40	316	$23.99	$1,439.40	CT10	$29.76	$1,785.60
		Extra Cost for : XXL		$38.99			$25.99			$34.78	
		3XL		$39.99			$25.99			$34.78	
		4XL		$40.99			$25.99			$34.78	
		5XL		$41.99			$25.99			$34.78	
20	180	Coveralls-Insulated		$49.00	$8,820.00	3358	$85.99	$15,478.20	CT30	$60.66	$10,918.80
		Extra Cost for : XXL		$50.00			$87.99			$74.04	
		3XL		$51.00			$87.99			$74.04	
		4XL		$52.00			$87.99			$74.04	
		5XL		$53.00						$74.04	
21	180	Overalls-Cotton		$42.99	$7,738.20	3357	$70.99	$12,778.20	CC16	$40.55	$7,299.00
		Extra Cost for : XXL					$80.99			$47.71	
		3XL					$80.99			$47.71	
		4XL					$80.99			$47.71	
		5XL					$80.99			$47.71	
22	80	Overalls- Insulated		$52.00	$4,160.00	3357	$70.99	$5,679.20	CC16	$40.55	$3,244.00
		Extra Cost for : XXL					$80.99			$47.71	
		3XL					$80.99			$47.71	
		4XL					$80.99			$47.71	
		5XL					$80.99			$47.71	
23	20	Smocks		$18.00	$360.00	3059	$9.99	$199.80	KP10	$14.49	$289.80
		Extra Cost for : XXL		$19.00			$11.99			$17.39	
		3XL		$20.00			$11.99			$17.39	
		4XL		$21.00			$11.99			$17.39	
		5XL		$22.00			$11.99			$17.39	
24	20	Lab Coats		$16.00	$320.00	380	$18.99	$379.80	KP14	$15.95	$319.00
		Extra Cost for : XXL		$17.00			$21.99			$19.14	
		3XL		$18.00			$21.99			$19.14	
		4XL		$19.00			$21.99			$19.14	
		5XL		$20.00			$21.99			$19.14	
25	180	Jacket-Perma Lined		$26.00	$4,680.00	300	$22.99	$4,138.20	JT50	$27.35	$4,923.00
		Extra Cost for : XXL		$27.00			$24.99			$32.83	
		3XL		$28.00			$24.99			$32.83	
		4XL		$29.00			$24.99			$32.83	
		5XL		$30.00			$24.99			$32.83	
26	180	Jacket-Hooded Duck, Dickies		$44.00	$7,920.00	3355	$55.99	$10,078.20	J763H	$51.87	$9,336.60
		Extra Cost for : XXL		$45.00			$65.99			$53.36	
		3XL		$46.00			$65.99			$56.32	
		4XL		$47.00			$65.99			$57.81	
		5XL		$48.00			$65.99			$60.77	
27	180	Jacket-Wind Breaker		$27.00	$4,860.00	1993	$24.99	$4,498.20	JST73	$25.24	$4,543.20
		Extra Cost for : XXL		$28.00			$26.99			$26.81	
		3XL		$29.00			$26.99			$29.97	
		4XL		$30.00			$26.99			$31.55	
		5XL		$31.00			$26.99			$34.71	
28	100	Jacket-Tundra System Outer Only		$44.00	$4,400.00	82002	$75.99	$7,599.00	88205	$76.42	$7,642.00
		Extra Cost for : XXL		$45.00			$85.99			$81.01	
		3XL		$46.00			$85.99			$83.30	
		4XL		$47.00			$85.99			$85.60	
		5XL		$48.00			$85.99			$87.89	
29	100	Jacket-Tundra System Inner Only		$44.00	$4,400.00	2943	$27.99	$2,799.00	88205		NO BID
		Extra Cost for : XXL		$45.00			$30.99				NO BID
		3XL		$46.00			$30.99				NO BID
		4XL		$47.00			$30.99				NO BID
		5XL		$48.00			$30.99				NO BID
		Direct Embroidered Logo							DE Logo	$4.50	
		Direct Embroidered Name							DE Name	$2.00	
		Freight								Included	
		TOTALS:			$224,667.00			$240,800.10			$193,423.30

Bidding Summary:

64 **Bid requests were issued.**

3 **Bids listed above**

1 **NO BIDS were received.**

60 **Bidders did not respond.**

0 **Incomplete Proposals**

City Council Meeting

Item Number: 9

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 SLURRY SEAL PROJECT TO VIKING CONSTRUCTION, INC. OF GEORGETOWN, TEXAS, AT A TOTAL COST OF $1,484,100.62; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for the Fiscal Year 2022 Slurry Seal Project.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding in the amount of $1,484,101 is available in the Microsurfacing and Slurry Seal Project, and the contingency of $74,205 is available in the FY22 General Fund operating budget.

Discussion:

The City Manager approved the plans and specifications and authorized advertisement for bids for the Fiscal Year 2022 Slurry Seal Project. This pavement restoration technique is designed to extend the useful life of the City's streets. Thirty-five (35) bid requests were issued. We received three (3) bids. Staff recommends awarding a contract for this project to the apparent low bidder, Viking Construction, Inc. Please see the attached memo from Abe Langston, Transportation Manager, for additional information.

Therefore, please consider a resolution awarding a contract for the Fiscal Year 2022 Slurry Seal Project to Viking Construction, Inc. of Georgetown, Texas for a cost of $1,484,100.62. Staff also recommends authorizing the City Manager to execute change orders up to the contingency amount of $74,205.03. The total cost for this project should not exceed $1,558,305.65.

Tina Jaug

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE FISCAL YEAR 2022 SLURRY SEAL PROJECT TO VIKING CONSTRUCTION, INC. OF GEORGETOWN, TEXAS, AT A TOTAL COST OF $1,484,100.62; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the plans and specifications and advertised for competitive bids for the Fiscal Year 2022 Slurry Seal Project (the "Project"); and

WHEREAS, Bid No. 22000572 was opened on November 10, 2021, with the lowest responsible bidder being Viking Construction, Inc. of Georgetown, Texas ("Contractor"), having submitted a bid of $1,484,100.62 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 $1,484,100.62; 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 $1,484,100.62, 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 $74,205.03.

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 $1,558,305.65 from funds available as follows:

A. $1,484,100.62 in the Microsurfacing and Slurry Seal Project for the contract amount; and

B. $74,205.03 in the FY22 General Fund Operating Budget for change orders;

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., 2022, 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 # 22000572 FY 2022 Slurry Seal Project **OPENED** November 10, 2021				Missouri Petroleum Products Company 1620 Woodson Road St. Louis, MO 63114 314-713-0658 stevej@missouripetroleum.com		Intermountain Slurry Seal, Inc 701 E Main Street Lewisville, TX 75057 972-874-8724 josh.bowen@gcinc.com		Viking Construction Inc 2592 Shell Rd Georgetown, TX 78628 512-930-5777 dan@vciss.com	
ITEM	UNIT	QTY	DESCRIPTION	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
1	LS	1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	$176,500	$176,500.00	$140,000.00	$140,000.00	$62,000.00	$62,000.00
2	SY	504,291	Emulsified Asphalt Slurry Seal Surfacing	$2.87	$1,447,315.17	$2.67	$1,346,456.97	$2.82	$1,422,100.62
			TOTALS:		**$1,623,815.17**		**$1,486,456.97**		$1,484,100.62

Bidding Summary:

35 Bid requests were issued.

3 Bids listed above

0 NO BIDS were received.

32 Bidders did not respond.

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: FY 2022 Slurry Seal Project
Bid# 22000572
Recommend Award

DATE: November 11, 2021

CC: Gabe McClelland, Engineering Senior Manager

The bid tabulation for the Fiscal Year 2022 Slurry Seal Project has been reviewed by the Transportation Division. Slurry Seal is a pavement preservation technique that includes the application of a mixture of water, polymer modified asphalt emulsion, aggregate, and chemical additives to an existing asphalt concrete surface. These surface treatments are designed to extend the useful life of our paved streets. Slurry Seal is the chosen application for residential and minor collector roadways.

Viking Construction, Inc. is the apparent low bidder and has a track record of successfully completing pavement preservation projects in the State of Texas. In addition, the unit prices appear to be in line with current pricing and trends. Therefore, I am recommending award of the FY 2022 Micro-Surfacing and Slurry Seal Project to Viking Construction, Inc. in the amount of $1,484,100.62 (Base Bid) plus $74,205.03 (5% Contingency) for a total of $1,558,305.65. Please see the amounts and funding sources below:

Base Bid:	$1,484,100.62 (900344-005: Construction Streets and Roads)
Contingency (5%):	$74,205.03 (001085-54220: Maintenance Street and Roadways)
Total Amount:	**$1,558,305.65**

City of Midland - Bid Tabulation

BID # 22000572 FY 2022 Slurry Seal Project **OPENED** November 10, 2021				Missouri Petroleum Products Company 1620 Woodson Road St. Louis, MO 63114 314-713-0658 stevej@missouripetroleum.com		Intermountain Slurry Seal, Inc 701 E Main Street Lewisville, TX 75057 972-874-8724 josh.bowen@gcinc.com		Viking Construction Inc 2592 Shell Rd Georgetown, TX 78628 512-930-5777 dan@vciss.com	
ITEM	UNIT	QTY	DESCRIPTION	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
1	LS	1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	$176,500	$176,500.00	$140,000.00	$140,000.00	$62,000.00	$62,000.00
2	SY	504,291	Emulsified Asphalt Slurry Seal Surfacing	$2.87	$1,447,315.17	$2.67	$1,346,456.97	$2.82	$1,422,100.62
			TOTALS:		**$1,623,815.17**		**$1,486,456.97**		$1,484,100.62

Bidding Summary:

35 Bid requests were issued.

3 Bids listed above

0 NO BIDS were received.

32 Bidders did not respond.

THE CITY OF MIDLAND

CONTRACT

Contract No.22000572

THIS CONTRACT, effective the 11th day of January 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Viking Construciton, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 1,484,100.62 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for FY2022 Slurry Seal 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 365 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 Viking Construction, 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

CITY OF MIDLAND

PURCHASING DIVISION

BID REQUEST

DATE: 10/15/21

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 22000572

OPENING TIME: 2 :00 PM

CLOSING DATE: 11/10/21

CITY OF MIDLAND

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

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

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Materials, equipment and labor necessary for the FY2022 Slurry Seal Project in accordance with the attached detail sheet, specifications, drawing and contract.	$ 2.82	$ 1,422,100.62
				TOTAL	$1,484,100.62

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: Viking Construction Inc.
ADDRESS 2592 Shell Rd.
CITY Georgetown, ST Tx. ZIP 78628
PHONE NO. 512-930-5777 FAX NO. 512-868-1955

CASH DISCOUNT: 0 % DAYS

DELIVERY CAN BE MADE 4/01/2022

AUTHORIZED SIGNATURE Brad J Pearce

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

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 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.

BID SCHEDULE

FOR

FY 2022 Slurry Seal 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 construction of the various items of the project.

Lists and maps showing the streets selected for treatment in the FY 2022 Slurry Seal Project are included in these bid documents. Quantities for the FY 2022 Slurry Seal Project have been included below.

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. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished.

Base Bid: Slurry Seal

BASE BID – FY 2022 Slurry Seal Project

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	LS	1	$62,000.00	$62,000.00
2	FY 2022-Emulsified Asphalt Slurry Seal Surfacing in accordance with the City of Midland's Slurry Seal Specifications	SY	504,291	$2.82	$1,422,100.62

TOTAL BASE BID: $1,484,100.62

X Brad J Pearce-Vice President

Micro-Surfacing and/or Slurry Seal

City of Midland Specifications

1. SCOPE

The work covered by this specification includes the design, testing, construction, and quality control required for the proper application of micro-surfacing and slurry seal treatment services.

- **Micro-Surfacing**

This application is used to give maximum skid resistance and an improved wearing surface. An example would be on pavements which have high traffic volume. Rate of application: 25 to 28 pounds per square yard of dry aggregate minimum.

- **Slurry Seal**

TYPE IIA: This application is used to give maximum skid resistance and an improved wearing surface. An example would be on pavements which have a highly textured surface and require this size aggregate to fill in the voids and provides an improved wearing surface. Rate of application: 15 to 18 pounds per square yard of dry aggregate minimum.

2. DESCRIPTION

Both the Micro-Surfacing and the Slurry Seal shall consist of a mixture of an approved emulsified asphalt, mineral aggregate, mineral filler, and water and specified additives, proportioned, mixed and uniformly spread over a properly prepared surface. The completed micro-surface shall leave a homogenous mat, adhere firmly to the prepared surface and have a skid resistant surface texture.

The streets to be treated are shown on the attached lists and maps.

3. LABORATORY EVALUATION

Before work commences, the Contractor shall submit a signed original of a mix design containing the test results and proportioning of the specific materials to be used on the project. This design shall have been performed by a qualified laboratory. Previous lab reports covering the exact materials to be used may be accepted provided they were made during the calendar year. This initial mix design will be done at the Contractor's expense. Upon receipt of the original mix design, an independent qualified laboratory selected by the City may perform tests using the same materials as used in the initial mix design for verification of the results. This testing will be done at the City's expense. No work will begin until all the materials and/or mix design proportions have met the specifications as required. Once the materials are approved, no substitutions will be permitted unless first tested and approved by the methods stated above.

4. APPLICABLE SPECIFICATIONS

The following specifications and test methods form a part of this specification.
AASHTO: American Association of State Highway and Transportation Officials
ASTM: American Society for Testing and Materials
ISSA: International Slurry Seal Association

AGGREGATE AND MINERAL FILLER		
AASHTO TEST NO.	**ASTM TEST NO.**	**TEST**
T 2	D 75	Sampling Aggregates
T 27	C136	Sieve Analysis of Aggregates
T 11	C117	Materials Finer than No. 200 in Mineral Aggregate
T 176	D 2419	Sand Equivalent Value of Soils and Fine Aggregate
T 19	C 29	Bulk Density ("Unit Weight") and Voids in Aggregate
T 104	C 88	Soundness of Aggregates by use of Sodium Sulfate or Magnesium Sulfate
T 96	C 131	Resistance to Degradation of Small Size Aggregate by Abrasion and Impact in the Los Angeles Machine
M17	D 242	Mineral Filler for Bituminous Paving Mixtures

EMULSIFIED ASPHALTS		
AASHTO TEST NO.	**ASTM TEST NO.**	**TEST**
T 40	D 140	Sampling Bituminous Materials
M 140	D 977	Specifications for Emulsified Asphalt
M 208	D 2397	Specifications for Cationic Emulsified Asphalt
T 59	D 244	Testing Emulsified Asphalt
T 59	D 6997	Distillation of Emulsified Asphalt

SLURRY SEAL SYSTEM		
ISSA TEST NO.	**ASTM NO.**	**TEST**
A105		Design, Testing, and Construction of Slurry Seal
TB 100		Test Method for Wet Track Abrasion of Slurry Surfaces
TB 101		Guide for Sampling Slurry Mix Extraction Test
TB 106		Measurement of Slurry Seal Consistency
TB 109		Test Method for Measurement of Excess Asphalt in Bituminous Mixtures by Use of a Loaded Wheel Tester
TB 111		Outline Guide Design Procedure for Slurry Seal
TB 112		Method of Estimate Slurry Seal Spread Rates and to Measure Pavement Macrotexture
TB 113		Trail Mix Procedures for Slurry Seal Design
TB 114		Wet Stripping Test for Cured Slurry Seal Mixes
TB 115		Determination of Slurry Seal Compatibility
TB 139		Method of Classified Emulsified Asphalt, Aggregate Mixtures by Modified Cohesion Test Measurement of Set and Cure Characteristics

MATERIALS

5. AGGREGATE

The mineral aggregate shall consist of a natural or manufactured crushed stone such as granite, slag, limestone or other high quality aggregates or a combination thereof and shall be free of dirt, organic matter, clay balls, and adherent films of clay, dust or other objectionable material. The aggregate shall contain no free water.

5.1 Quality Tests

The aggregate should meet the specified polishing values and these minimum requirements:

TEST	Test Method		Specification
	AASHTO	ASTM	
Sand Equivalent Value of Soils and Fine Aggregate	T 176	D 2419	45 Minimum – Slurry 65 Minimum - Micro
Soundness of Aggregates by Use of Sodium Sulfate of Magnesium Sulfate	T 104	C 88	15% Maximum w/NA_2SO_4 25% Maximum w/$MgSO_4$
Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine[1]	T96	C 131	35% Maximum – Slurry 30% Maximum – Micro

[1]The abrasion test is run on the parent aggregate.

5.2 GRADATION

When tested in accordance with AASHTO T 27 (ASTM C 136) and AASHTO T 11 (ASTM C 117), the mix design aggregate gradation shall be within one of the following bands (or one recognized by the local paving authority[1]):

SIEVE SIZE	TYPE I PERCENT PASSING	TYPE II PERCENT PASSING	TYPE III PERCENT PASSING	STOCKPILE TOLERANCE FROM THE MIX DESIGN GRADATION
3/8 (9.5 mm)	100	100	100	
#4 (4.75 mm)	100	90-100	70-90	±5%
#8 (2.36 mm)	90-100	65-90	45-70	±5%
#16 (1.18 mm)	65-90	45-70	28-50	±5%
#30 (600 um)	40-65	30-50	19-34	±5%
#50 (330 um)	25-42	18-30	12-25	±4%
#100 (150 um)	15-30	10-21	7-18	±3%
#200 (75 um)	10-20	5-15	5-15	±2%

[1]The City of Midland will also accept the following bands for Type II Gradation:

Slurry Seal

SIEVE SIZE	TYPE II PERCENT PASSING	STOCKPILE TOLERANCE FROM THE MIX DESIGN GRADATION
3/8 (9.5 mm)	100	
#4 (4.75 mm)	85-100	±5%
#8 (2.36 mm)	55-80	±5%
#16 (1.18 mm)	35-60	±5%
#30 (600 um)	25-45	±5%
#50 (330 um)	18-30	±4%
#100 (150 um)	10-21	±3%
#200 (75 um)	5-15	±2%

Micro-Surface

SIEVE SIZE	TxDOT Grade II PERCENT PASSING	STOCKPILE TOLERANCE FROM THE MIX DESIGN GRADATION
3/8 (9.5 mm)	100	

#4 (4.75 mm)	86-94	±5%
#8 (2.36 mm)	45-65	±5%
#16 (1.18 mm)	25-46	±5%
#30 (600 um)	15-35	±5%
#50 (330 um)	10-25	±4%
#100 (150 um)	7-18	±3%
#200 (75 um)	5-15	±2%

The gradation of the aggregate stockpile shall not vary by more than the stockpile tolerance from the mix design gradation (indicated in the table above) while also remaining within the specification gradation band. The percentage of aggregate passing any two sieves shall not change from one end of the specified range to the other end.

The aggregate will be accepted at the job location or stockpile based on five gradation tests sampled according to AASHTO T 2 (ASTM D 75). If the average of the five tests is within the stockpile tolerance from the mix design gradation, the material will be accepted. If the average of those test results is out of specification or tolerance, the Contractor will be given the choice to either remove the material or blend additional aggregate with the stockpile material to bring it into compliance. Material used in blending must meet the required aggregate quality test specification in Section 5.1 before blending and must be blended in a manner to produce a consistent gradation. Aggregate blending may require a new mix design.

Screening shall be required at the stockpile.

6. MINERAL FILLER

Mineral filler may be used to improve mixture consistency and to adjust mixture breaking and curing properties. Provide mineral filler that is sufficiently dry, free-flowing, and free of clumps and foreign matter consisting of portland cement, hydrated lime, or other approved filler meeting the requirements of ASTM D 242. Use mineral filler if required by the mix design. Typical use levels are normally 0.0-3.0 percent and may be considered part of the aggregate gradation.

7. WATER

All water shall be potable and compatible with the micro-surfacing and slurry seal mix and free of harmful soluble salts. Compatibility shall be ensured by the Contractor. The percent of water in the mix design shall produce proper mix consistency.

8. EMULSIFIED ASPHALT – The asphalt emulsion shall be homogenous and show no separation after mixing.

- **Micro-Surfacing** – The emulsified asphalt shall be polymer modified. The polymer material shall be milled or blended into the asphalt or emulsifier solution prior to the emulsification process. In general, a three percent (3%) polymer solids, based on asphalt weight, is considered minimum.
- **Quality Tests**
  The emulsified asphalt, and emulsified asphalt residue, shall meet the requirements of AASHTO M 208 or ASTM D 2397 for CSS-1p, with the following exceptions:

Test	Test Method		Specification
	AASHTO	ASTM	
Settlement and Storage Stability of Emulsified	T 59	D 6930	1% Maximum

Asphalts, 24-h			
Distillation of Emulsified Asphalt[1]	T 59	D 6997	62% Minimum
Tests on Emulsified Asphalt Residue			
Softening Point of Bitumen (Ring-and-Ball Apparatus)	T 53	D 36	135°F (57°C) Minimum
Penetration of Bituminous Materials at 77°F (25°C)	T 49	D 5	40-90[2]

[1] The Temperature for this test should be held at 350°F (177°C) for 20 minutes.

[2] The climatic conditions should be considered when establishing this range.

The Solubility test, if required, should be evaluated on the base asphalt.

Each load of emulsified asphalt shall be accompanied with a Certificate of Analysis/Compliance to indicate that the emulsion meets specification.

- **Slurry Seal** –The emulsified asphalt, and emulsified asphalt residue, shall meet the requirements of AASHTO M 140 or ASTM D 977 for SS-1 or SS-1h. For CSS-1, CSS-1h, or CQS-1hp, it shall meet the requirements of AASHTO M 208 or ASTM D 2397. Each load of emulsified asphalt shall be accompanied with a Certificate of Analysis/Compliance to indicate that the emulsion meets the specifications.

9. Latex Modifier

- Micro-surfacing and Slurry Seal will have latex content sufficient to meet the mix design.

10. ADDITIVES

Additives may be used to accelerate or retard the break/set of the slurry seal and/or the micro surfacing. Appropriate additives, and their applicable use range, should be approved by the laboratory as part of the mix design.

TEST AND DESIGN

11. General

Before work begins, the contractor shall submit a sign mix design covering the specific materials to be used on the project. This design will be performed by a laboratory which has experience in designing Emulsified Asphalt Slurry Seal Surfacing and/or Micro Surfacing. After the mix design has been approved, no material substitution will be permitted unless approved by the B.A.R.

12. MIX DESIGN

Compatibility of the aggregate, emulsified asphalt (slurry)/polymer-modified emulsified asphalt (micro), water, mineral filler and other additives shall be evaluated in the mix design. The mix design shall be completed using materials consistent with those supplied by the Contractor for the project. Recommended tests and values are as follows:

12.1 SLURRY SEAL

TEST	ISSA TB NO.	SPECIFICATION
Mix Time @ 77° F (25° C)	TB 113	Controllable to 180 Seconds Min.
Slurry Seal Consistency	TB 106	0.79 – 1.18 inches (2.0 – 3.0 cm)
Wet Cohesion	TB 139	

@ 30 Minutes Minimum (Set) @ 60 Minutes Minimum (Traffic)	(for quick-traffic systems)	12 kg-cm Minimum 20 kg-cm Minimum or Near Spin Min.
Wet Stripping	TB 114	Pass (90% Minimum)
Wet-Track Abrasion Loss One-hour Soak	TB 100	75 g/ft^2 (807 g/m^2) Maximum
Excess Asphalt by LWT Sand Adhesion	TB 109 (Critical in heavy-traffic areas)	50 g/ft^2 (538 g/m^2) Maximum

12.2 Micro Surface

TEST	ISSA TB NO.	SPECIFICATION
Mix Time @ 77° F (25° C)	TB 113	Controllable to 120 Seconds Min.
Wet Cohesion @ 30 Minutes Minimum (Set) @ 60 Minutes Minimum (Traffic)	TB 139	 12 kg-cm Minimum 20 kg-cm Minimum or Near Spin Min.
Wet Stripping	TB 114	Pass (90% Minimum)
Wet-Track Abrasion Loss One-hour Soak Six-day Soak	TB 100	 50 g/ft^2 (538 g/m^2) Maximum 75 g/ft^2 (807 g/m^2) Maximum
Lateral Displacement Specific Gravity after 1,000 Cycles of 125 lb (56.71 kg)	TB 147	5% Maximum 2.10 Maximum
Excess Asphalt by LWT Sand Adhesion	TB 109	50 g/ft^2 (538 g/m^2) Maximum
Classification Compatibility	TB 144	11 Grade Points Minimum (AAA, BAA)

The Wet Track Abrasion Test is performed under laboratory conditions as a component of the mix design process. The purpose of this test is to determine the minimum asphalt content required in a slurry seal/micro surfacing system. The Wet Track Abrasion Test is not recommended as a field quality control or acceptance test. ISSA TB 136 describes potential causes for inconsistent results of the Wet Track Abrasion Test.

The mixing test is used to predict the time the material can be mixed before it begins to break. It can be a good reference check to verify consistent sources of material. The laboratory should verify that mix and set times are appropriate for the climatic conditions expected during the project.

The laboratory shall also report the quantitative effects of moisture content on the unit weight of the aggregate (bulking effect) according to AASHTO T19 (ASTM C29). The report must clearly show the proportions of aggregate, mineral filler (if used) and emulsified asphalt based on the dry weight of the aggregate.

The percentage of each individual material required shall be shown in the laboratory report. Based on the field conditions, adjustments within the specific ranges of the mix design may be required.

The component materials shall be designed within the following limits:

COMPONENT MATERIALS	SUGGESTED LIMITS
Residual Asphalt (Slurry Seal)	Type I: 10-16% Type II: 7.5-13.5% Type III: 6.5-12%

	(Based on dry weight of aggregate)
Residual Asphalt (Micro Surface)	5.5-10% by dry weight of aggregate
Mineral Filler	0.0-3.0% by dry weight of aggregate
Polymer Content (Micro Surface)	Minimum of 3.0% solids based on bitumen wright content
Additives	As needed
Water	As required to produce proper mix consistency

12.3 MIX TOLERANCES (SLURRY SEAL)

Tolerances for the slurry seal mixture are as follows:

1. After the residual asphalt content is determined, a variation of ±1% by weight of dry aggregate will be permitted.
2. The slurry consistency, as determined according to ISSA TB No. 106, shall not vary more than ±0.2% (±0.5% cm) from the job mix formula after field adjustments.
3. The rate of application shall not vary more than ±2 lb/yd^2 (1.1 kg/m^2) when the surface texture does not vary significantly.

General Notes

13. 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 engineer prior to the submission of bids.

14. 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.

- Contractor shall comply with all applicable local, state, and federal requirements regarding excesses and waste material, including methods of handling and disposal.

15. 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 contractor to at least the preexisting condition at his expense before acceptance of the work.

16. 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.

17. 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.

18. Contractor is responsible for complying with all applicable environmental laws.

19. 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.

20. Any water hauled to the site during the installation shall be paid by the contractor.

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. 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.

EQUIPMENT

24. GENERAL

All methods and equipment employed in performing the work shall be subject to the approval of the Program Manager before work is started and whenever found unsatisfactory they shall be changed and improved as required. Equipment shall be kept in good working conditions with no leaks. Any equipment that shows signs of leaks shall be fixed immediately and shall not be used until such leaks are fixed. All equipment shall be maintained in a satisfactory condition.

The Contractor shall have a minimum of 2 Slurry Seal machines at the project site in good working condition each having a capacity of at least 8 cubic yards to assure sufficient production capability

25. MIXING EQUIPMENT

- **Micro-Surfacing** – The material shall be mixed by a self-propelled micro-surfacing mixing machine which shall be a continuous flow mixing unit able to accurately deliver and proportion the aggregate, emulsified asphalt, mineral filler and water to a revolving multi-blade mixer and discharge the mixed product on a continuous flow basis. The machine shall have sufficient storage capacity for aggregate, emulsified asphalt, mineral filler and water to maintain adequate supply to the proportioning controls. The machine shall be equipped with self-loading devices which provide for the loading of all materials while continuing to lay micro-surfacing, thereby minimizing construction joints.

- Individual volume or weight controls for proportioning each material to be added to the mix shall be provided. Each material control device shall be calibrated and properly marked. Scales used for weighing materials and emulsion must be calibrated and meet the requirements of TxDOT Item# 520.

- The aggregate feed to the mixer shall be equipped with a revolution counter or similar device so the amount of aggregate used may be determined at any time.

- The emulsion pump shall be a positive displacement type and shall be equipped with a revolution counter or similar device so that the amount of emulsion used may be determined at any time.

- The mixing machine shall be equipped with a water pressure system and nozzle type spray bar to provide a water spray immediately ahead of and outside the spreader box with 0.05 to 0.15 gallons per square yard.

- The mixing machine shall be equipped with an approved fines feeder that shall provide a uniform, accurately metered, predetermined amount of specified mineral filler.

26. Electronic Monitoring System

- The micro-surfacing machine shall be equipped with an electronic monitoring system that consists of pulse sensors measuring material delivery rates, a radar gun to monitor distance traveled, and programmable micro-controller, and operators display/input board and an on-board printer.

- System shall be capable of monitoring and displaying application rates and use of aggregate, emulsion, fines, water, and additives.

- System shall be capable of calculating and displaying ratios of emulsion to aggregate, fines to aggregate, additive to aggregate, water to aggregate, and application rate in pounds per square yard.

- System shall be capable of printing a hard copy report on demand which displays the date, weight of aggregate, emulsion, fines, number of gallons of additive and gallons of water, and all of the above mention ratios since last reset.

- A computer-generated report providing statistics of the work day shall be provided with each hand calculated daily run sheet.

- This system shall be accurate to with ½ of a percent of actual weights and measures for all parameters noted above. The system is not expected to calculate quantities and ratios for materials used in handwork and cul-de-sac areas.

- **Slurry Seal** – The slurry seal mixing equipment shall be a continuous flow mixing unit or continuous-run design machines as to give a uniform and complete circulation of the batch in the mixer, so as to not segregate the aggregate, but will provide a thorough and uniform free flowing mix with the asphalt and water. The units shall be equipped with approved devices so that the machine can be accurately calibrated and the quantities of material used can be determined. The mixing machine shall be equipped with a water pressure system and nozzle type spray bar adequate for completely fogging the surface with 0.05 to 0.15 gallons per square yard immediately ahead of the spreader box.

27. SPREADING EQUIPMENT

Spreader boxes shall be kept clean to minimize lumps. Set and maintain the skis on spreader boxes as to prevent chatter in the finished mat. Adjust the rear seal to provide the desired spread. Adjust the secondary strike-off to provide the desired surface texture.

- **Micro-Surfacing** – The surface mixture shall be spread uniformed by means of a mechanical type spreader box attached to the mixer, equipped with paddles to agitate an spread the materials throughout the box. A front seal shall be provided to ensure no loss of the mixture at the road contact point. The rear seal shall act as final strike off and shall be adjustable. The mixture shall be spread to fill cracks and minor surface irregularities and leave a uniform skid resistant application of material on the pavement, the longitudinal joint where two passes join shall be neat appearing, uniform and lapped. All excess material shall be removed from the job site prior to opening the road. The spreader box shall have suitable means provided to side shift the box to compensate for variations in pavement geometry.

- **Slurry Seal** – The spreader box shall be equipped to prevent loss of slurry seal from all sides and a flexible rear strike-off capable of being adjusted. It shall provide suitable means for side tracking to compensate for deviations in pavement geometry. The box shall be kept free of build-up asphalt and aggregate. The strike-off drag shall be kept completely flexible at all times.

28. AUXILIARY EQUIPMENT

Suitable crack and pavement cleaning equipment, hand tools and any support equipment will be provided by the Contractor as necessary to perform the work. The Contractor shall use a vacuum equipped street sweeper to remove all swept debris. Sweeping of debris into the gutter shall not be permitted.

29. EQUIPMENT CALIBRATION

Each slurry unit to be used shall be calibrated in the presence of the Program Manager prior to construction. Previous calibration documentation covering the exact materials to be used may be accepted provided they were made during the calendar year. No machine shall be allowed to work on the project until the calibrations have been completed and/or accepted.

LIMITATIONS

30. WEATHER

Air temperature requirements for placing micro-surfacing and/or slurry seal shall be as follows:

- November 1 to March 31
  a. Micro-surfacing/slurry seal shall not be placed when the air temperate is below 60 degrees F and falling.
  b. Micro-surfacing/slurry seal may be placed when the air temperature is above 50 degrees F and rising.
- April 1 to October 31
  a. Micro-surfacing/slurry seal shall not be placed when the air temperature is below 50 degrees F and falling.
  b. Micro-surfacing/slurry seal may be placed when the air temperature is above 50 degrees F and rising.

Surface of roadway must be 60 degrees F or higher prior to placing micro-surfacing/slurry seal to pavement, as determined in the field.

No Micro-Surface/Slurry Seal shall be applied:

- In the period following precipitation with water remaining on the surface to be coated.
- In foggy conditions.
- If there is a threat of rain before the slurry seal can fully cure.
- If there is a danger that he finished product will freeze within 24 hours after the application.
- If weather conditions prolongs opening to traffic beyond the time specified by the Program Manager.

The Micro-Surfacing/Slurry Seal will be placed on the location and within the time limits as specified by the Program Manager.

31. CONDIDITON AND TYPE PAVEMENT TO BE TREATED

Any base failures, severe pavement defects, or similar conditions which are present will be properly repaired by the City to ensure correct application and performance of the slurry. Slurry normally adheres to asphalt pavement more readily than concrete, especially worn or polished areas. Heavy traffic areas, especially those on concrete, require greater care in selection type of coarseness of slurry allowing the surface to fully cure before opening to traffic, and the placing of either a tack coat or a second coat of slurry for greater adhesion and wear purposes.

32. NOTIFICATIONS

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 the name of the company and the phone number of a person of authority on site who represents 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 after the notices have been distributed, the contractor shall issue an updated notice.
- A copy of the notice shall be submitted to the Transportation Division prior to the beginning of the project for approval.
- 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.

33. TRAFFIC CONTROL

Care shall be used to create a safe work area, with minimal impact on the flow of traffic. 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.

It shall be the Contractor's responsibility to provide adequate traffic control measures, such as barricades, cones advance warning signs, flag person, etc. to protect the uncured micro/slurry from all types of traffic and provide traffic safety in the construction area. 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). Opening to traffic does not constitute acceptance of the work. Any damage to the uncured slurry will be the responsibility of the Contractor and will be repaired as directed by the Program Manager. Approved temporary lane marking will be provided by the Contractor for placement if the street was previously striped.

The Contractor shall be responsible for the traffic control plan and shall submit the plan to the Traffic Operations Division for approval before commencing work. The Contractor shall plan and layout the work such that no traffic is allowed on new pavement while the asphalt work is being placed. All traffic control shall be in accordance with TMUTCD standards.

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.

34. TEMPORARY MARKINGS AND LANE DELINEATION

Whenever the work causes obliteration of pavement markings or delineation, temporary markings or delineation shall be in place prior to opening the traveled way to public traffic. Lane line and centerline pavement delineation shall be provided at all times for traveled ways open to public traffic. Other markings such as crosswalks, stop bars, and pavement arrows shall be delineated prior to opening the roadway to public traffic.

All work necessary to establish satisfactory temporary markings and line delineation shall be performed by the Contractor. Surfaces on which temporary marking and line delineation is to be applied shall be cleaned of all dirt and loose material, and shall be dry when it is applied. Temporary markings and line delineation shall be maintained until replaced with permanent markings.

Temporary lane delineation shall consist of either a 4-inch by 4-inch square stripe or a 4-inch reflectorized tab, as directed by the Program manager. Temporary lane delineators shall be placed on lane lines and centerlines at longitudinal intervals of not more than 40 feet apart, or 12 feet apart on radii. The temporary markings and lane delineators shall be the same color as the lane line, centerline, or pavement marking being replaced.

If used, tabs shall be in accordance with Item 662 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges,

latest edition. The contractor shall replace temporary road marker tabs as necessary throughout the project until permanent pavement markings are installed, and shall remove all tabs with installation of permanent markings. The placement, maintenance, and eventual removal of temporary lane markers shall be performed by the Contractor and be incidental to the project.

STORAGE AND STOCKPILING

35. STOCKPILING OF AGGREGATE

Precautions shall be taken to ensure the aggregate does not become contaminated with oversized rock, clay, silt, or excessive amount of moisture. The Contractor shall be required to utilize a screening plant to remove oversized particles from the aggregate at the stockpile site. The stockpile shall be kept in areas that have good drainage. Segregation of aggregates proposed for use and as supplied to the mixing plant shall be uniform.

36. STORAGE SITE

The Contractor shall provide a suitable storage facility for all equipment and materials needed to perform the work. This site should be located as close as possible to the area of work being done to reduce turnaround time and ensure an acceptable rate of work. Any site selected shall be subjected to final approval by the Program Manager. Erosion control measures shall be implemented as needed to comply with the law and City of Midland ordinances.

37. SURFACE PREPARATION

The existing roadway surface shall be thoroughly clean and free of all vegetation, loose aggregate, other loose materials, and soil and approved by the City inspector before placement. Equipment, labor and materials required by this item shall be incidental to the project.

Any breakdowns, base failures, or other defects will be properly repaired by the City before application of the slurry seal begins. Manholes, valve boxes, grate inlets, concrete collars, and other designated objects shall be covered by the Contractor to ensure their integrity. After completion of slurry placement, the Contractor shall remove said covers so the objects protected will remain fully functional. Any objects damaged by the Contractor shall be repaired or replaced at no cost to the City.

Existing raised pavement markers and thermoplastic markings wider than 4” shall be thoroughly removed. Grind off all existing raised stop bars, turn arrows, rail road crossings, cross walk markings, and any other pavement markings that are wider than 4”. All 4” lane striping may be left to be covered with the new micro-surfacing layer (unless otherwise directed by the Program Manager or the Traffic Engineer).

APPLCATION

38. GENERAL

If conditions require, the pavement shall be pre-wetted by fogging ahead of the spreader box. Water used in fogging the surface shall be applied so that the entire surface is damp with no flowing water in front of the box.

39. RATE OF APPLICATION

The slurry shall be sufficiently stable during the spreading period so that the emulsion does not break, there is no segregation of the fines from the coarser aggregate and the liquid of the mix does not float to the surface.

The Slurry Seal mix shall be Type II Gradation and spread uniformly at a rate of not less than 15 pounds of dry aggregate per square yard and no more than 20 pounds of dry aggregate per square yard, or as directed.

Micro-surfacing shall be either the TxDOT Grade II or the Type II Gradation and the mix shall be spread uniformly at a rate of not less than 25 pounds of dry aggregate per square yard and no more than 30 pounds of dry aggregate per square yard, or as directed.

40. Rutting on Major Thoroughfares and Collector Streets—Micro-Surface

- Shallow ruts that are less than ½ inch in depth may be covered by a full width scratch box utilizing a steel primary strike-off plate.
- Ruts that are between ½ inch and 1 inch in depth shall be filled independently with fixed width spreader box no more than 6 feet wide. The rut filling box shall have a steel primary strike-off plate that is the same width as the spreader box.
- Ruts that are in excess of 1 inch in depth shall be filled with a 5-foot wide rut filling spreader box specifically designed to fill wheel path ruts. This operation will require multiple placement passes to restore the pavement to its original cross section. Special care shall be used by the Contractor to ensure that the material has proper time to dry between applications to promote bonding between the original pavement and the micro-surfacing pavement.
- Maximum micro-surfacing thickness applied as rut filling shall not exceed 1 inch for each pass required to restore pavement to the original profile.

41. Scratch Course—Micro-Surfacing

All “Scratch Course” applications shall be performed utilizing a steel primary strike-off plate. This will allow the bottom, or “scratch course,” to mitigate any irregularities and have a more uniform profile for the micro-surfacing pavement to be applied to.

42. Asphalt Grinding at Concrete Intersections

Thoroughfares and collector streets which have concrete intersections or where concrete valley gutters intersect the street and that have pre-existing rough or bumpy transitions shall have the asphalt surface grinded to such a depth as to allow a smooth transition between concrete and the completed micro-surfacing pavement. Smooth concrete/asphalt joints do not require grinding prior to the micro-surface placement.

Specific places for asphalt grinding:

- Asphalt to concrete pavement joint at Midkiff and Wadley (grind excess asphalt to ensure a smooth transition)
- Asphalt to concrete pavement joint on both sides of valley gutter at Midkiff and Maxwell
- Asphalt to concrete pavement joint on both side of bridge deck at Midkiff just south of Rio Dr.
- Asphalt to concrete pavement joint at Midkiff and Loop 250
- Asphalt to concrete pavement joint at Mockingbird and Rodeo St (both sides)
- Asphalt to concrete pavement joint at Mockingbird just east of Baca St. (both sides)

43. JOINTS

No excessive buildup or unsightly appearance shall be permitted on longitudinal or transverse joints. An excessive overlap will not be permitted on longitudinal joints. The Contractor shall provide suitable width spreading equipment to produce a minimum number of longitudinal joints throughout the project. Longitudinal joints shall be placed on lane lines when possible. If half passes are used they shall not be the last pass of any paved area. Joints and edges shall be uniform and neat in appearance.

44. HAND WORK

In areas where the spreader box cannot be used, the slurry/micro shall be applied by hand squeegees to provide complete and uniform coverage. Any joint or cracks not filled by the slurry/micro shall be corrected by use of hand squeegees. Hand work shall be completed during the machine applying process. Due to difficulty in hand working micro-surfacing material due to the quickset nature of the emulsion, handwork areas should be kept to a minimum.

Contractor is not required to treat the area at the end of radii (ER) of streets at intersections unless:

- The intersecting street is also scheduled to receive the surface treatment.
- The ER is located at the end of work at an intersection where the continuing street is not receiving the surface treatment.
- The project manager makes a special request.

45. LINES

Straight lines along curb gutters and shoulder will be required. No runoff on these areas will be permitted. Lines at intersections shall be kept straight to provide a good appearance. Slurry shall be placed at the lip of the gutter or at a distance from the face of the curb as directed by the Program Manager.

Mask of the ends of intersections and other ends of work where the abutting surface does not receive the surface treatment in order to produce a crisp and straight line.

46. MANHOLES AND VALVES

Special care shall be taken by the contractor to ensure that all manholes, water valves, concrete collars, and other surface structures are sufficiently protected from the micro-surfacing/slurry process by the use of a plastic membrane covering or other approved method.

Contractor shall be responsible for removing the coverings after the surface treatment has cured. The cost of this work shall be incidental to the project.

47. CURING

- **Micro-Surface** – all traffic shall be kept off the micro until it has cured to a firm condition that will prevent damage to the micro. **The emulsified asphalt shall be so formulated that when the paving mixture is applied with the relative humidity at no more than 50% and ambient air temperature of at least 75 degrees Fahrenheit, it will cure sufficiently such that uniformly moving traffic can be allowed on completed travel lanes within 1 hour after placement with no damage to the surface. Failure to comply with this requirement may result in cessation of all the work until such time that the Contractor provides the proper adjustments in his operations. If determined necessary by the Program Manager, the mixture properties shall be**

adjusted according to humidity conditions and ambient air temperatures <u>to allow uniformly moving traffic on completed travel lanes within 1 hour after placement with no damage to the surface.</u> Failure to comply with this requirement may result in cessation of all the work until such time that the Contractor provides the proper adjustments in his operations. Protect other locations subject to sharp turning or stopping and starting traffic for longer periods when necessary. Any uncured micro damaged will be repaired to the satisfaction of the Program Manager at the Contractor's expense.

- **Slurry Seal** - all traffic shall be kept off the slurry until it has cured to a form condition that will prevent damage to the slurry. Any uncured slurry damaged will be repaired to the satisfaction of the Program Manager at the Contractor's expense.

48. FINISHED SURFACE

- Micro-surfacing and slurry finished grade shall be uniform in texture and free from excessive scratch marks, tears, holes, bare spots, cracks, and other surface irregularities. All such irregularities shall be repaired by the Contractor at their own expense.
- Longitudinal joints shall be placed on lane lines unless otherwise directed by the Program Manager.
- Joints and edges shall be uniform and neat in appearance. Mask off end of streets and intersections to provide straight lines.
- Make straight lines along the lip of gutters and shoulders. Keep the same thickness in these areas. No runoff on these areas will be permitted.
- Avoid unsightly appearance from hand work.
- **Micro-Surface**—all ruts, utility cuts, and depressions in the surface shall be filled in a separate pass from the final pass.
- Protect surface treatment materials from traffic until it has cured.

49. CLEAN-UP

- All objects covered (manhole covers, valve covers, grate inlets, concrete collars, etc.) shall be restored to their original integrity. The Contractor shall remove all unused material and debris from the sire prior to final acceptance.
- The Contractor shall thoroughly clean any curbs, sidewalks, guardrails, guide posts, etc. that receives any splatter, mar or overcoat from the surface treatment application.

50. 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 relive the Contractor from its full obligations to the Owner, as provided by the contract documents.

51. WARRANTY

- The Contractor shall provide a one (1) year minimum warranty when the existing pavement is in an appropriate condition (Contractor to determine condition). Warranty covers delaminating, peeling, and premature surface wear (raveling, shedding, or the loss of aggregate that is not typical).

a. Before placement notify the Engineer if pavement condition or application condition voids the warranty.
b. Engineer may allow or cancel product application at no cost to OWNER if warranty cannot be given.

- Acceptable performance after one (1) year period is no delaminating, peeling, or inter-aggregate loss in surface wear. Mechanical disturbances by snow plow chatter, studded tires, etc, are excluded from warranty. Repair defective coverage at no additional cost to OWNER.

52. PROJECT SCHEDULE

- It shall be the responsibility of the contractor to provide a project schedule to City staff prior to construction. The schedule should outline the anticipated start and end dates for each phase of the surface seal project.
- The project shall be completed no later than August 31, 2021.
- **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.
  a. 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.
  b. 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.
  c. 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 of any excess cost when the delay in completion of the work is due:

i. To any preference, priority or allocation order duly issued by the Government;
ii. 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
iii. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

d. 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.
e. **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.**

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.

53. ADDITIONAL NOTES

- 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.
- 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

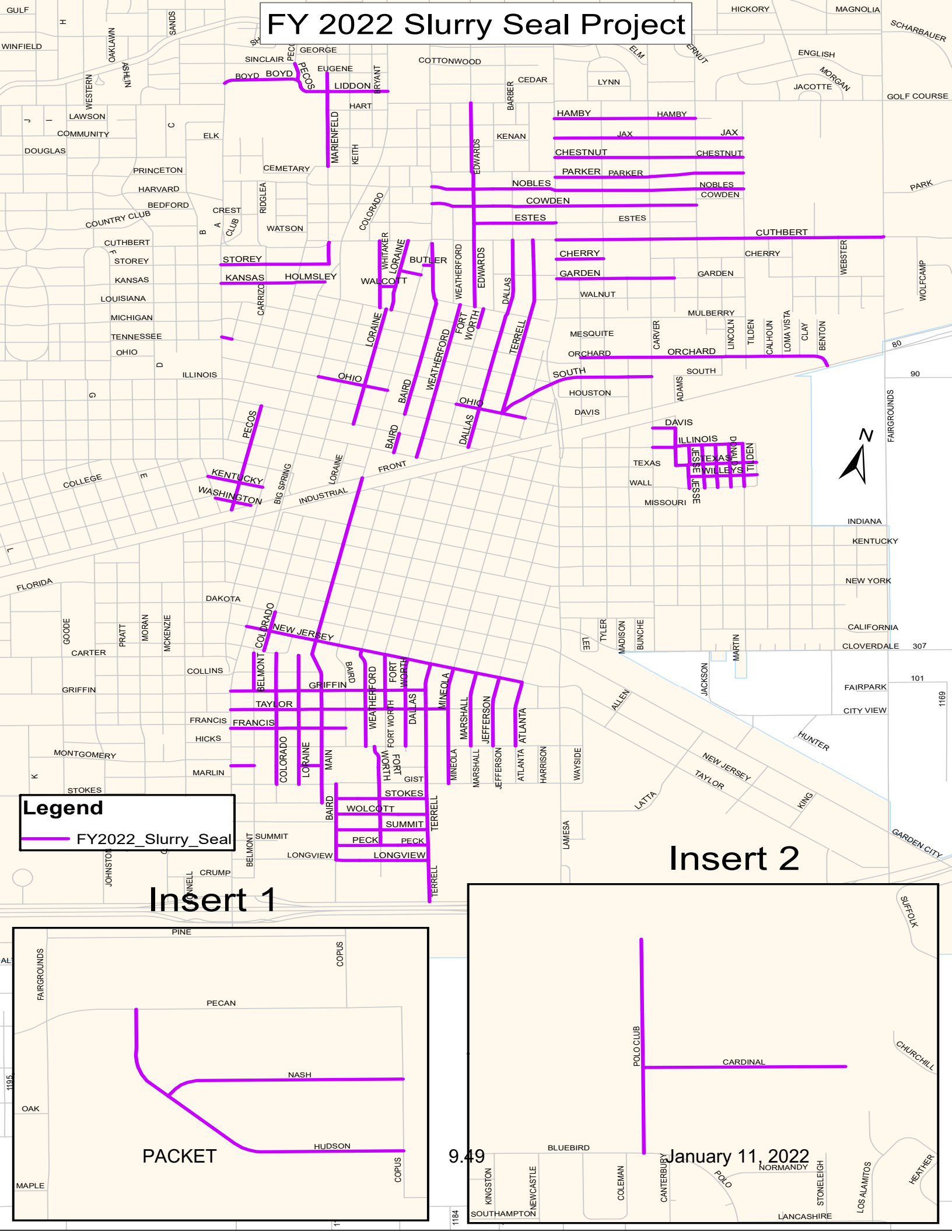
1. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing/traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

2. The slurry seal treatment in accordance with City of Midland Slurry Seal Specification shall be paid for by the number of square yards placed at the contract unit price; which price shall be full compensation for all surface cleaning, traffic and erosion control, mixing and application of material, and for all labor, equipment, tools, testing, cleaning and incidentals necessary to complete the work as specified herein.

FY 2022 Slurry Seal Project Street List

NAME	From	To	Syds
ADAMS	Davis	Texas	1,918
ATLANTA	New Jersey	Hicks	4,347
BAIRD	north of Butler	Illinois	14,733
BAIRD	Texas	Wall	1,880
BAIRD	Gist	Longview	3,860
BELMONT	Rhode Island	Griffin	2,400
BOYD	A Street	Pecos	4,757
BUTLER	Main	Baird	585
CARDINAL	Polo Club	End of road	1,595
CHERRY	Lamesa	Tyler	2,395
CHESTNUT	Lamesa	Tilden	10,824
COLORADO	Dacota	Rhode Island	2,595
COLORADO	Rhode Island	Gist	9,485
COWDEN	Main	Jackson	15,352
CUTHBERT	Lamesa	Fairgrounds	20,817
DALLAS	Cuthbert	Texas	15,807
DALLAS	New Jersey	Hicks	6,014
DAVIS	Carver	Adams	1,380
DONALD	Illinois	Wall	1,728
EDWARDS	Golf Course	Mississippi	14,350
ESTES	Edwards	Lamesa	4,471
FORT WORTH	Mississippi	Kansas	1,063
FORT WORTH	New Jersey	Taylor	3,633
FORT WORTH	Hicks	Peck	5,065
FRANCIS	Rankin (Big Spring)	Baird	6,223
GARDEN	Lamesa	Jackson	8,411
GRIFFIN	Rankin (Big Spring)	Terrell	11,251
HAMBY	Lamesa	Jackson	8,004
HOLMSLEY	Pecos	Marienfeld	1,232
HUDSON	Pecan	Copus	5,200
ILLINOIS	Carver	Tilden	3,655
JACKSON	Illinois	Wall	1,692
JAX	Lamesa	Tilden	10,945
JEFFERSON	New Jersey	Hicks	4,671
JESSE	Illinois	Wall	2,298
KANSAS	A Street	Pecos	4,702
KENTUCKY	B Street	Marienfeld	3,500
LIDDON	Pecos	Big Spring	4,830
LINCOLN	Illinois	Wall	1,624
LONGVIEW	Baird	Terrell	3,503
LORAINE	Cuthbert	Kansas	4,886
LORAINE	Kansas	Texas	12,504
LORAINE	north of Collins	Gist	8,700
MAIN	Front (Business I 20)	Florida	10,676

MAIN	Florida	Stokes	15,490
MARIENFELD	Eugene	Parker	6,355
MARIENFELD	Cuthbert	Storey	1,250
MARSHALL	New Jersey	Hicks	5,015
MINEOLA	New Jersey	Gist	7,908
MONTGOMERY	Rankin (Big Spring)	Belmont	983
MONTGOMERY	Loraine	Main	1,191
NASH	Hudson	Copus	3,270
NEW JERSEY	Rankin (Big Spring)	Atlanta	18,468
NOBLES	Main	Tilden	15,777
OHIO	Big Spring	Main	4,457
OHIO	Ft. Worth	Mineola	4,247
ORCHARD	Lee	Front (Business I 20)	14,750
PARKER	Lamesa	Tilden	10,771
PECK	Baird	Terrell	3,210
PECOS	Sinclair	Liddon	2,600
PECOS	Texas	Front (Business I 20)	8,194
POLO CLUB	Bluebird	Midland Polo Club entrance	3,310
SOUTH	Terrell/Ohio	Carver	12,050
STOKES	Baird	Terrell	3,100
STOREY	A Street	Marienfeld	6,088
SUMMIT	Baird	Terrell	3,040
TAYLOR	Rankin (Big Spring)	Mineola	12,297
TENNESSEE	A Street	east of A Street	796
TERRELL	Cuthbert	Ohio	13,472
TERRELL	New Jersey	I 20	16,971
TEXAS	Adams	Calhoun	2,698
TILDEN	Illinois	Wall	1,965
WALCOTT	Whitaker	Loraine	800
WALCOTT	Loraine	Main	1,100
WASHINGTON	B Street	Front (Business I 20)	2,098
WEATHERFORD	Mississippi	Wall	14,112
WEATHERFORD	New Jersey	Hicks	6,590
WHITAKER	Cuthbert	Kansas	4,976
WILLEYS	Jesse	Calhoun	2,281
WOLCOTT	Baird	Terrell	3,050
TOTAL			504,291


FY 2022 Slurry Seal Project
Legend
FY2022_Slurry_Seal
Insert 1
Insert 2
PINE
PECAN
NASH
HUDSON
OAK
MAPLE
FAIRGROUNDS
COPUS
POLO CLUB
CARDINAL
BLUEBIRD
SUFFOLK
CHURCHILL
NORMANDY
POLO
STONELEIGH
LOS ALAMITOS
HEATHER
KINGSTON
NEWCASTLE
SOUTHAMPTON
COLEMAN
CANTERBURY
LANCASHIRE
GULF
WINFIELD
SINCLAIR
GEORGE
BOYD
EUGENE
LIDDON
HART
MARIENFELD
KEITH
BRYANT
COTTONWOOD
CEDAR
BARBER
LYNN
HICKORY
MAGNOLIA
SCHARBAUER
ENGLISH
JACOTTE
MORGAN
GOLF COURSE
HAMBY
JAX
CHESTNUT
PARKER
NOBLES
COWDEN
ESTES
CUTHBERT
CHERRY
GARDEN
WALNUT
MULBERRY
MESQUITE
ORCHARD
SOUTH
HOUSTON
DAVIS
ILLINOIS
TEXAS
WILLEYS
WALL
MISSOURI
INDIANA
KENTUCKY
NEW YORK
CALIFORNIA
CLOVERDALE
FAIRPARK
CITY VIEW
HUNTER
NEW JERSEY
TAYLOR
LATTA
KING
GARDEN CITY
ALLEN
JACKSON
MARTIN
LEE
TYLER
MADISON
BUNCHE
WAYSIDE
HARRISON
ATLANTA
JEFFERSON
MARSHALL
MINEOLA
DALLAS
FORT WORTH
WEATHERFORD
EDWARDS
DALLAS
TERRELL
WHITAKER
LORAINE
BUTLER
WALCOTT
STOREY
KANSAS
HOLMSLEY
CARRIZO
OHIO
BAIRD
FRONT
INDUSTRIAL
BIG SPRING
KENTUCKY
WASHINGTON
PECOS
COLLEGE
FLORIDA
DAKOTA
NEW JERSEY
COLORADO
BELMONT
GRIFFIN
TAYLOR
FRANCIS
HICKS
MONTGOMERY
MARLIN
STOKES
GIST
WOLCOTT
SUMMIT
PECK
LONGVIEW
CRUMP
CARTER
COLLINS
GRIFFIN
GOODE
PRATT
MORAN
MCKENZIE
JOHNSTON
BELMONT
LAMESA
TERRELL
WOLFCAMP
WEBSTER
FAIRGROUNDS
CARVER
LINCOLN
TILDEN
CALHOUN
LOMA VISTA
CLAY
BENTON
ADAMS
DOWNS
JESSE
80
90
101
307
1169
1195
1164
PACKET
9.49
January 11, 2022

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.**

NONE

Name of Officer

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

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

7 Brad J Pearce - VICE PRESIDENT

Signature of vendor doing business with the governmental entity

11-8-21

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: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/COMPANY CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. CONSIDERATION - The terms of this agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

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

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

No-Bid
Response
For
Request #: 22000572 FY 2022 Slurry Seal Project

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 OF MIDLAND

ADDENDUM

RFP # 22000572

TO ALL PROPOSERS ON THE SUBJECT:

ADDENDUM # 1

DATE: November 2, 2021

The answers are provided as a matter of clarification for all proposers as follows:

Q: All the streets have excessive vegetation growth into the roadway. In the gutters and throughout the asphalt. Will this be addressed by the city prior to the slurry work to establish the limits of the slurry?
If not how will this extra work be paid for? (In the past when removing vegetation from the road way to the extent which will be required the underlying asphalt typically needs patched or replaced.)

- The streets selected for the FY2022 Slurry Seal Project will be sprayed with herbicide then swept prior to the project start date. Any patching will be done by the City prior to the project start date.
- However, Contractors are reminded that the contract states (#37 SURFACE PREPARATION): "**The existing roadway surface shall be thoroughly clean and free of all vegetation, loose aggregate, other loose materials, and soil and approved by the City inspector before placement. Equipment, labor and materials required by this item shall be incidental to the project**."
- Most of the cleaning will have been done by the City but contractors may have to do touch-up cleaning prior to the application of the slurry.

Q: Will the RPM's buttons be removed by the city? If not how will this extra work be paid for?

- The RPM's will be removed by the City.

Q: By the schools within the work areas there is heavy thermo plastic pavement markings. Will the city be removing these prior to slurry work? If not how will this extra work be paid for?

- The thermo plastic pavement markings will be removed by the City prior to the project start date.

Q: There are many trees which will not allow clearance of our equipment. Will these trees be trimmed by the city Prior to the slurry work?

- Low hanging trees will be trimmed by the City prior to the contract start date.

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

All other terms and conditions shall remain the same.

Viking Construction Inc.
Company Name

Brad J Pearce
Authorized Signature

11/8/21
Date

Brad Pearce
Please Print Above Name

512-930-5777
Phone

CITY OF MIDLAND

ADDENDUM

RFP # 22000572

TO ALL PROPOSERS ON THE SUBJECT:

ADDENDUM # 2

DATE: November 8, 2021

The answers are provided as a matter of clarification for all proposers as follows:

Q: On Page #1 of the contract document, you ask for a "Unit Price" an "amount" and a "Total". (No Mobilization)
On page 5 you ask for a "Mobilization" and a "Slurry Seal Unit price and Total".
Where do we put our Mobilization cost on page #1?

- As long as the prices are listed on the detail sheet it is not required to be listed on the bid request page.

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

All other terms and conditions shall remain the same.

Viking Construction, Inc.
Company Name

Brad J Pearce
Authorized Signature

11/08/2021
Date

Brad J. Pearce
Please Print Above Name

512-930-5777
Phone

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT Viking Construction Inc.
2592 Shell Road, Georgetown, Texas 78628

(hereinafter called the Principal), as Principal, and Merchants Bonding Company (Mutual)
PO Box 14498, Des Moines, Iowa 50306-3498

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of Five Percent of The Total Amount Bid DOLLARS ($ 5$), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to FY 2022 Slurry Seal Project.

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 10th day of November, 20 21.

Viking Construction Inc.	Merchants Bonding Company (Mutual)
Principal	Surety
By Budd J. Pearce - Vice President	By
Address 2592 Shell Road	Address PO Box 14498
Georgetown, Texas 78628	Des Moines, Iowa 50306-3498

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

MERCHANTS BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Andy Webb; April M Terbay; Hanna Ruth Ogle; James F Siddons; Joy M Holten; Patrick L Watkins; Sheila Pennington Noxon

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and aut hority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 11th day of February , 2020 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.
On this 11th day of February 2020 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

NOTARIAL SEAL IOWA

POLLY MASON
Commission Number 750576
My Commission Expires
January 07, 2023

Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 10th day of November , 2021.

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

William Warner Jr.
Secretary

MERCHANTS BONDING COMPANY™
MERCHANTS BONDING COMPANY (MUTUAL) P.O. BOX 14498, DES MOINES, IOWA 50306-3498
PHONE: (800) 678-8171 FAX: (515) 243-3854

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company (Mutual) toll-free telephone number for information or to make a complaint at:

1-800-678-8171

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM AND CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

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)).

City Council Meeting

Item Number: 10

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF HERBICIDE FOR THE PLANT FARM FROM HELENA AGRI-ENTERPRISES, LLC OF STANTON, TEXAS, AT A TOTAL COST OF $193,168.50 (DISTRICT 2) (GENERAL SERVICES)

Purpose:

Resolution authorizing the purchase of Herbicide for the Plant Farm.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY22 Water and Sewer operating budget.

Discussion:

Bid requests for Herbicide for the Plant Farm were issued to twenty-four (24) vendors. We received a sole bid from Helena Agri-Enterprises, LLC. Staff recommends awarding the purchase to sole bidder Helena Agri-Enterprises, LLC of Stanton, Texas. Please see the attached memo from Bennie Jordan, Water Pollution Control Plant and Spraberry Superintendent, for more information.

Therefore, please consider approval of a resolution awarding the purchase of Herbicide for the Spraberry Farm to Helena Agri-Enterprises, LLC of Stanton, Texas for a total cost of $193,168.50.

Tina Dawg

City Manager's Office

MIDLAND
Water Pollution Control Plant

INTEROFFICE MEMORANDUM

TO: **Regina Stephenson, General Services Director, Erika Munoz, Purchasing Manager**

FROM: **Bennie Jordan, Superintendent** B.J.

SUBJECT: **Recommend Award for purchase of Herbicides for Plant Farm**

DATE: **December 2, 2021**

Consider a resolution approving the award of purchases in the amount of $ 193,168.50 to the bidder Helena Agri-Enterprises LLC for the purchase of 1060 gallons of Xtendimax $67,000.00, 1750 gallons of Powermax Roundup $109,375.00 ,275 gallons of Smoke $11,258.50,135 gallons of warrant $5535.00.

The City of Midland land applies our treated wastewater at the Plant Farm and at Sprayberry. Kevin Cook, our farming services contractor, is working to get all fields back in shape after years of neglect. Our contract with Mr. Cook specifies that the City purchase herbicides to assist in crop development. The type and agronomic cropping rate of all crops planted must be in accordance with the Crop Management Plan which details out both spring and fall plantings. Each crop type requires different herbicides, so a variety of the different types of herbicide is required.

This purchase will be for one cropping year. This is a regularly occurring budgeted expense each year.

Project funding will be paid for from the Water Reclamation Facility operating budget. Staff recommendation is to award the contract in the amount of $ 193,168.50 for fiscal yr. 2022.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF HERBICIDE FOR THE PLANT FARM FROM HELENA AGRI-ENTERPRISES, LLC OF STANTON, TEXAS, AT A TOTAL COST OF $193,168.50

WHEREAS, the City of Midland issued a request for competitive bids for the purchase of herbicide for the Plant Farm; and

WHEREAS, Bid No. 22000288r was opened on November 17, 2021, with the sole bid being submitted by Helena Agri-Enterprises, LLC, of Stanton, Texas, at a total cost of $193,168.50, as shown on the bid detail sheet attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the fees proposed by Helena Agri-Enterprises, LLC for the purchase of said herbicide for the Plant Farm to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of said herbicide from Helena Agri-Enterprises, LLC;

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

SECTION ONE. That the City Manager hereby authorized and directed to purchase herbicide for the Plant Farm from Helena Agri-Enterprises, LLC at a total cost of $193,168.50.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Helena Agri-Enterprises, LLC from funds available in the FY22 Water and Sewer 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., 2022, 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

_____
Carl Craigo, Utilities Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22000288R **FY2022 Herbicide for Plant Farm** **OPENED** November 17, 2021			Helena Agri-Enterprises LLC 100 South St Peter Stanton, TX 79782 Will Wagner 432-756-2888	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1000	Xtendimax	$67.00	$67,000.00
	Gal	Brand Name: Xtendimax		
		Package Qty: 265 tote (Quantity needs to be 1060 gal.)		
2	275	Smoke	$40.94	$11,258.50
	Gal	Brand Name: Smoke		
		Package Qty: 2x2.5		
3	1750	Roundup Powermax (bulk)	$62.50	$109,375.00
	Gal	Brand Name: Powermax 3		
		Package Qty: Bulk		
		Subject to availability		
4	135	Warrant	$41.00	$5,535.00
	Gal	Brand Name: Waarant		
		Package Qty: 2x2.5		
5	1	Freight	$0.00	$0.00
		TOTAL PROPOSAL		$193,168.50

Bidding Summary:

24 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

23 **Bidders did not respond.**

City Council Meeting

Item Number: 11

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF 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 (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for Turf and Landscape Maintenance Services for the City of Midland Parks, Athletic Fields, and other City properties maintained with the Parks and Recreation Division.

Recommended City Council Action:

Approve

Fiscal Impact:

OPTION ONE:
$1,706,802.19 is available in the FY22 General Fund Operating Budget, and $159,864.00 is available in the FY22 Scharbauer Sports Complex Operating Budget.

OPTION TWO:
$1,575,136.29 is available in the FY22 General Fund Operating Budget, and $131,133.21 is available in the FY22 Scharbauer Sports Complex Operating Budget.

OPTION THREE:
$1,555,993.74 is available in the FY22 General Fund Operating Budget, and $113,969.04 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. After council's guidance, staff sent out a second BAFO to all four (4) vendors. All four (4) vendors responded. The initial contract will be prorated for eight months, from February-September 2022. Staff's recommendation is to issue one contract to Alldredge Gardens as recommended by the committee. Staff also provided two (2) additional options to be considered. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Therefore, please consider a resolution authorizing the execution of a contract for Turf and Landscape Maintenance Services for the City of Midland Parks, Athletic Fields, and other City properties maintained with the Parks and Recreation Division.

Tina Daugherty
City Manager's Office

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 27, 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 (RFP) 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. Since only one proposal was received, it was decided to reissue the RFP, changing the term to a three-year contract, hoping to attract a larger pool of proposals. Four local companies submitted proposals in November. A committee comprised of Council members, Parks and Recreation Commissioners, and staff was formed to review and rank each of the proposals. The committee was looking to award the contract to the company most capable of providing the staff and equipment to complete the services at the best value. After the committee met and ranked the proposals, Alldredge Gardens was their top selection, followed by M3 Landscape Maintenance and Irrigation. Alldredge was asked to submit a BAFO, resulting in a proposal of $2,800,000 per year. The recommendation of the committee to award the contract to Alldredge Gardens was taken to Council in December.

At the December City Council meeting, the item was deferred with the suggestion that a one-year contract might be a better option until it could be further reviewed to determine how best to break it into multiple, smaller contracts. Changing the contract from a three-year term to a one-year term would require putting the contract back out for proposals. Due to the need to start the contract in February, time does not allow for the reissuance of the RFP.

However, a clause in the RFP states that the City has the option of breaking up the individual items in the contract and awarding them separately. The four companies that had submitted proposals were then asked to submit their Best and Final Offers (BAFO) for the contract, knowing that the contract may be awarded to multiple companies.

Staff would like to present City Council with three options for consideration. These options are based on the recommendations of the committee, as well as the Best and Final offers received from each company. In the interest of having a provider in place prior to the necessary start of the contract in February, the contract will be awarded for three years.

Option One: Award the contract to Alldredge Gardens at a cost of $2,800,000 as recommended by the review committee based on confidence that the company has the equipment and manpower needed to provide the contract services.

Option Two: Award the contract to M3 Landscape Maintenance & Irrigation, LLC, the committee's second choice. This provider submitted a Best and Final Offer of $2,559,404.25, which was the lowest overall bid and included a 3% discount if awarded the full contract.

Option Three: Award the contract to three providers as follows:

Lawn & Tree Tech, LLC in the amount of $814,647.21
- Schedule E – Scharbauer Sports Complex
- Schedule G – General Parks
- Schedule J – No mow areas

Alldredge Gardens in the amount of $982,446.24
- Schedule B – Beal Park
- Schedule D – Windlands Park
- Schedule F – Parks with Athletic Fields

M3 Landscape Maintenance & Irrigation, LLC in the amount of $707,850.72
- Schedule A – Hogan Park
- Schedule C – Butler Park
- Schedule H – Bi-monthly mowing
- Schedule I – Occasional mowing
- Schedule K – City Offices
- Schedule L – Additional Maintenance Services as Required

For the third option, staff has considered the BAFO for each individual maintenance item as well as the ability of each company to perform the work. The total for moving forward with the three proposed landscape maintenance contracts is $2,504,944.17.

Staff recommends moving forward with one of these options.

The initial contract will be prorated for eight months, from February-September 2022.

OPTION ONE:
$1,706,802.19 is available in the FY22 General Fund Operating Budget, and
$159,864.00 is available in the FY22 Scharbauer Sports Complex Operating Budget.

OPTION TWO:
$1,575,136.29 is available in the FY22 General Fund Operating Budget, and
$131,133.21 is available in the FY22 Scharbauer Sports Complex Operating Budget.

OPTION THREE:
$1,555,993.74 is available in the FY22 General Fund Operating Budget, and
$113,969.04 is available in the FY22 Scharbauer Sports Complex Operating Budget.

Overall Rank 1=4 POINTS
Overall Rank 2=3 POINTS
Overall Rank 3=2 POINT
Overall Rank 4=1 POINT

	Scorer 1 (POINTS)		Scorer 2 (POINTS)		Scorer 3 (POINTS)		Scorer 4 (POINTS)	Overall Total	Overall Rank
Alldredge Gardens	4		4		4		4	32.00	1
Lawn and Tree Tech LLC	1		2		2		1	13.00	3
M3 Landscape	3		3		3		3	24.00	2
Turf Specialties	2		1		1		2	11.00	4

	Scorer 5 (POINTS)		Scorer 6 (POINTS)		Scorer 7 (POINTS)		Scorer 8 (POINTS)	Overall Total	Overall Rank
Alldredge Garden	4		4		4		4	32.00	1
Lawn and Tree Tech LLC	2		1		2		2	13.00	3
M3 Landscape	3		3		3		3	24.00	2
Turf Specialties	1		2		1		1	11.00	4

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF 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

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 by _____; and

WHEREAS, the Council finds the price proposed by _____ 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 _____ 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 with _____ for the City of Midland parks, athletic fields, and other City properties maintained within the Parks and Recreation Division, for a total price of $_____ 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 _____ 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., 2022, 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 BAFO 2

BID # 22000143 Turf and Landscape Services OPENED 11/5/2021, BAFO 12/20/2021 Est. Cost:			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		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	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	12	Schedule A - Hogan Park	$30,378.77	$364,545.24	$37,556.92	$450,683.04	$36,742.46	$440,909.52	$41,724.79	$500,697.48
	mo							award		
2	12	Schedule B - Beal Park	$19,542.25	$234,507.00	$16,790.00	$201,480.00	$16,560.02	$198,720.24	$18,745.00	$224,940.00
	mo					award				
3	12	Schedule C - Butler Park	$8,951.58	$107,418.96	$10,316.00	$123,792.00	$10,203.75	$122,445.00	$10,582.50	$126,990.00
	mo							award		
4	12	Schedule D - Windlands Park	$21,063.49	$252,761.88	$15,638.52	$187,662.24	$20,700.02	$248,400.24	$23,737.50	$284,850.00
	mo					award				
5	12	Schedule E - Scharbauer Sports Complex	$14,246.13	$170,953.56	$19,983.00	$239,796.00	$16,898.61	$202,783.32	$19,666.67	$236,000.04
	mo			award						
6	12	Schedule F - Parks with Athletic Fields	$34,877.10	$418,525.20	$49,442.00	$593,304.00	$46,592.66	$559,111.92	$51,185.83	$614,229.96
	mo					award				
7	12	Schedule G - General Parks	$53,304.10	$639,649.20	$65,686.00	$788,232.00	$58,376.24	$700,514.88	$69,493.10	$833,917.20
	mo			award						
8	12	Schedule H - Bi-Monthly Mowing	$33,439.77	$401,277.24	$8,908.00	$106,896.00	$4,916.25	$58,995.00	$7,031.25	$84,375.00
	mo							award		
9	12	Schedule I - Occasional Mowing	$2,346.12	$28,153.44	$1,452.83	$17,433.96	$332.50	$3,990.00	$1,166.67	$14,000.04
	mo							award		
10	12	Schedule J - No mow Areas (Xeriscape and/or Beds Only)	$337.04	$4,044.45	$3,852.00	$46,224.00	$6,452.48	$77,429.76	$5,470.92	$65,651.04
	mo			award						
11	12	Schedule K - City Offices	$4,704.90	$56,458.80	$3,708.00	$44,496.00	$2,105.10	$25,261.20	$4,674.94	$56,099.28
	mo							award		
12	1	Schedule L - Additional Maintenance Services as Required	$124,696.25	$124,696.25	No Bid	No Bid	$56,250.00	$56,250.00	$158,250.00	$158,250.00
	ea							award		
		TOTAL ALL SCHEDULES A-K		**$2,678,294.97**		**$2,799,999.24**		**$2,638,561.08**		**$3,041,750.04**
13		The rack price per gallon of gasoline used to prepare this proposal is:	$3.15		$2.89		$3.05		$3.08	
14		The rack price per gallon of diesel used to prepare this proposal is:	$3.40		$2.95		$3.30		$3.41	
15		Estimated number of gallons of diesel fuel per month:	1750		Average		375-450		400	
16		Estimated number of gallons of unleaded gasoline per month:	2250		Average		250		600	
							3% Discount if awarded entire contract			
		TOTALS:		$2,678,294.97		$2,799,999.24		$2,638,561.08		$3,041,750.04
		TOTAL OF LOW BID ITEMS BY VENDOR:		$1,705,136.61		$187,662.24		$343,216.44		$0.00
							With the 3% Discount	$2,559,404.25		

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 12th day of January , 2022 , 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

11.49

Name of Company submitting this offer: **ALLDREDGE GARDENS, LP**

January 11, 2022

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN 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, 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)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	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			Composite Bids for All Services	
					Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5 AC.		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
11.56
January 11, 2022

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 OF MIDLAND
SERVICE CONTRACT
#22000143-2

THIS CONTRACT, effective this 12th day of January , 2022 , by and between the City of Midland, hereinafter referred to as the "CITY" and M3 Landscape Maintenance & Irrigation, LLC, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $2,559,404.25

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. M3 Landscape Maintenance & Irrigation, LLC
5001 E. County Road 136
Midland, Texas 79706

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 M3 Landscape Maintenance & Irrigation, 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 _____

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 the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number 81-1566271 or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from Purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Parks and Recreation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Professional Turf and Landscape Maintenance Services for Parks & Recreation as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

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

1.6. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.7. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be

determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

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

1.8. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City of Midland
Office of the Purchasing Agent OR
P.O. Box 115
Midland, TX 79702

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.9. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.10. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.11. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

"(Offeror's Name)", understands and will comply.

1.12. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.13. SUBMITTING A SEALED PROPOSAL

1.13.1. Number of copies and Location:

1.13.1.1. Offerors must submit one original, and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the

face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.13.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.13.2. Each Offeror who submits a proposal represents that:

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

1.13.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.13.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

1.13.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.14. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

a) waive any formality;
b) cancel or terminate this RFP;
c) reject any or all proposals received in response to this document;
d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.15. BONDING REQUIREMENTS

Intentionally Omitted

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the

contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

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

1.21.4. The initial contract(s) term is for a period of three years. Renewals of the contract may be made at one-year intervals, not to exceed a total of (4) four one-year renewals, at the City's option.

1.21.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.21.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all

 Robin Morin understands will comply

Urban Consumers (1982-84=100: through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

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

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

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

2.4. **<u>WAIVER:</u>**

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

2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**

2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

Alan Morin
Understands will comply

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.

Alan Morin
Understands will Comply

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.

Blain Moir will comply

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.

Blain Moir Understands & will comply

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.

Dan Moir understands will comply

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.

Dan Moir understands will comply

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.

Dan Moir understands will comply

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.

Blair Moir
Understands will comply

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.

Blair Moir
Understands will comply

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.

Blair Mori
Understands will comply

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.

Blair Mori
Understands will comply

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.

Blair Mori
Understands will comply

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

Blair Mori
Blair Mori
Understands and will
Comply

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

Blair Morin understands will compl

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

Blair Morin understands will comply

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.	

Blair Morin understands will comply

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

Blaze Mowing understands will comply

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	

blue Mon
Unless may will comply

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	

Blair Mon understands will comply

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**

Park Mow Gatherstown will COMPLY

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

Blair Mori understands will comply

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

Blair Mori understands will comply

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
O3	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

Dlm Mori understands will comply

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

Dlm Mori understands will comply

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.

Blair Moir understands will comply

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.

Blair Moir understands will comply

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.

Blair Moir understands will comply

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.

Blair Moir understands will comply

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

Understood
Elvin Moir will comply

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

Elvin Moir
understands will comply

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) ____2005 (16 years)_____.

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.

City Of Midland
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: $ 3.05

3. The Rack price per gallon of diesel used to prepare this proposal is: $ 3.30

4. Estimated number of gallons of diesel fuel per month..... 375-450

5. Estimated number of gallons of unledded gasoline..... 250

11.130

Name of Company submitting this offer: M3 Landscape

January 11, 2022

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN PARK

Proposal From:

					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
A	Hogan Park	1201 E. Wadley							
	(Baseball)		8 AC		2,470.00	183.33	106.67	2760	33,120
	(Softball)		2 AC		617.50	45.83	26.67	690	8,280
	(Soccer)		22 1/2 AC		69,46.68	515.58	300	7,762.46	93,149.52
B	Hogan Park	1201 E. Wadley							
	(Dog Parks)		9 AC		2,778.75	206.25	120	3,105	37,260.52
C	Hogan Park	1201 E. Wadley							
	(Common areas)		65 AC	1064 SQ FT	20,068.75	1,489.58	866.67	22,425	269,100
	Totals Schedule A				32,881.88	2,440.57	1,420.01	36,742.46	440,909.52

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: 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
D	Beal Park	5200 Wall							
	(Baseball)		8 AC		2,470	183.33	106.67	2,760	33,120
	(Cricket)		1/2 AC		154.38	11.46	6.67	172.51	2,070.12
	(Soccer)		4 1/2 AC		1389.38	103.13	60	1,552.51	18,630.12
E	Beal Park	5200 Wall							
	(Dog Parks)		5 AC		1543.75	114.58	66.67	1725.00	20,700
F	Beal Park	5200 Wall							
	(Common areas)		30 AC		9,262.50	687.50	400	10,350	124,200
	Totals Schedule B				14,820.01	1,100	640.01	16,560.02	198,720.24

City of Midland

Turf and Landscape Maintenance Services

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		2,161.75	160.42	93.33	2415	28,980
	(Soccer)		8 AC		2,470	183.33	106.67	2760	33,120
H	Butler Park	3801 Bluebird							
	(Common areas)		13 AC	1358 SQ FT	4,013.75	297.92	173.33	5028.75	60,345
	Totals Schedule C				8645.00	641.67	373.33	10,203.75	122,445.

City of Midland

Turf and Landscape Maintenance Services

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SCHEDULE D - WINDLANDS 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
I	Windlands Park	1000 W. Dengar							
	(Baseball)		4 AC		1235	91.67	53.33	1,380	15,360
	(Soccer)		19 AC		5,866.25	435.42	253.33	6,555	78,660
J	Windlands Park	1000 W. Dengar							
	(Common areas)		17 AC	3100 SQ FT	5248.75	389.58	226.67	5,865	70,380
K	Windlands Park	1000 W. Dengar							
	(Natural areas & Trails)		20 AC		6,175	458.33	266.67	6,900.02	82,800.24
	Totals Schedule D				18,325	1,375	800	20,700.02	247,400.24

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE E - SCHARBAUER SPORTS COMPLEX

Proposal From:

					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
L	Scharbauer Sports Complex	801 N Loop 250 W							
	(Common Areas)		46 AC	26,114 Sq Ft	14,202.50	702.78	613.33	15,518.61	186,223.32
M	Scharbauer Sports Complex	801 N Loop 250 W							
	(NE Undeveloped Area)		4 AC		1,235	91.67	53.33	1,380.00	16,560
	Totals Schedule E				15,437.50	794.45	6666.66	16,898.61	202,783.32

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)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5 AC.		1543.75	114.58	66.67	1725	20,700
	(Football)		2 AC.		617.50	45.83	26.67	690	8,280
	(Common Areas)		23 AC	1000 Sq Ft	7,101.25	351.33	306.67	7,759.25	93,111
O	Reyes/Mashburn/Nelms Park	2101 E. Cuthbert							
	(Baseball)		7 AC.		2,161.25	160.42	93.33	2415	28,980
	(Soccer)		10 AC		3,087.50	152.75	133.33	3,373.58	40,482.96
	(Common Areas)		48 AC.		14,820	733.33	640	16,193.33	194,319.96
P	MUGS/Ulmer Park	2700 W. Kentucky							
	(Softball)		8 AC.	200 Sq Ft	2,470	183.33	106.67	2760	33,120
	(Common Areas)		17 AC.		5,248.75	389.58	226.67	5865	70,380
Q	Dunagan Park	600 E. Gist							
	(Soccer)		6 AC.		1852.50	91.67	80.00	2,024.17	24,290.04
	(Common Areas)		2 AC.		617.50	45.83	26.67	690	8,280
R	Hidalgo Park	1401 Orchard Lane							
	(Softball)		1 AC.		308.75	15.25	13.33	337.33	4,047.96
	(Common Areas)		8 AC.		2470	183.33	106.67	2,760	33,120
	Totals Schedule F				42,298.75	2,467.23	1,824.68	46,592.66	559,111.92

PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE G – GENERAL PARKS

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging, Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
S	Bradford	801 E Pennsylvania	3.5 AC.	NA	1025.21	80.21	46.67		1152.09	13.825.08
T	Cowden	1100 Ward	8 AC	NA	2.343.33	122.17	106.67		2572.17	30.866.04
U	Crier Park	"H" at Texas	½ AC	5722	146.46	7.58	6.67	267.03	427.74	5.132.88
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	1250	1.669.96	87.08	76.00	58.33	1891.37	22.696.44
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450	1.464.58	76.33	64.67	21.00	1628.58	19.542.96
X	Elkin	1101 W. Washington	2 AC.	100	585.83	30.50	26.69	4.67	647.69	7772.28
Y	Essex	3400 Whittle Way	4 AC.	1000	1.171.67	61.08	53.33	46.67	1332.75	15.993
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA	1025.21	80.21	46.67		1152.09	13.825.08
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA	2.636.25	137.50	120.00		2893.75	34.725
BB	Grafa	3201 MaMar Ave	6 AC	NA	1.757.50	91.67	80.00		1929.17	23.150.04
CC	Grasslands	2501 Crowley	5 AC.	NA	1464.58	76.33	66.67		1607.58	19290.96
DD	Greathouse	5105 Greathouse	5 AC	1500	1464.58	76.33	66.67	76.00	1677.58	20130.96
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA	1.025.21	80.21	46.67		1152.09	13.825.08
FF	Halff	100 E. New Jersey	2 AC.	NA	585.83	30.50	26.67		643.00	7.716
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA	1.025.21	80.21	46.67		1152.09	13.825.08
HH	Hill	1301 W. Cuthbert	5 ½ AC	400	1.611.04	84	73.33	18.66	1787.03	21.444.36
II	House	4800 Ric Drive	6 ½ AC	NA	1.903.96	99.25	86.67		2089.88	25.078.56
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA	439.38	22.92	20.00		482.30	5.787.60
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA	585.83	30.50	26.67		643.00	7.716
LL	Jacotte	Golf Course intersect. With Jacotte	1 AC.	NA	292.92	15.25	13.33		321.50	3.858
				NA						
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA	146.46	4.00	3.50		153.96	1847.52
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA	1.025.21	80.21	46.67		1152.09	13.825.08
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA	1.171.67	61.08	53.33		12.86.08	15.432.96
PP	Lamesa Triangle	Kentucky and Indiana	½ AC	NA	146.46	7.58	6.67		160.71	1.928.52
				NA						
QQ	Lancaster	3501 W. Kansas	7 AC	NA	2.050.42	106.92	93.33		2250.67	27.008.04
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA	732.29	38.17	33.33		803.79	9645.48
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA	1171.67	61.08	53.33		12.86.08	15.432.96
TT	Pioneer	2001 Lindora Way	5 AC	300	1464.58	76.33	66.67	14.00	1621.58	19458.96

January 11, 2022

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
UU	Ratliff	2411 Edwards	5 AC.	NA	1.464.58	76.33	66.67		1.607.58	19.290
VV	Santa Rita	5200 Whitman	5 AC.	NA	1.464.58	76.33	66.67		1.607.50	19.290
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA	292.92	15.25	13.33		321.50	3.858.
XX	Sidwell	500 Neely	5 ½ AC.	NA	1.611.04	84.00	73.33		1.768.37	21.220.44
YY	Sparks	1500 E. Golf Course	5 AC.	NA	1.464.58	76.33	66.67		1.607.58	19.290.96
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA	2.343.33	122.17	106.67		2.572.17	30.866.04
A3	Trinity	3900 St. Andrew	4 AC	NA	1171.67	61.08	53.33		1.286.08	15.432.96
B3	Tumbleweed	1300 Ventura	8 AC	NA	2.343.33	122.17	106.67		2.572.17	30.866.04
C3	Unity	600 N. Mincola	1 AC	1244	292.92	15.25	13.33	58.05	321.50	3858
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000	732.29	38.17	33.33	1166.67	1.970.46	23.645.52
E3	Wadley Barron	1001 N. A Street	5 AC	450	1.464.58	76.33	66.67	21.00	1.628.58	19.542.96
F3	Washington Park	1803 E. Indiana	16 AC.	1500	4.686.67	244.42	213.33	70.00	5.214.42	62.573.04
	Totals Schedule G									700.514.80

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	71.25	71.25	855.00
H3	Fuhrman House	3301 Sinclair	1 ¼ AC	213.75	213.75	2565.00
I3	Heritage Blvd	Behind Lowe's	½ AC	71.25	71.25	855.00
J3	HWY 191 Easement	Adj to Grasslands	3 AC	427.50	427.50	5,124.00
K3	Loop 250 Easement	Adj to Grasslands	4 AC	570.00	570	6,840.00
L3	Marienfeld at Rankin Hwy	Same	½ AC	71.25	71.25	855.00
M3	Orchard & Front	Same	½ AC	71.25	71.25	855.00
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC	783.75	783.75	9,405.00
O3	Lamesa at Cuthbert	Same	¼ AC	71.25	71.25	855.00
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC	2,565.00	2,565	30,780
	Totals Schedule H			4,916.25	4,916.25	58,985

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: Litter and Trash Pick Up and Mowing (3 cycles/year)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3 AC	71.25	71.25	855.00
R3	Fairgrounds Road Hike/Bike Wadley to Loop 250	Fairgrounds Road	4 AC	95.00	95.00	1,140.00
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement West	5 AC	118.75	118.75	1,425.00
T3	RMN Undeveloped Area	Fairgrounds at Cuthbert	2 AC	47.50	47.50	570.00
	Totals Schedule I			322.50	332.50	3,990.00

City of Midland

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Cost Summary

SCHEDULE J - NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

Proposal From:

ID	Property Name	Location	Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance (18 cycles/year)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
U3	Achievement Plaza	W. Wall at Front Ave	7200 SQ. FT.	1,080.00	1,080.00	12,960
V3	Broadway Island	at Ohio Ave	22,721 SQ. FT.	1,704.08	1,704.08	20,448.90
W3	Broadway Median	At Cuthbert	500 SQ. FT.	75.00	75.00	900.00
X3	Cowden Island	At Big Spring	1950 SQ. FT.	292.50	292.50	3,510.00
Y3	Cowden Island	At Colorado	7838 SQ. FT.	1,175.70	1,175.70	14,108.40
Z3	Main & Baird	Islands	5544 SQ. FT.	831.60	831.60	9,979.20
A4	Wall Street	Downtown beds/trees	450 SQ. FT.	67.50	67.50	810.00
B4	Front Street	Beds near RR tracks	1000 SQ. FT.	150.00	150.00	1,800.00
C4	Volunteer Park	Big Spring & Marienfeld	14348 SQ. FT.	1,076.10	1,076.10	12,913.20
	Totals Schedule J			6,452.48	6,452.48	77,429.70

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	25.00	185.77	210.77	2529.24
E4	Loraine Center	Loraine & Louisiana	¼ AC	951	101.56	3.75	3.33	31.70	140.34	1684.08
F4	MLK Comm Center	2300 Butternut	2 AC	1000	617.50	30.50	8.33	33.33	689.66	8275.92
G4	Scarborough/Linebery House	802 S. Main	1 AC	1250	308.75	15.25	13.33	41.67	379.00	4548.00
H4	Old Police Station	404 E. Texas	1/2 AC	NA	154.38	NA	6.67		161.05	1932.60
I4	Parks Office	2701 Elizabeth	¼ AC	800	101.56	3.75	10.00	26.67	141.98	1703.76
J4	Baldwin Office	300 Baldwin	¼ AC	500	101.56	NA	7.50	16.67	125.73	1508.76
K4	Central Fire Station	1500 W. Wall	¼ AC	3500	101.56	21.67	16.67	116.67	256.57	3078.84
	Totals Schedule K								2,105.10	25,241.20

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	N/C	N/C
ORNAMENTAL SHRUB (5 GAL)	100	N/C	N/C
ORNAMENTAL TREE PLANTING	25	N/C	N/C
TREE PLANTING	50	225.00	11,250.00
TREE REMOVAL-TYPE A	20	500.00	10,000.00
TREE REMOVAL-TYPE B	50	700.00	35,000.00
Totals Schedule L			56,250.00

8.2 EVALUATION CRITERIA

8.2.1 Company Service Qualifications:

Commercial lawn maintenance, residential maintenance seasonal color, tree care and removal, irrigation installation and repair, artificial turf installation and all shrub care.

8.2.2 Three references: See attached letters

1. City of Midland Utilities Department- Raymond Saddler 432-681-7660

2. MISD- David Ramirez 432-240-1605

3. Sunset Memorial Gardens & Funeral Home- Jesse Arizpe- 432-235-3289

8.2.3 Years in business:

2005- Current (16 years)

8.2.4 Project Manager:

Isfrain Morin Jr.

8.2.5 Implementation Plan

First day meet with city point person on the project go thru all the properties with him ask his expectations once we know his expectations will hold a meeting with our staff will cover the contract the expections the legal part of it that will include the damage to trees, property so everyone understand what needs to be done. Documentation of the work they complete once we brief our staff will go over who were going to assign these properties to and work out our schedule. After day one of work will do a review to insure that were meeting city's expectations after a time period set will have an appointment with the city's point person to make sure were meeting expectations and give us feedback and continue to have meetings to make sure were doing everything he expects.

8.2.6 Training Requirements:

When we hire new employee we go thru proper protective equipment and used when operating equipment. We go thru how to operate all equipment in a safe manner, how to use and what not to do. Proper safety when using chemical, fertilizers and proper fueling of equipment.

8.2.7 Organization:

Will work out a schedule. Isfrain Morin will be in charge and Juan Vasquez will assist with daily work being done. Will have 15 employees assigned to do all work, 1- crew 2 men with exmark diesel 96", 1 crew 3 men 3- 60" mower, 1 crew 2 men 2- 60" mower, 2 crews 4 men each weed eat, edge, blow and anything else that needs done. If needed we have more employees help to assure that were meeting expectations. If awarded contract will be purchasing 2- 16 ft ground masters 5900 T 4.

8.2.8 Technical Abilities:

Commercial maintenance we maintain high schools, elementary schools, apartment properties, cemetery and complexes. Irrigation, seasonal color, tree care, chemicals needed, artificial turf and sod installation.

MIDLAND
Utilities Department

Raymond Saddler
Superintendent
5000 N Midland Dr
Midland, TX 79707
432-681-7660

To Whom It May Concern:

M3 Landscape Maintenance & Irrigation has been taking of annual growing season lawn maintenance for the City Of Midland Water Plant and towers for the past 4-5 years. Mr. Morin and his crews have always ben professional and courteous in their interactions with our staff.

The Lawn services have been good and performed on schedule as per our contract with this company. Mr. Morin quickly and professionally addresses any and all issues that may arise. We have extended our contract over these past few years with M3, and plan to continue to extend our contract with M3 Landscaping.

Sincerely,

Raymond Saddler

REFERENCES

Midland Independent School District

FACILITY DESIGN & STRUCTURAL SERVICES
801 S. Moran Street
Midland, Texas 79701

Dear Sir or Madam,

I am writing this recommendation letter, and unequivocally, I recommend the services of M3 Landscaping and Irrigation. For the past three years I have had the pleasure of working directly with Mr. Morin and GM, Juan and together they maintain 39 school properties, the administration buildings, undeveloped land and athletic fields.

The level of service far exceeds our service agreement and expectations. M3 Landscaping and Irrigation also provided landscaping and irrigation services on a need and emergency call out situations.

I look forward to future business relations with M3 and I would ask that you highly consider the professional maintenance services for your company needs.

David A. Ramirez
Director of Facility Design & Structural Services

To whom it may concern,

My name is Jesse Arizpe. I am the Grounds Maintenance Superintendent for Sunset Memorial Gardens & Funeral Home. Frank Morin is responsible for the lawn and grounds maintenance at my facility. Our agreement with M3 includes mowing the grounds and string trimming approximately 8,500 cemetery upright monuments, flat grave stones and granite park benches. Blowing the gravestones of grass and debris and maintaining tree canopies to a safe and manageable height. The staff stops operations if a procession enters, powers down their equipment and removes their hats as a sign of respect to the loved ones they are entrusted to care for their final place of rest. M3 has greatly improved the appearance of our cemetery and I would ask that you give M3 an opportunity to show you the level of service and care we have grown accustomed to experiencing.

Respectfully,

Jesse Arizpe
Grounds Maintenance Superintendent
Sunset Memorial Gardens and Funeral Home
6801 E Highway 80
Odessa, Texas
79762

M3 LANDSCAPE MAINTENANCE

JANUARY - OCTOBER 2021 PROFIT & LOSS STATEMENT

Gross Profit	**$**	**1,801,521.23**
Expenses		
Advantage Payroll	$	832,337.95
Contract Labor	$	12,569.35
Auto- Payment	$	9,456.36
Auto- Payment	$	7,905.00
Mower Payments	$	18,257.76
Commercial Insurance	$	14,400.00
General Liability Ins.	$	7,598.81
Workers Comp Insurance	$	16,699.79
Cell Phones/Repair	$	6,725.60
Office Supplies	$	7,228.12
Shop Utility's	$	2,420.28
Office Utility's	$	2,725.69
Internet	$	2,157.48
Employees Lunch	$	5,892.75
Uniforms	$	14,817.50
Further Education/ License Renewals	$	1,695.00
Tag's Truck/Trailers	$	1,701.95
Sales Tax	$	19,134.31
Shop Payment	$	4,528.20
Glass Replacement/ Keys	$	3,127.75
Fuel	$	69,525.27
Tires	$	9,780.72
M&M Disposal	$	2,584.00
Material/ Supplies	$	215,238.72
New Equipment & Tools	$	36,042.10
Skid Steer Payment	$	5,530.30
Equipment Rental	$	15,009.66
Equipment Parts/ Maintenance	$	14,325.69
M3 Donations	$	9,435.00
Skid Steer/ Trailer Payment	$	8,920.50
Turf Purchases	$	49,800.62
NET INCOME	**$**	**373,949.00**

FINANCIAL INFORMATION

S CORPORATION
Two-Year Comparison

2020

Name

M3 LANDSCAPE MAINTENANCE & IRRIGATION

Employer identification Number

-*6271

Description	Prior Year	Current Year	Increase (Decrease)
ORDINARY BUSINESS INCOME (LOSS):			
INCOME:			
GROSS RECEIPTS OR SALES LESS RETURNS AND ALLOWANCES	1,295,021.	2,213,353.	918,332.
COST OF GOODS SOLD	0.	323,359.	323,359.
GROSS PROFITS	1,295,021.	1,889,994.	594,973.
TOTAL INCOME	1,295,021.	1,889,994.	594,973.
DEDUCTIONS:			
SALARIES AND WAGES LESS EMPLOYMENT CREDITS	712,239.	1,008,097.	295,858.
REPAIRS AND MAINTENANCE	38,105.	70,260.	32,155.
RENTS	12,428.	0.	-12,428.
TAXES AND LICENSES	65,901.	92,500.	26,599.
INTEREST	9,747.	5,719.	-4,028.
DEPRECIATION	38,830.	218,976.	180,146.
ADVERTISING	935.	219.	-716.
EMPLOYEE BENEFIT PROGRAMS	0.	17,856.	17,856.
OTHER DEDUCTIONS	396,846.	291,335.	-105,511.
TOTAL DEDUCTIONS	1,275,031.	1,704,962.	429,931.
ORDINARY BUSINESS INCOME (LOSS)	19,990.	185,032.	165,042.
S CORPORATION TAXES:			
PAYMENTS AND CREDITS:			
BALANCE DUE OR REFUND:			
SCHEDULE K:			
INCOME:			
ORDINARY BUSINESS INCOME (LOSS)	19,990.	185,032.	165,042.
DEDUCTIONS:			
CHARITABLE CONTRIBUTIONS	4,924.	7,512.	2,588.
INVESTMENT INTEREST:			
CREDITS:			

012041
04-01-20

S CORPORATION
Two-Year Comparison

2020

Name

M3 LANDSCAPE MAINTENANCE & IRRIGATION

Employer Identification Number

-*6271

Description	Prior Year	Current Year	Increase (Decrease)
FOREIGN TAXES:			
AMT ITEMS:			
POST-1986 DEPRECIATION ADJUSTMENT	2,067.	-46.	-2,113.
OTHER SCHEDULE K ITEMS:			
NONDEDUCTIBLE EXPENSES	3,615.	3,581.	-34.
INCOME (LOSS)	15,066.	177,520.	162,454.
SCHEDULE M-1:			
NET INCOME (LOSS) PER BOOKS	11,451.	173,939.	162,488.
TRAVEL & ENTERTAINMENT RECORDED ON BOOKS NOT INCLUDED ON SCHEDULE K	3,615.	3,581.	-34.
TOTAL EXPENSES RECORDED ON BOOKS NOT INCLUDED ON SCHEDULE K	3,615.	3,581.	-34.
TOTAL OF LINES 1 THROUGH 3	15,066.	177,520.	162,454.
INCOME (LOSS)	15,066.	177,520.	162,454.
SCHEDULE M-2:			
ACCUMULATED ADJUSTMENTS ACCOUNT:			
BALANCE AT BEGINNING OF TAX YEAR	0.	11,451.	11,451.
ORDINARY INCOME	19,990.	185,032.	165,042.
OTHER REDUCTIONS	8,539.	11,093.	2,554.
COMBINE LINES 1 THROUGH 5	11,451.	185,390.	173,939.
BALANCE AT END OF TAX YEAR	11,451.	185,390.	173,939.

EXECUTION OF OFFER

Date: 11/5/21

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: M3 Landscape Maintenance & Irrigation, LLC

SIGNATURE (INK): Isfrain Morin

NAME: (TYPED/PRINTED) Isfrain Morin Jr.

TITLE: Owner

STREET: 5001 E. County Road 136

CITY/STATE/ZIP: Midland, TX 79706

TELEPHONE: 432-967-3125 FAX: n/a

E-MAIL ADDRESS: hometurf3m@hotmail.com

EXECUTION OF OFFER

CITY OF MIDLAND
SERVICE CONTRACT
# #
EXAMPLE

THIS CONTRACT, effective this _ day of __, 2021, by and between the City of Midland, hereinafter referred to as the "CITY" and ____, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $ $2,693,800.90 PLUS 3% DISCOUNT

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**

EXAMPLE SERVICE CONTRACT

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 (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: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

_____
Notary Public, State of _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

M3 Landscape Maintenance & Irrigation, LLC

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.**

n/a

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.** n/a

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.** n/a

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

11/5/21

Date

PACKET 11:167 January 11, 2022

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: M3 Landscape Maintenance & Irrigation, LLC

Local Address (must be within the City limits): 5001 E. County Road 136

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? 32
3. Year your business was established in the City of Midland: 2009
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 3-20595-9489-8

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

   M3 Landscape Maintenance & Irrigation, LLC
   5001 E. County Road 136
   Midland, TX 79706-7173

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: [signature] Date: 11/5/2021

Printed Name and Title: Isfrain Marin Jr. owner

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.

December 16, 2021

M3 Landscape Maintenance & Irrigation LLC
5001 ECR 136
Midland, TX 79706

Response Due: December 20, 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: Best and Final Offer for Request for Proposal (RFP) 22000143_21004234 Turf & Landscape Maintenance

M3 Landscape Maintenance has been qualified as an offeror to the subject RFP based on evaluation of your response to the RFP being judged reasonably acceptable. M3 Landscape Maintenance 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,
Purchasing Manager

Clarifications:

Please provide all the requested documents as outlined in the original RFP as well as the price of gasoline and diesel and the estimated number of gallons you will use per month.

Multiple contracts may be awarded in accordance with the separate schedules. See statement below.

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

The original RFP is attached.

Please deliver your BAFO to:

City of Midland, Texas
Purchasing Division
300 North Loraine, Suite 220
Midland, TX 79701

On or before December 20, 2021 at 2:00 PM

CITY OF MIDLAND

ADDENDUM

BID # 22000143

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: October 20, 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. Inconsistencies found- Page 3 Intended date to begin Contract Services – February 1, 2022. Then - 4.2.1 Contractor will have ten days from receipt of certified letter to commence mowing. Page 1 of 12 Service Contract example- Company hereby agrees to commence work within 15days after the date written notice. Question- Which one should we expect to follow? Most of our new equipment will be unavailable by this start time if we are awarded the contract will we be able to move the date back until it is available?

A1. The contract work should begin on February 1, 2022. Mowing operations can usually be scheduled to begin March 1, but due to league play and use of the parks, mowing must not be postponed. If equipment is not on hand, a sub-contractor or rental equipment may need to be utilized. Operations such as pre-emergent and other required work must be completed in February.

Q2. 4.2.3. – Fenced fields should be mowed with a mower with a 52" deck. Question- We would like to request to use a 72in deck mower?

A2. Fenced fields can be mowed with a 72 in deck mower as long as the work can be completed satisfactorily.

Q3. 4.2.6. - Mowing operations shall not be performed in common areas if grass height does not exceed 3 3/4in (minimum grass height requirement to mow). Questions- If we do not mow these areas because it has not grown enough will there be a payment deduction? Also say if we are in a high drought year and grass throughout is not growing will there be a payment deduction? Are there any scenarios that will cause the cancelation of parks in full that will create a payment deduction?

A3. If mowing is not completed due to lack of growth, the cycle will still be paid. The contract inspector for the city will need to be notified to verify that a "no- mow" decision was made. It is preferred that mowing not occur and payment be made over "mowing dirt".

There may be scenarios that will cause the cancellation of parks in full that will result in payment reductions. One example of this type of scenario would occur if a particular park is fully renovated, to include irrigation and turf. That park would be removed from the schedule and payment would not be made during the time of construction and any warrantee period that may be included in the renovation.

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

All other terms and conditions shall remain the same.

M3 LANDSCAPE & IRRIGATION
Company Name

Bidder Authorized Signature

12-19-21
Date

ISRAIN MORIN
Please Print Above Name

432-967-3125 432-853-8818
Phone

CITY OF MIDLAND
SERVICE CONTRACT
#22000143

THIS CONTRACT, effective this 12th day of January , 2022 , 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: $982,446.24

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

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

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

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

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

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

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

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

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

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

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

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

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

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for four(4) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

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

9. COMPANY shall:

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

Governments;

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

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

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

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

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

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

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

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

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

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

To CITY:

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

(If hand delivered) 300 North Loraine
Suite 220

Midland, Texas 79701

To COMPANY. 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 _____

December 16, 2021

Alldredge Gardens LP
PO Box 50005
Midland, TX 79710

Response Due: December 20, 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: Best and Final Offer for Request for Proposal (RFP) 22000143_21004234 Turf & Landscape Maintenance

Alldredge has been qualified as an offeror to the subject RFP based on evaluation of your response to the RFP being judged reasonably acceptable. Alldredge 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,
Purchasing Manager

Clarifications:

Please provide all the requested documents as outlined in the original RFP as well as the price of gasoline and diesel and the estimated number of gallons you will use per month.

Multiple contracts may be awarded in accordance with the separate schedules. See statement below.

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

The original RFP is attached.

Please deliver your BAFO to:

City of Midland, Texas
Purchasing Division
300 North Loraine, Suite 220
Midland, TX 79701

On or before December 20, 2021 at 2:00 PM

`CITY OF MIDLAND

PURCHASING DIVISION DATE: 11/05/2021

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22000143_21004234**

OPENING TIME: 11:00 AM **CLOSING DATE: 12/20/2021**

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 PM. 11/05/2021 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various Locations, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Professional Turf and Landscape Maintenance Services for Parks & Recreation		$2,800,000
				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 ALLDREDGE GARDENS LP
ADDRESS P O BOX 50005
CITY MIDLAND ST TX ZIP 79710
PHONE NO. 432-682-4500 FAX NO. 432-687-6876
EMAIL:justinsmithag@gmail.com
msa.alldredge@yahoo.com

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE _____

AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

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 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 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. 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.

Request for Proposals

RFP 21004234

for

Professional Turf and Landscape Maintenance Services for Parks & Recreation

Proposals for this requirement will be accepted until 2:00 P.M. on August 27, 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 21004234

For

Professional Turf And Landscape Maintenance Services For Parks & Recreation

Event	Date*
RFP Released	August 11, 2021
Cutoff Date for inquiries and clarification	August 25, 2021
Proposal Due Date	August 27, 2021
Notification of Vendor Interviews / Product Demonstrations	To be determined
Present Recommendation to Council for Consideration	September 14, 2021
Intended date for Contract Award	September 15, 2021
Intended date to begin Contract Services	October 1, 2021

*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 orexpand 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

See Exhibit C

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 _one_ year. Renewals of the contract may be made at one-year intervals, not to exceed a total of (6) six 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 contractorto 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 plantmaterials 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

5.4.5.5.4.5.

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

5.5.5.5.5.5.

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

	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

HEDULE 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

5.9.35.9.3

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

5.10.3.5.10.3.

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

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)	3,198
6.2	ORNAMENTAL SHRUB (5 GAL)	5,499
6.3	ORNAMENTAL TREE PLANTING	15,000
6.4	TREE PLANTING	40,000
6.5.6.	TREE REMOVAL-TYPE A	24,000
6.5.7.	TREE REMOVAL-TYPE B	80,000

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 establishthe 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 awardinga 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 15%

8.2.2 Three references.....5%

8.2.3 Years in business..... 5%

8.2.4 Project Manager 10%

8.2.5 Implementation Plan 15%

8.2.6 Training Requirements 10%

8.2.7 Organization..... 10%

8.2.8 Technical Abilities.....10%

8.2.9 Cost Analysis 20%

9. PROPOSAL CONTENTS

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

9.1 THE RFP

9.2 THE COST SUMMARY OR PROPOSAL FORM

9.3 REQUESTED ATTACHMENTS

9.3.1 References

9.3.2 Resumes

9.3.3 Business Plan

9.3.4 Financial Information

9.3.5 Signed Execution of Offer

10. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through_____.

OFFEROR/COMPANY: ALLDREDGE GARDENS, LP

SIGNATURE (INK)_____

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 Midland
Turf & Landscape Services
Cost Summary

Instructions and Information

1. Insert the bid amounts on each schedule according to the requirements coinciding with the specification for that schedule.

2. The last column is to provide the total monthly cost of fuel that is already included in the monthly costs for mowing, trimming, etc. This is for City informational purposes and does not preclude including fuel cost in these costs.

3. The Rack price per gallon of gasoline used to prepare this proposal is: $ 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

Name of Company submitting this offer: **ALLDREDGE GARDENS, LP**

January 11, 2022

11.227

PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN PARK

January 11, 2022
11.228
PACKET

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: Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: 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

38 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)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	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

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PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE D - WINDLANDS PARK

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
I	Windlands Park	1000 W. Dengar							
	(Baseball)		4 AC		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

PACKET

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

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PACKET

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)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	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

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE G – GENERAL PARKS

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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

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE H - BI-MONTHLY MOWING

Proposal From:				Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up, Edging,Trimming, (18 cycles/year)	Monthly	Annually
G3	Andrews Hwy ROW	Andrews & Godfrey	½ AC	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

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE I - OCCASIONAL MOWING

Proposal From:				Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up and Mowing (3 cycles/year)	Monthly	Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3 AC	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

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE J - NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

	Proposal From:			Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance (18 cycles/year)	Monthly	Annually
U3	Achievement Plaza	W. Wall at Front Ave	7200 SQ. FT.	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

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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			

January 11, 2022
11.240
PACKET

CITY OF MIDLAND
SERVICE CONTRACT
#22000143

THIS CONTRACT, effective this 12th day of January , 2022 , by and between the City of Midland, hereinafter referred to as the "CITY" and Lawn & Tree Tech, LLC , hereinafter referred to as the "COMPANY".

Projected Annual Cost: $814,647.21

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; Schedule E – Scharbauer Sports Complex, Schedule G – General Parks, Schedule J – No mow areas, 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. Lawn & Tree Tech, LLC
P.O. Box 9641
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. <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 Lawn & Tree Tech, 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 Proposal for Professional Turf and Landscape Maintenance Services for Parks and Recreation

RFP #22000143



Submitted by:
Lawn & Tree Tech, LLC
Mike Small
P.O. Box 9641
Midland, Texas 79708
Phone: (432) 934-1104

Lawn & Tree Tech, LLC
Mike Small
P.O Box 9641
Midland, Texas 79708
(432) 934-1104

City of Midland Proposal for Professional Turf and Landscape Maintenance Services for Parks and Recreation
RFP #220143

Lawn & Tree Tech, LLC would like to thank the City of Midland, and the City of Midland Purchasing Department for the opportunity to submit our Best and Final Offer Request for Proposal (RFP), #22000143_21004234 Turf & Landscape Maintenance.

As requested by the Purchasing Manager Erika Martinez, the price per gallon as submitted in Lawn and Tree Tech's RFP is estimated to be $3.15 per gallon for gasoline, and $3.40 per gallon for diesel fuels. Our operations anticipate using an average of 1,750 gallons of unleaded fuel, and 2,250 gallons of diesel products annually.

Lawn & Tree Tech, LLC would like to ask that the City of Midland's Purchasing Department to take into consideration that the original offer submitted in the amount of $2,678,294.94, is for work Schedules "A-K", being the City of Midland's primary requirements to execute this contract. Additional work attributed to Scheduled "L", in the amount of $124,696.25 is an estimated cost dedicated to "elective services," that can be performed at the City's request.

The bid submitted by Lawn & Tree Tech, LLC in RFP # 220143, dated November 15, 2021, represents our Best and Final Offer, which we believe to be the best value for the City of Midland.

Thank you,

Mike Small
Lawn & Tree Tech, LLC
432-934-9641

CITY OF MIDLAND

ADDENDUM

BID # 22000143

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: October 20, 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. Inconsistencies found- Page 3 Intended date to begin Contract Services – February 1, 2022. Then - 4.2.1 Contractor will have ten days from receipt of certified letter to commence mowing. Page 1 of 12 Service Contract example- Company hereby agrees to commence work within 15days after the date written notice. Question- Which one should we expect to follow? Most of our new equipment will be unavailable by this start time if we are awarded the contract will we be able to move the date back until it is available?

A1. The contract work should begin on February 1, 2022. Mowing operations can usually be scheduled to begin March 1, but due to league play and use of the parks, mowing must not be postponed. If equipment is not on hand, a sub-contractor or rental equipment may need to be utilized. Operations such as pre-emergent and other required work must be completed in February.

Q2. 4.2.3. – Fenced fields should be mowed with a mower with a 52" deck. Question- We would like to request to use a 72in deck mower?

A2. Fenced fields can be mowed with a 72 in deck mower as long as the work can be completed satisfactorily.

Q3. 4.2.6. - Mowing operations shall not be performed in common areas if grass height does not exceed 3 3/4in (minimum grass height requirement to mow). Questions- If we do not mow these areas because it has not grown enough will there be a payment deduction? Also say if we are in a high drought year and grass throughout is not growing will there be a payment deduction? Are there any scenarios that will cause the cancelation of parks in full that will create a payment deduction?

A3. If mowing is not completed due to lack of growth, the cycle will still be paid. The contract inspector for the city will need to be notified to verify that a "no- mow" decision was made. It is preferred that mowing not occur and payment be made over "mowing dirt".

There may be scenarios that will cause the cancellation of parks in full that will result in payment reductions. One example of this type of scenario would occur if a particular park is fully renovated, to include irrigation and turf. That park would be removed from the schedule and payment would not be made during the time of construction and any warrantee period that may be included in the renovation.

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

All other terms and conditions shall remain the same.

Lawn & Tree Tech, LLC
Company Name

Bidder Authorized Signature

12-20-2021
Date

Mike Small
Please Print Above Name

432.934.1104
Phone

City of Midland Proposal for Professional Turf and Landscape Maintenance Services for Parks and Recreation

RFP #2200014 3

LAWN & TREE TECH, LLC
432 934 1104
RESIDENTIAL & COMMERCIAL

Submitted by:
Lawn & Tree Tech, LLC
Mike Small
P.O. Box 9641
Midland, Texas 79708
Phone: (432) 934-1104

CITY OF MILDAND

TURF AND LANDSCAPE BID

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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 the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from Purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Parks and Recreation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Professional Turf and Landscape Maintenance Services for Parks & Recreation as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

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

1.6. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.7. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be

determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

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

1.8. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City of Midland
Office of the Purchasing Agent
P.O. Box 115
Midland, TX 79702

OR

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.9. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.10. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.11. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

"(Offeror's Name)", understands and will comply.

1.12. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.13. SUBMITTING A SEALED PROPOSAL

1.13.1. Number of copies and Location:

1.13.1.1. Offerors must submit one original, and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the

face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.13.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.13.2. Each Offeror who submits a proposal represents that:

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

1.13.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.13.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

1.13.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.14. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

a) waive any formality;
b) cancel or terminate this RFP;
c) reject any or all proposals received in response to this document;
d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.15. BONDING REQUIREMENTS

Intentionally Omitted

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the

contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

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

1.21.4. The initial contract(s) term is for a period of three years. Renewals of the contract may be made at one-year intervals, not to exceed a total of (4) four one-year renewals, at the City's option.

1.21.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.21.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all

Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

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

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

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

2.4. <u>WAIVER:</u>

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

2.5.1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;

2.5.2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland is requesting sealed proposals from qualified vendors for the purpose of establishing a contract to provide grounds maintenance, pest and weed control services, tree removal, and tree and shrub planting as specified herein and including all provisions set forth in the accompanying documentation. The contractor will provide professional turf and landscaping services necessary to complete the scope of work indicated as set forth in the following Schedules A through I.

4. GENERAL MAINTENANCE REQUIREMENTS

THE FOLLOWING MINIMUM STANDARDS WILL BE REQUIRED FROM SUCCESSFUL BIDDERS WITH RESPECT TO THE CARE AND MAINTENANCE OF TURF AND LANDSCAPE AREAS. ITEMS OF WORK WILL BE LISTED IN SCHEDULES A-I:

4.1. LITTER AND TRASH PICK-UP

4.1.2. All trash debris shall be picked up and disposed of by the Contractor prior to performing each cycle of work.

4.1.3. Failure to pick up litter and trash prior to mowing will result in a deduction of 25% of the cycle payment for each location.

4.2. MOWING

4.2.1. Mowing shall commence upon written notice by the Assistant Director of the Community Services Department for the City of Midland, Midland, Texas. Contractor will have ten (10) days from receipt of certified letter to commence mowing.

4.2.2. Mowing decks must be in good repair, with leveling wheel in place.

4.2.3. Fenced fields should be mowed with a mower with a 52" deck. Requests to utilize other deck mowers may be approved by the Assistant Community Services Director, pending written request. Mowing height of fields should be 2" after mowing. **DO NOT SCALP FIELDS**! This will result in payment deduction.

4.2.4 Schedule D areas that are mowed 3 cycles per year are to be mowed with a brush hog type mower.

4.2.5. Grass clippings shall not be caught. No grass "ridges" should be left after mowing.

4.2.6. Mowing operations shall not be performed in common areas if grass height does not exceed 3 ¾" (minimum grass height requirement to mow).

4.2.7. **GRASS HEIGHT SHALL BE 3" AFTER MOWING IN COMMON AREAS.** "Mowing Dirt" and/or "scalping" will not be tolerated. Cycle will not be paid if grass does not meet grass height requirement. Unpaid cycles will result in additional funds for tree or shrub planting or other maintenance as required.

4.2.8. All walks shall be swept or blown clear of grass clippings after each mowing. Do not blow clippings into the street unless they are subsequently picked up and properly disposed of by the contractor.

4.2.9. Contractor is responsible for notifying City of Midland Park Superintendent of any damages to structures, fences, gates, trees, or equipment including irrigation that occurs while mowing. Notification shall occur within 48 hours of damage.

4.2.10. Contractor is responsible for replacing or repairing all structures, fences, gates, trees, or equipment (excluding irrigation) that is damaged while mowing. Repair or replacement must occur within 2 weeks of damage. Failure by the contractor to make repairs or rectify damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

4.3. EDGING

All walks shall be edged to a depth of 1 1/2" and to a width of ½" in conjunction with every mowing cycle. This shall be performed by a blade edger in locations of high public traffic. Debris must be swept clear and disposed of by the Contractor. Blowing debris into the street is not acceptable.

4.4. TRIMMING

4.4.1. All trimming will be done in conjunction with every mowing cycle to achieve a uniform height in accordance with the mowing height around trees, signs, park structures and any other obstacles.

4.4.2. Contractor is responsible for repairing or replacing trees, signs, park structures and any other obstacles that are damaged while trimming. DO NOT allow trimmers to come in contact with trees.

4.4.3. Trees damaged by trimmers will be replaced. Tree guards may be placed around trees to prevent damage by mowers. These must be furnished at the contractor's expense. They must be maintained by the contractor. Replacement trees must be equal in size and variety, unless otherwise approved by the Assistant Director of Community Services.

4.4.5. Use of Glyphosate herbicide may be used to "chemically trim" areas around fences, structures, mature trees, sign posts, light posts, and buildings. Herbicide applicators must hold a TDA pesticide applicator license, or be under the direct supervision of a licensed applicator. If damages to surrounding turf or other plant materials is observed, this practice may be discontinued at the discretion of the Assistant Community Services Director.

4.5. FERTILIZATION

4.5.1. Park Common Areas designated to receive fertilization will be fertilized two times a year; once in the spring (April) and once in the fall (September). Sports Fields will be fertilized three times per year in April, June and August.

4.5.2. Fertilizer shall be a 4 to 1 to 2 ratio of nitrogen, phosphorus and potassium (20-5-10 or approved equal). Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) plus minimum 8% Sulphur and 4 % iron plus micronutrients. Apply at a rate of 1 pound of nitrogen per 1000 square feet per application.

4.5.3. Fertilizer must be approved by the Assistant Community Services Director prior to application.

4.6. Pest Control

4.6.1. Control all insects/pests that are detrimental to the maintenance of a healthy park landscape. This would include, but not be limited to, fire ants, harvester ants, tree bores and other insects or pests that are detrimental to health of turfgrass, trees and shrubs.

4.6.2. Broad spectrum pesticide for Ant Control (Talstar P or approved equal) shall be broadcast applied annually to all areas in schedules A, B, C, D Areas I and J, E Area L, .F Areas N, O and P, and G Areas V, Z, E3 and F3.

4.6.3 All other areas requiring pest control should be spot treated as needed.

4.7. Weed Control

□ Note: All control methods will be coordinated with the Park irrigation schedules.

4.7.1. Control all weeds, noxious plants and fungal forms that are detrimental to the maintenance of a healthy park landscape. This would include any weed, noxious plant or fungal form that inhibits the healthy growth of turfgrass, trees and/or shrubs.

4.7.2. Control all weeds and/or noxious plants in the crushed granite paths within the parks.

4.7.3. Control all weeds and/or noxious plants in the parking lots within the maintenance areas and parks as well as those in curbing /streets that directly border a park property.

4.7.4. High quality pre-emergent applications should be made starting in February and again in November for all areas where "Weed Control" is specified. Contractor must notify Park Superintendent when applications will begin. Pre-Emergent shall be Pendulum Aqua Cap or approve equal.

4.7.5. The following schedules DO NOT require pre-emergent applications:

Schedule D Area K, Schedule E Area M, and Schedule H, I and J

4.7.6. Post Emergent Herbicides should be used in all areas where weed control is specified as a work requirement. Depending on the target weed species, Speedzone EW-orange, Speed Zone- Red, Tenacity, and Image (or approved equals) should be used at appropriate times.

4.7.7 Do not use marker dye unless location is specifically approved by Assistant Community Services Director.

4.8. Planter Bed Maintenance

4.8.1 All beds to be turned and weeded once every 30 days during mowing cycles.

4.8.2 Pre-Emergent (Ronstar or approved equal) may be applied in beds.

4.9. SHRUB MAINTENANCE

All shrubs to be trimmed and pruned once every 30 days during mowing cycles, as to maintain a neat, uniform appearance.

4.10. IRRIGATION

4.10.1. Repair and operation of all irrigation systems will be the sole responsibility of the City of Midland Parks' Division.

4.10.2. Contractor must immediately report any damages to the irrigation system caused by maintenance operations to the Park Superintendent. Contractor should mark damages with a green irrigation flag.

4.10.3. Failure to report damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

5. SCHEDULE OF WORK

The following minimum standards will be required from successful bidders with respect to the care and maintenance of Turf and Landscape Areas listed in Schedules A-I:

5.1. SCHEDULE A- HOGAN PARK

5.1.1 General Work Requirements for all Schedule A locations:
Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.1.2. MOWING FREQUENCY

March-October	1 cycle every 7 days	35 cycles
November - February	1 cycle every 30 days	4 cycles

5.1.3

SCHEDULE A – HOGAN PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
A	Hogan Park (Baseball) (Softball) (Soccer)	1201 E. Wadley	 8 AC. 2 AC. 22 ½ AC.	
B	Hogan Park (Dog Parks)	1201 E. Wadley	9 AC.	
C	Hogan Park Common Areas	1201 E. Wadley	65 AC	1064

5.2. SCHEDULE B - BEAL PARK

5.2.1 General Work Requirements for all Schedule B locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, and Shrub Maintenance.

5.2.2. MOWING FREQUENCY

March-October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 30 days.....4 cycles

5.2.3

SCHEDULE B – BEAL PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
D	Beal Park (Baseball) (Cricket) (Soccer)	5200 Wall	 8 AC. ½ AC. 4 ½ AC.	
E	Beal Dog Parks	5200 Wall	5 AC.	
F	Beal Common Areas	5200 Wall	30 AC.	

5.3. SCHEDULE C - BUTLER PARK

5.3.1 General Work Requirements for all Schedule C locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.3.2. MOWING FREQUENCY

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.3.3.

SCHEDULE C – BUTLER PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
G	Butler Park (Baseball) (Soccer)	3801 Bluebird	 7 AC. 8 AC.	
H	Butler Common Areas	3801 Bluebird	13 AC.	1358

5.4. SCHEDULE D - WINDLANDS PARK

5.4.1 General Work Requirements for all Schedule D Areas I and J locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.4.2 General Work Requirements for all Schedule D Area K only:

Litter and Trash Pick-up, Mowing (brush hog allowed), and Trimming

5.4.3. MOWING FREQUENCY – Areas I and J

March-October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 30 days.....4 cycles

5.4.4. MOWING FREQUENCY – Area K

February only	1 cycle ..... 1 cycle

5.4.5.

SCHEDULE D – WINDLANDS PARK				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
I	Windlands Park (Baseball) (Soccer)	1000 W. Dengar	 4 AC. 19 AC.	
J	Windlands Park Common Areas	1000 W. Dengar	17 AC	3100
K	Windlands Park Natural Area & Jogging Trail	1000 W. Dengar	20 AC	

5.5. SCHEDULE E – SCHARBAUER SPORTS COMPLEX

5.5.1 General Work Requirements for Schedule E location L:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.5.2 General Work Requirements for Schedule E location M:

Litter and Trash Pick-up, Mowing, and Trimming. Brush hog is allowed.

5.5.3. MOWING FREQUENCY – Area L

March - October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 30 days.....4 cycles

5.5.4. MOWING FREQUENCY – Area M

1 cycle April/ 1 cycle July/ 1 cycle October.....3 cycles

5.5.5.

SCHEDULE E – SCHARBAUER SPORTS COMPLEX				
	AREA	ADDRESS	EST. TURF	EST. SQ.FT.BEDS
L	Scharbauer Sports Complex Common Areas	801 N Loop 250 W	46 AC	26,114
M	Scharbauer Sports Complex Undeveloped Areas	801 N Loop 250 W	4 AC	

5.6. SCHEDULE F - PARKS WITH ATHLETIC FIELDS

5.6.1 General Work Requirements for all Schedule F locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control.

5.6.2. MOWING FREQUENCY

March-October 1 cycle every 7 days.....35 cycles

November - February 1 cycle every 30 days.....4 cycles

5.6.3

SCHEDULE F – PARKS WITH ATHLETIC FIELDS				
AREA	PARK	LOCATION	EST. TURF	EST. SQ.FT.BEDS
N	CJ Kelly Park (Baseball) (Football) Common Areas	5500 League Drive	 5 AC. 2 AC. 23 AC	 1000
O	Reyes/Mashburn/Nelms (Baseball) (Soccer) Common Areas	2101 E. Cuthbert	 7 AC. 10 AC. 48 AC.	
P	MUGS/Ulmer Park (Softball) Common Areas	2700 W. Kentucky	 8 AC. 17 AC	 200
Q	Dunagan Common Areas (Soccer)	600 E. Gist	 2 AC. 6 AC.	
R	Hidalgo Common Areas (Softball)	1401 Orchard Lane	 8 AC. 1 AC.	

5.7 SCHEDULE G – GENERAL PARKS

5.7.1 General Work Requirements for all Schedule G locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.7.2. MOWING FREQUENCY

March - October	1 cycle every 7 days.....35 cycles
November - February	1 cycle every 60 days.....2 cycles

5.7.3.

SCHEDULE G – GENERAL PARKS				
	PARK	LOCATION	EST. TURF	EST. SQ. FT. BEDS
S	Bradford	801 E Pennsylvania	3.5 AC.	NA
T	Cowden	1100 Ward	8 AC	NA
U	Crier Park	"H" at Texas	½ AC	5722
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	NA
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450
X	Elkin	1101 W. Washington	2 AC.	100
Y	Essex	3400 Whittle Way	4 AC.	1000
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA
BB	Grafa	3201 MaMar Ave	6 AC	NA
CC	Grasslands	2501 Crowley	5 AC.	NA
DD	Greathouse	5105 Greathouse	5 AC	400
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA
FF	Halff	100 E. New Jersey	2 AC.	NA
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA
HH	Hill	1301 W. Cuthbert	5 ½ AC	400
II	House	4800 Ric Drive	6 ½ AC	NA
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA
LL	Jacotte	Golf Course intersect. With Jacotte	1 AC.	NA
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA
PP	Lamesa Triangle	Kentucky and Indiana	½ AC	NA
QQ	Lancaster	3501 W. Kansas	7 AC	NA
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA
TT	Pioneer	2001 Lindora Way	5 AC	300
UU	Ratliff	2411 Edwards	5 AC.	NA
VV	Santa Rita	5200 Whitman	5 AC.	NA

SCHEDULE G – GENERAL PARKS				
	PARK	LOCATION	EST. TURF	EST. SQ. FT. BEDS
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA
XX	Sidwell	500 Neely	5 ½ AC.	NA
YY	Sparks	1500 E. Golf Course	5 AC.	NA
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA
A3	Trinity	3900 St. Andrew	4 AC	NA
B3	Tumbleweed	1300 Ventura	8 AC	NA
C3	Unity	600 N. Mineola	1 AC	1244
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000
E3	Wadley Barron	1001 N. A Street	5 AC	450
F3	Washington Park	1803 E. Indiana	16 AC.	1500

5.8 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
O3	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.

City Of Midland
Turf & Landscape Services
Cost Summary

Instructions and Information

1. Insert the bid amounts on each schedule according to the requirements coinciding with the specification for that schedule.

2. The last column is to provide the total monthly cost of fuel that is already included in the monthly costs for mowing, trimming, etc. This is for City informational purposes and does not preclude including fuel cost in these costs.

3. The Rack price per gallon of gasoline used to prepare this proposal is: $ 3.15

3. The Rack price per gallon of diesel used to prepare this proposal is: $ 3.40

4. Estimated number of gallons of diesel fuel per month:..... 1,750

5. Estimated number of gallons of unledded gasoline..... 2,250

Name of Company submitting this offer: Lawn + Tree Tech, LLC

January 11, 2022

11.286

PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule A (Hogan Park)

Proposal Form:

ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas. (SQ FT)	Monthly Bids For Specific Services: Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Monthly Bids For Specific Services: Fertilization (3 times/year)	Monthly Bids For Specific Services: Pesticide, Herbicide & Ant Control (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
A	Hogan Park	1201 E. Wadley							
	(Baseball)		8		$12,096.68	$131,997.56	$71,530.73		
	(Softball)		2		$3,024.17				
	(Soccer)		22.5		$34,021.90				
B	Hogan Park	1201 E. Wadley							
	(Dog Parks)		9		$13,608.76				
C	Hogan Parks	1201 E. Wadley							
	(Common Areas)		65	1064	$98,285.49				
	Total Acreage		106.5						
	Total Common Area SQ FT			1064					
	Total Schedule A				$161,037.00	$131,977.56	$71,530.73	$30,378.77	$364,545.29

January 11, 2022
11.287
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule B (Beal Park)

Proposal Form:

ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas (SQ FT)	Monthly Bids For Specific Services: Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Monthly Bids For Specific Services: Fertilization (3 times/year)	Monthly Bids For Specific Services: Pesticyde, Herbicide, and Ant Control (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
D	Beal Park	5200 W. Wall							
	(Baseball)		8		$12,092.57	$97,474.56	$64,478.00		
	(Softball)		0.5		$754.74				
	(Soccer)		4.5		$6,802.07				
E	Beal Park	5200 W. Wall							
	(Dog Parks)		5		$7,557.85				
F	Beal Park	5200 W. Wall							
	(Common Areas)		30		$45,347.15				
	Total Acreage		48						
	Total Common Area SQ FT								
	Total Schedule B				$72,554.38	$97,474.56	$64,478.00	$19,542.25	$234,506.94

January 11, 2022
11.288
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule C (Butler Park)

Proposal Form:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas. (SQ FT)	Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (3 times/year)	Pesticyde, Herbicide, Ant Control (as needed)	Monthly	Annually
G	**Butler Park**	3801 Bluebird							
	(Baseball)		7			$56,860.16	$18,806.20		
	(Soccer)		8		$12,096.23				
H	**Butler Park**	3901 Bluebird							
	(Common Area)		13	1358	$19,656.38				
	Total Acreage		28						
	Total Common Area SQ FT			1358					
	Total Schedule C				$31,752.61	$56,860.16	$18,806.20	$8,951.58	$107,418.97

January 11, 2022
11.289
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule D (Windlands Park)

Proposal Form:

ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas. (SQ FT)	Monthly Bids For Specific Services			Composite Bids for All Services	
					Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (3 times/year)	Pesticyde, Herbicide, Ant Control (as needed)	Monthly	Annually
I	**Windlands Park**	**1000 W Dengar**							
	(Baseball)		4		$6,044.22	$121,800.00	$40,299.00		
	(Soccer)		19		$28,709.10				
J	**Windlands Park**	**1000 W Dengar**							
	(Common Areas)		17	3100	$25,688.19				
K	**Windlands Park**	**1000 W Dengar**							
	Nature areas & Trails		20		$30,221.35				
	Total Acreage		60						
	Total Common Area SQ FT			3100					
	Total Schedule D				$90,662.86	$121,800.00	$40,299.00	$21,063.49	$252,761.86

January 11, 2022
11.290
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule E (Scharbauer Sports Complex)

Proposal Form:

ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas (SQ FT)	Monthly Bids For Specific Services			Composite Bids for All Services	
					Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (3 times/year)	Pesticyde, Herbicide (as needed)	Monthly	Annually
L	**Windlands Park**	**801 N Loop 250 W**							
	(Common Areas)		46	26,114	$69,483.96	$61,845.00	$33,582.50		
M	**Windlands Park**	**801 N Loop 250 W**							
	Nature areas & Trails		4		$6,042.13				
	Total Acreage		50						
	Total Common Area SQ FT			26,114					
	Total Schedule E				$75,526.09	$61,845.00	$33,582.50	$14,246.13	$170,953.59

January 11, 2022
11.291
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule F (Parks with Athletic Fields)

Proposal Form:

ID	Property Name	Location	Mowing Areas (Acres)	Bed Areas (SQ FT)	Monthly Bids For Specific Services: Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Monthly Bids For Specific Services: Fertilization (3 times/year)	Monthly Bids For Specific Services: Pesticyde, Herbicide (as needed)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5		$5,877.27	$37,107.00	$20,149.50		
	(Football)		2		$2,350.90				
	(Common Areas)		23	1000	$27,035.53				
	Total Acreage		30						
O	Reye/Mashburn/Nelms Park	2101 E Cuthbert							
	(Baseball)		7		$8,228.19	$80,398.50	$43,657.25		
	(Soccer)		10		$11,754.57				
	(Common Areas)		48		$56,421.95				
	Total Acreage		65						
P	MUGS/Ulmer Park	2700 W. Kentucky							
	(Softball)		8	200	$9,404.67	$30,922.50	$16,791.25		
	(Common Areas)		17		$19,982.78				
	Total Acreage		25						
Q	Dunagan Park	600 E. Gist							
	(Soccer)		6		$7,052.73	$9,895.20	$5,373.20		
	(Common Areas)		2		$2,350.63				
	Total Acreage		8						
R	Hidalgo Park	1410 Orchard Lane							
	(Softball)		1		$1,174.32	$9,895.20	$3,298.40		
	(Common Areas)		8		$9,403.61				
	Total Acreage		137						
	Total Common Area SQ FT								
	Total Schedule F				$161,037.15	$168,218.40	$89,269.60	$34,877.10	$418,525.15

January 11, 2022
11.292
PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule G (1) (General Parks)

Proposal Form:

ID	Property Name	Location	Turf Area (Acres)	Plant Bed Areas. (SQ FT)	Monthly Bids For Specific Services: Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (2 times/year)	Pesticyde, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
S	Bradford	801 E. Pennsylvania	3.5	NA	$5,145.89	$2,839.55	1935.305			
T	Cowden	1100 Ward	8	NA	$11,762.04	$6,490.40	4209.29			
U	Crier Park	"H" at Texas	0.5	5722	$735.13	$405.65	419.315			
V	Dennis the Menace	2201 W. Indiana	5.7	1250	$8,380.45	$4,624.41	3047.031			
W	Doug Russell Pool	900 N. Midland Dr.	5	450	$7,351.27	$4,056.50	2693.3			
X	Elkin	1101 W. Washington	2	100	$2,940.51	$1,622.60	1177.31			
Y	Essex	3400 Whittle Way	4	1000	$5,881.02	$3,245.20	2187.97			
Z	Fasken	2301 Humble	3.5	1000	$5,145.89	$2,839.55	1935.305			
AA	MUGS/Ulmer Park	2700 W. Kentucky	9	NA	$13,232.29	$7,301.70	4714.62			
BB	Grafa	3201 MaMar Ave	6	NA	$8,821.53	$4,867.80	3198.63			
CC	Grasslands	2501 Crowley	5	NA	$7,351.27	$4,056.50	2693.3			
DD	Greathouse	5105 Greathouse	5	1500	$7,351.27	$4,056.50	2693.3			
EE	Haley	1800 Holloway Ave.	3.5	NA	$5,145.89	$2,839.55	1935.305			
FF	Halff	100 E. New Jersey	2	NA	$2,940.51	$1,622.60	1177.31			
GG	Henderson	4701 Graceland Dr.	3.5	NA	$5,145.89	$2,839.55	1935.305			
HH	Hill	1301 W. Cuthbert	5.5	400	$8,086.40	$4,462.15	2945.965			
II	House	4800 Ric Drive	6.5	NA	$9,556.66	$5,273.45	3451.295			
JJ	Ida Jo Moore	701 W. Nobles	1.5	NA	$2,205.38	$1,216.95	924.645			
KK	Indiana Island (3)	At "C" & "G"	2	NA	$2,940.51	$1,622.60	1177.31			
LL	Jacotte	Golf Course intercest with Jacotte	1	NA/NA						
MM	Lloyd	Cuthbert & Marienfield	0.33	NA	$1,470.25	$811.30	671.98			
NN	M.L. Kings, Jr.	1415 E. Schaurbauer	3.5	NA	$485.18	$267.73	333.4089			
OO	Kiwanis	2900 Haynes Drive	4	NA	$5,145.89	$2,839.55	1935.305			
PP	Lamesa Trianlge	Kentucky & Indiana	0.5	NA	$5,881.02	$3,245.20	2187.97			
QQ	Lancaster	3501 W. Kansas	7	NA	$735.13	$405.65	419.315			
RR	Lancaster (Annexx)	3400 W. Storey	2.5	NA	$10,291.78	$5,679.10	3703.96			
SS	Lancaster (Tesco)	3500 W. Kansas	4	NA	$3,675.64	$2,028.25	1429.975			
TT	Pioneer	2001 Lindora Way	5	300	$5,881.02	$3,245.20	2187.97			
	Total Schedule G (1)		109.53		$7,351.27	$4,056.50	2693.3			
					$161,037.00	$88,861.69	$60,014.99		$25,826.14	$309,913.68

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Schedule G (2) (General Parks)

continued:

Proposal Form:

ID	Property Name	Location	Turf Area (Acres)	Plant Bed Areas. (SQ FT)	Monthly Bids For Specific Services				Composite Bids for All Services	
					Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (2 times/year)	Pesticyde, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
UU	Ratliff	2411 Edwards	5	NA	$12,387.46	$4,123.00	$8,408.25			
VV	Santa Rita	5200 Whitman	5	NA	$12,387.46	$4,123.00	$8,408.25			
WW	Schrabuer Triangle	1601 W. Schrarbauer	1	NA	$2,477.49	$824.00	$1,681.65			
XX	Sidwell	500 Neely	5.5	NA	$13,626.21	$4,535.30	$9,249.08			
YY	Sparks	1500 E. Golf Course	5	NA	$12,387.46	$4,123.00	$8,408.25			
ZZ	Taylor	1401 E. Carter Dr.	8	NA	$19,819.94	$6,596.80	$13,453.20			
A3	Trinity	3900 St. Andrew	4	NA	$9,909.97	$3,298.40	$6,726.60			
B3	Tumbleweed	1300 Ventura	8	NA	$19,819.94	$6,596.80	$13,453.20			
C3	Unity	600 N. Mineola	1	1244	$2,477.49	$824.00	$1,681.65			
D3	Vietnam Memorial	Wright Drive	2.5	25,000	$6,193.73	$2,061.50	$4,204.13	$3,160.08		
E3	Wadley Barron	1001 N. A Street	5	450	$12,387.46	$4,123.00	$8,408.25	$1,053.36		
F3	Washington Park	1803 E. Indiana	15	1500	$37,162.38	$12,369.00	$25,224.75	$1,580.04		
	Total Schedule G (2)		65		$161,037.00	$53,597.80	$109,307.25	$5,793.48	$27,477.96	$329,735.53

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule H - BI-Monthly Mowing

Proposal Form:

ID	Property Name	Location	Area (Acres)	Litter & Trash Pick Up, Edging Trimming, (18 cyles/year)	Monthly	Annually
G3	Andrews Hwy ROW	Andrews & Godfrey	0.5	$6,032.88		
H3	Fuhrman House	3301 Sinclair	1.5	$18,098.64		
I3	Heritage Blvd.	Behind Lowe's	0.5	$6,032.88		
J3	HWY 191 Easement	Adj. to Grasslands	3	$36,197.28		
K3	Loop 250 Easement	1500 E. Golf Course	4	$36,288.00		
L3	Marienfeld at Rankin Hwy.	1401 E. Carter Dr.	0.5	$6,032.88		
M3	Orchard & Front	3900 St. Andrew	0.5	$6,032.88		
N3	Tumbleweed	"C"-"I" Pecos to Humble	5.5	$66,361.68		
O3	Lamesa at Cuthbert	Same	0.25	$3,016.44		
P3	Holiday Hill Rd. Extension	Holiday Hill North	18	$217,183.68		
	Total Schedule G		34.25	$401,277.24		$401,277.24

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule I - Occasional Mowing

Proposal Form:

ID	Property Name	Location	Area (Acres)	Litter & Trash Pick Up, Edging Trimming, (3 cyles/year)	Monthly	Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3	$6,032.88		
R3	Fairgrounds Road Hike/bike Wadley to Loop 250	Fairgrounds Road	4	$8,043.84		
S3	Loop 250 to Lancaster Hike/Bike Path	Behind Lowe's	5	$10,054.80		
T3	RMN	Fairgrounds to Cuthbert	2	$4,021.92		
	Total Schedule I			$28,153.44	$1,400.00	$28,153.44

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule J - No Mow Areas (Xeriscape and/or Beds Only)

Proposal Form:

ID	Property Name	Location	Area (Sq. FT)	Litter & Trash Pick Up, Edging Trimming, (3 cyles/year)	Monthly	Annually
U3	Achievement Plaze	W. Wall at Front Ave.	7,200.00	$497.70		$497.70
V3	Broadway Island	at Ohio Ave.	22,721.00	$663.44		$663.44
W3	Broadway Median	At Cuthbert	500.00	$331.81		$331.81
X3	Cowden Island	At Big Spring	1,950.00	$497.70		$497.70
Y3	Cowden Island	At Colorado	7,838.00	$662.76		$662.76
Z3	Main & Baird	Islands	5,544.00	$297.78		$297.78
A4	Wall Street	Downtown beds/trees	450.00	$297.78		$297.78
B4	Front Street	Beds near RR tracks	1,000.00	$297.78		$297.78
C4	Volunteer Park	Big Spring & Marienfeld	14,348.00	$497.70		$497.70
	Total Schedule I					$4,044.45

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule K (City Offices)

Proposal Form:					Monthly Bids For Specific Services				Composite Bids for All Services	
ID	Property Name	Location	Turf Area (Acres)	Plant Bed Areas. (SQ FT)	Litter & Trash Pick Up, Edging Trimming, (39 cyles/year)	Fertilization (2 times/year)	Pesticyde, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
D4	City Hall	300 N. Loraine	NA	5,573.00	$5,752.60	$824.00	$3,021.00			
E4	Loraine Center	Loraine & Louslana	0.25	951.00	$5,752.60	$824.00				
F4	MLK Coom Center	2300 Butternut	2	1,000.00	$5,752.60	$1,649.00				
G4	Scarborough/Lineberry Home	802 S. Main	1	1,250.00	$5,752.60	$824.00				
H4	Old Police Station	404 E. Texas	0.5	NA	$5,752.60	$824.00				
I4	Parks Office	2701 Elizabeth	0.25	800.00	$5,752.60	$824.00				
J4	Baldwin Office	300 Baldwin	0.25	500.00	$5,752.60	$824.00				
K4	Central Fire Station	1500 W. Wall	0.25	3,500.00	$5,752.60	$824.00				
	Total Schedule K		4.5		$46,020.80	$7,417.00	$3,021.00		$4,704.90	$56,458.80

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City of Midland

Turf and Landscape Maintenance Services

Cost Summary

Schedule L - Additional Maintenance Services As Required

Proposal Form:

	Quantities	Composite Bids for All Services	
Items of Work	Estimated Quanity Per Year	Each	Annually
Ornanmental Schrub (1 Gal)	200	15.99	$3,198.00
Ornanmental Schrub (5 Gal)	100	39.99	$3,999.00
Ornamaental Tree Planting	25	299.99	$7,499.75
Tree Planting	50	899.99	$44,999.50
Tree Removal Type A	20	750.00	$15,000.00
Tree Removal Type B	50	1,000.00	$50,000.00
Total Schedule L			$124,696.25

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Lawn & Tree Tech, LLC

Total for All Schedules A-K	**$2,678,294.94**
Total for Additional Work Schedule L	**$124,696.25**

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References

St. Luke's United Methodist Church
3011 W. Kansas
Midland, TX 79701
432.694.2571
stlukesumc@midland.org

Archrock
9704 W Interstate 20
Midland, TX 79706
432.682.3380
bradford.remley@archrock.com

David Fields Company
605 N. Carrizo St.
Midland, TX 79704
432.683.3296
I do several of their properties

Permian Basin Pain Management
1802 W. Wall
Midland, TX 79701
432.683.3121

Dolly Doctor
2817 Loop 250 N.
Midland, TX 79707
432.528.2527

Imperial Shopping Center
3211 W. Wadley
Midland, TX 79707
432.694.6401

MIKE SMALL

PO Box 9641 Midland, TX 79707 | (432) 934.1104 | lawnandtreetech@yahoo.com

Website

- lawnandtreetech.com

Professional Summary

Innovative and goal-oriented Owner committed to professional development and expert leadership of landscape management. Comfortable leading and working with individuals from broad array of backgrounds and cultures. Results-driven bringing 37+ years of experience in the landscape management industry. Focused on boosting team productivity and increasing profits by proactively managing and improving operations.

Skills

- Relationship and Team Building
- Executive Leadership
- Industry Expertise
- Goal Setting
- Integrity and Transparency
- Organizational Development

Work History

Owner Midland, TX January 2020-Current

Lawn & Tree Tech, LLC

- Applied performance data to evaluate and improve operations, target current business conditions and forecast needs.
- Managed day-to-day business operations.
- Founded and managed Landscape business, growing to $1.5 million in first year.
- Recruited, hired and trained initial personnel, working to establish key internal functions and outline scope of positions for new organization.
- Frequently studied market to keep abreast of new industry trends.
- Trained and guided team members to maintain high productivity and performance metrics.
- Drafted invoices for completed work.

Alldredge Gardens	Manager	Midland, TX	2006-20
JMS Landscape	Owner	McKinney, TX	2002-06
Longhorn Maintenance	Manager	McKinney, TX	1995-2002
Alldredge Gardens	Worker	Midland, TX	1990-1995
Milton Kirby	Worker	Midland, TX	1989-90
Sun Horticulture	Manager	Midland, TX	1986-88
Milton Kirby	Worker	Midland, TX	1984-85

MIKE SMALL

PO Box 9641 Midland, TX 79707 | (432) 934.1104 | lawnandtreetech@yahoo.com

Education

Texas Tech University	No Degree: Accounting	Lubbock, TX	Fall 1988
Midland College	No Degree: Basics	Midland, TX	Spring 86
Pratt Jr. College	General Studies	Pratt, KS	Fall 1985
Robert E. Lee High School	High School Diploma	Midland, TX	May 1985

Certifications

- Licensed TDA – 4 years
- Licensed Backflow Tester – 8 years
- Licensed Irrigator – 10 years
- Licensed Structural Pest Control – 30 years

LAWN & TREE TECH, LLC

PO Box 9641
Midland, TX 79708
432.934.1104
lawnandtreetech@yahoo.com

City of Midland
Parks and Recreation
300 N. Loraine, Suite 340
Midland, TX 79701

Thank you for allowing Lawn & Tree Tech, LLC the opportunity to enter this bid for the landscape maintenance and park services contract for the City of Midland Parks and Recreational Facilities. Lawn & Tree Tech, LLC prides itself on the abilities of both its employees and management with well over 40 plus years of experience in the lawn and tree maintenance workspaces from all over the State of Texas but mainly the Permian Basin. Lawn & Tree Tech, LLC strives to provide the highest quality work for both its residential and commercial clients throughout West Texas.

Lawn & Tree Tech, LLC will have 6 crews which will be focusing on providing excellent mowing, edging, weed eating, blowing, bed clean up, maintenance, fertilization, weed and ant control located within the municipal properties owned, operated or managed by the City of Midland Parks and Recreational Services. Lawn & Tree Tech, LLC's crew leaders will delegate certain jobs to individual employees who represent the best qualities and traits associated with their skills sets. This will help to improve productivity and benefit the management of individual projects making them as proficient as possible in their duties. By delegating and properly managing these individual skills we will be able to provide superior services and proficiency that will pass from park to park. Our goal is to have each employee as efficient, knowledgeable and proud of their individual tasks and projects so that it will create a sense of pride and ownership. This in turn will benefit both the employee and our community.

Lawn & Tree Tech, LLC is very proud of our extremely low turnover rate within our crews. We feel that this is in response to the training and development time we put into each of our employees. Lawn & Tree Tech, LLC's low turnover rate allows for a better seasonal vision of the properties managed and maintained, creating better spring growth and higher quality parks. Also, by allowing our employees to learn the properties which they maintain, they become stewards of the properties for the betterment of the city and community. Lawn & Tree Tech, LLC will take certain steps throughout the year to make sure the turf and plants are in top shape, by implementing experienced fertilization and pruning technics. Lawn & Tree Tech, LLC will for example, switch mowing directions weekly to allow the grass to stand tall. This will allow the grass to grow properly not allowing the

grass to fall on itself which will benefit all the sports complexes and parks. Lawn & Tree Tech, LLC will implement these technics which in the past had been overlooked by previous management companies. This technic of care and knowledge only comes with experience, time, and pride in your work.

During park inspections Lawn & Tree Tech, LLC will notify city appointed employees of any irrigation issues and irregularities discovered during our mowing services allowing for better vegetation growth and avoiding unnecessary water waste. Lawn and Tree Tech, LLC will notify city employees of any fertilization, weed control and insect control prior to application. Lawn & Tree Tech, LLC will work with city employees and management to improve any fertilization needs that may be of benefit to the parks. Lawn & Tree Tech, LLC **will not** use inferior products in an attempt to save money, we will use top brands with the best results, **period**. Lawn & Tree Tech, LLC will never spot treat weeds or spot treat for pest control. It is our policy that the best results are found by treating the entire area. Lawn & Tree Tech, LLC believes that fertilization and weed control is the key to growing and maintaining the turf in our arid West Texas environment.

After evaluating the parks in the city, weeds and stickers are in an abundance. The parks are completely infested by weeds and stickers which creates very poor and undesirable conditions for anyone hoping to use the facilities. With proper maintenance this can be corrected. Lawn & Tree Tech, LLC's vision is to completely change the view of our West Texas parks and create an environment for not only residents, but visitor who come to enjoy the city parks as well. We envision our sports complexes as something of pride for all our residents and by improving our parks we will improve our image on a larger scale and finally make Midland a destination.

At Lawn & Tree Tech, LLC we pride ourselves on our performance and reputation.

Mike Small
Lawn & Tree Tech, LLC

Maintenance Schedule

Monday	Schedule A	
Property	**Schedule**	
Beal Park	Weekly	Parks
Henderson	Weekly	Parks
Garret-Brown	Weekly	Parks
Dennis the Menace	Weekly	Parks
Haley	Weekly	Parks
Indiana	Weekly	Parks
Elkin	Weekly	Parks
Lancaster (Annex)	Weekly	Parks
Lancaster (Tesco)	Weekly	Parks
Vietnam Memorial	Weekly	Maintenance

Tuesday	Schedule B	
Property	**Schedule**	
Scharbauer Sports Complex	Weekly	Parks
Doug Russel	Weekly	Parks
House	Weekly	Parks
Lancaster	Weekly	Parks
Cowden	Weekly	Parks
Grafa	Weekly	Parks
Furman House	Bi-Weekly	Parks
Fasken	Weekly	Parks
Scharbauer Triangle	Weekly	Parks
Wadley Barron	Weekly	Parks
Ida Jo Moore	Weekly	Parks
Hill	Weekly	Parks
Crier	Weekly	Parks
Lloyd	Weekly	Parks
Andrews Hwy	Bi-Monthly	Maintenance

Wednesday	Schedule C	
Property	**Schedule**	
Santa Rita	Weekly	Parks
Butler Park	Weekly	Parks
Greathouse	Weekly	Parks
CJ Kelly	Weekly	Parks
Essex	Weekly	Parks
Trinity	Weekly	Parks
Kiwanis	Weekly	Parks

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Ventura	Weekly	Parks
Pioneer	Weekly	Parks
Heritage Blvd	Bi-Weekly	Parks
Hwy 191	Bi-Weekly	Parks
Loop 250	Bi-Weekly	Parks
Holiday Hill	Bi-Weekly	Parks

Thursday	Schedule D	
Property	Schedule	
Reyes/Mashburn/Nelms	Weekly	Parks
Jacotte	Weekly	Parks
Sparks	Weekly	Parks
MLK	Weekly	Parks
Ratliff	Weekly	Parks
Sidwell	Weekly	Parks
Hidalgo	Weekly	Parks
Unity	Weekly	Parks
Orchard	Weekly	Parks
Bradford	Weekly	Parks
Half	Weekly	Parks
Taylor	Weekly	Parks
Lamesa Triangle	Weekly	Parks
Washington Park	Weekly	Parks
Marienfield & Rankin	Bi-Weekly	Maintenance
Scharbauer Row	Bi-Weekly	Parks
Lamesa & Cuthbert	Bi-Weekly	Maintenance
Orchard & Front	Bi-Weekly	Maintenance

Friday	Schedule E	
Property	Schedule	
Hogan Park	Weekly	Parks
Windlands	Weekly	Parks
Unscheduled Maintnance Projects		

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January 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
					1/2 January
3 SEASONAL SCHEDULE A Mowing, & Monthly Bedding Maintenance	4 Schedule B Seasonal Mowing	5 Schedule C Seasonal Mowing	6 Schedule D Seasonal Mowing	7 Schedule E Seasonal Mowing	8/9
10 Schedule A Seasonal Mowing	11 SEASONAL SCHEDULE B Mowing & Monthly Maintenance	12 Schedule C Seasonal Mowing	13 Schedule D Seasonal Mowing	14 Schedule E Seasonal Mowing	15/16
17 Schedule A Seasonal Mowing	18 Schedule B Seasonal Mowing	19 SEASONAL SCHEDULE C Mowing, & Monthly Bedding Maintenance	20 Schedule D Seasonal Mowing	21 Schedule E Seasonal Mowing	22/23
24 Schedule A Seasonal Mowing	25 Schedule B Seasonal Mowing	26 Schedule C Seasonal Mowing	27 SEASONAL SCHEDULE D Mowing, & Monthly Bedding Maintenance	28 Schedule E Seasonal Mowing	29/30
31 Schedule A Seasonal Mowing					

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February 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
	1 February Schedule B Seasonal Mowing	2 Schedule C Seasonal Mowing	3 Schedule D Seasonal Mowing	4 Schedule E Tracts	5/6
7 SEASONAL SCHEDULE A Mowing, & Monthly Bedding Maintenance	8 Schedule B Seasonal Mowing	9 Schedule C Seasonal Mowing	10 Schedule D Seasonal Mowing	11 Schedule E Tracts	12/13
14 Schedule A Mowing	15 SEASONAL SCHEDULE B Mowing & Monthly Maintenance	16 Schedule C Seasonal Mowing	17 Schedule D Seasonal Mowing	18 Schedule E Tracts	19/20
21 Schedule A Mowing	22 Schedule B Seasonal Mowing	23 SEASONAL SCHEDULE C Mowing, & Monthly Bedding Maintenance	24 SEASONAL SCHEDULE D Mowing, & Monthly Bedding Maintenance	25 Schedule E Tracts	26/27
28 Schedule A Mowing	1 March	2	3	4	5/6
7	8	9	10	11	12/13

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March 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
	1 March START SUMMER SCHEDULE B Mowing, & Bi-Weekly Mowing	2 START SUMMER SCHEDULE C Mowing	3 START SUMMER SCHEDULE D, Mowing, & Bi-Weekly Tracts	4 START SUMMER SCHEDULE E Tracts	5/6
7 START SUMMER SCHEDULE A Mowing, & Monthly Bedding	8 Schedule B Tracts	9 Schedule C Mowing, & Bi-Weekly Tracts	10 Schedule D Mowing	11 Schedule E Tracts	12/13
14 Schedule A Mowing	15 Schedule B Mowing, & Bi-Weekly Mowing Tracts	16 Schedule C Mowing	17 Schedule D, Mowing, & Bi-Weekly Tracts	18 Schedule E Tracts	19/20
21 Schedule A Mowing	22 Schedule B Tracts	23 Schedule C Mowing, & Bi-Weekly Tracts	24 Schedule D Mowing	25 Schedule E Tracts	26/27
28 Schedule A Mowing	29 Schedule B Mowing, & Bi-Weekly Mowing Tracts	30 Schedule C Mowing	31 Schedule D, Mowing, & Bi-Weekly Tracts		

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April 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
				1 April Schedule E Tracts	2/3
4 **Schedule A Mowing, & Monthly Bedding Maintenance**	5 Schedule B Tracts	6 Schedule C Mowing, & Bi-Weekly Tracts	7 Schedule D Mowing	8 Schedule E Tracts	9/10
11 Schedule A Mowing	12 Schedule B Mowing, & Bi-Weekly Mowing Tracts	13 Schedule C Mowing	14 Schedule D, Mowing, & Bi-Weekly Tracts	15 Schedule E Tracts	16/17
18 Schedule A Mowing	19 Schedule B Tracts	20 Schedule C Mowing, & Bi-Weekly Tracts	21 Schedule D Mowing	22 Schedule E Tracts	23/24
25 Schedule A Mowing	26 Schedule B Mowing, & Bi-Weekly Mowing Tracts	27 Schedule C Mowing	28 Schedule D, Mowing, & Bi-Weekly Tracts	29 Schedule E Tracts	30/1 May

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May 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
					1 May
2 Schedule A Mowing, & Monthly Bedding Maintenance	3 Schedule B Tracts	4 Schedule C Mowing, & Bi-Weekly Tracts	5 Schedule D Mowing	6 Schedule E Tracts	7/8
9 Schedule A Mowing	10 Schedule B Mowing, & Bi-Weekly Mowing Tracts	11 Schedule C Mowing	12 Schedule D, Mowing, & Bi-Weekly Tracts	13 Schedule E Tracts	14/15
16 Schedule A Mowing	17 Schedule B Tracts	18 Schedule C Mowing, & Bi-Weekly Tracts	19 Schedule D Mowing	20 Schedule E Tracts	21/22
23 Schedule A Mowing	24 Schedule B Mowing, & Bi-Weekly Mowing Tracts	25 Schedule C Mowing	26 Schedule D, Mowing, & Bi-Weekly Tracts	27 Schedule E Tracts	28/29
30 Schedule A Mowing	31 Schedule B Tracts				

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June 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
		1 June Schedule C Mowing, & Bi-Weekly Tracts	2 Schedule D Mowing	3 Schedule E Tracts	4/5
6 Schedule A Mowing, & Monthly Bedding Maintenance	7 Schedule B Mowing, & Bi-Weekly Mowing Tracts	8 Schedule C Mowing	9 Schedule D, Mowing, & Bi-Weekly Tracts	10 Schedule E Tracts	11/12
13 Schedule A Mowing	14 Schedule B Tracts	15 Schedule C Mowing, & Bi-Weekly Tracts	16 Schedule D Mowing	17 Schedule E Tracts	18/19
20 Schedule A Mowing	21 Schedule B Mowing, & Bi-Weekly Mowing Tracts	22 Schedule C Mowing	23 Schedule D, Mowing, & Bi-Weekly Tracts	24 Schedule E Tracts	25/26
27 Schedule A Mowing	28 Schedule B Tracts	29 Schedule C Mowing, & Bi-Weekly Tracts	30 Schedule D Mowing		

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July 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
				1 July Schedule E Tracts	2/3
4 Schedule A Mowing, & Monthly Bedding Maintenance	5 Schedule B Mowing, & Bi-Weekly Mowing Tracts	6 Schedule C Mowing	7 Schedule D, Mowing, & Bi-Weekly Tracts	8 Schedule E Tracts	9/10
11 Schedule A Mowing	12 Schedule B Tracts	13 Schedule C Mowing, & Bi-Weekly Tracts	14 Schedule D Mowing	15 Schedule E Tracts	16/17
18 Schedule A Mowing	19 Schedule B Mowing, & Bi-Weekly Mowing Tracts	20 Schedule C Mowing	21 Schedule D, Mowing, & Bi-Weekly Tracts	22 Schedule E Tracts	23/24
25 Schedule A Mowing	26 Schedule B Tracts	27 Schedule C Mowing, & Bi-Weekly Tracts	28 Schedule D Mowing	29 Schedule E Tracts	30/31

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August 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
1 August Schedule A Mowing, & Monthly Bedding Maintenance	2 Schedule B Mowing, & Bi-Weekly Mowing Tracts	3 Schedule C Mowing	4 Schedule D, Mowing, & Bi-Weekly Tracts	5 Schedule E Tracts	6/7
8 Schedule A Mowing	9 Schedule B Tracts	10 Schedule C Mowing, & Bi-Weekly Tracts	11 Schedule D Mowing	12 Schedule E Tracts	13/14
15 Schedule A Mowing	16 Schedule B Mowing, & Bi-Weekly Mowing Tracts	17 Schedule C Mowing	18 Schedule D, Mowing, & Bi-Weekly Tracts	19 Schedule E Tracts	20/21
22 Schedule A Mowing	23 Schedule B Tracts	24 Schedule C Mowing, & Bi-Weekly Tracts	25 Schedule D Mowing	26 Schedule E Tracts	27/28
29 Schedule A Mowing	30 Schedule B Mowing, & Bi-Weekly Mowing Tracts	31 Schedule C Mowing			

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September 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
			1 September Schedule D, Mowing, & Bi-Weekly Tracts	2 Schedule E Tracts	3/4
5 Schedule A Mowing, & Monthly Bedding Maintenance	6 Schedule B Tracts	7 Schedule C Mowing, & Bi-Weekly Tracts	8 Schedule D Mowing	9 Schedule E Tracts	10/11
12 Schedule A Mowing	13 Schedule B Mowing, & Bi-Weekly Mowing Tracts	14 Schedule C Mowing	15 Schedule D, Mowing, & Bi-Weekly Tracts	16 Schedule E Tracts	17/18
19 Schedule A Mowing	20 Schedule B Tracts	21 Schedule C Mowing, & Bi-Weekly Tracts	22 Schedule D Mowing	23 Schedule E Tracts	24/25
26 Schedule A Mowing	27 Schedule B Mowing, & Bi-Weekly Mowing Tracts	28 Schedule C Mowing	29 Schedule D, Mowing, & Bi-Weekly Tracts	30 Schedule E Tracts	

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October 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
					1/2 October
3 Schedule A Mowing, & Monthly Bedding Maintenance	4 Schedule B Tracts	5 Schedule C Mowing, & Bi-Weekly Tracts	6 Schedule D Mowing	7 Schedule E Tracts	8/9
10 Schedule A Mowing	11 Schedule B Mowing, & Bi-Weekly Mowing Tracts	12 Schedule C Mowing	13 Schedule D, Mowing, & Bi-Weekly Tracts	14 Schedule E Tracts	15/16
17 Schedule A Mowing	18 Schedule B Tracts	19 Schedule C Mowing, & Bi-Weekly Tracts	20 Schedule D Mowing	21 Schedule E Tracts	22/23
24 Schedule A Mowing	25 Schedule B Mowing, & Bi-Weekly Mowing Tracts	26 Schedule C Mowing	27 Schedule D, Mowing, & Bi-Weekly Tracts	28 Schedule E Tracts	29/30
31 Schedule A Mowing					

January 11, 2022
11.317
PACKET

November 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
	1 November	2	3	4	5/6
7 START SEASONAL SCHEDULE A Mowing, & Monthly Bedding	8 START SEASONAL SCHEDULE B MOWING & MONTHLY BEDDING	9 START SEASONAL SCHEDULE C Mowing, & Monthly Bedding	10 START SEASONAL SCHEDULE D Mowing, & Monthly Bedding	11 START SEASONAL SCHEDULE E Mowing, & Monthly Bedding	12/13
14 Schedule A Seasonal Mowing	15 SEASONAL SCHEDULE B Mowing & Monthly Bedding Maintenance	16 Schedule C Seasonal Mowing	17 Schedule D Seasonal Mowing	18 Schedule E Seasonal Mowing	19/20
21 Schedule A Seasonal Mowing	22 Schedule B Seasonal Mowing	23 SEASONAL SCHEDULE C Mowing, & Monthly Bedding Maintenance	24 SEASONAL SCHEDULE D Mowing, & Monthly Bedding Maintenance	25 Schedule E Seasonal Mowing	26/27
28 Schedule A Seasonal Mowing	29 Schedule B Seasonal Mowing	30 Schedule C Seasonal Mowing			

January 11, 2022
11.318
PACKET

December 2022

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
			1 December Schedule D Seasonal Mowing	2 Schedule E Seasonal Mowing	3/4
5 **SEASONAL SCHEDULE A Mowing, & Monthly Bedding Maintenance**	6 Schedule B Seasonal Mowing	7 Schedule C Seasonal Mowing	8 Schedule D Seasonal Mowing	9 Schedule E Seasonal Mowing	10/11
12 Schedule A Seasonal Mowing	13 **SEASONAL SCHEDULE B Mowing & Monthly Bedding Maintenance**	14 Schedule C Seasonal Mowing	15 Schedule D Seasonal Mowing	16 Schedule E Seasonal Mowing	17/18
19 Schedule A Seasonal Mowing	20 Schedule B Seasonal Mowing	21 **SEASONAL SCHEDULE C Mowing, & Monthly Bedding Maintenance**	22 Schedule D Seasonal Mowing	23 Schedule E Seasonal Mowing	24/25
26 Schedule A Seasonal Mowing	27 Schedule B Seasonal Mowing	28 Schedule C Seasonal Mowing	29 **SEASONAL SCHEDULE D Mowing, & Monthly Bedding Maintenance**	30 Schedule E Seasonal Mowing	31

January 11, 2022
11.319
PACKET

Lawn & Tree Tech, LLC
Balance Sheet
As of December 31, 2020

	Dec 31, 20
ASSETS	
Current Assets	
Checking/Savings	
Lawn & Tree Tech, LLC	46,981.78
Total Checking/Savings	46,981.78
Accounts Receivable	
Accounts Receivable	2,390.10
Total Accounts Receivable	2,390.10
Total Current Assets	49,371.88
Fixed Assets	
Furniture and Equipment	486.00
Landscaping Equipment	
Warren Cat Skid Steer	68,117.12
Total Landscaping Equipment	68,117.12
Vehicles	37,114.66
Total Fixed Assets	105,717.78
TOTAL ASSETS	**155,089.66**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	-1,145.68
Total Accounts Payable	-1,145.68
Credit Cards	
B of A Debit 8659	9,669.38
B of A Georgann 8667	114.13
B of A MC 0147	16,381.80
Lawn & Tree Tech,LLC	
Lawn & Tree Tech, LLC	572.84
Lawn & Tree Tech,LLC - Other	1,120.27
Total Lawn & Tree Tech,LLC	1,693.11
Total Credit Cards	27,858.42
Other Current Liabilities	
Sales Tax Payable	2,852.97
Total Other Current Liabilities	2,852.97
Total Current Liabilities	29,565.71
Total Liabilities	29,565.71
Equity	
Opening Balance Equity	106,304.62
Net Income	19,219.33
Total Equity	125,523.95
TOTAL LIABILITIES & EQUITY	**155,089.66**

Lawn & Tree Tech, LLC
Balance Sheet
As of October 30, 2021

	Oct 30, 21
ASSETS	
Current Assets	
Checking/Savings	
Lawn & Tree Tech, LLC	820,572.49
Total Checking/Savings	820,572.49
Accounts Receivable	
Accounts Receivable	88,538.50
Total Accounts Receivable	88,538.50
Total Current Assets	909,110.99
Fixed Assets	
Furniture and Equipment	486.00
Irrigation Trencher	355.75
Landscaping Equipment	
Warren Cat Skid Steer	68,117.12
Total Landscaping Equipment	68,117.12
Vehicles	37,114.66
Total Fixed Assets	106,073.53
TOTAL ASSETS	**1,015,184.52**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	-1,715.68
Total Accounts Payable	-1,715.68
Credit Cards	
B of A Debit 8659	9,669.38
B of A Georgann 8667	114.13
B of A MC 0147	16,381.80
Lawn & Tree Tech,LLC	
Lawn & Tree Tech, LLC	572.84
Lawn & Tree Tech,LLC - Other	1,120.27
Total Lawn & Tree Tech,LLC	1,693.11
Total Credit Cards	27,858.42
Other Current Liabilities	
Sales Tax Payable	67,612.22
Total Other Current Liabilities	67,612.22
Total Current Liabilities	93,754.96
Total Liabilities	93,754.96
Equity	
Members Equity	19,219.33
Opening Balance Equity	106,304.62
Net Income	795,905.61
Total Equity	921,429.56
TOTAL LIABILITIES & EQUITY	**1,015,184.52**

Lawn & Tree Tech, LLC
Profit & Loss
October 1 - 30, 2021

	Oct 1 - 30, 21
Ordinary Income/Expense	
Income	
Installation Services	83,260.42
Maintenance Services	59,874.00
Total Income	143,134.42
Cost of Goods Sold	
Materials Costs	15,259.32
Total COGS	15,259.32
Gross Profit	127,875.10
Expense	
Roll off Dumpster	350.00
Sub Contract Labor	700.00
Sub Contractor	625.00
Uncategorized Expenses	450.00
Total Expense	2,125.00
Net Ordinary Income	125,750.10
Net Income	**125,750.10**

CITY OF MIDLAND
SERVICE CONTRACT
#22000143

THIS CONTRACT, effective this 12th day of January , 2022 , by and between the City of Midland, hereinafter referred to as the "CITY" and Isfrain Morin, Jr. dba M3 Landscape Maintenance & Irrigation, LLC , hereinafter referred to as the "COMPANY".

Projected Annual Cost: $707,850.79

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; Schedule A – Hogan Park, Schedule C – Butler Park, Schedule H – Bi-monthly mowing, Schedule I – Occasional mowing, Schedule K – City offices, Schedule L – Additional maintenance services as required 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. Isfrain Morin, Jr. dba M3 Landscape Maintenance & Irrigation, LLC
5001 E County Road 136
Midland, Texas 79706

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 Isfrain Morin, Jr. dba M3 Landscape Maintenace & Irrigation, 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 _____

December 16, 2021

M3 Landscape Maintenance & Irrigation LLC
5001 ECR 136
Midland, TX 79706

Response Due: December 20, 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: Best and Final Offer for Request for Proposal (RFP) 22000143_21004234 Turf & Landscape Maintenance

M3 Landscape Maintenance has been qualified as an offeror to the subject RFP based on evaluation of your response to the RFP being judged reasonably acceptable. M3 Landscape Maintenance 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,
Purchasing Manager

Clarifications:

Please provide all the requested documents as outlined in the original RFP as well as the price of gasoline and diesel and the estimated number of gallons you will use per month.

Multiple contracts may be awarded in accordance with the separate schedules. See statement below.

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

The original RFP is attached.

Please deliver your BAFO to:

City of Midland, Texas
Purchasing Division
300 North Loraine, Suite 220
Midland, TX 79701

On or before December 20, 2021 at 2:00 PM

CITY OF MIDLAND

ADDENDUM

BID # 22000143

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: October 20, 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. Inconsistencies found- Page 3 Intended date to begin Contract Services – February 1, 2022. Then - 4.2.1 Contractor will have ten days from receipt of certified letter to commence mowing. Page 1 of 12 Service Contract example- Company hereby agrees to commence work within 15days after the date written notice. Question- Which one should we expect to follow? Most of our new equipment will be unavailable by this start time if we are awarded the contract will we be able to move the date back until it is available?

A1. The contract work should begin on February 1, 2022. Mowing operations can usually be scheduled to begin March 1, but due to league play and use of the parks, mowing must not be postponed. If equipment is not on hand, a sub-contractor or rental equipment may need to be utilized. Operations such as pre-emergent and other required work must be completed in February.

Q2. 4.2.3. – Fenced fields should be mowed with a mower with a 52" deck. Question- We would like to request to use a 72in deck mower?

A2. Fenced fields can be mowed with a 72 in deck mower as long as the work can be completed satisfactorily.

Q3. 4.2.6. - Mowing operations shall not be performed in common areas if grass height does not exceed 3 3/4in (minimum grass height requirement to mow). Questions- If we do not mow these areas because it has not grown enough will there be a payment deduction? Also say if we are in a high drought year and grass throughout is not growing will there be a payment deduction? Are there any scenarios that will cause the cancelation of parks in full that will create a payment deduction?

A3. If mowing is not completed due to lack of growth, the cycle will still be paid. The contract inspector for the city will need to be notified to verify that a "no- mow" decision was made. It is preferred that mowing not occur and payment be made over "mowing dirt".

There may be scenarios that will cause the cancellation of parks in full that will result in payment reductions. One example of this type of scenario would occur if a particular park is fully renovated, to include irrigation and turf. That park would be removed from the schedule and payment would not be made during the time of construction and any warrantee period that may be included in the renovation.

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

All other terms and conditions shall remain the same.

M3 LANDSCAPE & IRRIGATION
Company Name

Bidder Authorized Signature

12-19-21
Date

ISRAIN MORIN
Please Print Above Name

432-967-3125 432-853-8818
Phone

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 the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number 81-1566271 or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from Purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Parks and Recreation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Professional Turf and Landscape Maintenance Services for Parks & Recreation as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

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

1.6. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.7. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be

determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

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

1.8. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City of Midland
Office of the Purchasing Agent OR
P.O. Box 115
Midland, TX 79702

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.9. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.10. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.11. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

"(Offeror's Name)", understands and will comply.

1.12. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.13. SUBMITTING A SEALED PROPOSAL

1.13.1. Number of copies and Location:

1.13.1.1. Offerors must submit one original, and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the

face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.13.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.13.2. Each Offeror who submits a proposal represents that:

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

1.13.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.13.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

1.13.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.14. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

a) waive any formality;
b) cancel or terminate this RFP;
c) reject any or all proposals received in response to this document;
d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.15. BONDING REQUIREMENTS

Intentionally Omitted

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the

contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

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

1.21.4. The initial contract(s) term is for a period of three years. Renewals of the contract may be made at one-year intervals, not to exceed a total of (4) four one-year renewals, at the City's option.

1.21.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.21.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all

 Robin Morin understands will comply

Urban Consumers (1982-84=100: through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

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

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

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

2.4. **<u>WAIVER:</u>**

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

2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**

2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

Alan Morin
Understands will comply

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.

Alan Morin
Understands will Comply

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.

Blain Moir
Will comply

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.

Blain Moir
Understands & will comply

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.

Dan Moir understands will comply

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.

Dan Moir understands will comply

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.

Dan Moir understands will comply

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.

Blair Moir
Understands will comply

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.

Blair Moir
Understands will comply

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.

Blair Mori
Understands will comply

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.

Blair Mori
Understands will comply

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.

Blair Mori
Understands will comply

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

Blair Mori
Blair Mori
Understands and will
Comply

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

Blair Morin understands will Compl

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

Blair Morin understands will comply

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.	

Blair Morin understands will comply

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

Blaze Mow
Understand will comply

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	

blue Moon will comply unless snow

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	

Blair Mon understands will comply

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**

Parks Mow Contractors will comply

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

Blair Mori understands will comply

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

Blair Mori understands will comply

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
O3	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

Dlevi Mori understands will comply

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

Dlevi Mori understands will comply

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.

Blair Moir understands will comply

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.

Blair Moir understands will Comply

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.

Blair Moir understands will Comply

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.

Blair Moir understands will Comply

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

Understood
Elvin Moir will comply

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

Elvin Moir
understands will comply

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) ____2005 (16 years)_____.

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.

City Of Midland
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: $ 3.05

3. The Rack price per gallon of diesel used to prepare this proposal is: $ 3.30

4. Estimated number of gallons of diesel fuel per month..... 375-450

5. Estimated number of gallons of unledded gasoline..... 250

Name of Company submitting this offer: M3 Landscape

11.366

January 11, 2022

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN PARK

Proposal From:

					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
A	Hogan Park	1201 E. Wadley							
	(Baseball)		8 AC		2,470.00	183.33	106.67	2760	33,120
	(Softball)		2 AC		617.50	45.83	26.67	690	8,280
	(Soccer)		22 1/2 AC		69,46.68	515.58	300	7,762.46	93,149.52
B	Hogan Park	1201 E. Wadley							
	(Dog Parks)		9 AC		2,778.75	206.25	120	3,105	37,260.52
C	Hogan Park	1201 E. Wadley							
	(Common areas)		65 AC	1064 SQ FT	20,068.75	1,489.58	866.67	22,425	269,100
	Totals Schedule A				32,881.88	2,440.57	1,420.01	36,742.98	440,909.52

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: 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
D	Beal Park	5200 Wall							
	(Baseball)		8 AC		2,470	183.33	106.67	2,760	33,120
	(Cricket)		1/2 AC		154.38	11.46	6.67	172.51	2,070.12
	(Soccer)		4 1/2 AC		1389.38	103.13	60	1,552.51	18,630.12
E	Beal Park	5200 Wall							
	(Dog Parks)		5 AC		1543.75	114.58	66.67	1725.00	20,700
F	Beal Park	5200 Wall							
	(Common areas)		30 AC		9,262.50	687.50	400	10,350	124,200
	Totals Schedule B				14,820.01	1,100	640.01	16,560.02	198,720.24

City of Midland

Turf and Landscape Maintenance Services

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		2,161.75	160.42	93.33	2415	28,980
	(Soccer)		8 AC		2,470	183.33	106.67	2760	33,120
H	Butler Park	3801 Bluebird							
	(Common areas)		13 AC	1358 SQ FT	4,013.75	297.92	173.33	5028.75	60,345
	Totals Schedule C				8645.00	641.67	373.33	10,203.75	122,445

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: 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
I	Windlands Park	1000 W. Dengar							
	(Baseball)		4 AC		1235	91.67	53.33	1,380	15,360
	(Soccer)		19 AC		5,866.25	435.42	253.33	6,555	78,660
J	Windlands Park	1000 W. Dengar							
	(Common areas)		17 AC	3100 SQ FT	5248.75	389.58	226.67	5,865	70,380
K	Windlands Park	1000 W. Dengar							
	(Natural areas & Trails)		20 AC		6,175	458.33	266.67	6,900.02	82,800.24
	Totals Schedule D				18,325	1,375	800	20,700.02	247,400.24

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	14,202.50	702.78	613.33	15,518.61	186,223.32
M	Scharbauer Sports Complex	801 N Loop 250 W							
	(NE Undeveloped Area)		4 AC		1,235	91.67	53.33	1,380.00	16,560
	Totals Schedule E				15,437.50	794.45	6666.66	16,898.61	202,783.32

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)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Composite Bids for All Services: Monthly	Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5 AC.		1543.75	114.58	66.67	1725	20,700
	(Football)		2 AC.		617.50	45.83	26.67	690	8,280
	(Common Areas)		23 AC	1000 Sq Ft	7,101.25	351.33	306.67	7,759.25	93,111
O	Reyes/Mashburn/Nelms Park	2101 E. Cuthbert							
	(Baseball)		7 AC.		2,161.25	160.42	93.33	2415	28,980
	(Soccer)		10 AC		3,087.50	152.75	133.33	3,373.58	40,482.96
	(Common Areas)		48 AC.		14,820	733.33	640	16,193.33	194,319.96
P	MUGS/Ulmer Park	2700 W. Kentucky							
	(Softball)		8 AC.	200 Sq Ft	2,470	183.33	106.67	2760	33,120
	(Common Areas)		17 AC.		5,248.75	389.58	226.67	5865	70,380
Q	Dunagan Park	600 E. Gist							
	(Soccer)		6 AC.		1852.50	91.67	80.00	2,024.17	24,290.04
	(Common Areas)		2 AC.		617.50	45.83	26.67	690	8,280
R	Hidalgo Park	1401 Orchard Lane							
	(Softball)		1 AC.		308.75	15.25	13.33	337.33	4,047.96
	(Common Areas)		8 AC.		2470	183.33	106.67	2,760	33,120
	Totals Schedule F				42,298.75	2,467.23	1,824.68	46,592.66	559,111.92

PACKET

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE G – GENERAL PARKS

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging, Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
S	Bradford	801 E Pennsylvania	3.5 AC.	NA	1025.21	80.21	46.67		1152.09	13.825.08
T	Cowden	1100 Ward	8 AC	NA	2.343.33	122.17	106.67		2572.17	30.866.04
U	Crier Park	"H" at Texas	½ AC	5722	146.46	7.58	6.67	267.03	427.74	5.132.88
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	1250	1.669.96	87.08	76.00	58.33	1891.37	22.696.44
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450	1.464.58	76.33	64.67	21.00	1628.58	19.542.96
X	Elkin	1101 W. Washington	2 AC.	100	585.83	30.50	26.69	4.67	647.69	7772.28
Y	Essex	3400 Whittle Way	4 AC.	1000	1.171.67	61.08	53.33	46.67	1332.75	15.993
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA	1025.21	80.21	46.67		1152.09	13.825.08
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA	2.636.25	137.50	120.00		2893.75	34.725
BB	Grafa	3201 MaMar Ave	6 AC	NA	1.757.50	91.67	80.00		1929.17	23.150.04
CC	Grasslands	2501 Crowley	5 AC.	NA	1464.58	76.33	66.67		1607.58	19290.96
DD	Greathouse	5105 Greathouse	5 AC	1500	1464.58	76.33	66.67	76.00	1677.58	20130.96
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA	1.025.21	80.21	46.67		1152.09	13.825.08
FF	Halff	100 E. New Jersey	2 AC.	NA	585.83	30.50	26.67		643.00	7.716
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA	1.025.21	80.21	46.67		1152.09	13.825.08
HH	Hill	1301 W. Cuthbert	5 ½ AC	400	1.611.04	84	73.33	18.66	1787.03	21.444.36
II	House	4800 Ric Drive	6 ½ AC	NA	1.903.96	99.25	86.67		2089.88	25.078.56
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA	439.38	22.92	20.00		482.30	5.787.60
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA	585.83	30.50	26.67		643.00	7.716
LL	Jacotte	Golf Course intersect. With Jacotte	1 AC.	NA	292.92	15.25	13.33		321.50	3.858
				NA						
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA	146.46	4.00	3.50		153.96	1847.52
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA	1.025.21	80.21	46.67		1152.09	13.825.08
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA	1.171.67	61.08	53.33		12.86.08	15.432.96
PP	Lamesa Triangle	Kentucky and Indiana	½ AC	NA	146.46	7.58	6.67		1600.71	1.928.52
				NA						
QQ	Lancaster	3501 W. Kansas	7 AC	NA	2.050.42	106.92	93.33		2250.67	27.008.04
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA	732.29	38.17	33.33		803.79	9645.48
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA	1171.67	61.08	53.33		12.86.08	15.432.96
TT	Pioneer	2001 Lindora Way	5 AC	300	1464.58	76.33	66.67	14.00	1621.58	19458.96

January 11, 2022
1.373

Proposal From:

ID	Property Name	Location	Turf Area	Plant Bed Area	Monthly Bids For Specific Services: Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Composite Bids for All Services: Monthly	Annually
UU	Ratliff	2411 Edwards	5 AC.	NA	1.464.58	76.33	66.67		1.607.58	19.290
VV	Santa Rita	5200 Whitman	5 AC.	NA	1.464.58	76.33	66.67		1.607.50	19.290
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA	292.92	15.25	13.33		321.50	3.858.
XX	Sidwell	500 Neely	5 ½ AC.	NA	1611.04	84.00	73.33		1.768.37	21.220.44
YY	Sparks	1500 E. Golf Course	5 AC.	NA	1.464.58	76.33	66.67		1.607.58	19.290.96
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA	2.343.33	122.17	106.67		2.572.17	30.866.04
A3	Trinity	3900 St. Andrew	4 AC	NA	1171.67	61.08	53.33		1.286.08	15.432.96
B3	Tumbleweed	1300 Ventura	8 AC	NA	2.343.33	122.17	106.67		2.572.17	30.866.04
C3	Unity	600 N. Mincola	1 AC	1244	292.92	15.25	13.33	58.05	321.50	3858
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000	732.29	38.17	33.33	1166.67	1.970.46	23.645.52
E3	Wadley Barron	1001 N. A Street	5 AC	450	1.464.58	76.33	66.67	21.00	1.628.58	19.542.96
F3	Washington Park	1803 E. Indiana	16 AC.	1500	4.686.67	244.42	213.33	70.00	5.214.42	62.573.04
	Totals Schedule G									700.514.80

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	71.25	71.25	855.00
H3	Fuhrman House	3301 Sinclair	1 ¼ AC	213.75	213.75	2565.00
I3	Heritage Blvd	Behind Lowe's	½ AC	71.25	71.25	855.00
J3	HWY 191 Easement	Adj to Grasslands	3 AC	427.50	427.50	5,124.00
K3	Loop 250 Easement	Adj to Grasslands	4 AC	570.00	570	6,840.00
L3	Marienfeld at Rankin Hwy	Same	½ AC	71.25	71.25	855.00
M3	Orchard & Front	Same	½ AC	71.25	71.25	855.00
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC	783.75	783.75	9,405.00
O3	Lamesa at Cuthbert	Same	¼ AC	71.25	71.25	855.00
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC	2,565.00	2,565	30,780
	Totals Schedule H			4,916.25	4,916.25	58,985

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: Litter and Trash Pick Up and Mowing (3 cycles/year)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3 AC	71.25	71.25	855.00
R3	Fairgrounds Road Hike/Bike Wadley to Loop 250	Fairgrounds Road	4 AC	95.00	95.00	1,140.00
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement West	5 AC	118.75	118.75	1,425.00
T3	RMN Undeveloped Area	Fairgrounds at Cuthbert	2 AC	47.50	47.50	570.00
	Totals Schedule I			322.50	332.50	3,990.00

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: Litter and Trash Pick Up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance (18 cycles/year)	Composite Bids for All Services: Monthly	Composite Bids for All Services: Annually
U3	Achievement Plaza	W. Wall at Front Ave	7200 SQ. FT.	1,080.00	1,080.00	12,960
V3	Broadway Island	at Ohio Ave	22,721 SQ. FT.	1,704.08	1,704.08	20,448.90
W3	Broadway Median	At Cuthbert	500 SQ. FT.	75.00	75.00	900.00
X3	Cowden Island	At Big Spring	1950 SQ. FT.	292.50	292.50	3,510.00
Y3	Cowden Island	At Colorado	7838 SQ. FT.	1,175.70	1,175.70	14,108.40
Z3	Main & Baird	Islands	5544 SQ. FT.	831.60	831.60	9,979.20
A4	Wall Street	Downtown beds/trees	450 SQ. FT.	67.50	67.50	810.00
B4	Front Street	Beds near RR tracks	1000 SQ. FT.	150.00	150.00	1,800.00
C4	Volunteer Park	Big Spring & Marienfeld	14348 SQ. FT.	1,076.10	1,076.10	12,913.20
	Totals Schedule J			6,452.48	6,452.48	77,429.70

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	25.00	185.77	210.77	2529.24
E4	Loraine Center	Loraine & Louisiana	¼ AC	951	101.56	3.75	3.33	31.70	140.34	1684.08
F4	MLK Comm Center	2300 Butternut	2 AC	1000	617.50	30.50	8.33	33.33	689.66	8275.92
G4	Scarborough/Limebery House	802 S. Main	1 AC	1250	308.75	15.25	13.33	41.67	379.00	4548.00
H4	Old Police Station	404 E. Texas	1/2 AC	NA	154.38	NA	6.67		161.05	1932.60
I4	Parks Office	2701 Elizabeth	¼ AC	800	101.56	3.75	10.00	26.67	141.98	1703.76
J4	Baldwin Office	300 Baldwin	¼ AC	500	101.56	NA	7.50	16.67	125.73	1508.76
K4	Central Fire Station	1500 W. Wall	¼ AC	3500	101.56	21.67	16.67	116.67	256.57	3078.84
	Totals Schedule K								2,105.10	25,241.20

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	N/C	N/C
ORNAMENTAL SHRUB (5 GAL)	100	N/C	N/C
ORNAMENTAL TREE PLANTING	25	N/C	N/C
TREE PLANTING	50	225.00	11,250.00
TREE REMOVAL-TYPE A	20	500.00	10,000.00
TREE REMOVAL-TYPE B	50	700.00	35,000.00
Totals Schedule L			56,250.00

8.2 EVALUATION CRITERIA

8.2.1 Company Service Qualifications:

Commercial lawn maintenance, residential maintenance seasonal color, tree care and removal, irrigation installation and repair, artificial turf installation and all shrub care.

8.2.2 Three references: See attached letters

1. City of Midland Utilities Department- Raymond Saddler 432-681-7660

2. MISD- David Ramirez 432-240-1605

3. Sunset Memorial Gardens & Funeral Home- Jesse Arizpe- 432-235-3289

8.2.3 Years in business:

2005- Current (16 years)

8.2.4 Project Manager:

Isfrain Morin Jr.

8.2.5 Implementation Plan

First day meet with city point person on the project go thru all the properties with him ask his expectations once we know his expectations will hold a meeting with our staff will cover the contract the expections the legal part of it that will include the damage to trees, property so everyone understand what needs to be done. Documentation of the work they complete once we brief our staff will go over who were going to assign these properties to and work out our schedule. After day one of work will do a review to insure that were meeting city's expectations after a time period set will have an appointment with the city's point person to make sure were meeting expectations and give us feedback and continue to have meetings to make sure were doing everything he expects.

8.2.6 Training Requirements:

When we hire new employee we go thru proper protective equipment and used when operating equipment. We go thru how to operate all equipment in a safe manner, how to use and what not to do. Proper safety when using chemical, fertilizers and proper fueling of equipment.

8.2.7 Organization:

Will work out a schedule. Isfrain Morin will be in charge and Juan Vasquez will assist with daily work being done. Will have 15 employees assigned to do all work, 1- crew 2 men with exmark diesel 96", 1 crew 3 men 3- 60" mower, 1 crew 2 men 2- 60" mower, 2 crews 4 men each weed eat, edge, blow and anything else that needs done. If needed we have more employees help to assure that were meeting expectations. If awarded contract will be purchasing 2- 16 ft ground masters 5900 T 4.

8.2.8 Technical Abilities:

Commercial maintenance we maintain high schools, elementary schools, apartment properties, cemetery and complexes. Irrigation, seasonal color, tree care, chemicals needed, artificial turf and sod installation.

MIDLAND
Utilities Department

Raymond Saddler
Superintendent
5000 N Midland Dr
Midland, TX 79707
432-681-7660

To Whom It May Concern:

M3 Landscape Maintenance & Irrigation has been taking of annual growing season lawn maintenance for the City Of Midland Water Plant and towers for the past 4-5 years. Mr. Morin and his crews have always ben professional and courteous in their interactions with our staff.

The Lawn services have been good and performed on schedule as per our contract with this company. Mr. Morin quickly and professionally addresses any and all issues that may arise. We have extended our contract over these past few years with M3, and plan to continue to extend our contract with M3 Landscaping.

Sincerely,

Raymond Saddler

Midland Independent School District

FACILITY DESIGN & STRUCTURAL SERVICES
801 S. Moran Street
Midland, Texas 79701

Dear Sir or Madam,

I am writing this recommendation letter, and unequivocally, I recommend the services of M3 Landscaping and Irrigation. For the past three years I have had the pleasure of working directly with Mr. Morin and GM, Juan and together they maintain 39 school properties, the administration buildings, undeveloped land and athletic fields.

The level of service far exceeds our service agreement and expectations. M3 Landscaping and Irrigation also provided landscaping and irrigation services on a need and emergency call out situations.

I look forward to future business relations with M3 and I would ask that you highly consider the professional maintenance services for your company needs.

David A. Ramirez
Director of Facility Design & Structural Services

To whom it may concern,

My name is Jesse Arizpe. I am the Grounds Maintenance Superintendent for Sunset Memorial Gardens & Funeral Home. Frank Morin is responsible for the lawn and grounds maintenance at my facility. Our agreement with M3 includes mowing the grounds and string trimming approximately 8,500 cemetery upright monuments, flat grave stones and granite park benches. Blowing the gravestones of grass and debris and maintaining tree canopies to a safe and manageable height. The staff stops operations if a procession enters, powers down their equipment and removes their hats as a sign of respect to the loved ones they are entrusted to care for their final place of rest. M3 has greatly improved the appearance of our cemetery and I would ask that you give M3 an opportunity to show you the level of service and care we have grown accustomed to experiencing.

Respectfully,

Jesse Arizpe
Grounds Maintenance Superintendent
Sunset Memorial Gardens and Funeral Home
6801 E Highway 80
Odessa, Texas
79762

M3 LANDSCAPE MAINTENANCE

JANUARY - OCTOBER 2021 PROFIT & LOSS STATEMENT

Gross Profit	**$**	**1,801,521.23**
Expenses		
Advantage Payroll	$	832,337.95
Contract Labor	$	12,569.35
Auto- Payment	$	9,456.36
Auto- Payment	$	7,905.00
Mower Payments	$	18,257.76
Commercial Insurance	$	14,400.00
General Liability Ins.	$	7,598.81
Workers Comp Insurance	$	16,699.79
Cell Phones/Repair	$	6,725.60
Office Supplies	$	7,228.12
Shop Utility's	$	2,420.28
Office Utility's	$	2,725.69
Internet	$	2,157.48
Employees Lunch	$	5,892.75
Uniforms	$	14,817.50
Further Education/ License Renewals	$	1,695.00
Tag's Truck/Trailers	$	1,701.95
Sales Tax	$	19,134.31
Shop Payment	$	4,528.20
Glass Replacement/ Keys	$	3,127.75
Fuel	$	69,525.27
Tires	$	9,780.72
M&M Disposal	$	2,584.00
Material/ Supplies	$	215,238.72
New Equipment & Tools	$	36,042.10
Skid Steer Payment	$	5,530.30
Equipment Rental	$	15,009.66
Equipment Parts/ Maintenance	$	14,325.69
M3 Donations	$	9,435.00
Skid Steer/ Trailer Payment	$	8,920.50
Turf Purchases	$	49,800.62
NET INCOME	**$**	**373,949.00**

S CORPORATION
Two-Year Comparison

2020

Name

M3 LANDSCAPE MAINTENANCE & IRRIGATION

Employer identification Number

-*6271

Description	Prior Year	Current Year	Increase (Decrease)
ORDINARY BUSINESS INCOME (LOSS):			
INCOME:			
GROSS RECEIPTS OR SALES LESS RETURNS AND ALLOWANCES	1,295,021.	2,213,353.	918,332.
COST OF GOODS SOLD	0.	323,359.	323,359.
GROSS PROFITS	1,295,021.	1,889,994.	594,973.
TOTAL INCOME	1,295,021.	1,889,994.	594,973.
DEDUCTIONS:			
SALARIES AND WAGES LESS EMPLOYMENT CREDITS	712,239.	1,008,097.	295,858.
REPAIRS AND MAINTENANCE	38,105.	70,260.	32,155.
RENTS	12,428.	0.	-12,428.
TAXES AND LICENSES	65,901.	92,500.	26,599.
INTEREST	9,747.	5,719.	-4,028.
DEPRECIATION	38,830.	218,976.	180,146.
ADVERTISING	935.	219.	-716.
EMPLOYEE BENEFIT PROGRAMS	0.	17,856.	17,856.
OTHER DEDUCTIONS	396,846.	291,335.	-105,511.
TOTAL DEDUCTIONS	1,275,031.	1,704,962.	429,931.
ORDINARY BUSINESS INCOME (LOSS)	19,990.	185,032.	165,042.
S CORPORATION TAXES:			
PAYMENTS AND CREDITS:			
BALANCE DUE OR REFUND:			
SCHEDULE K:			
INCOME:			
ORDINARY BUSINESS INCOME (LOSS)	19,990.	185,032.	165,042.
DEDUCTIONS:			
CHARITABLE CONTRIBUTIONS	4,924.	7,512.	2,588.
INVESTMENT INTEREST:			
CREDITS:			

012041
04-01-20

S CORPORATION
Two-Year Comparison

2020

Name

M3 LANDSCAPE MAINTENANCE & IRRIGATION

Employer Identification Number

-*6271

Description	Prior Year	Current Year	Increase (Decrease)
FOREIGN TAXES:			
AMT ITEMS:			
POST-1986 DEPRECIATION ADJUSTMENT	2,067.	-46.	-2,113.
OTHER SCHEDULE K ITEMS:			
NONDEDUCTIBLE EXPENSES	3,615.	3,581.	-34.
INCOME (LOSS)	15,066.	177,520.	162,454.
SCHEDULE M-1:			
NET INCOME (LOSS) PER BOOKS	11,451.	173,939.	162,488.
TRAVEL & ENTERTAINMENT RECORDED ON BOOKS NOT INCLUDED ON SCHEDULE K	3,615.	3,581.	-34.
TOTAL EXPENSES RECORDED ON BOOKS NOT INCLUDED ON SCHEDULE K	3,615.	3,581.	-34.
TOTAL OF LINES 1 THROUGH 3	15,066.	177,520.	162,454.
INCOME (LOSS)	15,066.	177,520.	162,454.
SCHEDULE M-2:			
ACCUMULATED ADJUSTMENTS ACCOUNT:			
BALANCE AT BEGINNING OF TAX YEAR	0.	11,451.	11,451.
ORDINARY INCOME	19,990.	185,032.	165,042.
OTHER REDUCTIONS	8,539.	11,093.	2,554.
COMBINE LINES 1 THROUGH 5	11,451.	185,390.	173,939.
BALANCE AT END OF TAX YEAR	11,451.	185,390.	173,939.

EXECUTION OF OFFER

Date: 11/5/21

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: M3 Landscape Maintenance & Irrigation, LLC

SIGNATURE (INK): Isfrain Morin

NAME: (TYPED/PRINTED) Isfrain Morin Jr.

TITLE: Owner

STREET: 5001 E. County Road 136

CITY/STATE/ZIP: Midland, TX 79706

TELEPHONE: 432-967-3125 FAX: n/a

E-MAIL ADDRESS: hometurf3m@hotmail.com

EXECUTION OF OFFER

CITY OF MIDLAND
SERVICE CONTRACT
# #
EXAMPLE

THIS CONTRACT, effective this _ day of __, 2021, by and between the City of Midland, hereinafter referred to as the "CITY" and ____, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $ $2,693,800.90 PLUS 3% DISCOUNT

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**

EXAMPLE SERVICE CONTRACT

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 (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: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

_____
Notary Public, State of _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

M3 Landscape Maintenance & Irrigation, LLC

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.**

n/a

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.** n/a

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.** n/a

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: 11/5/21

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: M3 Landscape Maintenance & Irrigation, LLC

Local Address (must be within the City limits): 5001 E. County Road 136

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? 32
3. Year your business was established in the City of Midland: 2009
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 3-20595-9489-8

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

   M3 Landscape Maintenance & Irrigation, LLC
   5001 E. County Road 136
   Midland, TX 79706-7173

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: Efrain Marin M Date: 11/5/2021

Printed Name and Title: Efrain Marin Jr. owner

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.

City Council Meeting

Item Number: 12

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: Motion authorizing the execution of an Interlocal Agreement with Tarrant County, Texas, for cooperative purchasing services through the Tarrant County Cooperative Purchasing Program (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Motion authorizing the execution of an Interlocal Agreement with Tarrant County, Texas, for cooperative purchasing services through the Tarrant County Cooperative Purchasing Program.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required.

Discussion:

Please consider approval of a motion authorizing the City of Midland to participate in the Tarrant County Cooperative Purchasing Program. Texas Local Government Code 271.102 provides that a local government may participate in a cooperative purchasing program with a local cooperative organization of the state of Texas or another state. Tarrant County Cooperative Purchasing Program will facilitate compliance with state procurement requirements, identify qualified vendors of commodities, goods and services, and provide the City with various potential economies by increasing buying power. Please see the attached memo from Rick Brown, Project Manager, for additional information.

Tina Dawg

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz, Purchasing Manager

FROM: Rick Brown, Project Manager

SUBJECT: Justification Memo for Tarrant County Interlocal Agreements

DATE: December 21, 2021

CC: Abe Langston, Transportation Manager

Tarrant County Purchasing is a leader in providing interlocal agreements that allow other government jurisdictions and districts to obtain goods at competitive prices. The Department's furnishing of supplies, equipment and services at the best possible price makes its contracts attractive to other entities. Through piggybacking on its contracts, interlocal members may take advantage of cost savings.

There are several local governmental agencies that are affiliated with this cooperative purchasing group. Some local entities in the area include, the City of Odessa, the City of Andrews, Midland, and Ector Counties.

The Transportation Division is requesting that we join this group in order to purchase emulsion from P Squared Emulsions who sell their products through Tarrant County's purchasing contract.

TARRANT COUNTY COOPERATIVE PURCHASING PROGRAM

ENTITY INFORMATION SHEET

If your entity is currently participating or plans to participate in Tarrant County's Cooperative Purchasing Program, please complete this Entity Information Sheet and return to Leonel Rios, Cooperative Purchasing Administrator. ***(Address and additional information below regarding the Interlocal Agreement Form)*.** Please contact Mr. Rios at (817) 884-1414 if you have any questions.

Name of Entity: City of Midland

Point of Contact: Erika Munoz Martinez

Title: Purchasing Manager

Phone Number: 432-685-7980

Fax Number: 432-685- 0523

Internet Address: www.midlandtexas.gov

E-Mail Address: emunoz@midlandtexas.gov

Additional Contacts: purchasing@midlandtexas.gov

Complete Mailing Address: 300 North Loraine, Midland, Texas 79702

P.O. Box 1152, Midland, Texas 79701

Information as of this Date: 12/21/2021

NOTE: **To complete the Interlocal Agreement, please sign and return FOUR (4) DUPLICATE ORIGINAL AGREEMENTS, EACH CONTAINING AN ORIGINAL SIGNATURE, to the attention of Leonel Rios, Cooperative Purchasing Administrator, Tarrant County Purchasing Department, 100 E. Weatherford Street, Suite 303, Fort Worth, Texas 76196.**

INTERLOCAL AGREEMENT

BETWEEN COUNTY OF TARRANT AND City of Midland, Texas

This Agreement is made this 12 day of January, 2022 between the County of Tarrant, Texas and City of Midland, Texas.

Pursuant to the authority granted by the "Texas Interlocal Cooperation Act," Chapter 791 Texas Government Code providing for the cooperation between local governmental bodies, the parties hereto, in consideration of the premises and mutual promises contained herein, agree as follows:

WHEREAS, the contract is made under the authority of Sections 791.001-791.029 of the Texas Government Code; and,

WHEREAS, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder shall make that performance or those payments from current revenues legally available to that party;

WHEREAS, the governing bodies of each party find that the subject of this contract is necessary for the benefit of the public and that each party has the legal authority to perform and to provide the governmental function or service which is the subject matter of this contract; furthermore, the governing bodies find that the performance of this contract is in the common interest of both parties; and that the division of cost fairly compensates the performing party for the services under this contract.

I.

City of Midland, Texas, hereby makes, constitutes and appoints Tarrant County its true and lawful purchasing agent for the purchase of various commodities using Annual Contracts (Bids). Tarrant County will maintain a listing of Annual Contracts which are available for local entities use. Tarrant County will forward a copy of requested Annual Contract to the requesting entity. City of Midland, Texas agrees that Tarrant County shall serve as the purchasing agent for selected items, and agrees that the bidding shall be conducted by Tarrant County according to its usual bidding procedures and in accordance with applicable State statutes.

II.

City of Midland, Texas agrees that all specifications for selected items shall be determined by Tarrant County.

III.

City of Midland, Texas agrees to pay the supplier for all goods, equipment and products pursuant to this Agreement. The successful bidder or bidders shall bill City of Midland, Texas directly for all items purchased, and City of Midland, Texas shall be responsible for vendor's compliance with all conditions of delivery and quality of the purchased items.

IV.

Erika Martinez (name), Purchasing Manager (title) is hereby designated as the official representative to act for City of Midland, Texas in all matters relating to this Agreement.

V.

This Agreement shall take effect upon execution by both signatories.

VI.

This Agreement shall be in effect from the date of execution until terminated by either party to the Agreement upon written thirty (30) days' notice prior to cancellation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers the day and year first above written.

TARRANT COUNTY	**(Entity)** City of Midland, Texas
BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

City Council Meeting

Item Number: 13

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING A CONTRACT WITH THYSSENKRUPP ELEVATOR CORPORATION, THROUGH SOURCEWELL, FOR THE REPLACEMENT OF FOUR (4) ELEVATORS AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF $334,493.84; APPROVING $33,451.16 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for the replacements of four (4) elevators, three (3) elevators at Momentum Bank Ballpark and one (1) elevator at Grande Stadium within the Scharbauer Sports Complex, through Sourcewell for a cost of $334,493.84 plus $33,451.16 in contingences for a total cost of $367,945.00.

Recommended City Council Action:

Approve

Fiscal Impact:

$367,945.00 is available in the Scharbauer Sports Complex unappropriated fund balance and is hereby appropriated and will be transferred to a project in the Special Revenue Capital Projects Fund.

Discussion:

Staff is recommending the execution of a contract for the replacements of four (4) elevators, three (3) elevators at Momentum Bank Ballpark and one (1) elevator at Grande Stadium within the Scharbauer Sports Complex from TK Elevators, Inc. through Sourcewell formerly National Joint Powers Alliance (NJPA) contract 106268. 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. Please see the attached memo from Cristina Burns, Community Services Director, for additional information.

Therefore, please consider a resolution authorizing the execution of a contract for the replacements of four (4) elevators, three (3) elevators at Momentum Bank Ballpark and one (1) elevator at Grande Stadium within the Scharbauer Sports Complex from TK Elevators, Inc. of Midland, Texas through Sourcewell formerly National Joint Powers Alliance (NJPA) contract 106268 for a cost of $334,493.84 plus $33,451.16 in contingences for a total cost of $367,945.00.

Tina Daugherty

City Manager's Office

CITY OF MIDLAND

Community Services Department
Scharbauer Sports Complex Division
Interoffice Memorandum

Date: December 21, 2021
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Modernization of Dover Elevators at Scharbauer Sports Complex

The Community Services Department was notified by Thyssen-Krupp Elevator (TKE) that the current elevators at the Scharbauer Sports Complex are now obsolete. Parts to repair the units are becoming very difficult, if not impossible, to find. They have suggested a "modernization" to upgrade the mechanical components, adding another 10-15 years to the life of the elevators. Momentum Bank Ball Park has 1 elevator in the Diamond Club and 1 in each of the club houses. Grande Stadium has 1 elevator to the Press Box/Suites.

The modernization package is engineered specifically for the SSC elevator systems and includes the elevator mechanical and electrical components being replaced, refurbished or retained.

Benefits of Modernization include:
• Increased durability and reliability
• Improved fire and life safety features
• Decreased waiting times
• Reduced energy consumption
• Reduced operational cost
• Reduced troubleshooting time

The quote for modernizing the current elevators is estimated at $334,493.84. This pricing is through the Sourcewell purchasing co-op. Staff requests a 10% contingency added to this amount to cover any unforeseen conditions that may arise. Total funds requested for elevator modernization is $367,945.00.

$367,945.00 is available in the Scharbauer Sports Complex unappropriated fund balance and is hereby appropriated and will be transferred to a project in the Special Revenue Capital Projects Fund.

RESOLUTION NO. _____

RESOLUTION APPROVING A CONTRACT WITH THYSSENKRUPP ELEVATOR CORPORATION, THROUGH SOURCEWELL, FOR THE REPLACEMENT OF FOUR (4) ELEVATORS AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF $334,493.84; APPROVING $33,451.16 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, Sourcewell 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, Thyssenkrupp Elevator Corporation has submitted a total proposed cost to the City of $334,493.84, through Sourcewell, for the replacement of four (4) elevators at the Scharbauer Sports Complex; and

WHEREAS, the City Council finds the cost proposed by Thyssenkrupp Elevator Corporation for the replacement of said elevators to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Thyssenkrupp Elevator Corporation for the replacement of said elevators; and

WHEREAS, the City Council finds it to be in the public interest to approve $33,451.16 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Thyssenkrupp Elevator Corporation for the replacement of four (4) elevators at the Scharbauer Sport Complex for a total cost of $334,493.84. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $33,451.16 for contingencies is hereby approved for said project.

SECTION THREE. That the amount of $367,945.00 is hereby appropriated from the Scharbauer Sports Complex unappropriated fund balance to a project in the Special Revenue Capital Projects Fund.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Thyssenkrupp Elevator Corporation, from funds available in the above-referenced 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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 22001531

THIS CONTRACT, effective the 12 day of January, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and TK Elevator Corporation, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 334,493.84 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the replacements of four (4) elevators, three (3) elevators at Momentum Bank Ballpark and one (1) elevator at Grande Stadium within the Scharbauer Sports Complex 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 Cristina Burns 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 100 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

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

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

16. **Payment:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of said contract are completed, and CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, CITY shall thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. CITY shall be the final judge of when the work is completed by COMPANY. CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to CITY's requirements. CITY may make periodic payments to COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by COMPANY and approved by CITY. For contracts exceeding $25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. **Governmental Immunity:** By executing this contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

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

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

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

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

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

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

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

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

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

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

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

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

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

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

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

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

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

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

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

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

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

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

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

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

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of TK Elevator Corporation, 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"

Modernization Proposal

Scharbauer Sports Complex

December 13, 2021

Purchaser: Scharbauer Sports Complex
Address: 801 N Loop 250 W
Midland, TX 79703-5206

Location: Scharbauer Sports Complex
Address: 801 N Loop 250 W
Midland, TX 79703-5206

TK Elevator Corporation (hereinafter "TK Elevator") is dedicated to delivering (hereinafter “Purchaser”) the safest, highest quality vertical transportation solutions. I am pleased to present this customized Proposal (the “Proposal”) in the amount of $334,493.84 plus any applicable sales tax to modernize the elevator equipment described in the pages that follow at the above-referenced location.

Our modernization package is engineered specifically for your elevator system and will include the elevator mechanical and electrical components being replaced, refurbished or retained.

Benefits of Modernization include:
- Increased durability and reliability
- Improved fire and life safety features
- Decreased waiting times
- Reduced energy consumption
- Reduced operational cost
- Reduced troubleshooting time

This Proposal shall remain in effect for the next forty-five (45) days unless it is revoked earlier by TK Elevator in writing. The price above is subject to escalation - even after Purchaser’s acceptance of this Proposal – under certain circumstances including the possibility that TK Elevator may be subjected to increased charges by its suppliers for any of the applicable materials and/or components due to the imposition of new or increased taxes, tariffs, or other charges imposed by applicable governmental authorities or the possibility that the work described in this Proposal is not completed by December 31, 2022.

This Proposal has been priced using Sourcewell Member ID 106268

In the event you have any questions regarding the content of this Proposal, please do not hesitate to contact me. We appreciate your consideration.

Sincerely,

Zach Rogers Modernization
Sales
zach.rogers@tkelevator.com
+1 432 6831488

SCOPE OF WORK

Grouping Name: Visitor

Equipment Type: Hydraulic	Speed: 100 fpm
2 Stops (2 Front /0 Rear)	Capacity: 2500 lbs.

Modernization Proposal

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
			US93026	

Description of Work

Controller
- TAC 32 Controller (Includes Options listed below)
- eMax Monitoring Device Provisions
- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 460 / 575 VAC
- Viscosity Control (Required over 150 FPM)

Power Unit
- EP-80 Power Unit (Submersible)
- Viscosity Control (Required over 150 FPM)
- 5 gallon drum of Biodegradable oil (Citgo NZ)
- 55 gallon drum of Biodegradable oil (Citgo NZ)
- 2" Shutoff Valve Kit
- Isolation Couplings
- Overspeed Valve Kits for 2" (less than 150 GPM)

Jack
- Pipe Stands

Car
- 21" Toe guard
- Guide shoe mounting plates (set of 4 - only with shoe purchase from tkE)
- 4" Car roller guides (set of 4) (spring loaded)
- Fan: Two Speed
- Car Top Exit Switch
- Cab Wiring Material (200MK1)

Hoistway
- HN Boxes (per each 2 cars, grouped)
- Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)
- Final Limit Switch Package (Cam, Switches & mounting material)
- TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
- Hoistway Duct Kit

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Pit- Retain

Cab

Car Door (SSSS, #4 S/S (441))

Door Equipment

LD-16 Plus Drive Only (FRONT)

includes Car Top Inspection station (w/ alarm signal)

- Micro Light (Front)

Car Fixtures

Main Car Station Includes Options Below

• Swing Return (Mini-Swing (Column type) for New/Existing Dover/tkE Cabs)

Debranded Car Station (No Logo)

Vandal Resistant Floor Buttons

Cast Braille Plates for Car Features

Standard Key Switch Package

Fan

Light

Independent

Stop

Inspection/Hoistway Enable)

Emergency Light mounted in COP

2004 and later Fire Service Phase II Features (includes instructions signage)

Handicap Signal (Passing signal)

Position Indicator (2" CE Segmented)

ADA Phone System integral with COP (Rath)

Speaker Pattern for Intercom System/ADA Phone

No Smoking (Engraved)

Locked Service Cabinet

Certificate Window

Default Engravings

GFI Outlet

#4 Stainless Steel Finish (441)

Emergency Light Test Button (constant pressure)

Hall Fixtures

Modernization Proposal

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Hoistway Access Switch (in Hall Station)
Fire Service Phase I Key Switch
Fire Service Phase I Engraved Instructions

Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
Hoistway Jamb Braille (Pair of Standard) (# of Floors)
Terminal Hall Stations (Surface Mounted) with

Appendix O (Polycarbonate insert flame with engraved verbiage)
Fusion (#4 S/S (304))

2009 & 2010 Elevator Communications Failure add

Grouping Name: Home

Equipment Type: Hydraulic	Speed: 100 fpm
2 Stops (2 Front /0 Rear)	Capacity: 2500 lbs.

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
			US93028	

Description of Work

Controller

TAC 32 Controller (Includes Options listed below)
eMax Monitoring Device Provisions
Battery Lowering in Controller
Solid State Starters (6 or 12 leads) 460 / 575 VAC
Viscosity Control (Required over 150 FPM)

Power Unit

EP-80 Power Unit (Submersible)
Viscosity Control (Required over 150 FPM)
5 gallon drum of Biodegradable oil (Citgo NZ)
55 gallon drum of Biodegradable oil (Citgo NZ)
2" Shutoff Valve Kit
Isolation Couplings
Overspeed Valve Kits for 2" (less than 150 GPM)

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Modernization Proposal

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Jack
Pipe Stands

Car
21" Toe guard
Guide shoe mounting plates (set of 4 - only with shoe purchase from tkE)
4" Car roller guides (set of 4) (spring loaded) Fan: Two
Speed
Car Top Exit Switch
Cab Wiring Material (200MK1)

Hoistway
HN Boxes (per each 2 cars, grouped)
Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)
Final Limit Switch Package (Cam, Switches & mounting material)
TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
Hoistway Duct Kit

Pit-Retain

Cab
Car Door (SSSS, #4 S/S (441))

Door Equipment
LD-16 Plus Drive Only (FRONT)
includes Car Top Inspection station (w/ alarm signal)
Micro Light (Front)

Car Fixtures
Main Car Station Includes Options Below
• Swing Return (Mini-Swing (Column type) for New/Existing Dover/tkE Cabs)
Debranded Car Station (No Logo)
Vandal Resistant Floor Buttons
Cast Braille Plates for Car Features
Standard Key Switch Package
Fan
Light
Independent

Modernization Proposal

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Stop
Inspection/Hoistway Enable)

Emergency Light mounted in COP
2004 and later Fire Service Phase II Features (includes instructions signage)
Handicap Signal (Passing signal)
Position Indicator (2" CE Segmented)
ADA Phone System integral with COP (Rath)
Speaker Pattern for Intercom System/ADA Phone
No Smoking (Engraved)

Locked Service Cabinet
Certificate Window
Default Engravings

GFI Outlet
#4 Stainless Steel Finish (441)
Emergency Light Test Button (constant pressure)

Hall Fixtures

Hoistway Access Switch (in Hall Station)
Fire Service Phase I Key Switch
Fire Service Phase I Engraved Instructions
Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
Hoistway Jamb Braille (Pair of Standard) (# of Floors)
Terminal Hall Stations (Surface Mounted) with

Appendix O (Polycarbonate insert flame with engraved verbiage)
Fusion (#4 S/S (304))

2009 & 2010 Elevator Communications Failure add

Grouping Name: Diamond

Equipment Type: Hydraulic	Speed: 100 fpm
2 Stops (2 Front /1 Rear)	Capacity: 4500 lbs.

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
			US93027	

Description of Work

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Controller

TAC 32 Controller (Includes Options listed below)
eMax Monitoring Device Provisions
Battery Lowering in Controller
Solid State Starters (6 or 12 leads) 460 / 575 VAC
Viscosity Control (Required over 150 FPM)

Power Unit

EP-125 Power Unit (Submersible)
Viscosity Control (Required over 150 FPM)
5 gallon drum of Biodegradable oil (Citgo NZ)
55 gallon drum of Biodegradable oil (Citgo NZ)
2" Shutoff Valve Kit

-
-

Isolation Couplings
Overspeed Valve Kits for 2" (less than 150 GPM)

Jack
Pipe Stands

Car
21" Toe guard
Guide shoe mounting plates (set of 4 - only with shoe purchase from tkE)
4" Car roller guides (set of 4) (spring loaded)
Fan: Two Speed
Car Top Exit Switch
Cab Wiring Material (200MK1)

Hoistway
HN Boxes (per each 2 cars, grouped)
Steel Tape with Mounting hardware, Selector and magnets (terminal limits included)
Final Limit Switch Package (Cam, Switches & mounting material)
TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
Hoistway Duct Kit

Pit-Retain

Cab
Car Door (2SSS, #4 S/S (441))

Door Equipment
LD-16 Plus Drive Only (FRONT)
includes Car Top Inspection station (w/ alarm signal)
Micro Light (Front)
Micro Light (Rear)
LD-16 Plus Drive Only (REAR)

Car Fixtures
Main Car Station Includes Options Below
• Swing Return (Mini-Swing (Column type) for New/Existing Dover/tkE Cabs)
Debranded Car Station (No Logo)
Vandal Resistant Floor Buttons
Cast Braille Plates for Car Features
Standard Key Switch Package
Fan

- Light
- Independent
- Stop
- Inspection/Hoistway Enable)

Emergency Light mounted in COP
2004 and later Fire Service Phase II Features (includes instructions signage)
Handicap Signal (Passing signal)
Position Indicator (2" CE Segmented)
ADA Phone System integral with COP (Rath)
Speaker Pattern for Intercom System/ADA Phone
No Smoking (Engraved)
Locked Service Cabinet
Certificate Window
Default Engravings
GFI Outlet
#4 Stainless Steel Finish (441)
Door Open rear / Door Close rear
Emergency Light Test Button (constant pressure)
Voice Annunciator (mounted in COP)

- Standard features only
- additional costs apply for custom features

Hall Fixtures

Hoistway Access Switch (in Hall Station)
Fire Service Phase I Key Switch
Fire Service Phase I Engraved Instructions
Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)
Hoistway Jamb Braille (Pair of Standard) (# of Floors)
Terminal Hall Stations (Surface Mounted) with

- Appendix O (Polycarbonate insert flame with engraved verbiage)
- Fusion (#4 S/S (304))

2009 & 2010 Elevator Communications Failure add

Grouping Name: Stadium

Equipment Type: Hydraulic	Speed: 100 fpm
3 Stops (3 Front /0 Rear)	Capacity: 2500 lbs.

Units Included

Building	Nickname	OEM Serial #	TKE Serial #	Legal ID
			US93029	

Modernization Proposal

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Description of Work

Controller
- TAC 32 Controller (Includes Options listed below)
- eMax Monitoring Device Provisions
- Battery Lowering in Controller
- Solid State Starters (6 or 12 leads) 460 / 575 VAC
- Viscosity Control (Required over 150 FPM)

Power Unit
- EP-80 Power Unit (Submersible)
- Viscosity Control (Required over 150 FPM)
- 5 gallon drum of Biodegradable oil (Citgo NZ)
- 55 gallon drum of Biodegradable oil (Citgo NZ)
- 2" Shutoff Valve Kit
- Isolation Couplings
- Overspeed Valve Kits for 2" (less than 150 GPM)

Jack
- Pipe Stands

Car
- Guide shoe mounting plates (set of 4 - only with shoe purchase from tkE)
- 4" Car roller guides (set of 4) (spring loaded)
- Fan: Two Speed
- Car Top Exit Switch
- Cab Wiring Material (200MK1)

Hoistway
- HN Boxes (per each 2 cars, grouped)
- Selector and magnets (terminal limits included) Existing Steel Tape to be reused
- Final Limit Switch Package (Cam, Switches & mounting material)

TAC 32 Field Friendly Wiring Package Includes single traveling cable, hoistway wiring, interlock wiring, interlock connectors, and serial wiring.
Hoistway Duct Kit

Pit-Retain

Cab
Car Door (SSSS, #4 S/S (441))

Door Equipment
LD-16 Plus Drive Only (FRONT)
includes Car Top Inspection station (w/ alarm signal) - Micro Light (Front)

Car Fixtures
Main Car Station Includes Options Below
• Swing Return (Mini-Swing (Column type) for New/Existing Dover/tkE Cabs)
Debranded Car Station (No Logo)
Vandal Resistant Floor Buttons
Cast Braille Plates for Car Features
Standard Key Switch Package
Fan
Light
Independent
Stop
Inspection/Hoistway Enable)
Emergency Light mounted in COP
2004 and later Fire Service Phase II Features (includes instructions signage)
Handicap Signal (Passing signal)
Position Indicator (2" CE Segmented)
ADA Phone System integral with COP (Rath)
Speaker Pattern for Intercom System/ADA Phone
No Smoking (Engraved)
Locked Service Cabinet
Certificate Window
Default Engravings
GFI Outlet
#4 Stainless Steel Finish (441)
Emergency Light Test Button (constant pressure)
Voice Annunciator (mounted in COP)
Standard features only
additional costs apply for custom features

Hall Fixtures
Hoistway Access Switch (in Hall Station)
Fire Service Phase I Key Switch
Fire Service Phase I Engraved Instructions
Fusion Hall Lanterns (Standard) White Up/Down LED's #4 S/S (304)

Horizontal Fusion Combo (HL and Digital HPI) (Standard) White Up/Down LED's #4 S/S (304)
Hoistway Jamb Braille (Pair of Standard) (# of Floors)
Terminal Hall Stations (Surface Mounted) with
Appendix O (Polycarbonate insert flame with engraved verbiage)
Fusion (#4 S/S (304))
2009 & 2010 Elevator Communications Failure add
Intermediate Hall Stations (Surface Mounted) with
Appendix O (Polycarbonate insert flame with engraved verbiage)
Fusion (#4 S/S (304))

1. Key Tasks and Approximate Lead Times

Key Tasks to be performed to be performed by Purchaser prior to equipment fabrication: a. Execution of this Proposal
b. Payment for pre-production and engineering
c. Approval of layout (if applicable)
d. Execution of TK Elevator's Material Release Form

Approximate Durations/Lead Times

Contract execution (can run concurrently with layout drawing package preparation and approval)	Varies
Survey and Order of Materials (additional time required for cab, signal, entrance preparation and approval, if applicable)	3-4 Weeks
Fabrication time (from receipt of all approvals, fully executed contract, Material Release Form and initial progress payment)	9-10 Weeks
Modernization of elevator system (Per Unit): (Upon completion of all required preparatory work by others)	4 - 6 Weeks

The durations or lead times listed above are strictly approximations that can vary due to factors both within and outside of TK Elevator's control, are subject to change without notice to Purchaser and shall not be binding on TK Elevator.

2. Payment Terms

50% of the price set forth in this Proposal as modified by options selected from the section entitled “Value Engineering Opportunities & Alternates” (if applicable) will be due and payable as an initial progress payment within 30 days from TK Elevator's receipt of a fully executed copy of this Proposal. This initial progress payment will be applied to project management, permits, engineering and shop drawings, submittals, drilling mobilization (if required) and raw material procurement. Material will be ordered once this payment is received and the parties have both executed this Proposal and the Material Release Form.

25% of the price set forth in this Proposal as modified by options selected from the section entitled “Value Engineering Opportunities & Alternates” (if applicable) shall be due and payable when the material described above has been furnished. Material is considered furnished when it has been received at the jobsite or TK Elevator staging facility. Supporting

documentation of materials stored shall be limited to stored materials certificates of insurance and bills of lading. Receipt of this payment is required prior to mobilization of labor.

25% of the price set forth in this Proposal shall be made as progress payments throughout the life of the project. In the event TK Elevator fails to receive payment within thirty (30) days of the date of a corresponding invoice, TK Elevator reserves the right to demobilize until such a time that the payments have been brought up to date, and TK Elevator has the available manpower.

It is agreed that there will be no withholding of retainage from any billing and by the customer from any payment.

The payment terms breakdown above shall be considered the Schedule of Values for the project as written. Billing shall be submitted on or before the 25th day of the month according to the payment schedule above and accompanied by a form of G702-703 pay application/schedule of values and a conditional waiver, the format of which is hereby acknowledged and accepted.

The use of online Portals for the submission of billing shall follow the terms of the Proposal and Customer agrees to permit billing in accordance with the executed contract terms. Portal access and usage is to be provided free of additional charge to TK Elevator and any additional cost for such use is to be reimbursed to TK Elevator via a reimbursable change order immediately upon acceptance.

Purchaser agrees that TK Elevator shall have no obligation to complete any steps necessary to provide Purchaser with full use and operation of the installed equipment until such time as TK Elevator has been paid 100% both of the price reflected in this Proposal and for any other work performed by TK Elevator or its subcontractors in furtherance of this Proposal. Purchaser agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full.

Proposal price:		$334,493.84	
Initial progress payment:	(50%)		$167,246.92
Material furnished:	(25%)	$83,623.46	
Total of remaining progress payments:	(25%)	$83,623.46	

3. Warranty

TK Elevator warrants any equipment it installs as described in this Proposal against defects in material and workmanship for a period of one (1) year from the date of Purchaser’s execution of TK Elevator's “Final Acceptance Form” on the express conditions that all payments made under this Proposal and any mutually agreed-to change orders have been made in full and that such equipment is currently being serviced by TK Elevator. In the event that TK Elevator's work is delayed for a period greater than six (6) months, the warranty shall be reduced by the amount of the delay. This warranty is in lieu of any other warranty or liability for defects. TK Elevator makes no warranty of merchantability and no warranties which extend beyond the description in this Proposal, nor are there any other warranties, expressed or implied, by operation of law or otherwise. Like any piece of fine machinery, the equipment described in this Proposal should be periodically inspected, lubricated, and adjusted by competent personnel. This warranty is not intended to supplant normal maintenance service and shall not be construed to mean that
TK Elevator will provide free service for periodic examination, lubrication, or adjustment, nor will TK Elevator correct, without a charge, breakage, maladjustments, or other trouble arising from normal wear and tear or abuse, misuse, improper or inadequate maintenance, or any other causes other than defective material or workmanship. In order to make a warranty claim, Purchaser must give TK Elevator prompt written notice at the address listed on the cover page of this Proposal and provided all payments due under the terms of this Proposal and any mutually agreed to written change orders have been made in full, TK Elevator shall, at its own

expense, correct any proven defect by repair or replacement. TK Elevator will not, under any circumstances, reimburse Purchaser for cost of work done by others, nor shall TK Elevator be responsible for the performance of any equipment that has been the subject of service, repair, replacement, revisions or alterations by others. If there is more than one (1) unit which is the subject of work described in this Proposal, this section shall apply separately to each unit as accepted.

4. Preventative Maintenance Program

This Proposal does not include any maintenance, service, repair or replacement of the equipment or any other work not expressly described herein. TK Elevator will submit a separate proposal to Purchaser covering the maintenance and repair of this equipment to be supplied to Purchaser at an additional cost.

5. Work Not Included

There are certain items that are not included in this Proposal, many of which must be completed by Purchaser prior to and as a condition precedent to TK Elevator's performance of its work as described in this Proposal. In order to ensure a successful completion of this project, it shall be solely Purchaser's responsibility to coordinate its own completion of those items with TK Elevator. The following is a list of those items that are not included in this Proposal:

A. Hoistways and Equipment Rooms

1. Purchaser shall provide the following:
   a. A dry legal hoistway, properly framed and enclosed, and including a pit of proper depth and overhead. This is to include steel safety beam, inspection or access platforms, access doors, sump pump, lights, waterproofing and venting as required; dewatering of pit(s) and required permanent screening/
   b. A legal machine/control room, adequate for the elevator equipment, including floors, trap doors, gratings, access platforms, ladders, railings, foundations, lighting, ventilation sized per the TK Elevator shop drawings. Purchaser must maintain machine/control room temperature between 55 and 90 degrees Fahrenheit, with relative humidity less than 95% non-condensing at all times.
   c. Adequate bracing of entrance frames to prevent distortion during wall construction.
   d. All grouting, fire caulking, cutting, x-ray and removal of walls and floors, patching, coring, setting of sleeves/knockouts, penetrations and painting (except as specified) and removal of obstructions required for elevator work; along with all proper trenching and backfilling for any underground piping and/or conduit.
   e. All labor and materials necessary to support the full width of the hoistway at each landing for anchoring or welding TK Elevator sill supports, steel angles, sill recesses;
   f. The furnishing, installing and maintaining of the required fire rating of elevator hoistway walls, including the penetration of firewall by elevator fixture boxes;
   g. Ensuring that the elevator hoistways and pits are dewatered, cleaned and properly waterproofed;

B. Electrical and Life Safety:

1. Purchaser shall provide a dedicated, analog telephone or data line to the elevator telephone or communication device; one additional data line per group of elevators for diagnostic capability wired to designated controller;

2. Purchaser shall provide the following:
   a. suitable connections from the power main to each controller and signal equipment feeders as required, including necessary circuit breakers and fused mainline disconnect switches per N.E.C. prior to installation.
   Suitable power supply capable of operating the new elevator equipment under all conditions;
   b. piping and wiring to controller for mainline power, car lighting, and any other building systems that interface with the elevator controls per N.E.C. Articles 620-22 and 620-51;
   c. any required hoistway / wellway, machine room, pit lighting and/or 110v service outlets;

d. conduit and wiring for remote panels to the elevator machine room(s) and between panels. Remote panels required by local jurisdictions are not included in this proposal;
e. a bonded ground wire, properly sized, from the elevator controller(s) to the primary building ground; and all remote wiring to the outside alarm bell as requested by all applicable code provisions;
f. installed sprinklers, smoke/heat detectors on each floor, machine room and hoistways / wellways, shunt trip devices (not self-resetting) and access panels as may be required as well as normally open dry contacts for smoke/heat sensors, which shall be terminated by Purchaser at a properly marked terminal in the elevator controller;
g. a means to automatically disconnect the main line and the emergency power supply to the elevator prior to the application of water in the elevator machine room that shall not be self-resetting;
h. emergency power supply including automatic time delay transfer switch and auxiliary contacts with wiring to the designated elevator controller and along with electrical cross connections between elevator machine rooms for emergency power purposes;
i. the following emergency power provisions are not included: interface in controller, pre-testing and testing, emergency power keyswitches;
j. emergency power operation is included as part of the design of the elevator control system and based on each car in the group only, to properly sequence, one at a time to the programmed landing, and park. The design requires that the generator, transfer switch, and related circuitry are sufficient to run this function or any other function for any building other system that is associated with this project. In the event that the generator, transfer switch, and related circuitry are not sufficient, TK Elevator will provide Purchaser with a written change order for Purchaser's execution.
k. a dry set of contacts which close 20 seconds prior to the transfer from normal power to emergency power or from emergency power to normal power whether in test mode or normal operating conditions in the event that an emergency power supply will be provided for the elevator;
l. confirmation that the emergency standby power generator and/or building can accept the power generated to and from the elevator during both Hi-Speed and Deceleration. In cases where the generator and/or building load is not electrically sized to handle the power return from the regen drive, additional separate chopper and resistor units are available for purchase but not included in this proposal. The additional chopper and resistor units allow regenerated power to be dissipated in the resistor bank and not sent back into the building grid.

C. Miscellaneous:

1. Purchaser shall provide all work relating to the finished cab flooring including, but not limited to, the provision of materials and its installation to comply with all applicable codes;
2. Hydraulic jack replacement:
   a. the excavation of the elevator cylinder well hole in the event drilling is necessary through soil that is not free from rock, sand, water, building construction members and obstructions. Should obstructions be encountered, TK Elevator will proceed only after written authorization has been received from the Purchaser. The contract price shall be increased by the amount of additional labor at TK Elevator's standard labor rates as per the local office along with any additional expenses and materials required;
   b. adequate ingress and egress, including ramping, for rail-mounted or truck-mounted drill rig;
   c. Purchaser is responsible for pumping truck contractor to remove and dispose of spoils from the site. In the event that unforeseen and unfavorable below ground conditions are encountered, including but not limited to concrete around the cylinder, construction debris, adverse water and/or soil conditions, erosion, cavitations, oil contamination, or circumstances necessitating increased hole depth, etc., which require the employment of specialized contractors, TK Elevator shall immediately advise the Purchaser and costs will be extra to the contract;
   d. in ground protection systems other than TK Elevator's standard HDPE or PVC protection system with bottomless corrugated steel casing;
   e. any required trenching and backfilling for underground piping or casings, and conduit as well as any compaction, grouting, and waterproofing of block-out;
   f. engineering, provision and installation of methane barriers or coordination/access;

g. access to 2" pressurized water supply within 100'-0" of the jack hole location;
h. a safe, accessible storage area for placement of D.O.T. 55 gallon containers for the purpose of spoils containment; obtaining of local environmental or disposal permits i. any spoils or water testing;

6. Working Hours, Logistics and Mobilization

a. All work described in this Proposal shall be performed during TK Elevator's regular working days – defined as Monday thru Friday and excluding IUEC recognized holidays – and regular working hours – defined as those hours regularly worked by TK Elevator modernization mechanics at the TK Elevator branch office that will provide labor associated with the performance of the work described in this Proposal - unless otherwise specified and agreed to in writing by both TK Elevator and Purchaser (hereinafter TK Elevator's regular working days and regular working hours shall be collectively defined as “normal working hours”). TK Elevator shall be provided with uninterrupted access to the elevator hoistway and machine room areas to perform work during normal working hours.
b. Purchaser shall provide on-site parking to all TK Elevator personnel at no additional cost to TK Elevator.
c. Purchaser shall provide traffic control, lane closures, permits and flagmen to allow suitable access/unload of tractor trailer(s).
d. Purchaser agrees to provide unobstructed tractor-trailer access and roll-able access from the unloading area to the elevator or escalator hoistways or wellways (as applicable).
e. Purchaser will be required to sign off on the Material Release Form, which will indicate the requested delivery date of equipment to the site. If Purchaser is not ready to accept delivery of the equipment within ten (10) business days of the agreed upon date, Purchaser will immediately make payments due for equipment and designate an area adjacent to the elevator shaft where Purchaser will accept delivery. If Purchaser fails to provide this location or a mutually agreeable alternative, TK Elevator is authorized to warehouse the equipment at the TK Elevator warehouse or designated distribution facility at Purchaser's risk and expense. Purchaser shall reimburse TK Elevator for all costs due to extra handling and warehousing. Storage beyond ten (10) business days will be assessed at a rate of $100.00 per calendar day for each unit listed in this Proposal, which covers storage and insurance of the elevator equipment and is payable prior to delivery.
f. Purchaser agrees to provide a dry and secure area adjacent to the hoistway(s) at the ground level for storage of the elevator equipment and tools within ten (10) business days from receipt at the local TK Elevator warehouse. Any warranties provided by TK Elevator for vertical transportation equipment will become null and void if equipment is stored in any manner other than a dry, enclosed building structure. Any relocation of the equipment as directed by Purchaser after initial delivery will be at Purchaser's expense.
g. TK Elevator includes one mobilization to the jobsite. A mobilization fee of $2,500.00 per crew per occurrence will be charged for pulling off the job or for any delays caused by others once material has been delivered and TK Elevator's work has commenced.
h. Access for this project shall be free and clear of any obstructions. A forklift for unloading and staging material shall also be provided by Purchaser at no additional cost.
i. Purchaser shall provide an on-site dumpster. TK Elevator will be responsible for cleanup of elevator/ escalator packaging material; however, composite cleanup participation is not included in this Proposal.
j. The hiring of a disposal company which MUST be discussed prior to any material being ordered or work being scheduled. TK Elevator will provide environmental services ONLY if this is specifically included under the "Scope of Work" section above. TK Elevator assumes no responsibility and/or liability in any way whatsoever for spoils or other contamination that may be present as a result of the cylinder breach and/or other conditions present on the work site.
k. One or more of the units described in this Proposal will be out of service and unavailable to move passengers and/or property during entire duration of the performance of the work described in this Proposal until re-certified by the applicable authority(ies) having jurisdiction and in good standing with payment schedules.

7. Temporary Use, Inspection and Turnover

a. Unless required by specification, TK Elevator will not provide for “temporary use” of the elevator(s) described in this Proposal prior to completion and acceptance of the complete installation. Temporary use shall be agreed to via a change order to this Proposal which shall require Purchaser’s execution of TK Elevator's standard Temporary Use Agreement. Cost for temporary use of an elevator shall be $200.00 per calendar day per hydraulic elevator and $250.00 per calendar day for each traction elevator for rental use only, excluding personnel to operate. All labor and parts, including callbacks required during the temporary use period will be billed at TK Elevator's standard local billing rates. In the event that an elevator must be provided for temporary use, TK Elevator will require 30 days to perform final adjustments and re-inspection after the elevator has been returned to TK Elevator with all protection, intercoms and temporary signage removed. This duration does not include any provisions for finish work or for repairs of same, which shall be addressed on a project-by-project basis. Cost for preparation of controls for temporary use, refurbishment due to normal wear and tear, readjustment and re-inspection is $3,500.00 per elevator up to 10 floors. For projects above 10 stops, an additional cost of $1,500.00 / 10 floors shall apply. These costs are based on work performed during normal working hours. Temporary use excludes vandalism or misuse. Any required signage, communication devices, elevator operators, and protection are not included while temporary use is being provided. All overtime premiums for repairs during the temporary use period will be billed at TK Elevator's local service billing rates.

b. The Proposal price set forth above includes one (1) inspection per unit by the applicable authority having jurisdiction if required by the government of the locality where the equipment is located. In the event the equipment fails that inspection due to no fault of TK Elevator, TK Elevator will charge Purchaser for both the cost of each re-inspection which shall be $1,500.00 and a remobilization fee which shall be $2,500.00 via change order prior to scheduling a re-inspection.

c. Upon notice from TK Elevator that the installation and/or modernization of the equipment is complete, Purchaser will arrange to have present at the jobsite a person authorized to make the final inspection and to execute TK Elevator's “Final Acceptance Form.“ The date and time that such person will be present at the site shall be mutually agreed upon but shall not be more than ten (10) business days after the date of TK
Elevator's notice of completion to Purchaser unless both TK Elevator and Purchaser agree to an extension of that ten (10) day period in writing. Such final inspection and execution of TK Elevator's “Final Acceptance Form” shall not be unreasonably delayed or withheld.

d. Should the Purchaser or the local authority having jurisdiction require TK Elevator's presence at the inspection of equipment installed by others in conjunction with the work described in this Proposal, Purchaser agrees to compensate TK Elevator for its time at TK Elevator's current billing rate as posted at its local office.

e. At the conclusion of its work, TK Elevator will remove all equipment and unused or removed materials from the project site and leave its work area in a condition that, in TK Elevator's sole opinion, is neat and clean.

f. Purchaser agrees to accept a live demonstration of equipment’s owner-controlled features in lieu of any maintenance training required in the bid specifications.

g. Purchaser agrees to accept TK Elevator's standard owner’s manual in lieu of any maintenance, or any other, manual(s) required in the bid specifications.

8. MAX

MAX is a cloud based Internet of Things (IoT) platform that we, at our election, may connect to your elevators and escalators by means of installation of a remote-monitoring device or modem (each a “device”). MAX will analyze the unique signal output of your equipment 24/7 and when existing or potential outages are identified, MAX will automatically communicate with our dispatch centers. When appropriate, the dispatch center will alert our technicians during normal working hours. These MAX alerts provide the technician with precise diagnostics detail, which greatly enhances our ability to fix your equipment right the first time, MAXimizing the equipment uptime.

a. Purchaser authorizes TK Elevator and its employees to access purchaser’s premises to install, maintain and/or repair the devices and, upon termination of the service agreement, to remove the same from the premises if we elect to remove.

b. TK Elevator is and shall remain the sole owner of the devices and the data communicated to us by the devices. The devices shall not become fixtures and are intended to reside where they are installed. TK Elevator may remove the devices and cease all data collection and analysis at any time.

c. If the service agreement between TK Elevator and Purchaser is terminated for any reason, TK Elevator will automatically deactivate the data collection, terminate the device software and all raw data previously received from the device will be removed and/or expunged or destroyed.
d. Purchaser consents to the installation of the devices in your elevators and to the collection, maintenance, use, expungement and destruction of the daily elevator data as set forth in this agreement.
e. The devices installed by TK Elevator contain trade secrets belonging to us and are installed for the use and benefit of our personnel only.
f. Purchaser agrees not to permit purchaser personnel or any third parties to use, access, tamper with, relocate, copy, disclose, alter, destroy, disassemble or reverse engineer the device while it is located on purchaser's premises.
g. The installation of this equipment shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the equipment and/or any software contained or imbedded therein or utilized in connection with the collection, monitoring and/or analysis of data.

9. Additional Terms and Conditions

a. In no event shall TK Elevator be responsible for liquidated, consequential, indirect, incidental, exemplary, and special damages associated with the work described in this Proposal.
b. This Proposal is made without regard to compliance with any special purchasing, manufacturing or construction/installation requirements including, but not limited to, any socio-economic programs, such as small business programs, minority or woman owned business enterprise programs, or local preferences, any restrictive sourcing programs, such as Buy American Act, or any other similar local, state or federal procurement regulations or laws that would affect the cost of performance. Should any such requirements be applicable to the work described in this Proposal, TK Elevator reserves the right to modify this Proposal or rescind it altogether. c. TK Elevator is an equal opportunity employer.
d. TK Elevator's performance of the work described in this Proposal is contingent upon Purchaser furnishing TK Elevator with any and all necessary permission or priority required under the terms and conditions of government regulations affecting the acceptance of this Proposal or the manufacture, delivery or installation of the equipment. All applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator as of the date of the Proposal are included in the price of the Proposal. Purchaser is responsible for any additional applicable sales and use taxes, permit fees and licenses imposed upon TK Elevator after the date of the Proposal or as a result of any law enacted after the date of the Proposal.
e. All taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator as of the date of the execution of this Proposal are included in the price of the Proposal. Purchaser is responsible, in addition to the Proposal price, to pay TK Elevator for any additional (or any increase in) applicable taxes, tariffs, duties, permit and/or license fees imposed upon TK Elevator after the date of acceptance of this Proposal by any governmental authority or by any of TK Elevator's suppliers of the materials and/or components required in connection with this Proposal. f. Purchaser agrees to provide TK Elevator's personnel with a safe place in which to work and TK
Elevator reserves the right to discontinue work at the jobsite whenever, in TK Elevator's sole opinion, this provision is being violated.
g. The pricing set forth in this Proposal assumes that the elevator pits will not be classified as a confined space. TK Elevator will follow its standard safety policy and procedures. Any job specific safety requirements over and above TK Elevator's standard practices and policies may require additional costs.
h. TK Elevator will furnish and install all equipment in accordance with the terms, conditions, scope and equipment nomenclature as noted herein. Requested changes or modifications to such provisions will require a written change order issued on the Purchaser's letterhead and accepted by TK Elevator in writing prior to the execution of such work. This change order shall detail the current contract price, the amount of the change, and new contract value.
i. This Proposal does not include a schedule for the work described and any such schedule shall be mutually agreed upon by an authorized representative of both TK Elevator and Purchaser in writing before becoming effective.
j. In the event asbestos material is knowingly or unknowingly removed or disturbed in any manner at the jobsite, Purchaser shall monitor TK Elevator's work place and prior to and during TK Elevator's manning of the job,

Purchaser shall certify that asbestos in the environment does not exceed .01 fibers per cc as tested by NIOSH 7400. In the event TK Elevator's employees or those of TK Elevator's subcontractors are exposed to an asbestos hazard, PCP's, lead or other hazardous substances, Purchaser agrees, to the fullest extent permitted by law, to indemnify, defend, and hold TK Elevator harmless from all damages, claims, suits, expenses, and payments resulting from such exposure. Identification, notification, removal and disposal of asbestos containing material, PCP's lead or other hazardous substances are the responsibility of the Purchaser.

k. TK Elevator retains title to and a security interest in all equipment it supplies – which TK Elevator and Purchaser agree can be removed without material injury to the real property – until all payments including deferred payments and any extensions thereof, are made. In the event of any default by Purchaser on any payment, or any other provision of this Proposal, TK Elevator may take immediate possession of the equipment and enter upon the premises where it is located – without legal process – and remove such equipment or portions thereof, irrespective of the matter of its attachment to the real estate or the sale, mortgage or lease of the real estate. Pursuant to the Uniform Commercial Code, and at TK Elevator's request, Purchaser agrees to execute any financial or continuation statements which may be necessary for TK Elevator to file in public offices in order to perfect TK Elevator's security interest in such equipment.

l. TK Elevator reserves the right to assign payments owed to TK Elevator under this Proposal.

m. TK Elevator shall not be liable for any loss, damage or delay caused by acts of government, labor troubles, strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, acts of God or any cause beyond its control.

n. The rights of TK Elevator under this Proposal shall be cumulative and the failure on the part of the TK Elevator to exercise any rights hereunder shall not operate to forfeit or waive any of said rights. Any extension, indulgence or change by TK Elevator in the method, mode or manner or payment or any of its other rights shall not be construed as a waiver of any of its rights under this Proposal.

o. In the event TK Elevator engages a third party to enforce the terms of this Proposal, and/or to collect payment due hereunder, either with or without suit, Purchaser agrees to pay all costs thereof together with reasonable attorney's fees. Purchaser does hereby waive trial by jury and does hereby consent to the venue of any proceeding or lawsuit under this Proposal to be in the county where the work covered by this Proposal is located. p. TK Elevator can furnish Certificate of Workers' Compensation, Bodily Injury and Property Damage Liability Insurance coverage to Purchaser upon written request.

q. Should loss of or damage to TK Elevator's material, tools or work occur at the project site, Purchaser shall compensate TK Elevator for such loss, unless such loss or damage results from TK Elevator's own acts or omissions.

r. Purchaser, in consideration of TK Elevator performing the services set forth in this Proposal, to the fullest extent permitted by law expressly agrees to indemnify, defend, save harmless, discharge, release and forever acquit TK Elevator Corporation, TK Elevator Manufacturing, Inc., their respective employees, officers, agents, insurers, affiliates, and subsidiaries (hereinafter singularly a "TK Elevator party" and collectively the "TK Elevator parties") from and against any and all claims, demands, suits, and proceedings for loss, property damage (including damage to the equipment which is the subject matter of this Proposal), personal injury or death that are alleged to either have arisen out of or be connected with the sale, marketing, presence, use, misuse, maintenance, installation, removal, modernization, manufacture, design, operation or condition of the equipment that is the subject matter of this Proposal or the labor and materials furnished in connection with this Proposal. Purchaser's duty to indemnify a TK Elevator party does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this Proposal), personal injury or death is determined to be caused by or resulting from the negligence of that TK Elevator party. Purchaser recognizes that its obligation to defend the TK Elevator parties under this clause, which is separate and apart from its duty to indemnify the TK Elevator parties, includes payment of all attorneys' fees, court costs, judgments, settlements, interest and any other expenses of litigation arising out of such claims, demands, suits or proceedings.

s. TK Elevator's participation in any controlled insurance program is expressly conditioned upon review and approval of all controlled insurance program information and documentation prior to enrollment. Any insurance credits if applicable, will be provided at that time.

t. Unless so mutually agreed upon in a separate signed agreement, TK Elevator shall not be required to interact or correspond with any third party with whom Subcontractor is not in privity of contract concerning matters pertinent to this Agreement.

Modernization Proposal

Acceptance

All other prior representations or regarding this work, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Proposal will be recognized unless made in writing and properly executed by both parties as a change order. Should Purchaser's acceptance be in the form of a purchase order or other similar document, the provisions of this Proposal will exclusively govern the relationship of the parties with respect to this transaction. No agent or employee shall have the authority to waive or modify any of the terms of this Proposal without the prior written approval of an authorized TK Elevator manager.

(Purchaser):	TK Elevator Corporation Management Approval
By: _____ (Signature of Authorized Individual)	By: _____ (Signature of Branch Representative) Branch Manager
_____ (Print or Type Name)	
_____ (Print or Type Title)	
_____ (Date of Acceptance)	_____ (Date of Execution)

SCHEDULING AND PRODUCTION
REQUEST FOR PAYMENT

Please Remit To: TK Elevator
PO Box 3796
Carol Stream, IL 60132-3796

,

Date	Terms	Reference ID	Customer Reference # / PO
October 19, 2021	Immediate	ACIA-1WNGD0A	

Total Contract Price:		$334,493.84
Initial progress payment:	(50%)	$167,246.92

For inquiries regarding your contract or services provided by TK Elevator, please contact your local account manager at +1 432 6831488. To make a payment by phone, please call 678-4245642 with the reference information provided below.

Current and former service customers can now pay online at:
https://secure.billtrust.com/thyssenkruppelevator/ig/one-time-payment

Thank you for choosing TK Elevator. We appreciate your business.

Please detach the below section and provide along with payment.

- - - -

Reference ID:	ACIA-1WNGD0A
Remittance Amount:	$167,246.92

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.

==========

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

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

City Council Meeting

Item Number: 14

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING THE PURCHASE OF A FORD F-550 POTHOLE PATCHER FROM RUSH TRUCK CENTERS OF TEXAS, LP, THROUGH BUYBOARD FOR A TOTAL COST OF $186,723.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution approving the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP through the Buyboard contract 601-19 for a total cost of $186,723.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing of $186,723.00 is available in the FY22 Garage Operating Budget.

Discussion:

Staff is recommending the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP through the Buyboard contract 601-19. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. This truck is a replacement a unit that has gone beyond its serviceable life. Please see the attached memo from Manuel Salinas, Garage Superintendent, for more information.

Therefore, please consider a resolution approving the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP of New Braunfels, Texas through the Buyboard

contract 601-19 for a total cost of $186,723.00.

Tina Daug

City Manager's Office

Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: Buyboard 601-19 for a Pothole Patcher

DATE: 12/18/21

Fleet services is requesting the purchase of (1) one Pothole Patcher. This new unit will be a replacement for a unit that has gone beyond its serviceable use. Budgeted amount for FY 2022 is $180,000 for (1) one Pothole Patcher. Purchasing price for (1) one Pothole Patcher will be $186,723 offered through Buyboard 601-19 by Rush Truck Center. Due to manufacturing issues the price is slightly higher than the budgeted amount.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF A FORD F-550 POTHOLE PATCHER FROM RUSH TRUCK CENTERS OF TEXAS, LP, THROUGH BUYBOARD FOR A TOTAL COST OF $186,723.00

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, Rush Truck Centers of Texas, LP, has submitted a total proposed cost to the City of $186,723.00 for the purchase of a Ford F-550 pothole patcher 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 Rush Truck Centers of Texas, LP, for the purchase of a Ford F-550 pothole patcher to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase a Ford F-550 pothole patcher from Rush Truck Centers of Texas, LP, 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 a Ford F-550 pothole patcher from Rush Truck Centers of Texas, LP, through Buyboard for a total cost of $186,723.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Rush Truck Centers of Texas, LP, for a Ford F-550 pothole patcher 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., 2022, 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

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE
BUYBOARD

Vendor	*RUSH TRUCK CENTER*	Date Prepared	*11/12/2021*
Contact for Vendor:	*COLTON KRUSE*	Phone	(830) 302-5219
End User:	*City of Midland*		
End User Contact:	***Abe Langston***	Phone/Fax	
Product Description:	***Ford F-550 Pothole Patcher***		

A: Base Price in Bid/Proposal Number:	601-19	Series:	**F-550**	$ 25,299.00

	DESCRIPTION	AMOUNT
Ford	F5G	$ 1,735.00
Ford	6.7L Power Stroke Diesel	$ 10,955.00
Ford	4.88 Limited Slip/Payload Plus Upgrade Package	$ 1,515.00
Ford	Power Equipment Group/Mid Ship Fuel Tank	$ 1,540.00
Ford	Back Up Alarm/Transmission PTO Provision	$ 420.00
Subtotal Column 1:	$ 16,165.00	

OPT #	DESCRIPTION	AMOUNT
RTC-0040	OEM+ Safety Analysis	$ 1,275.00
RTC-0052	Body Prep	$ 2,804.00
RTC-0034	PTO For Automatic Transmission	$ 2,480.00
RTC-5123	500E	$ 139,887.00
RTC-1026	Lot Insurance	$ 2,976.00
RTC-1027	Floorplan Interest	$ 2,698.00
Subtotal Column 2:	$ 152,120.00	

Published Options added to Base Price(*Subtotal of "Col 1" & "Col 2"*)	$ 168,285.00

C: Subtotal of A + B	$ 193,584.00
D: Non Published Options	
PB Pothole Patcher with Options $ (14,124.00)	
Subtotal Column 1: $ (14,124.00)	Subtotal Column 2: $ -

Unpublished Options added to Base price (*Subtotal "Col 1 + Col 2"*)	$ (14,124.00)

E: Contract Price Adjustment (*If any, explain here*)	
PL Change	$ 3,263.00

F: Total of C + D +/- E	$ 182,723.00

G: Quantity ordered Units: 1.00	$ 182,723.00

H: BUYBOARD Administrative Fee %	$ 400.00

I: Non-Equipment Charges & Credits (*I.e.: Ext. Warranty, Trade-In, Delivery, etc.*)					
Freight	$ 3,600.00	x	1	$ 3,600.00	
		x		$ -	
					$ 3,600.00

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	$ 186,723.00

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE
BUYBOARD

Vendor	*RUSH TRUCK CENTER*	Date Prepared	*11/12/2021*
Contact for Vendor:	*COLTON KRUSE*	Phone	(830) 302-5219
End User:	*City of Midland*		
End User Contact:	***Abe Langston***	Phone/Fax	
Product Description:	***Ford F-550 Pothole Patcher***		

A: Base Price in Bid/Proposal Number:	601-19	Series:	**F-550**	$ 25,299.00

	DESCRIPTION	AMOUNT
Ford	F5G	$ 1,735.00
Ford	6.7L Power Stroke Diesel	$ 10,955.00
Ford	4.88 Limited Slip/Payload Plus Upgrade Package	$ 1,515.00
Ford	Power Equipment Group/Mid Ship Fuel Tank	$ 1,540.00
Ford	Back Up Alarm/Transmission PTO Provision	$ 420.00
Subtotal Column 1:	$ 16,165.00	

OPT #	DESCRIPTION	AMOUNT
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Subtotal Column 2:	$ 152,120.00	

Published Options added to Base Price(*Subtotal of "Col 1" & "Col 2"*)	$ 168,285.00

C: Subtotal of A + B	$ 193,584.00
D: Non Published Options	
PB Pothole Patcher with Options $ (14,124.00)	

Subtotal Column 1:	$ (14,124.00)	Subtotal Column 2:	$ -

Unpublished Options added to Base price (*Subtotal "Col 1 + Col 2"*)	$ (14,124.00)

E: Contract Price Adjustment (*If any, explain here*)			
PL Change			$ 3,263.00

F: Total of C + D +/- E	$ 182,723.00

G: Quantity ordere	Units:	1.00	$ 182,723.00

H: BUYBOARD Administrative Fee	%	$ 400.00

I: Non-Equipment Charges & Credits (*I.e.: Ext. Warranty, Trade-In, Delivery, etc.)*						
Freight	$ 3,600.00	x	1	$ 3,600.00		
		x		$ -		
						$ 3,600.00

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	$ 186,723.00

BuyBoard Vendor Contract Information Summary

Vendor Name	Rush Truck Centers of Texas, LP
Contact	Drew Neubauer
Phone Number	8303025254
Email	munisales@rushenterprises.com
Website	www.rushtruckcenter.com
Federal ID	74-2786264
Accepts RFQs	Yes
Address Line 1	555 IH 35 South, Suite 500
Vendor City	New Braunfels
Vendor Zip	78130
Vendor State	TX
Vendor Country	USA
Delivery Days	90
Freight Terms	FOB Destination
Payment Terms	Net 30 days
Shipping Terms	Pre-paid and added to invoice
Ship Via	Common Carrier
Is Designated Dealer	No
EDGAR Forms Received	Yes
Service-Disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
Is National	Yes
No Excluded Foreign Terrorist Orgs	Yes
No Israel Boycott Certificate	Yes
Is MWBE	No
Regions Served	All Texas Regions
States Served	All States
Contract Name	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
Quote Reference Number	Rush Truck Centers of Texas, LP
Return Policy	Parts - 14 days, Truck sales - no stated return policy

Additional Dealers See Dealer Distributor link for dealer list

City Council Meeting

Item Number: 15

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION RATIFYING THE CITY OF MIDLAND'S ACCEPTANCE OF CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATION ACT GRANT FUNDING THROUGH THE FEDERAL AVIATION ADMINISTRATION'S AIRPORT CORONAVIRUS RESPONSE GRANT PROGRAM IN THE AMOUNT OF $23,000.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION – AVIATION DIVISION (DISTRICT 4) (AIRPORTS)

Purpose:

Motion ratifying the acceptance of the Coronavirus Response and Relief Supplemental Appropriation Act, CRRSAA, distributed through the FAA's Airport Coronavirus Response Grant Program (ACRGP) funding for Midland Airpark in the amount of $23,000.00 from TxDOT Aviation.

Recommended City Council Action:

Approve

Fiscal Impact:

Grant Proceeds: $23,000

Discussion:

The CoronaVirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) provided a grant in the amount of $23,000, to the City of Midland to be used for allowable expenses at Midland Airpark. TxDOT Aviation requested that the grant be signed upon receipt as they are trying to process all the CRRSAA Grants for our region before the next wave of

Corona Virus Grants roll out. These grant proceeds will fund operating costs at Midland Airpark for the foreseeable future.

The CRRSA was signed into law by the President on December 27, 2020 and $2 billion in funds to be awarded as economic relief to eligible US Airports to prevent, prepare for, and respond to the COVID-19 pandemic. FAA guidance states that airports may use these funds for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. The airport has four years to spend these funds.

Tina Gaug

City Manager's Office

City Council Meeting

Item Number: 16

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION RATIFYING THE CITY OF MIDLAND'S ACCEPTANCE OF AIRPORT RESCUE GRANT FUNDING THROUGH THE AMERICAN RESCUE PLAN ACT IN THE AMOUNT OF $59,000.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION – AVIATION DIVISION (DISTRICT 4) (AIRPORTS)

Purpose:

Motion ratifying the acceptance of the Airport Rescue Grant funding through the American Rescue Plan Act, ARPA at Midland Airpark in the amount of $59,000.00 from TxDOT Aviation.

Recommended City Council Action:

Approve

Fiscal Impact:

Grant Proceeds: $59,000.00

Discussion:

The American Rescue Plan Act of 2021 (ARPA) provided a grant in the amount of $59,000.00, to the City of Midland to be used for allowable expenses at Midland Airpark. TxDOT Aviation requested that the grant be signed upon receipt as they are trying to process all the ARPA Grants for our region before the next wave of Corona Virus Grants roll out. These grant proceeds will fund operating costs at Midland Airpark for the foreseeable future.

The American Rescue Plan Act of 2021 was signed into law by the President on March 11, 2021, and included $8 billion in funds to be awarded as economic assistance to eligible US airports to prevent, prepare for, and respond to the coronavirus disease 2019 (COVID-19) pandemic. To distribute these funds, the FAA has established the Airport Rescue Grants that

can be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport and debt service payments. The airport has four years to spend these funds.

Tina Jaeger

City Manager's Office

City Council Meeting

Item Number: 17

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: RESOLUTION ADOPTING AND APPROVING A METRIC SCALE FOR CONSIDERING AND GRANTING SALES TAX REFUND INCENTIVES FOR ECONOMIC DEVELOPMENT PROPOSALS PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT: ALL) (CITY MANAGER)

Purpose:

Resolution approving a sales tax refund metric to be used as an economic development incentive.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

The MDC and city staff are proposing approval of a standardized scale for sales tax refunds. This tool will assist new and expanding businesses in knowing what the city can offer. The proposed standardized scale is based on capital investment since that number can be certified to the city prior to a Chapter 380 agreement being made. This tool will allow a consistent approach moving forward.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ADOPTING AND APPROVING A METRIC SCALE FOR CONSIDERING AND GRANTING SALES TAX REFUND INCENTIVES FOR ECONOMIC DEVELOPMENT PROPOSALS PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, staff for the City of Midland and the Midland Development Corporation have collaborated to develop a metric scale for sales tax refund incentives for the purpose of assisting the City Council with considering and granting sales tax refunds for economic development proposals pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City Council finds it to be in the public interest to adopt and approve said metric scale for considering and granting sales tax refund incentives for economic development proposals pursuant to Chapter 380 of the Texas Local Government Code;

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

THAT the metric scale for considering and granting sales tax refund incentives for economic development proposals, which is attached hereto as Exhibit A and incorporated herein for all purposes, is hereby adopted and approved.

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., 2022, 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

Sales Tax Refund

Sales tax refunds are available based upon project size. All sales tax refund agreements are subject to final approval by City Council.

CAPITAL INVESTMENT

<$3,000,000

- 50% for 1 year

$3,000,0001-$4,999,999

- 50% for 2 years

$5,000,000-$9,999,999

- 50% for 3 years

$10,000,000-$19,999,999

- 50% for 5 years

$20,000,000-$49,999,999

- 50% for 7 years

$50,000,000-$99,999,999

- 50% for 10 years

>$100M

- Flexible based on project

Sales Tax Refund

Sales tax refunds are available based upon project size. All sales tax refund agreements are subject to final approval by City Council.

CAPITAL INVESTMENT

<$3,000,000

- 50% for 1 year

$3,000,0001-$4,999,999

- 50% for 2 years

$5,000,000-$9,999,999

- 50% for 3 years

$10,000,000-$19,999,999

- 50% for 5 years

$20,000,000-$49,999,999

- 50% for 7 years

$50,000,000-$99,999,999

- 50% for 10 years

>$100M

- Flexible based on project

City Council Meeting

Item Number: 18

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: **RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO MCM OPERATING, LLC ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

Resolution approving the issuance of permits 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. The required 30-day public comment has passed, and the Council may consider this request. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval. MCM Operating will be using 24 ft. tall sound walls on all sides of the well pad during

drilling and fracing operations. Additionally, will be utilizing a quite frac crew to further minimize concerns with sound. Existing tank battery being relocated out of neighborhood and relocated to the county side west of Holiday Hill Road. Existing 4 wells located in the neighborhood, have been or in the process of being plugged and abandoned. MCM Operating does have a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, MCM Operating is requesting the following variances:

1. Requesting a variance to the hours of operation for fracture stimulations and to allow for frac operations to occur during a 24-hour period which will include the use a workover rig during the completion process following the fracing operations on the subject wells.

2. Requesting a variance to the landscaping plan, the proposed fencing plan provides adequate screening from adjacent roads and parcels. Additionally, MCM Operating, LLC will work with the surface owner/developer Los Conchos Ventures, LLC on future screening and landscaping.

3. Requesting a variance to have perimeter fence around entire pad site instead of the individual wellheads.

Attachments: Applications, Location maps, Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO MCM OPERATING, LLC ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on November 16, 2021; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's applications to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

MB-8H; MB-9H; MB-10H; MB-11H; and MB-12H;

located in Section 6, Block X, H.P. Hilliard Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "E" and incorporated herein for all legal purposes.

SECTION THREE. That said permits do not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two

hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 11, 2022, considered the application of MCM Operating, LLC ("Operator") dated September 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MB-8H oil and gas well shall be 1,450 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from January 11, 2022 through January 11, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.

3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 11, 2022, considered the application of MCM Operating, LLC ("Operator") dated September 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MB-9H oil and gas well shall be 1,470 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from January 11, 2022 through January 11, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

OIL AND GAS WELL PERMIT

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The location of Operator's MB-10H oil and gas well shall be 1,490 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

OIL AND GAS WELL PERMIT

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The location of Operator's MB-11H oil and gas well shall be 1,510 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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CITY OF MIDLAND, TEXAS

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Patrick N. Payton, Mayor

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MCM Operating, LLC

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Matthew Chitwood

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OIL AND GAS WELL PERMIT

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The location of Operator's MB-12H oil and gas well shall be 1,530 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
9/1/2021	MCM Operating, LLC	223 W. Wall Street, Suite 400 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 704-2500
Matthew Chitwood	223 W. Wall St,Ste. 400 Midland,TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Matthew Chitwood - (817) 675-6680 (Cell Phone)
223 W. Wall Street, Suite 400 Midland, TX 79701

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,***

a licensed Texas Attorney) **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
- Undeveloped, existing oil and gas facilities, future single family residences to the south
- Undeveloped and existing oil and gas facilities to the west

ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MB-8H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:
SHL - 1,450' FWL and 485' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 660' FWL and 50' FSL-Situated in Section 18, A-681,Block 39, T-1-S,T& P RR Co, Midland County,TX

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

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ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:
None.
(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Attached as Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the** ***Letter of Credit/Certificate of Deposit*** **in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

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ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

MCM Operating, LLC
[NAME OF COMPANY]

By Matt Chitwood
Its Vice President of Land

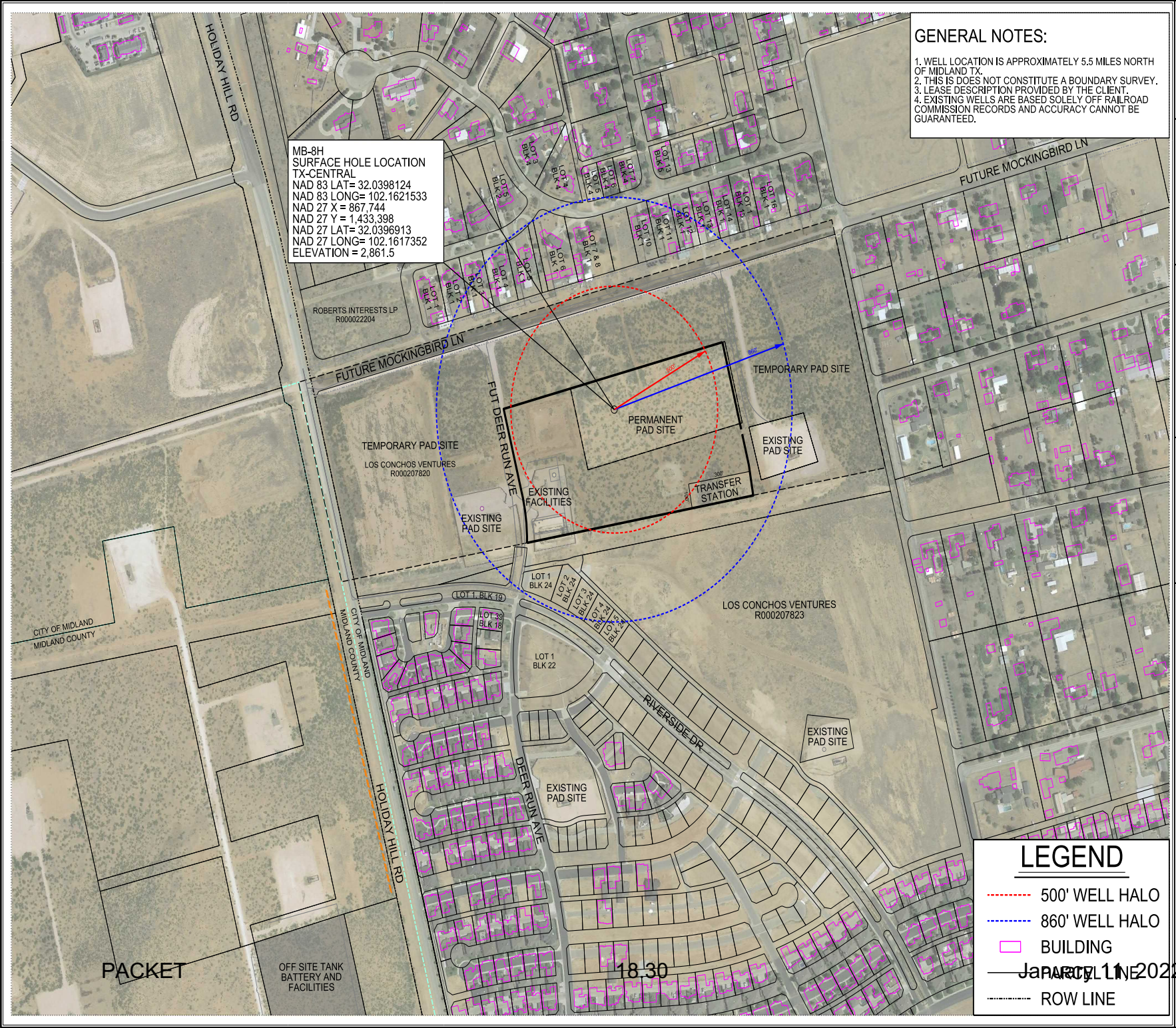
State of Texas)

County of Midland)

Matt Chitwood, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Adam Borgman
Notary Public, State of Texas

ADAM MURRAY BORGMAN
Notary Public, State of Texas
Comm. Expires 03-16-2022
Notary ID 128191650
SEAL



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

MCM OPERATING, LLC
223 W. WALL ST., SUITE 400
MIDLAND, TX 79701
PHONE: (432) 685-1790

SITE PLAN PREPARED BY:

PELOTON LAND SOLUTIONS

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

LNV
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10126500

PROJECT NO:	MCM20001
FILE PATH:	Planning\Exhibits\MB-8H - 12H
DRAWN BY:	AW
REVIEWED BY:	CH
DATE:	7/20/2021
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

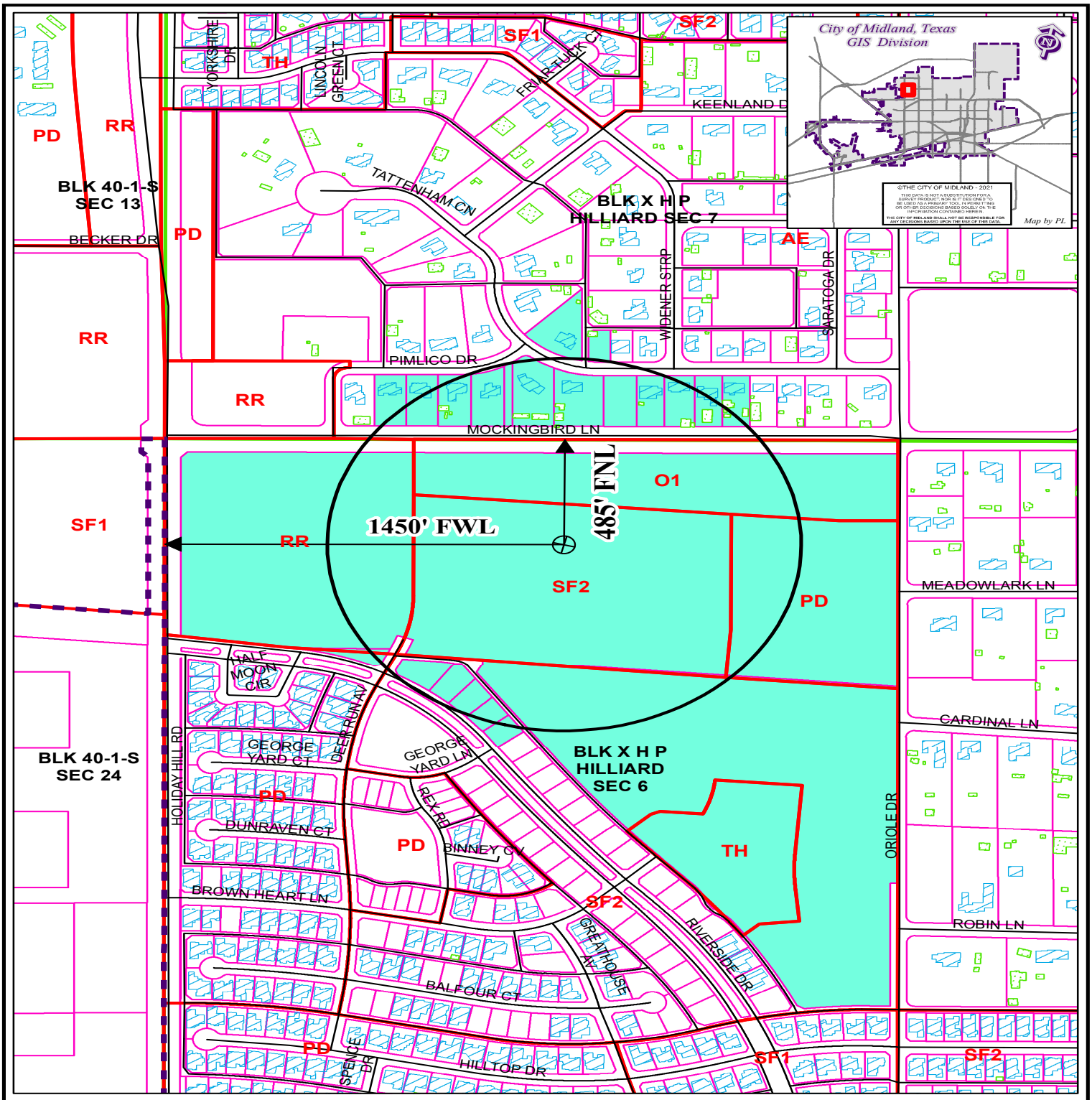
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MB-8H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

8/16/2021 11:55:26 AM Printed by: jhatcher



LOCATION AND ZONING MAP

Oil-037779-2021 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,450' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane extension and [illegible] feet east of Holiday Hill Road.

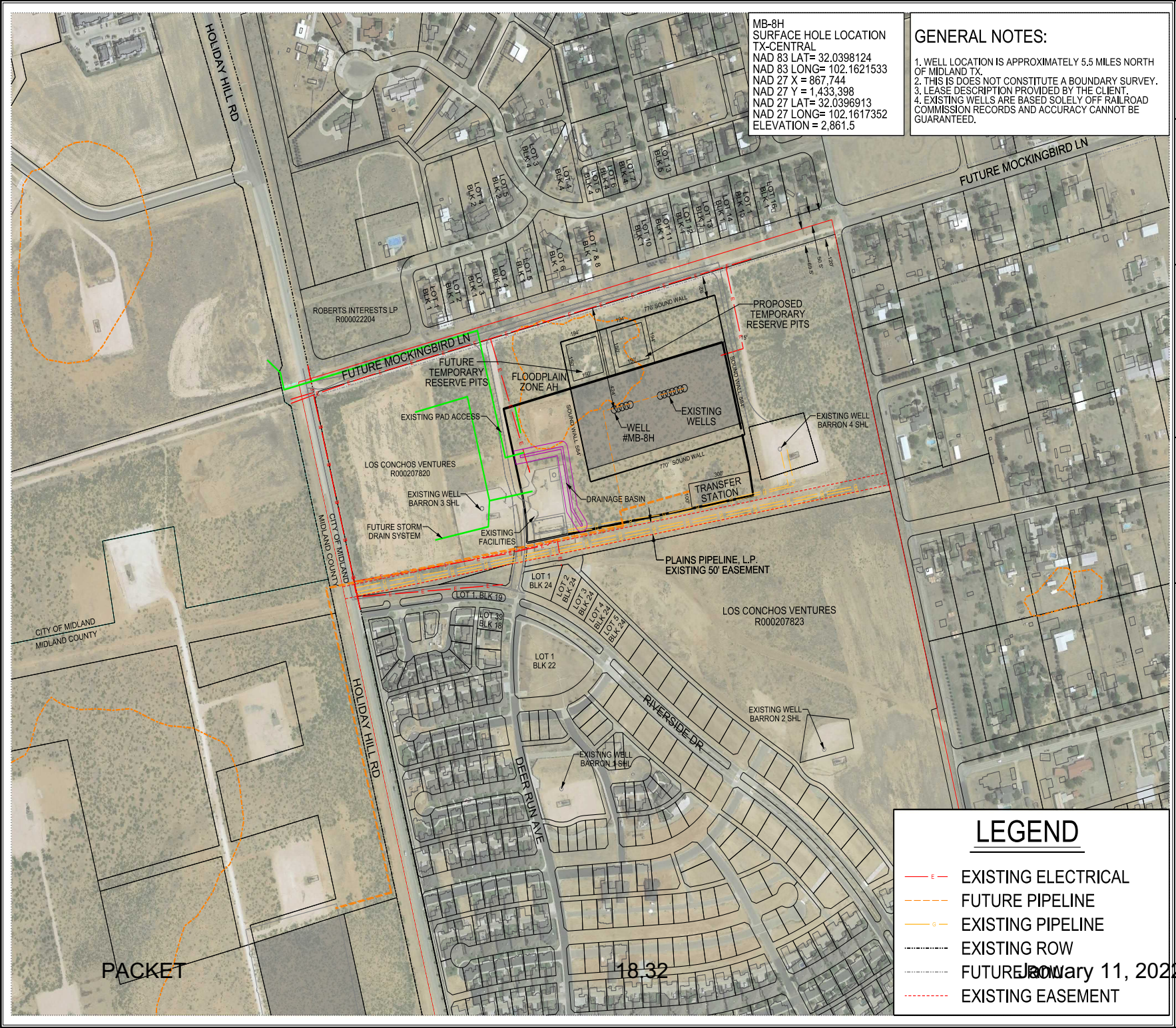
MB-8H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
[illegible]	ONE-FAMILY DWELLING	[illegible]	COMMERCIAL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

MCM OPERATING, LLC
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MIDLAND, TX 79701
PHONE: (432) 685-1790

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PROJECT NO:	MCM20001
FILE PATH:	Planning\Exhibits\MB-8H - 12H
DRAWN BY:	AW
REVIEWED BY:	CH
DATE:	7/20/2021
REV:	

SHEET CONTENT

EXHIBIT 'G' - 1

DRILL SITE, GATHERING LINES, ACCESS ROAD, ELECTRIC

MOCKINGBIRD
MB-8H

Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

8/16/2021 11:56:38 AM Printed by: jhatcher

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 11, 2022, considered the application of MCM Operating, LLC ("Operator") dated September 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MB-8H oil and gas well shall be 1,450 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from January 11, 2022 through January 11, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.

3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

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[NAME OF COMPANY]

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Its Vice President of Land

State of Texas)

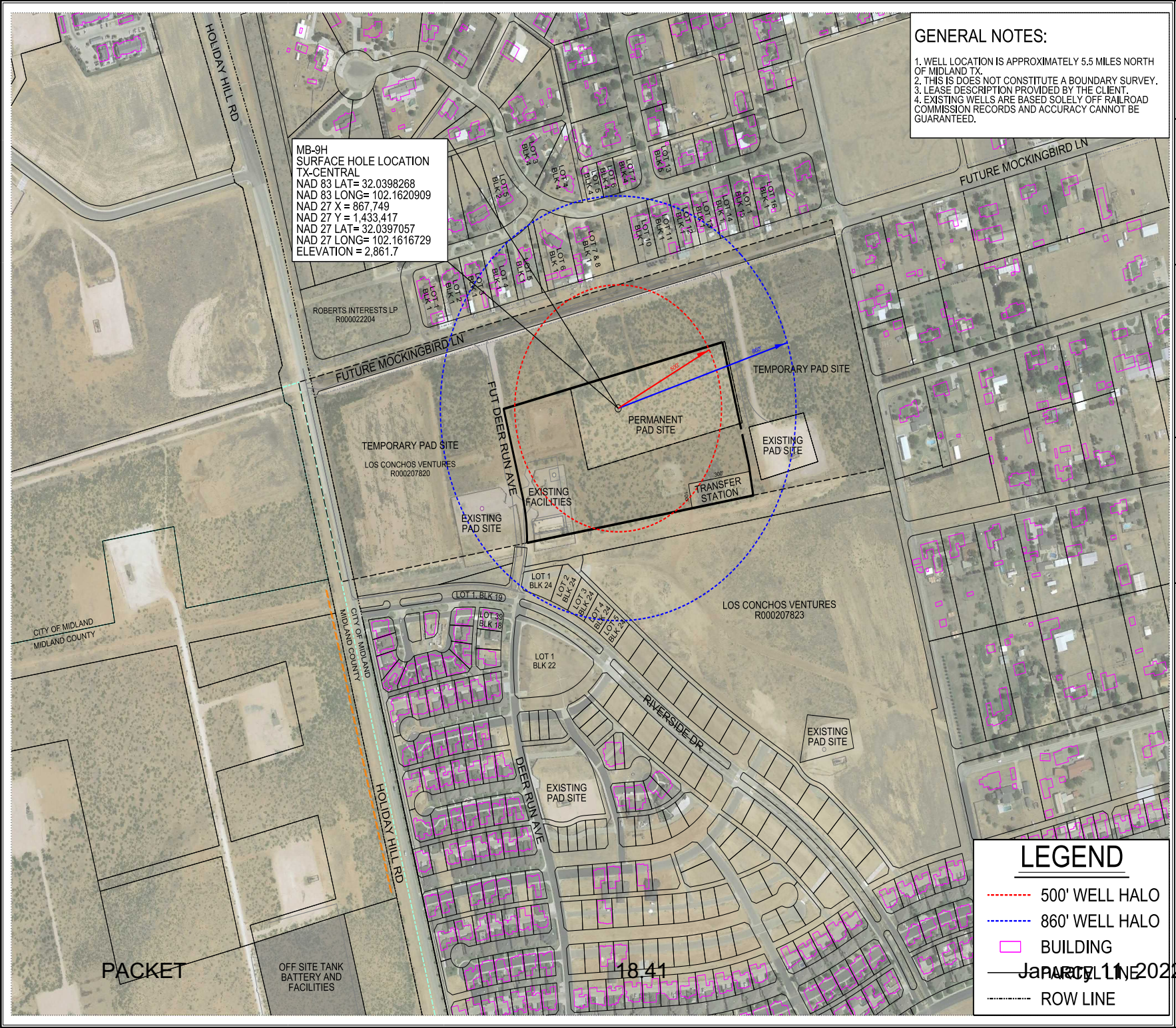
County of Midland)

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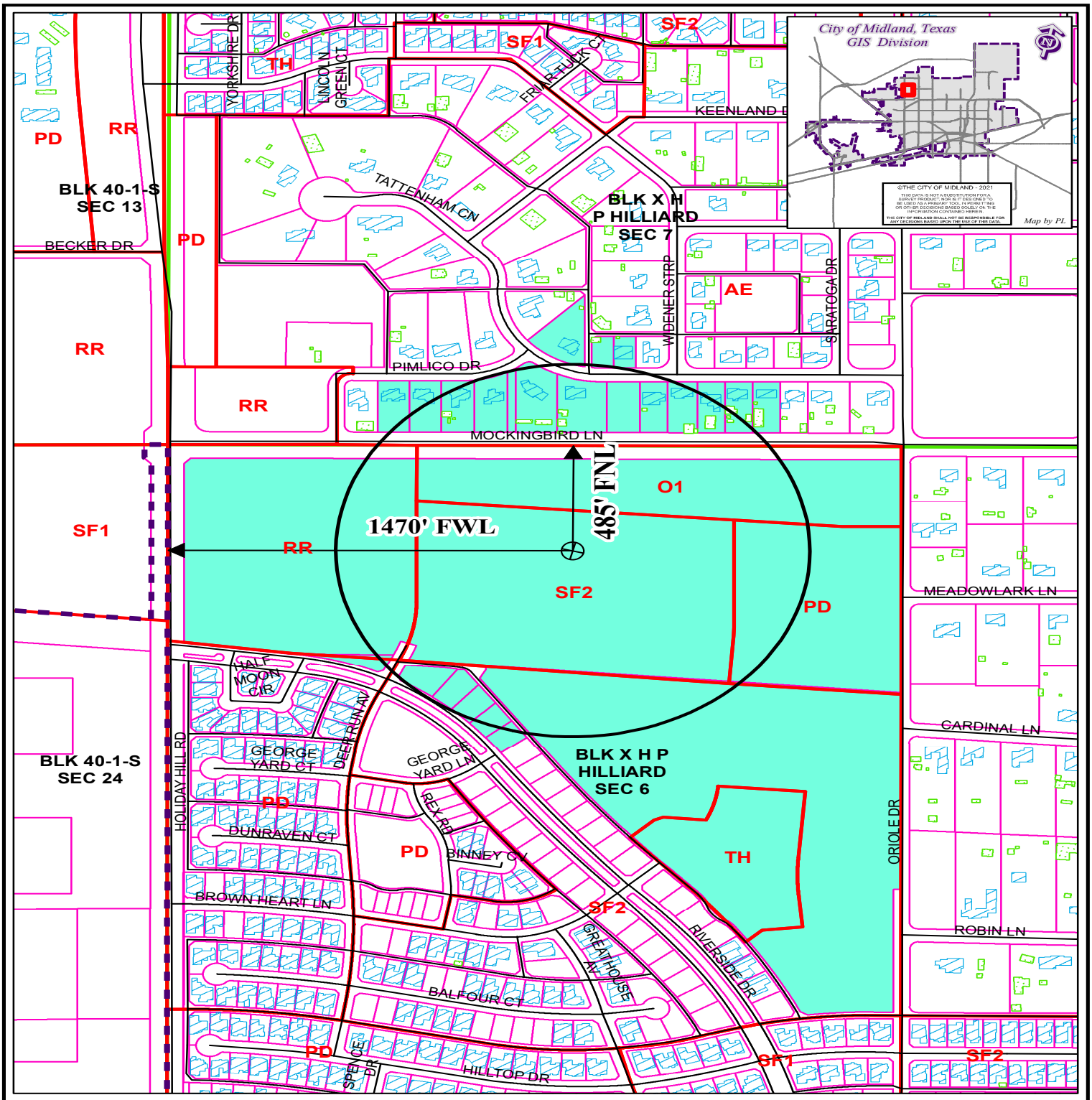
ADAM MURRAY BORGMAN
Notary Public, State of Texas
Comm. Expires 03-16-2022
Notary ID 128191650

SEAL



PACKET
January 11, 2022

8/16/2021 11:47:14 AM Printed by: jhatcher



LOCATION AND ZONING MAP

Oil-037780-2021 **Scale: 1" = 500'**

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Generally located 485 feet south of Mockingbird Lane extension and 1,470 feet east of Holiday Hill Road.

MB-9H

LEGEND

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COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

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PD	PLANNED DISTRICT	P	PARKING
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RR	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F, 1F1, 1F2, 1F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
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MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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The location of Operator's MB-9H oil and gas well shall be 1,470 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from January 11, 2022 through January 11, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.

3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
9/1/2021	MCM Operating, LLC	223 W. Wall Street, Suite 400 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 704-2500
Matthew Chitwood	223 W. Wall St,Ste. 400 Midland,TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Matthew Chitwood - (817) 675-6680 (Cell Phone)
223 W. Wall Street, Suite 400 Midland, TX 79701

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
- Undeveloped, existing oil and gas facilities, future single family residences to the south
- Undeveloped and existing oil and gas facilities to the west

ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MB-10H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:
SHL - 1,490' FWL and 485' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 2,310' FWL and 50' FSL-Situated in Section 18, A-681,Block 39, T-1-S,T& P RR Co, Midland County,TX

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

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ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:
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(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Attached as Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the** ***Letter of Credit/Certificate of Deposit*** **in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

ATTACHED AS EXHIBIT R **is the required Insurance Certificate. [See § J(19) and § K(3)].**

ATTACHED AS EXHIBIT S (if applicable) **is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].**

ATTACHED AS EXHIBIT T **is Applicant's Emergency Action Response Plan. [See § J(22)].**

ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

MCM Operating, LLC
[NAME OF COMPANY]

By Matt Chitwood
Its Vice President of Land

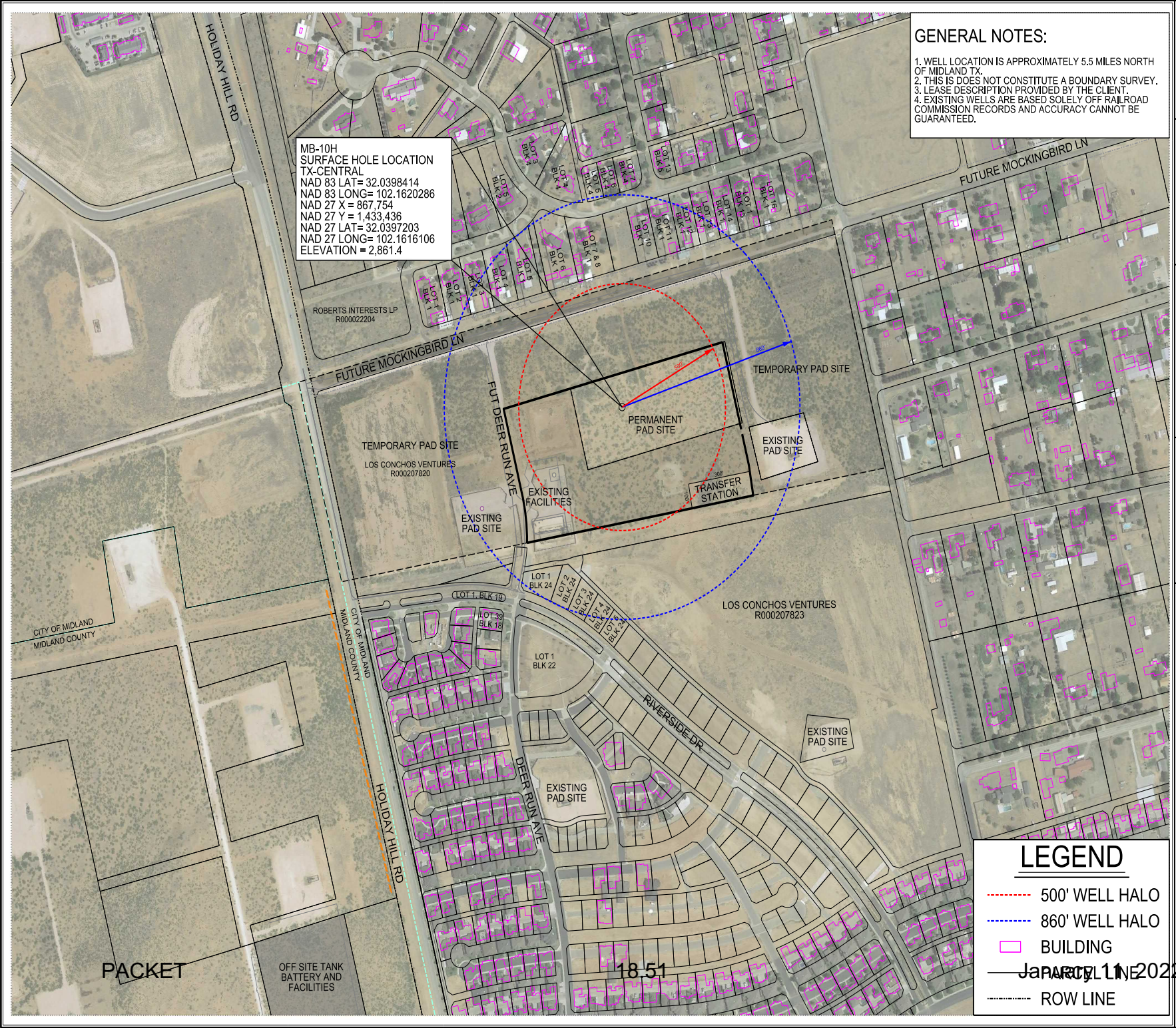
State of Texas)

County of Midland)

Matt Chitwood, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Adam Borgman
Notary Public, State of Texas

ADAM MURRAY BORGMAN
Notary Public, State of Texas
Comm. Expires 03-16-2022
Notary ID 128191650
SEAL



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

MCM OPERATING, LLC
223 W. WALL ST., SUITE 400
MIDLAND, TX 79701
PHONE: (432) 685-1790

SITE PLAN PREPARED BY:

PELOTON LAND SOLUTIONS

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

LNV
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10126500

PROJECT NO:	MCM20001
FILE PATH:	Planning\Exhibits\MB-8H - 12H
DRAWN BY:	AW
REVIEWED BY:	CH
DATE:	7/20/2021
REV:	

SHEET CONTENT

EXHIBIT 'E'

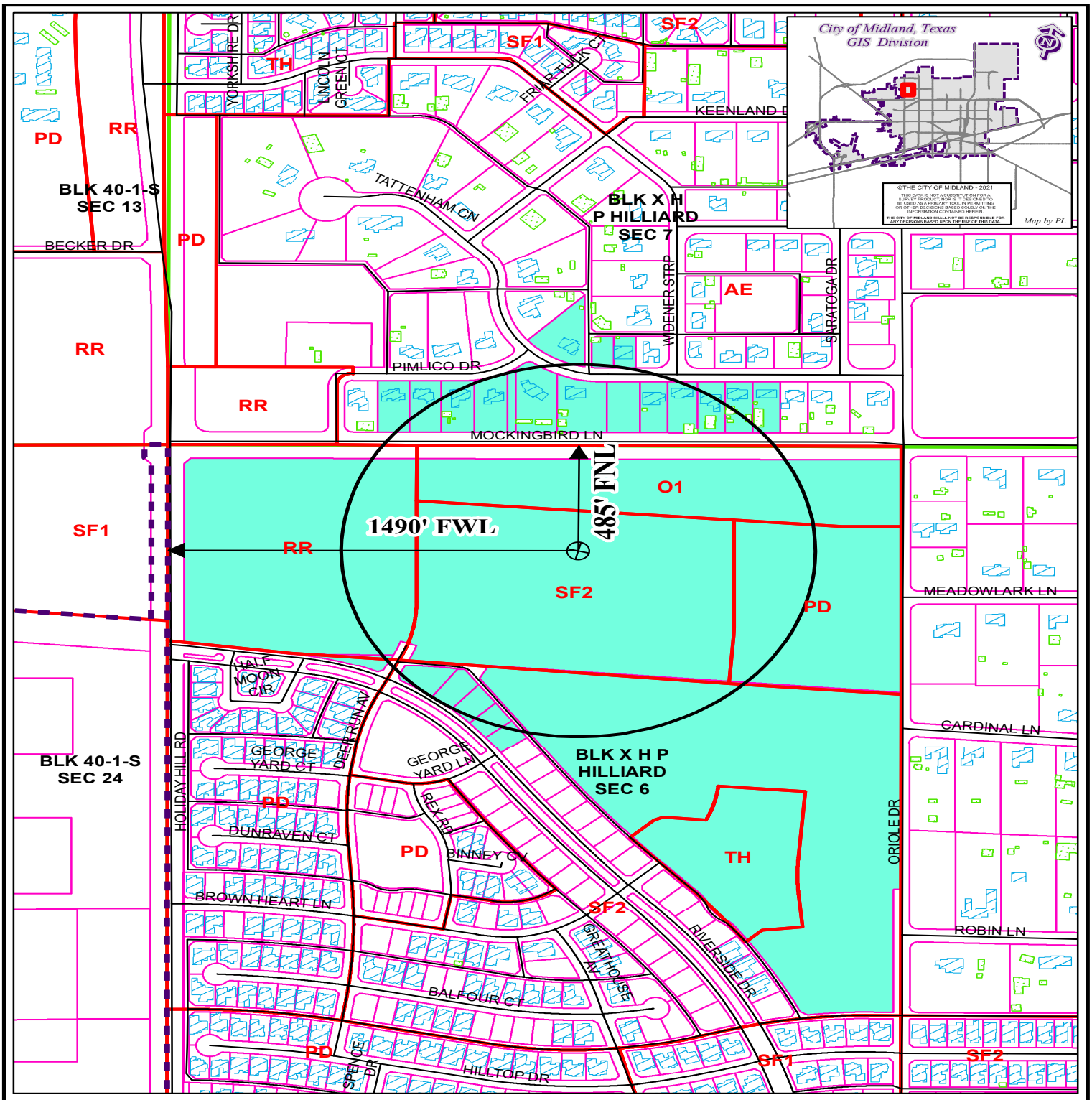
SURFACE OWNER

MOCKINGBIRD MB-10H

Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

PACKET
18.51
January 11, 2022

Printed by: jhatcher
1:23:23 PM
8/16/2021



LOCATION AND ZONING MAP

Oil-037781-2021 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,490' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane extension and [illegible] feet east of Holiday Hill Road.

MB-10H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
RE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
RR, SF1, SF2, SF3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 11, 2022, considered the application of MCM Operating, LLC ("Operator") dated September 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

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CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
9/1/2021	MCM Operating, LLC	223 W. Wall Street, Suite 400 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 704-2500
Matthew Chitwood	223 W. Wall St,Ste. 400 Midland,TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

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Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

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Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

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MCM Operating, LLC
[NAME OF COMPANY]

By Matt Chitwood
Its Vice President of Land

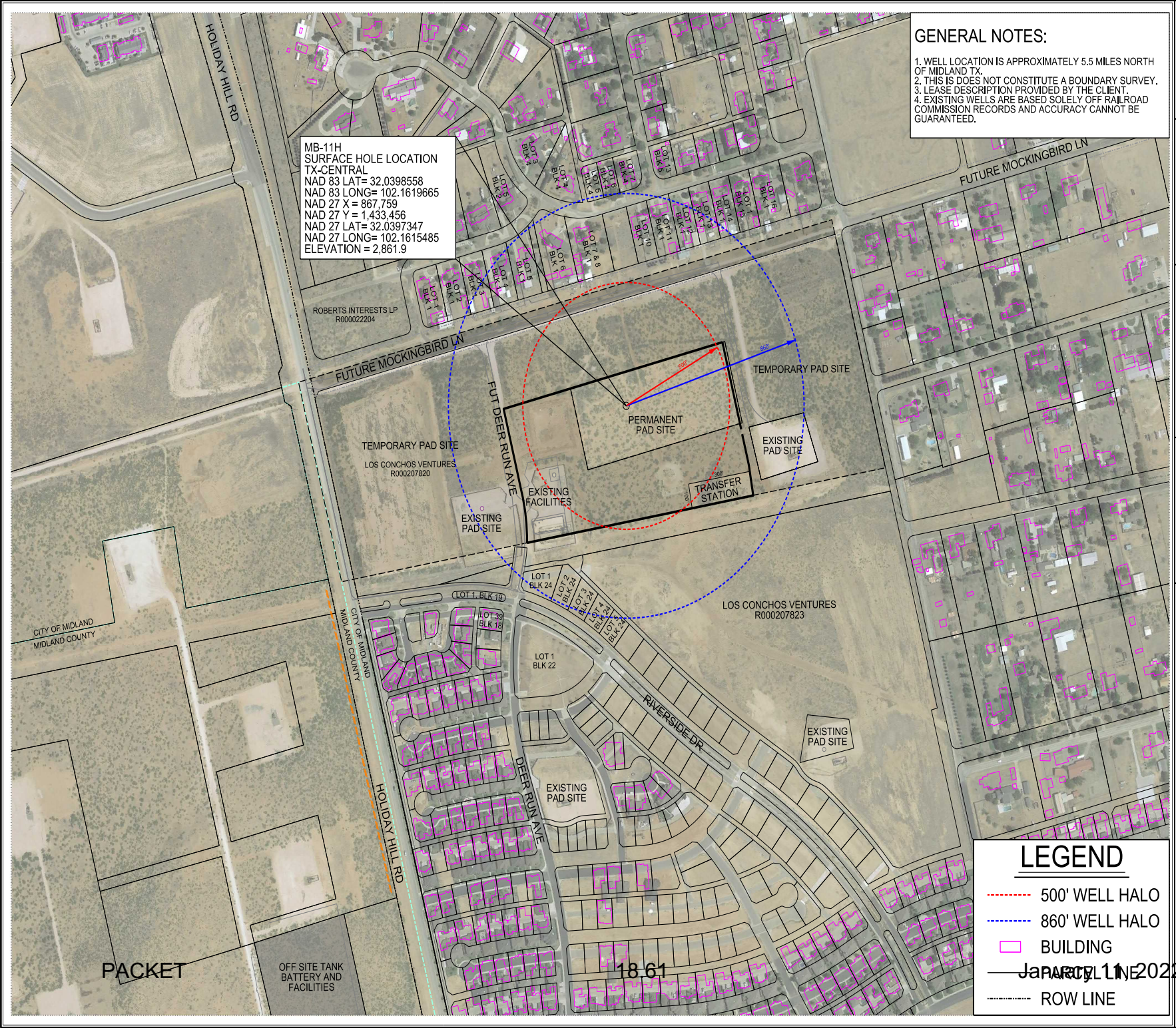
State of Texas)

County of Midland)

Matt Chitwood, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Adam Borgman
Notary Public, State of Texas

ADAM MURRAY BORGMAN
Notary Public, State of Texas
Comm. Expires 03-16-2022
Notary ID 128191650
[SEAL]



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

MCM OPERATING, LLC
223 W. WALL ST., SUITE 400
MIDLAND, TX 79701
PHONE: (432) 685-1790

SITE PLAN PREPARED BY:

PELOTON LAND SOLUTIONS

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

LNV
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10126500

PROJECT NO:	MCM20001
FILE PATH:	Planning\Exhibits\MB-8H - 12H
DRAWN BY:	AW
REVIEWED BY:	CH
DATE:	7/20/2021
REV:	

SHEET CONTENT

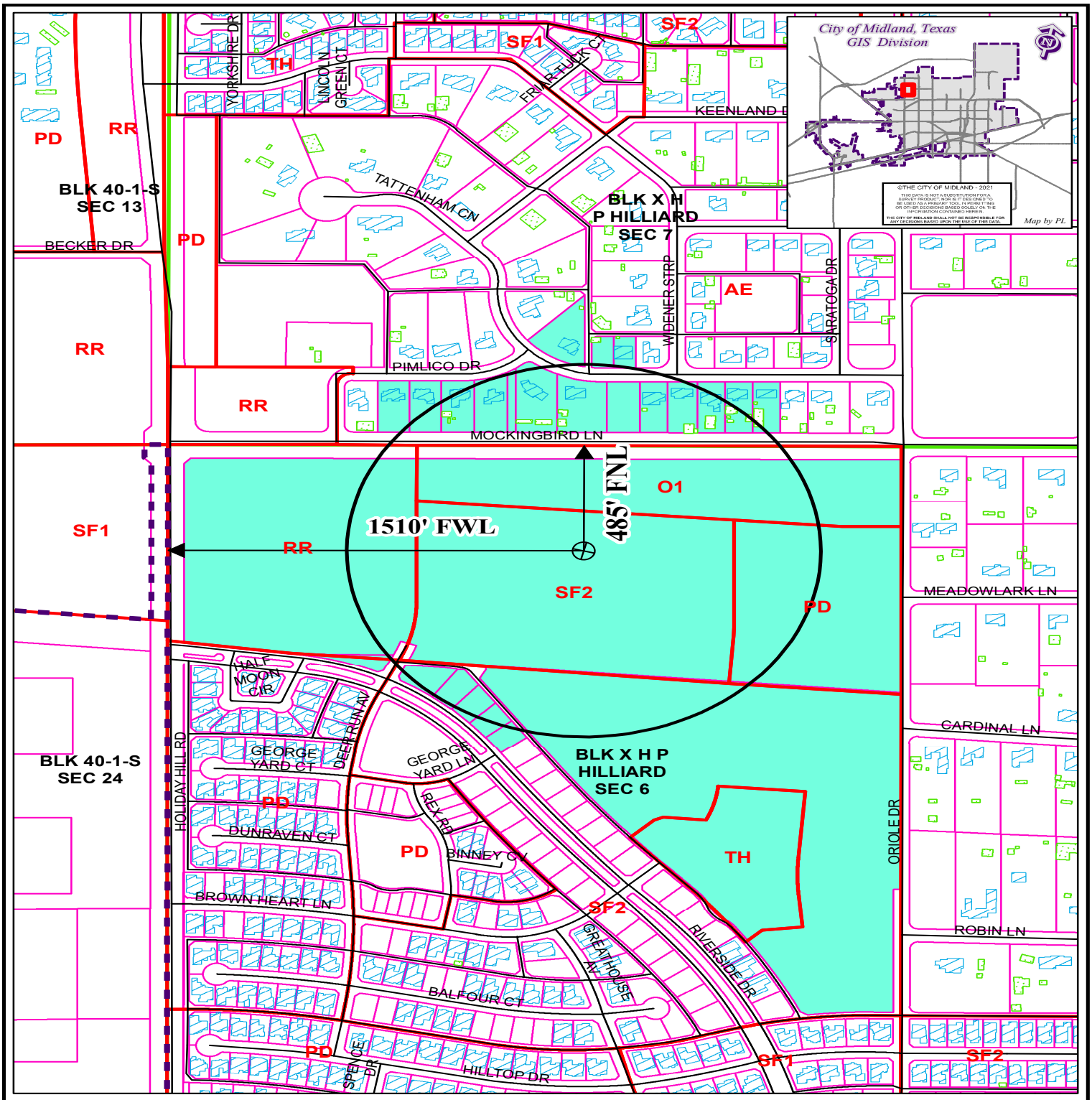
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MB-8H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

Printed by: jhatcher
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LOCATION AND ZONING MAP

Oil-037782-2021 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,510' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane extension and [illegible] feet east of Holiday Hill Road.

MB-11H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

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PD	PLANNED DISTRICT	P	PARKING
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MB-11H oil and gas well shall be 1,510 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from January 11, 2022 through January 11, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.

3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
9/1/2021	MCM Operating, LLC	223 W. Wall Street, Suite 400 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 704-2500
Matthew Chitwood	223 W. Wall St,Ste. 400 Midland,TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Matthew Chitwood - (817) 675-6680 (Cell Phone)
223 W. Wall Street, Suite 400 Midland, TX 79701

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
- Undeveloped, existing oil and gas facilities, future single family residences to the south
- Undeveloped and existing oil and gas facilities to the west

ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MB-12H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:
SHL - 1,530' FWL and 485' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 1,650' FWL and 50' FSL-Situated in Section 18, A-681,Block 39, T-1-S,T& P RR Co, Midland County,TX

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:
None.
(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Attached as Exhibit O

V. Additional Required Exhibits

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[NAME OF COMPANY]

By Matt Chitwood
Its Vice President of Land

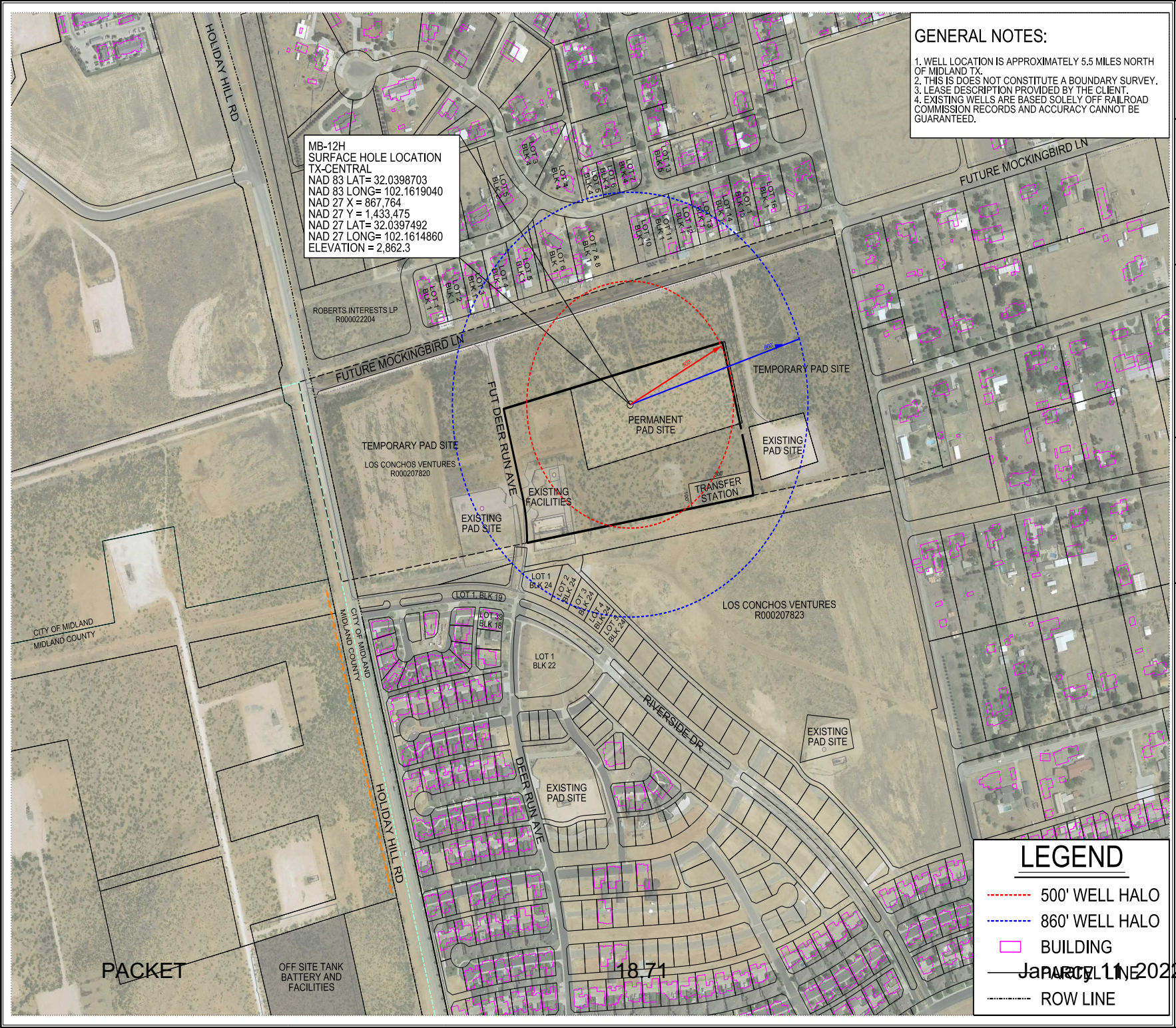
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ADAM MURRAY BORGMAN
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MOCKINGBIRD PROSPECT

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MIDLAND, TX

APPLICANT:

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223 W. WALL ST., SUITE 400
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PHONE: (432) 685-1790

SITE PLAN PREPARED BY:

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PHONE: (361) 883-1984
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DRAWN BY:	AW
REVIEWED BY:	CH
DATE:	7/20/2021
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

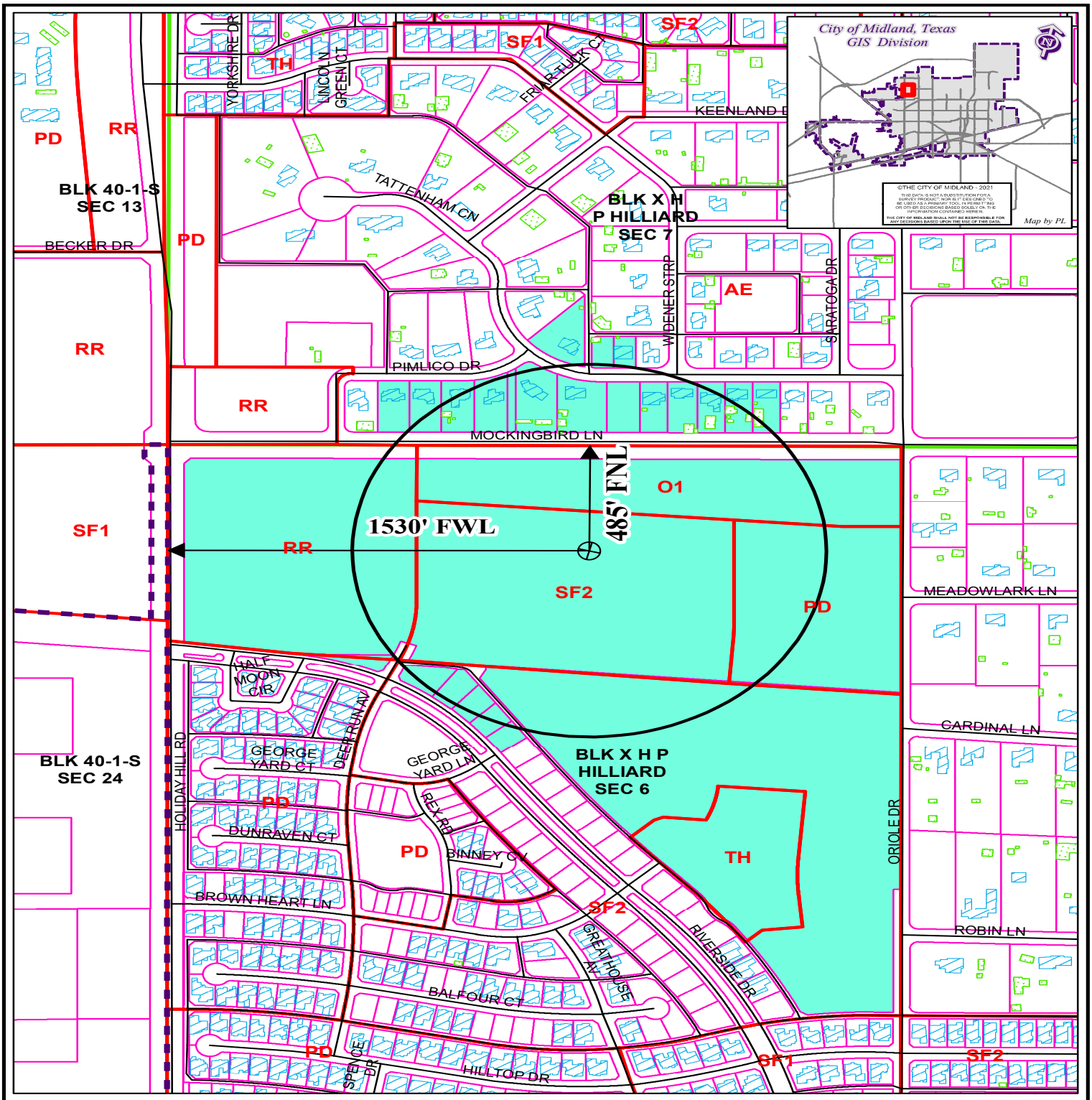
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD MB-12H

Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

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CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of January 2022.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

City Council Meeting

Item Number: 19

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 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

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 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 rear yard setback.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum rear yard setback 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., 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

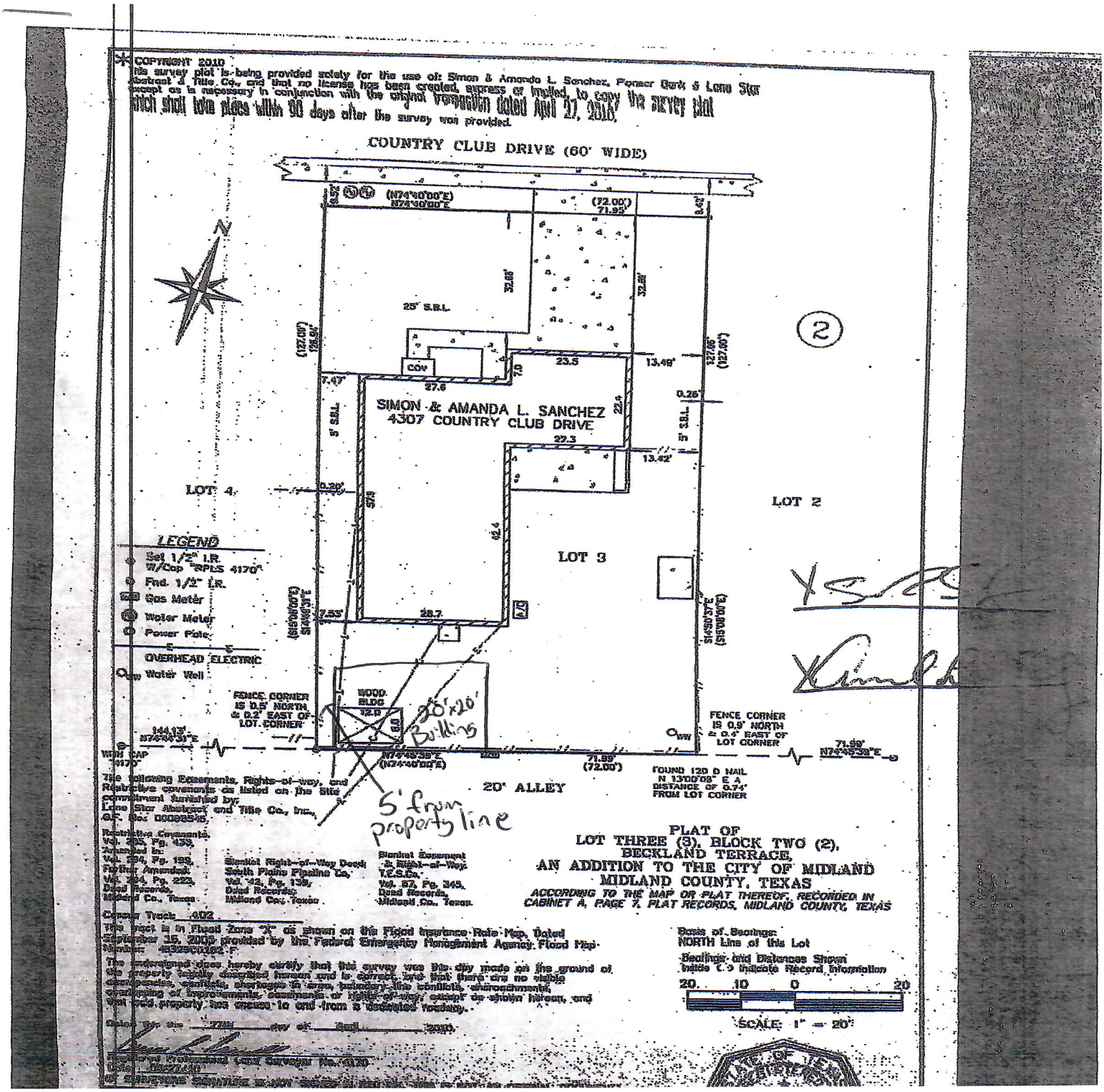
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
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.
COUNTRY CLUB DRIVE (60' WIDE)
(N74°40'00"E)
(72.00')
71.95'
25' S.B.L.
COV
SIMON & AMANDA L. SANCHEZ
4307 COUNTRY CLUB DRIVE
5' S.B.L.
LOT 4
LOT 3
LOT 2
(2)
LEGEND
Set 1/2" I.R. W/Cap "RPLS 4170"
Fnd. 1/2" I.R.
Gas Meter
Water Meter
Power Pole
OVERHEAD ELECTRIC
Water Well
WOOD BLDG
30'x20' Building
FENCE CORNER IS 0.5' NORTH & 0.2' EAST OF LOT CORNER
FENCE CORNER IS 0.9' NORTH & 0.4' EAST OF LOT CORNER
144.13'
N74°40'39"E
71.99'
N74°40'39"E
71.89'
(72.00')
N74°40'39"E
(N74°40'00"E)
20' ALLEY
FOUND 120 D NAIL N 13°00'05" E A DISTANCE OF 0.74' FROM LOT CORNER
WITH CAP 4170"
5' from property line
The following Easements, Rights-of-way, and Restrictive covenants as listed on the title commitment furnished by: Lone Star Abstract and Title Co., Inc., G.F. No. 00098545.
Restrictive Covenants Vol. 295, Pg. 139, Amended in: Vol. 294, Pg. 193, Further Amended: Vol. 294, Pg. 223, Deed Records, Midland Co., Texas
Standard Right-of-Way Deed: South Plains Pipeline Co., Vol. 42, Pg. 139, 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
Census Tract: 402
This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 26, 2008 provided by the Federal Emergency Management Agency. Flood Map Number: 48329C0182 F.
The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.
Basis of Bearings: NORTH Line of this Lot
Bearings and Distances Shown inside ( ) Indicate Record Information
20 10 0 20
SCALE: 1" = 20'

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 ssanchez2@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):	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

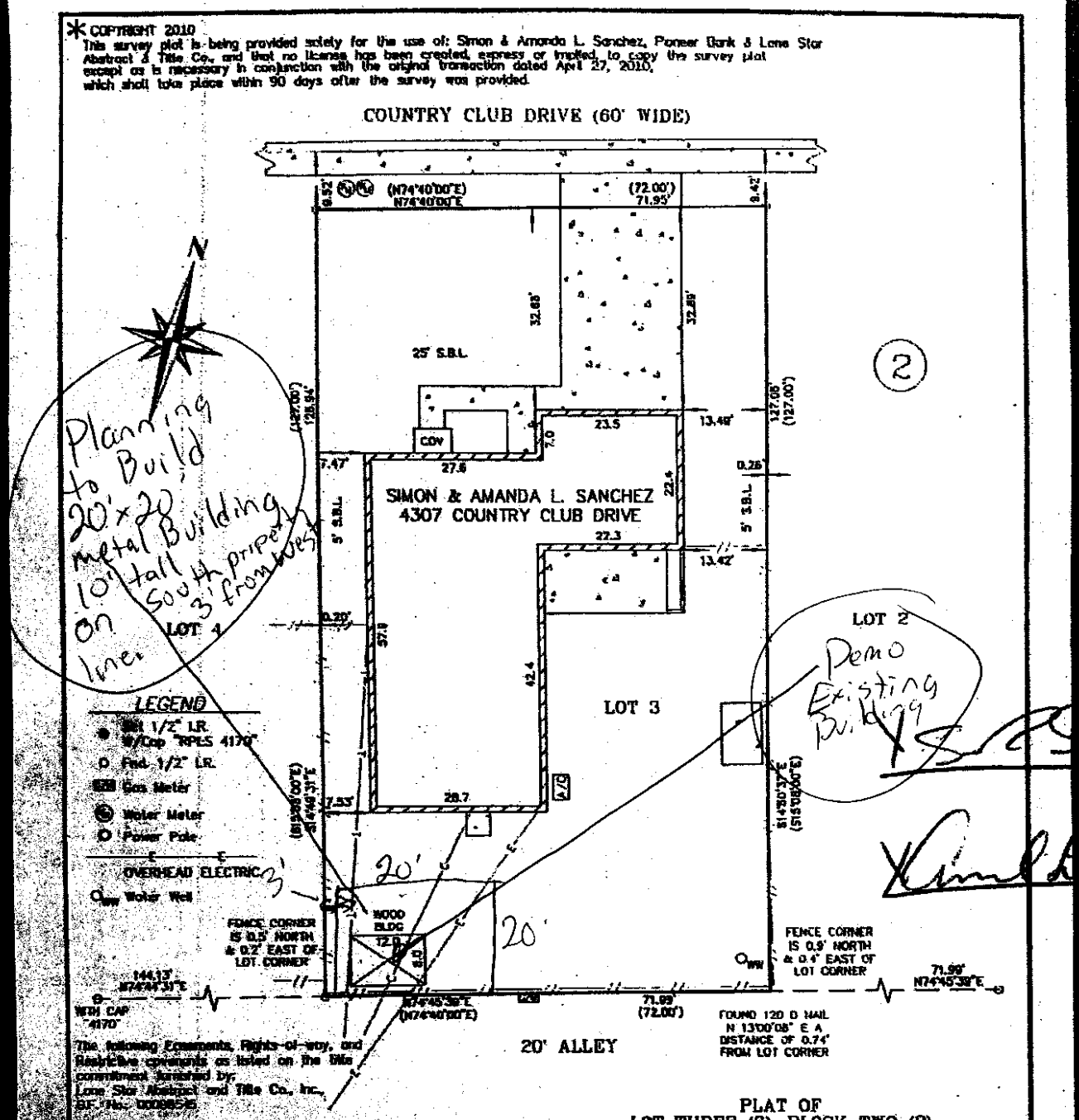
NOTARY PUBLIC, ~~MIDLAND~~ Gaines COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

*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 this commitment furnished by:
Lone Star Abstract and Title Co., Inc.,
GF No.: 0000836

Restrictive Covenants
Vol. 2795, Pg. 153,

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

Zone "X" as shown on the Flood Insurance Rate Map, Dated
Federal Emergency Management Agency Flood Map

Basis of Bearings:
NORTH Line of this Lot

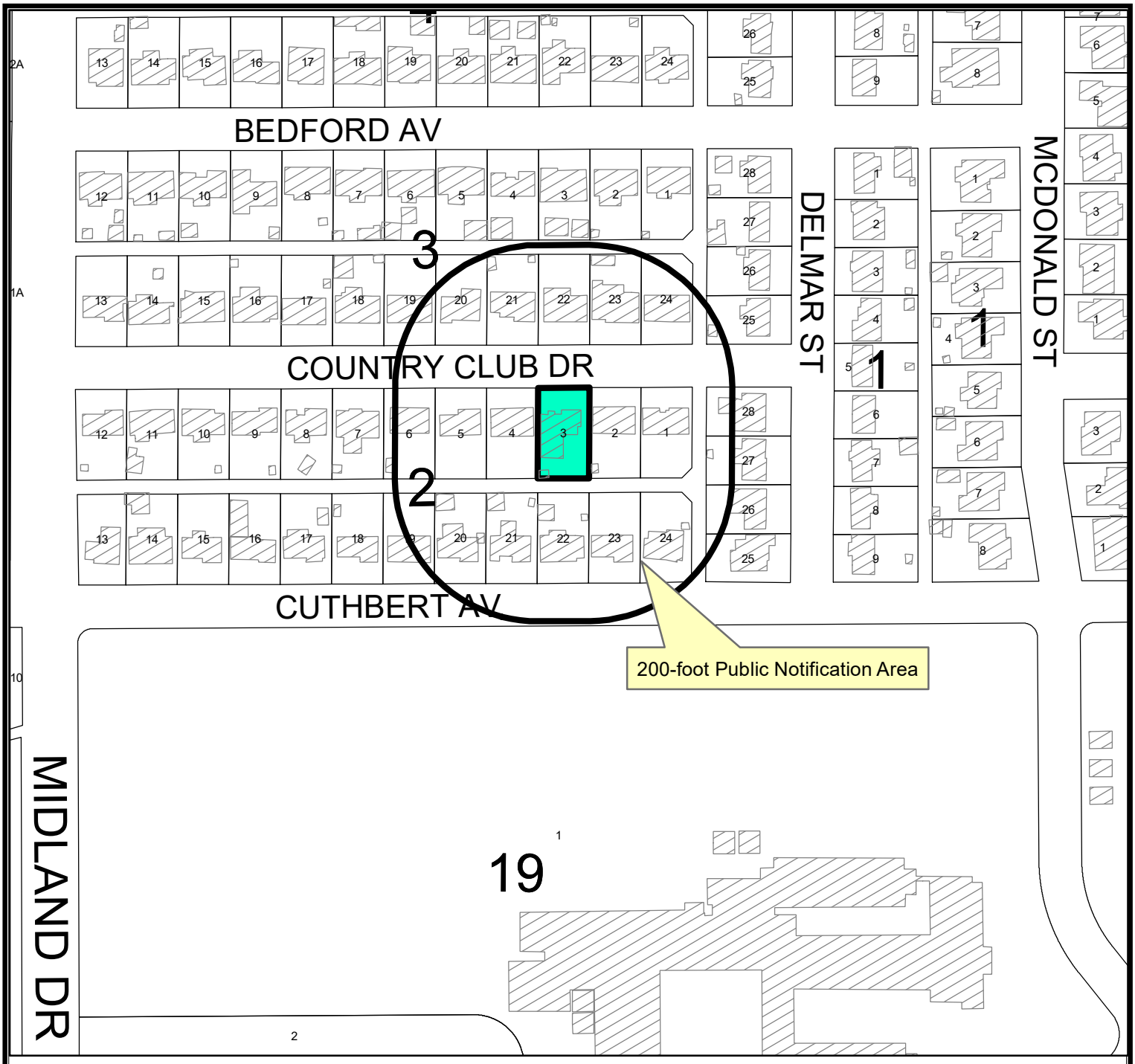
Bearings and Distances Shown Inside ( ) Indicate Record Information

20 10 0 20

SCALE: 1" = 20'

STATE OF TEXAS
REGISTERED
BRUCE A. PENNELL
4170
PROFESSIONAL LAND SURVEYOR

11, 2022



LOCATION MAP

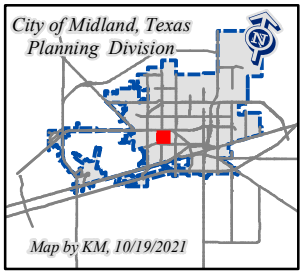
E-21-0061 **Scale: 1" = 200'**

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.

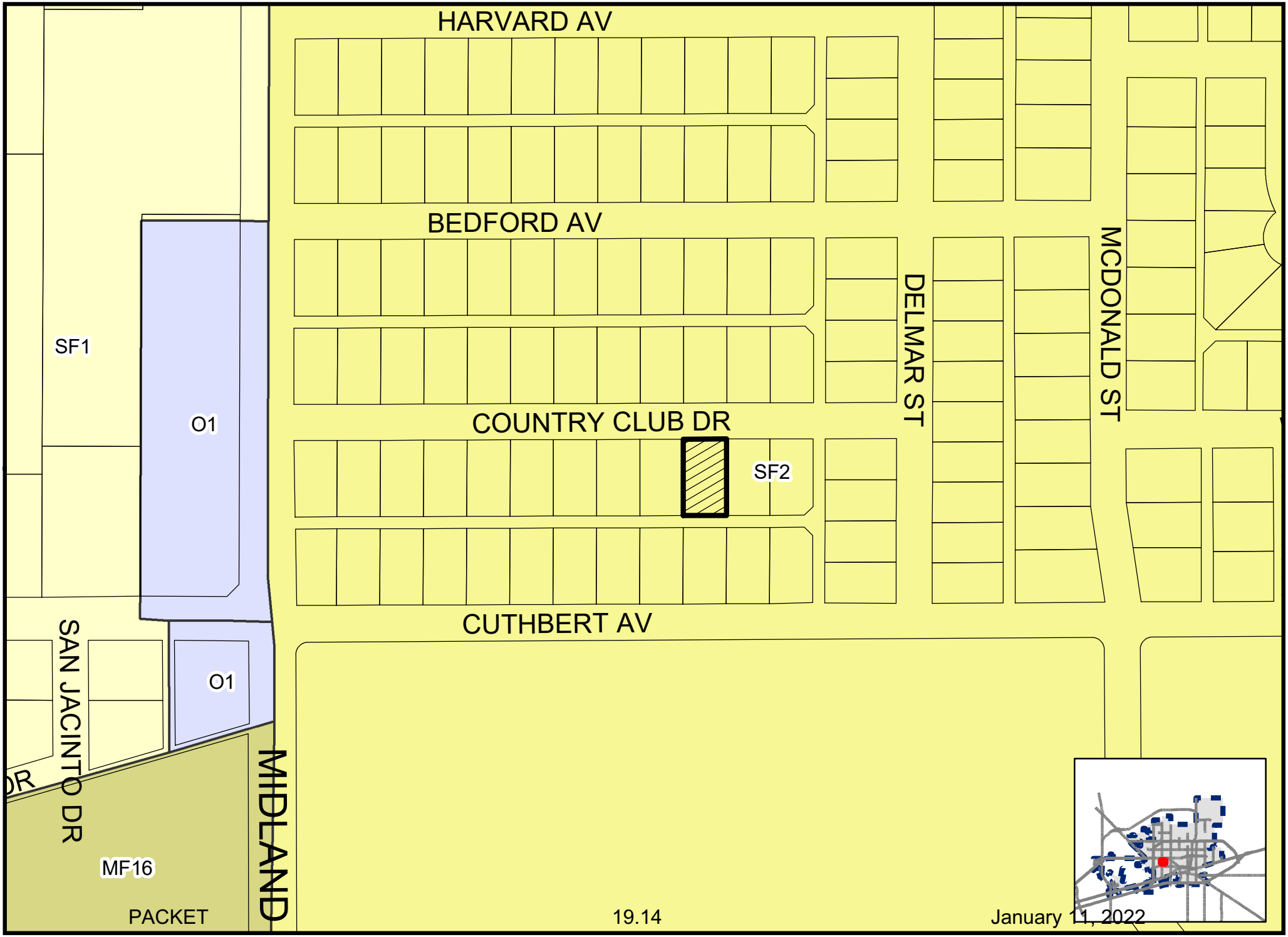
Generally located on the south side of Country Club, approximately 312 feet west of Delmar Street. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By 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: 20

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:

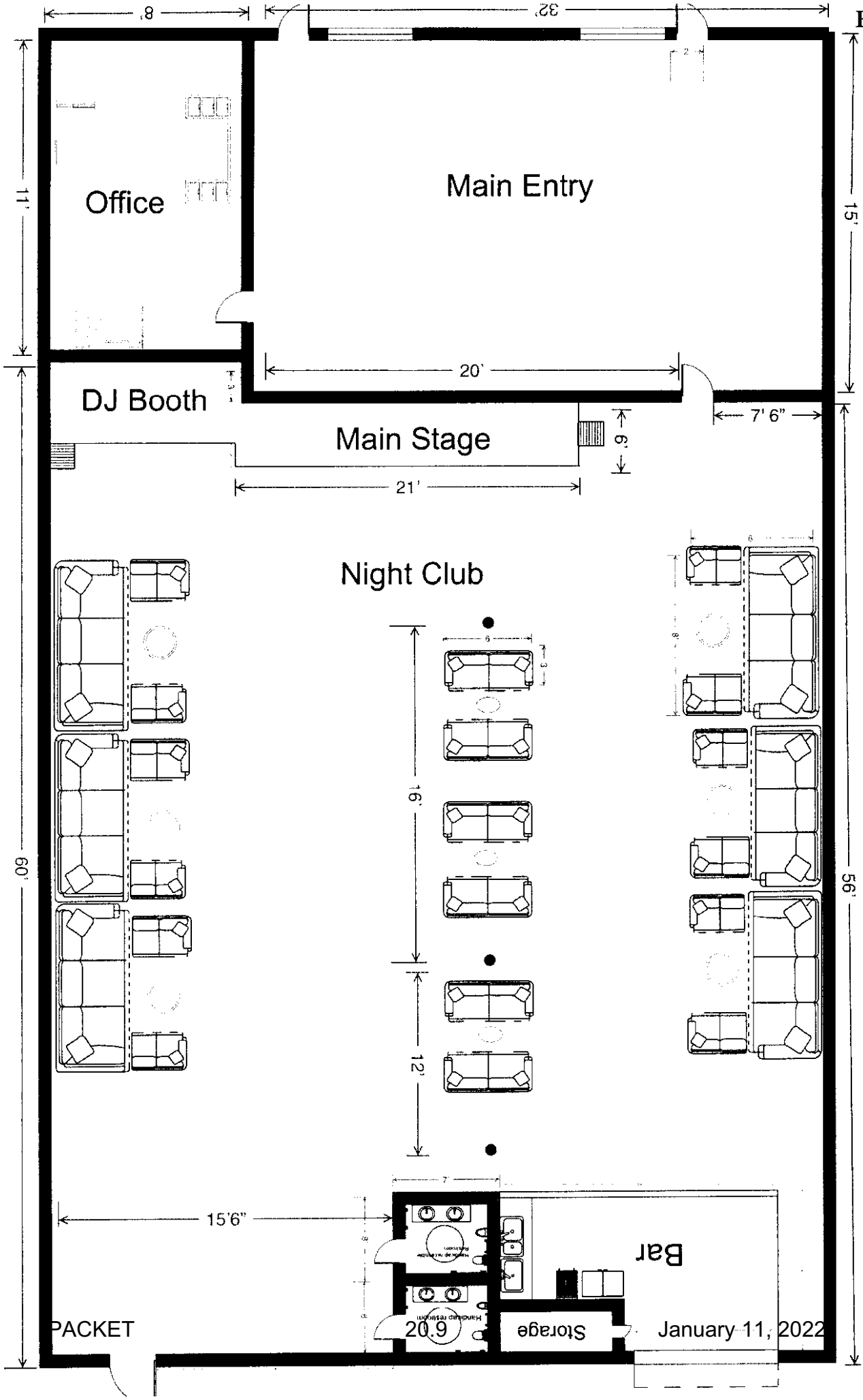
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney


8'
32'
11'
Office
Main Entry
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.

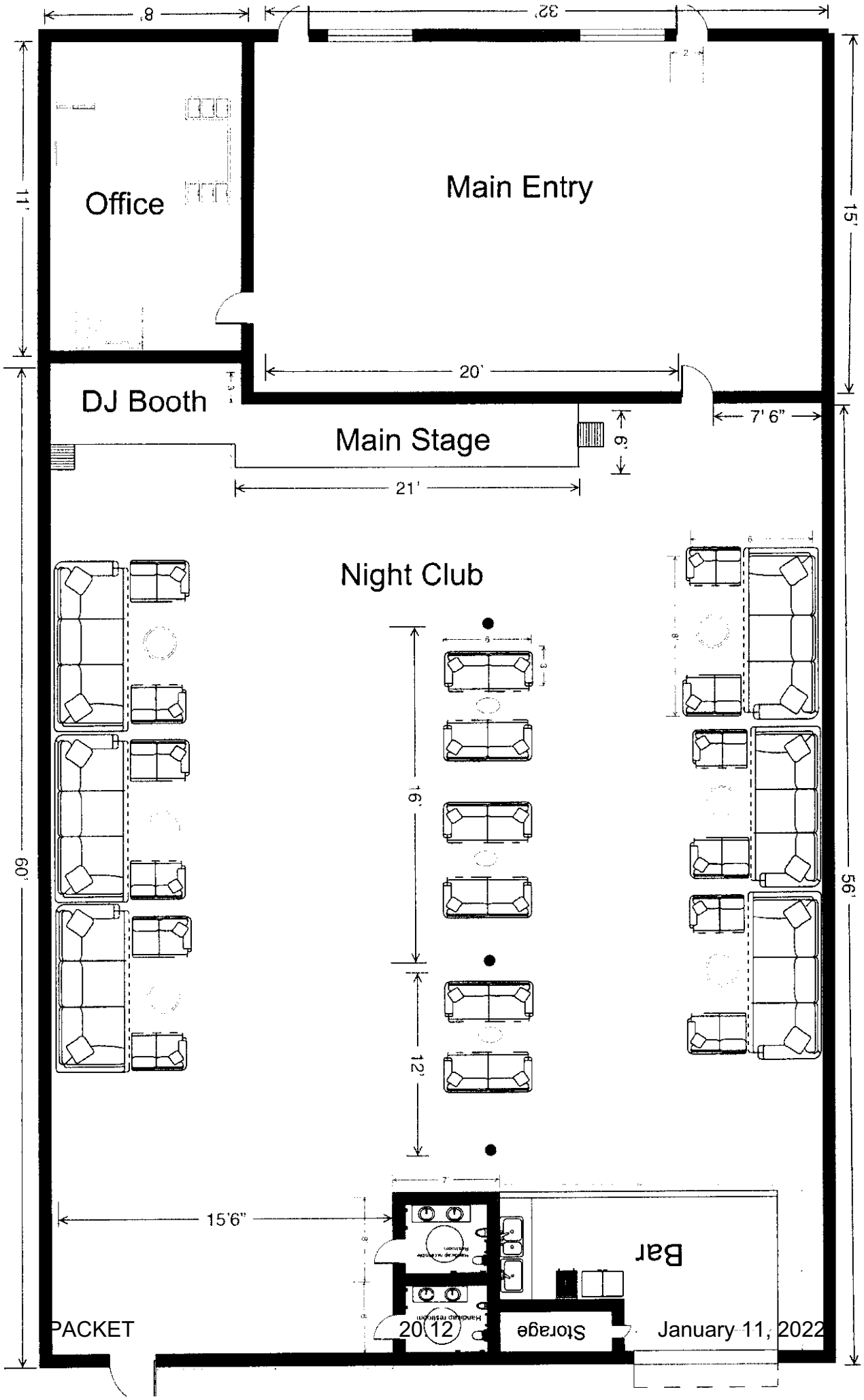
_____
Authorized Agent (*signature*)

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'
15'
Office
Main Entry
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. AlsoulEH
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-V
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
31
30
29
28
12
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

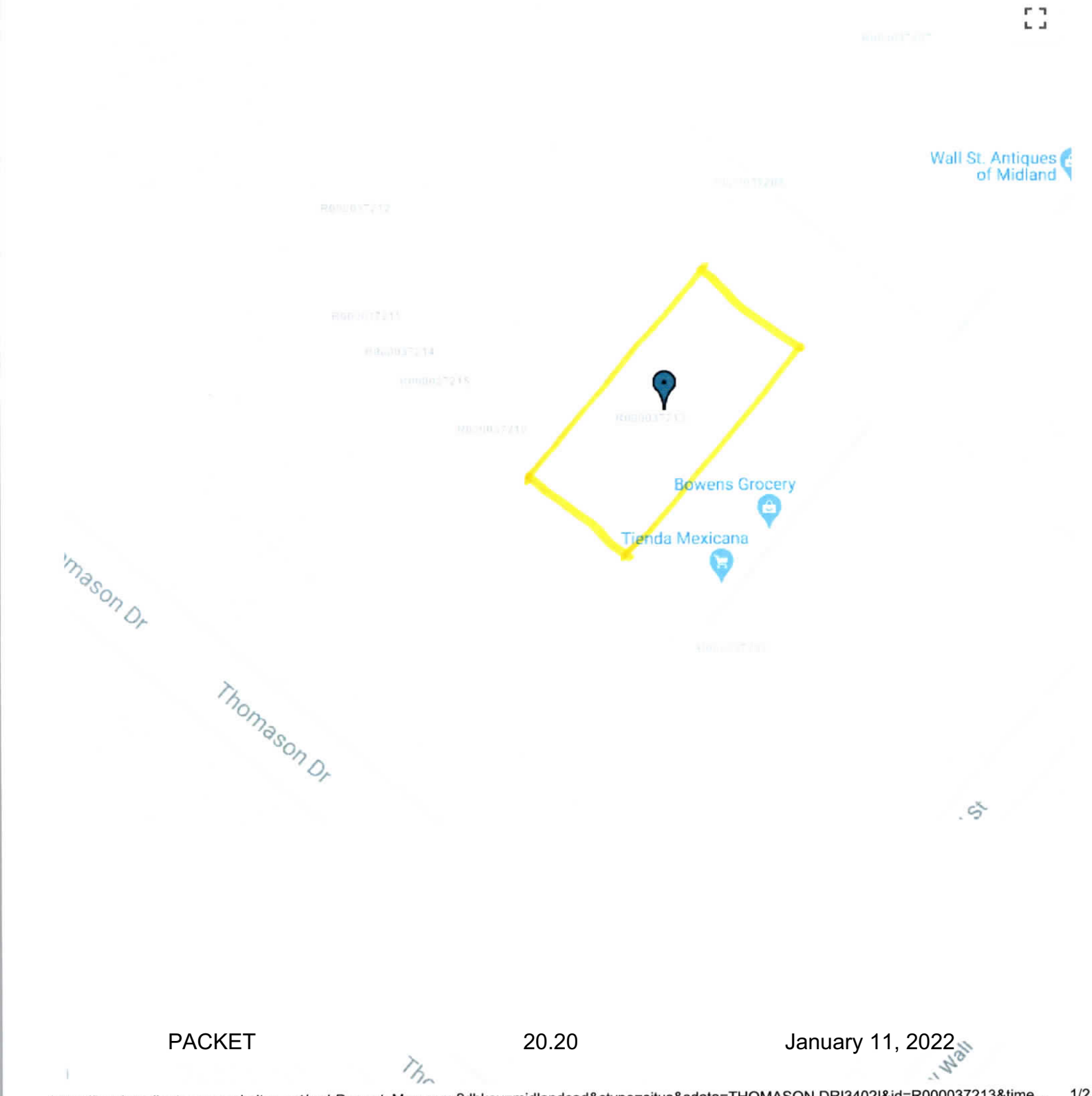
Home Return to Search Print

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 >



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.

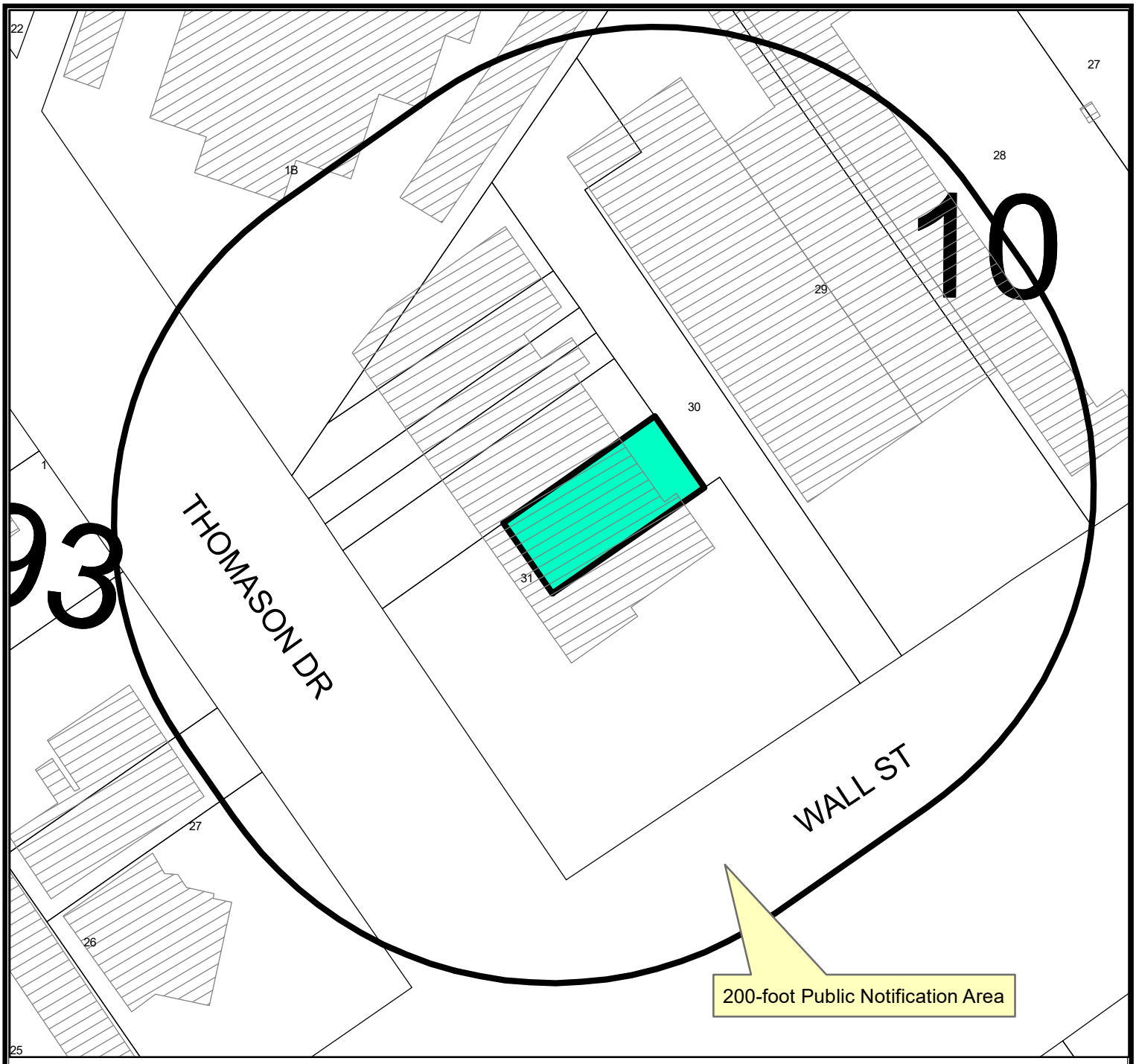
You should render this property for taxes between January 1st and April 1st.

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



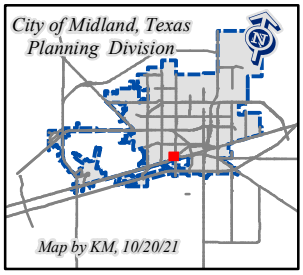
LOCATION MAP

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)

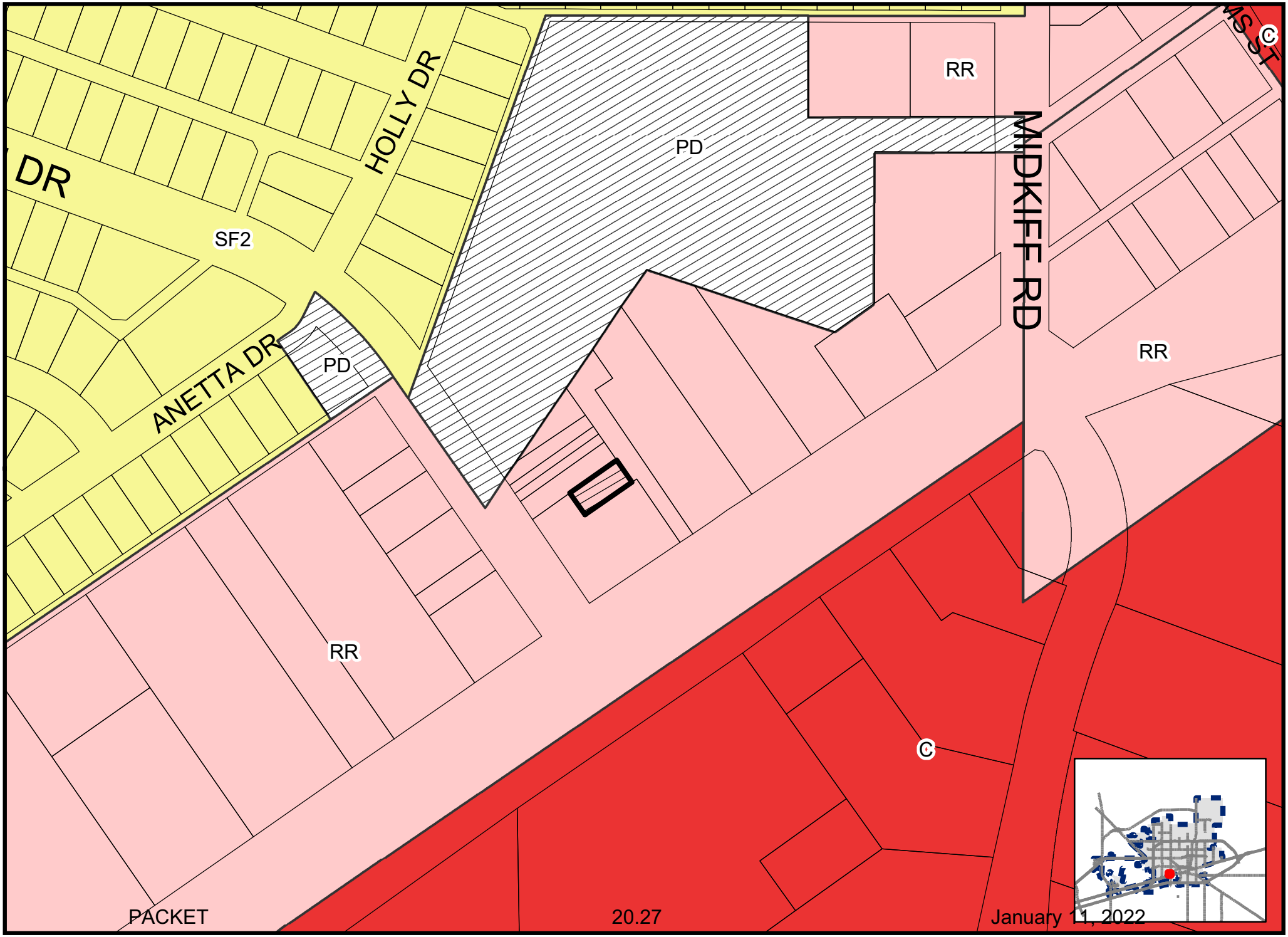
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

January 11, 2022



Map By KM, 10/20/21

SUD-21-0113

Scale: 1" = 200'

ZONING MAP

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Sunflowers
Antiques
NO SEV
PARKING ANYTIME
SPEED LIMIT 30
AFFORDABLE SELF STORAGE
AFFORDABLE SELF STORAGE
TOP RENTALS
BOAT STORAGE
STORAGE
2214


3406




MOTEL

City Council Meeting

Item Number: 21

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

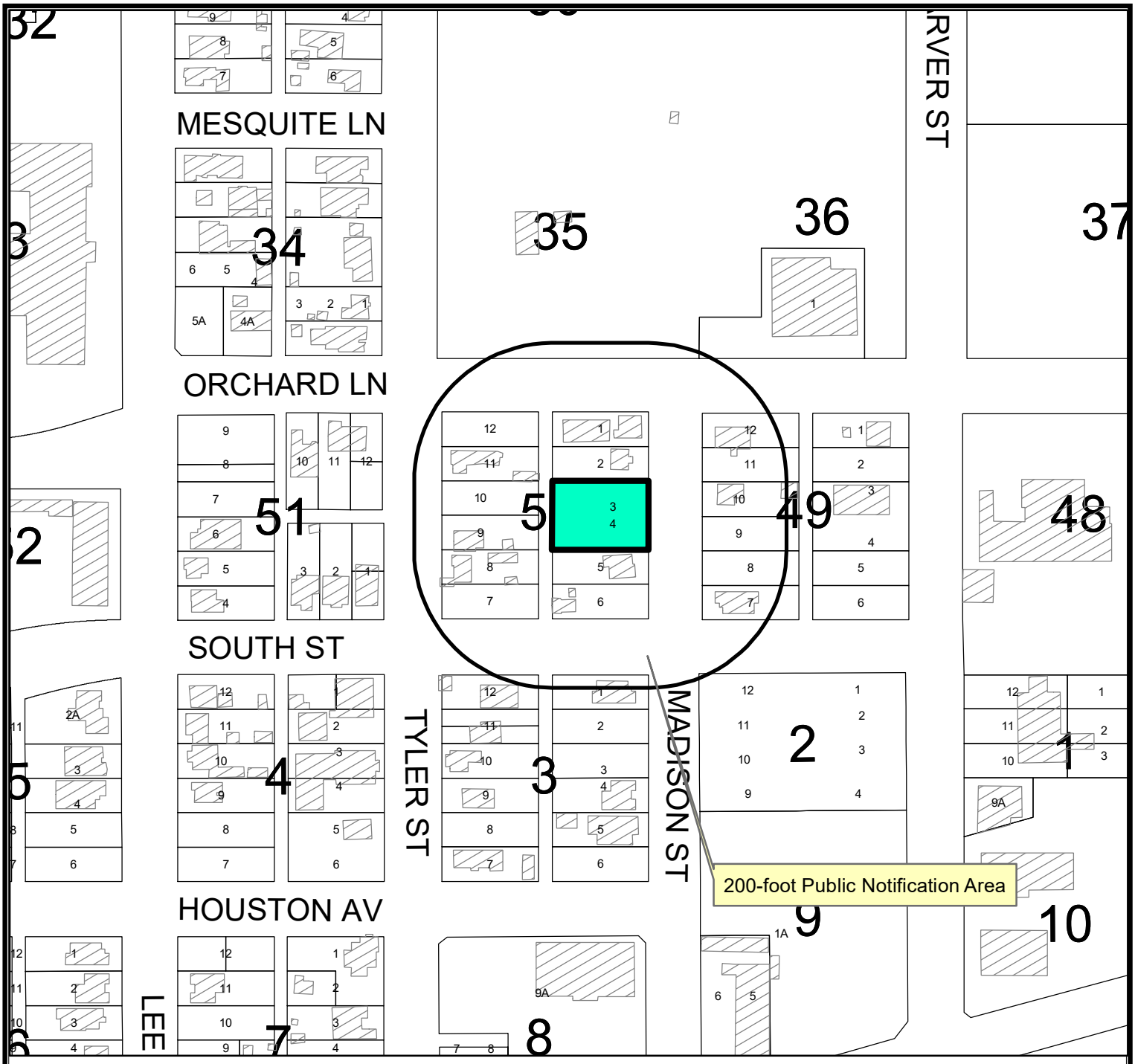
FOR OFFICE USE ONLY

☑ 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

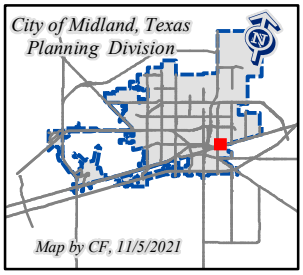
Z-21-0270 **Scale: 1" = 200'**

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.

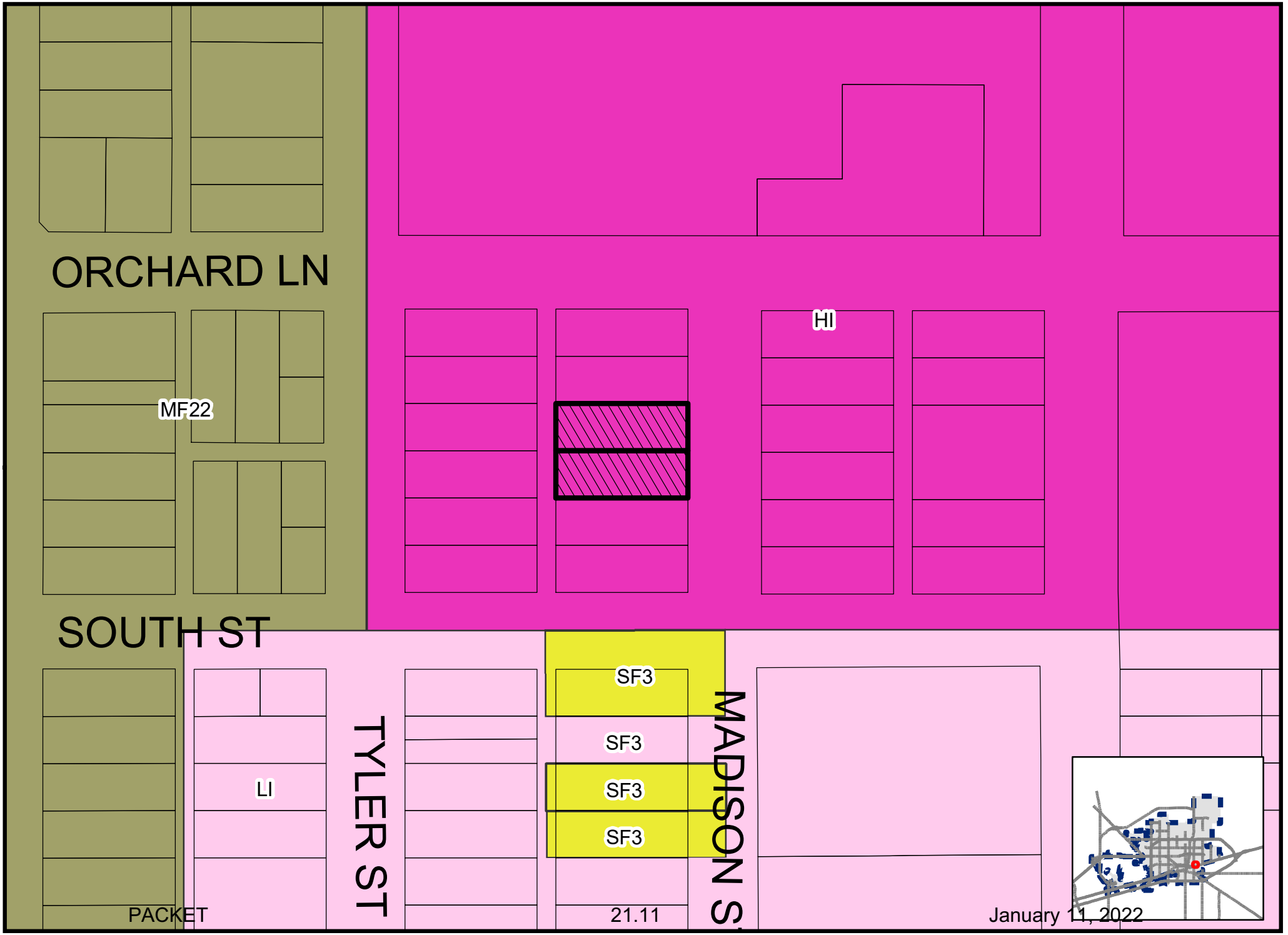
Generally located on the west side of N. Madison Street, Approximately 100 feet south of Orchard Lane (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By CF, 11/10/2021

Z-21-0270

Scale: 1" = 100'

ZONING MAP

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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: 22

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: The proposed granting of an oil and gas well permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well CM MIPA ALLOC #H105WA; said well being generally located 1,690 feet west of Rankin Highway and 605 feet south of I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The proposed granting of oil and gas well permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well CM MIPA ALLOC #H105WA; said well being generally located 1,690 feet west of Rankin Highway and 605 feet south of I-20. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval with updated exhibit. A 16 ft. sound wall will be used during drilling and completion operations being located on the south side of location. There have been previous permitted applications on this well pad requiring the same variances. The operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Permian Deep Rock Oil is requesting the following variances:

(1) Permian Deep Rock Oil Company requests variance to residence or commercial structure within 269 feet.
(2) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(3) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(4) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation due to no city water is available.
(5) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris Williams Jr.

City Manager's Office

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
11/01/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. / Rep. Fax
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped Rangeland, service company yards and apartment complex
Surface ownership: Two residences, apartment complex and service company yards:

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,
Current Tax Roll from Midland Central Appraisal District), **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: CM MIPA ALLOC #H105WA

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 240' FNL & 1,690' FEL, Section 10
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M: **No city roads will be used**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

Attached as Exhibit V: Applicants variances

Permian Deep Rock Oil Co. LLC
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

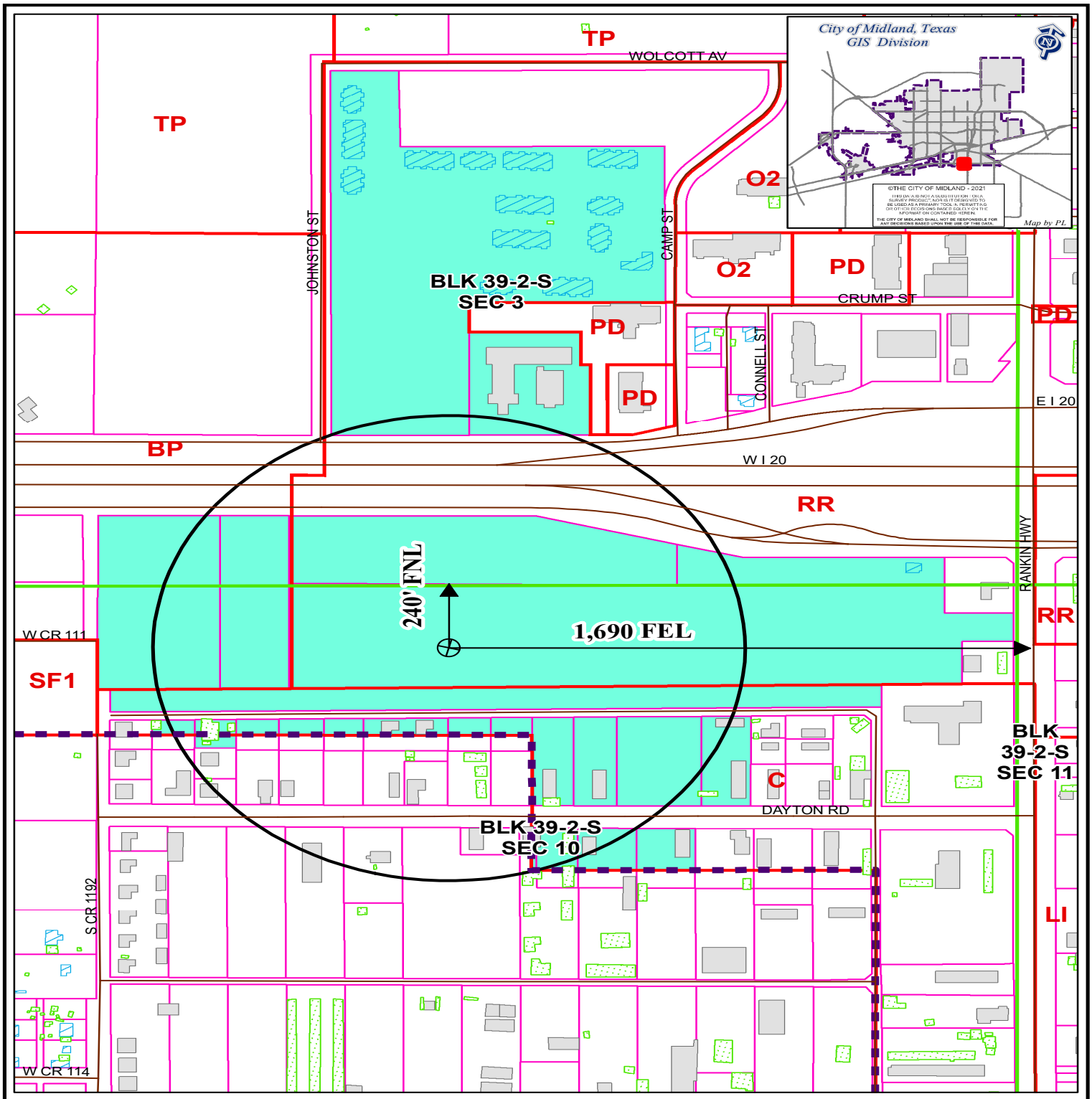
County of Midland)

Keith E. Bucy , personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Lindsay Jonell Venerable
Notary Public, State of Texas

LINDSAY JONELL VENERABLE
Notary ID #128754089
My Commission Expires
September 29, 2023

SEAL



LOCATION AND ZONING MAP

Oil - 039200 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 240' FNL and 1,690' FEL, Section 10, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,690 feet west of Rankin Highway and 605 feet south of I-20.

CM MIPA ALLOC #H105WA

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LRO, LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

SCALE: 1" = 300'

0' 150' 300'

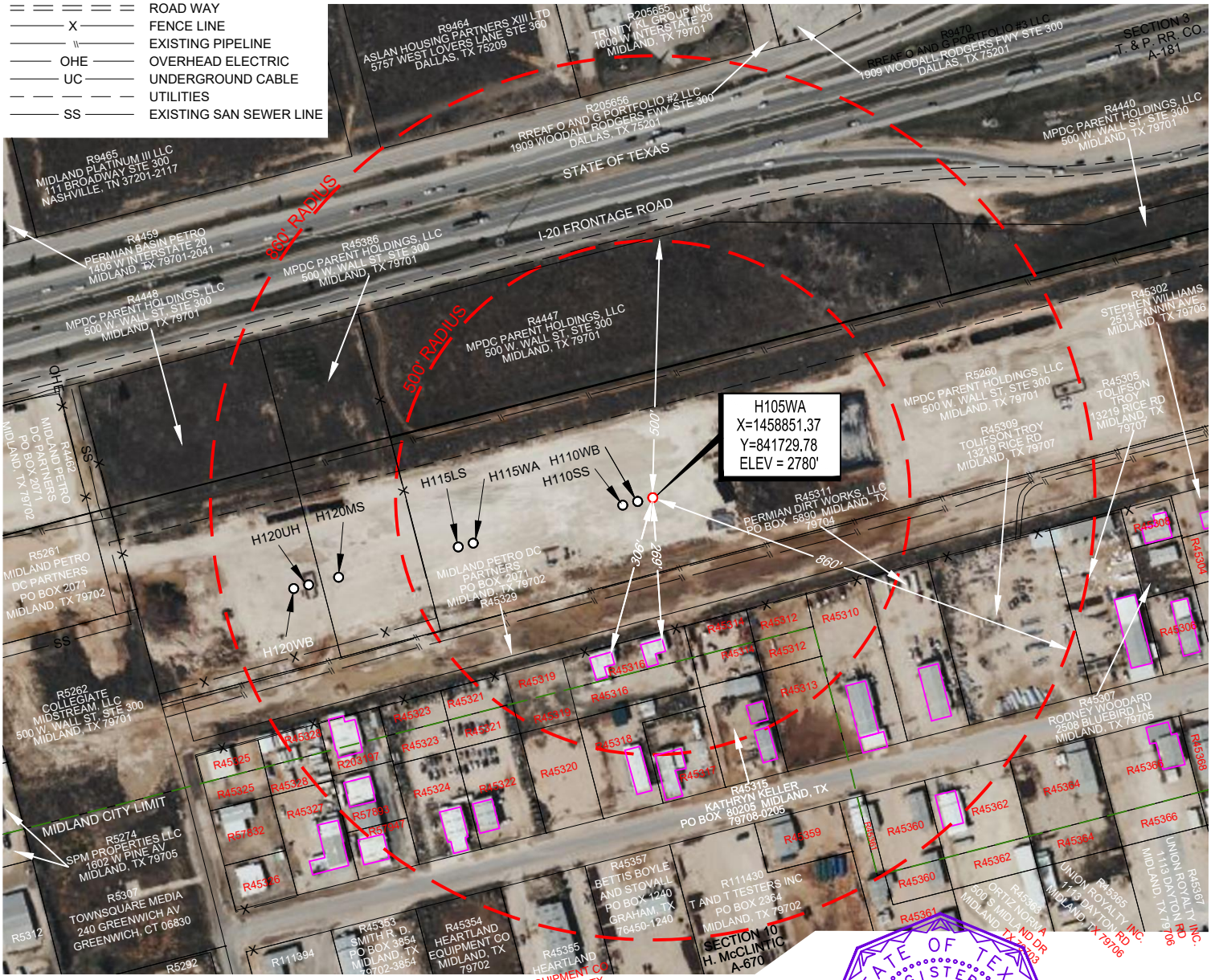
LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- X — FENCE LINE
- EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- UC — UNDERGROUND CABLE
- UTILITIES
- SS — EXISTING SAN SEWER LINE

SECTION 10, T. & P. RR. CO. SURVEY, A-670
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **CHARGER H105WA**
240' FNWL & 1690' FNEL (SECTION 10)

PERMIAN DEEP ROCK OIL CO., L.L.C.



STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
OCTOBER 7, 2021
Field note description of even date accompanies this plat.

N

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LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

CM MIPA ALOCC H105WA	REVISION:	
	INT	DATE
	DRH	10/21/2021
DATE: 10/12/2021		
FILE: CD_CHARGER_H105WA_REV1		
DRAWN BY: DRH		
SHEET : 1 OF 2		

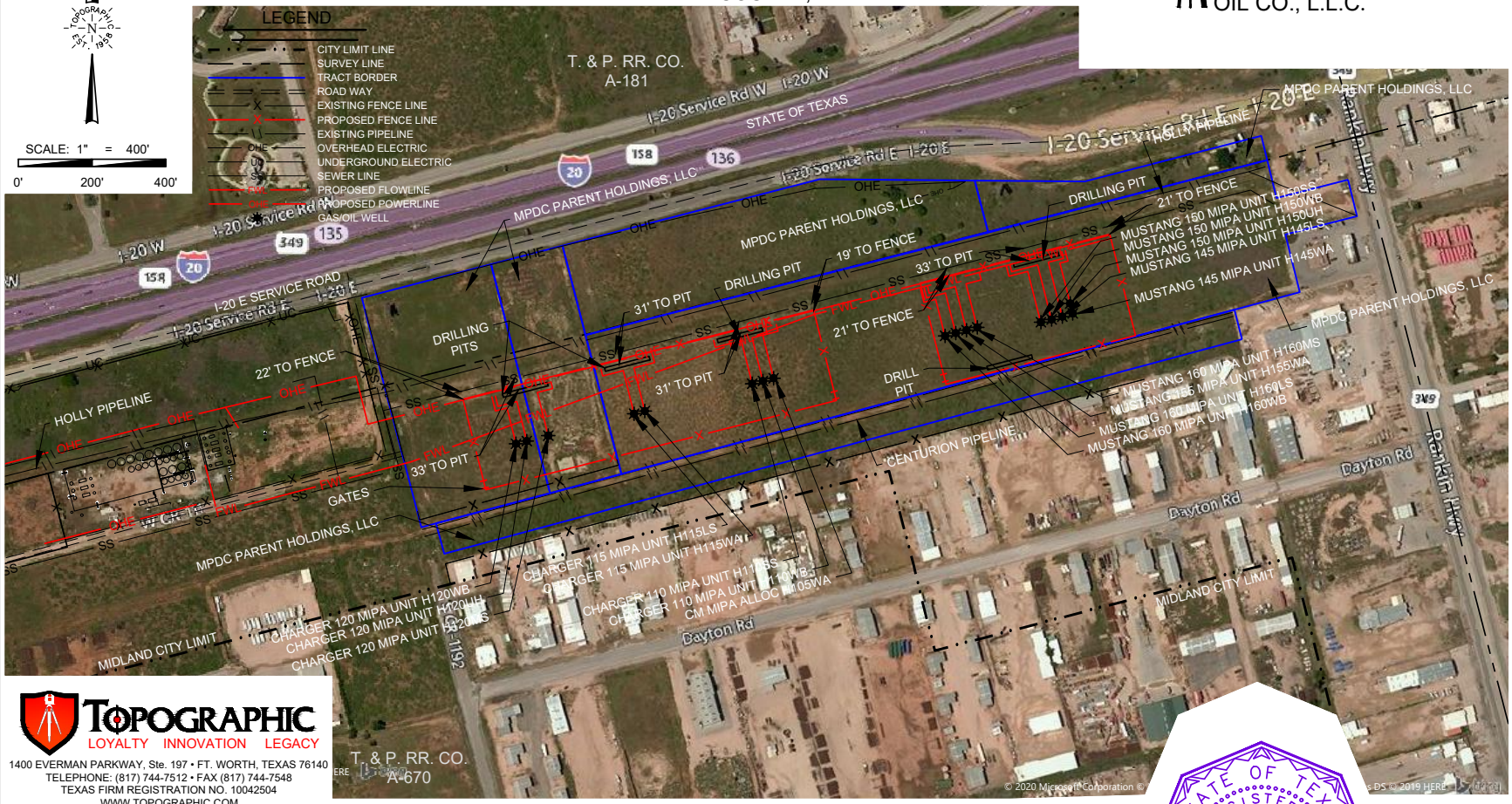
NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. THIS PROPOSED LOCATION HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, OFFICIAL SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED PERMIAN DEEP ROCK OIL CO., LLC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE.
4. OWNERSHIP INFORMATION SHOWN HEREON WAS TAKEN FROM THE CITY OF MIDLAND, TEXAS GIS SITE.
5. DISTANCES SHOWN HEREON TO EXISTING STRUCTURES ARE SCALED PER AERIAL MAP.

PACKET
22.8
January 11, 2022

EXHIBIT "G"

SECTION 3, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-181 &
SECTION 10, BLOCK 39, T2S, H. MCCLINTIC SURVEY, A-670
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.



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LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 197 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

CHARGER UNIT CITY PERMIT		REVISION:	
		DRH	06/04/21
		DRH	06/15/21
		DRH	06/16/21
DATE:	03/28/2018	DRH	07/21/21
FILE:	SK_MUSTANG_UNIT_A_CHARGER_UNIT_A_PERMIT_REV19	DRH	08/09/21
DRAWN BY:	GJU	DRH	10/13/21
SHEET :	3 OF 12	DRH	12/10/21

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
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5. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
6. D.R.M.C.T. = DEED RECORDS MIDLAND COUNTY, TEXAS
7. C.C.O.R.M.C.T. = C. C. OFFICIAL RECORDS MIDLAND COUNTY, TEXAS

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: JUNE 11, 2021

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\SKETCH\SK_MUSTANG_UNIT_A_CHARGER_UNIT_A_PERMIT_REV19.DWG 12/10/2021 10:42:30 AM dharris

City Council Meeting

Item Number: 23

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: The proposed granting of an oil and gas well permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well Mustang 110 MIPA Unit #H110WB; said well being generally located 2,365 feet east of Rankin Highway and 170 feet south of I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The proposed granting of oil and gas well permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well Mustang 110 MIPA Unit #H110WB; said well being generally located 2,365 feet east of Rankin Highway and 170 feet south of I-20. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval with updated exhibits. This pad was approved for two permits on February 12, 2018 that have expired. A 16 ft. tall and 160 ft. long sound wall will be used during drilling and completion operations being located on the North perimeter of location. The tank battery is located in the county. The operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Permian Deep Rock Oil is requesting the following variances:

(1) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(2) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(3) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation due to no city water is available.
(4) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris William Jr.

City Manager's Office

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
11/01/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. / Rep. Fax
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions within Mustang Unit

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped Rangeland, service company yards and apartment complex
Surface ownership: Two residences, apartment complex and service company yards:

See Exhibit "D"

ATTACHED AS EXHIBIT D **is**

Current Tax Roll from Midland Central Appraisal District), **which lists**

the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Mustang 110 MIPA Unit #H110WB

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 110' FSL & 2,365' FWL, Section 2
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M: **No city roads will be used**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V: Applicants variances

Permian Deep Rock Oil Company LLC
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

County of Midland)

Keith E Bucy, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

_____
Notary Public, State of Texas

CHRISTOPHER HALL
Notary Public, State of Texas
Comm. Expires 08-11-2019
Notary ID 128701314

[SEAL]

EXHIBIT "G"

SECTION 2, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-688 &
SECTION 11, BLOCK 39, T2S, H. MCCLINTIC SURVEY, A-63
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.



LEGEND

	CITY LIMIT LINE
	SURVEY LINE
	TRACT BORDER
	ROAD WAY
X	EXISTING FENCE LINE
\ \	EXISTING PIPELINE
OHE	OVERHEAD ELECTRIC
SS	SEWER LINE
X	PROPOSED FENCE LINE
SS	PROPOSED SEWER
FWL	PROPOSED FLOWLINE
OHE	PROPOSED POWERLINE
	GAS/OIL WELL
	PME

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1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

MUSTANG
CITY PERMIT

DATE: 06/13/2018
FILE: SK_MUSTANG_CITY_PERMIT_REV9
DRAWN BY: AMD
SHEET : 3 OF 8

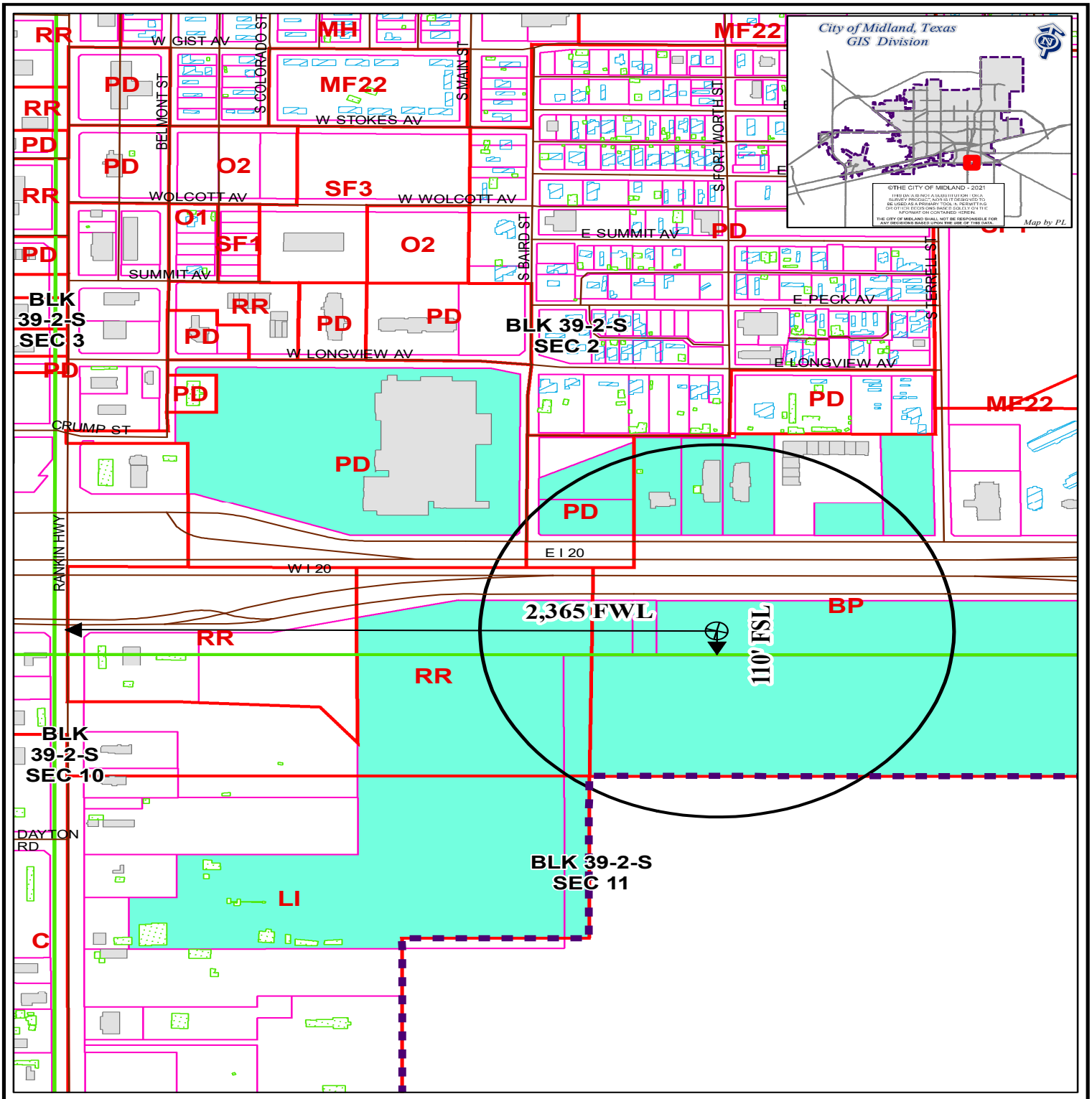
REVISION:	
JRH	10/30/18
DRH	09/23/21
DRH	09/28/21
DRH	09/29/21
DRH	10/29/21
DRH	11/30/21
DRH	12/10/21

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7. C.C.O.R.M.C.T. = C. C. OFFICIAL RECORDS MIDLAND COUNTY, TEXAS

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
LICENSED
PROFESSIONAL
LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: SEPTEMBER 20, 2020

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\SKETCH\SK_MUSTANG_CITY_PERMIT_REV9.DWG 12/10/2021 10:22:09 AM dharris



LOCATION AND ZONING MAP

Oil - 039201 - 2021 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 110' FSL and 2,365' FWL, Section 2, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 2,365 feet east of Rankin Highway and 170 feet south of I-20.

Mustang 110 MIPA Unit #H110WB

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F, 1F2, 1F3	ONE-FAMILY DWELLING	CR, CR2, CR3	COMMERCIAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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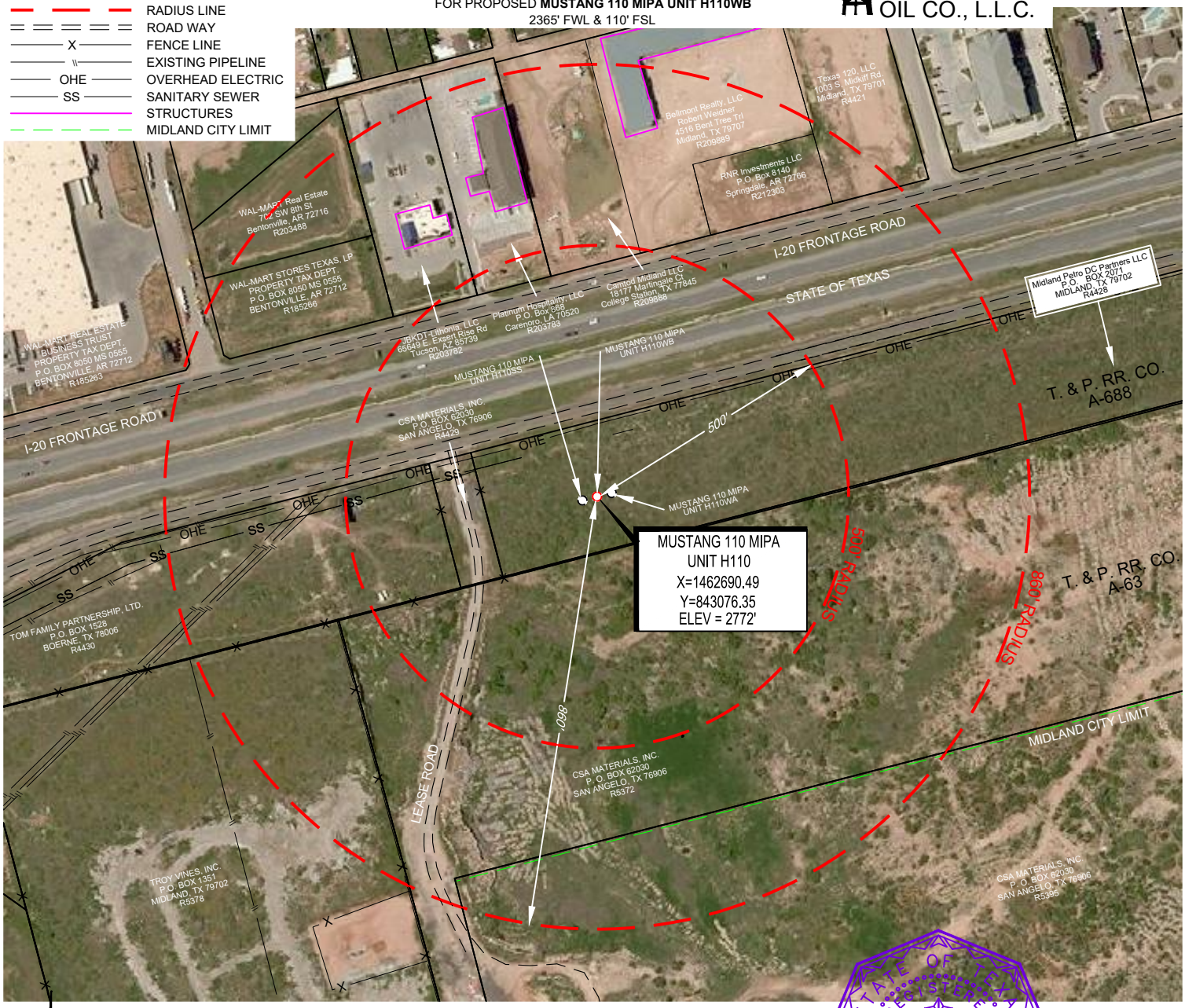
LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- SS — SANITARY SEWER
- STRUCTURES
- MIDLAND CITY LIMIT

T. & P. RR. CO. SURVEY, A-688
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 110 MIPA UNIT H110WB**
2365' FWL & 110' FSL

PERMIAN DEEP ROCK OIL CO., L.L.C.



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STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
SEPTEMBER 20, 2021

MUSTANG 110 MIPA UNIT H110WB	
DATE: 05/08/18	
FILE: CD_MUSTANG_H110WB_REV8	
DRAWN BY: PACKET	
SHEET : 1 OF 2	

REVISION:	
JRH	6/21/18
CDG	10/11/18
DRH	9/23/21
DRH	9/28/21
DRH	10/29/21
JF	12/13/21

NOTES:
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S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD27\CD_MUSTANG_H110WB_REV8.DWG 12/14/2021 6:05:56 AM dharris

City Council Meeting

Item Number: 24

Meeting Date: January 11, 2022

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 1,674-SQUARE FOOT PORTION OF LOT 1-H, BLOCK 5, COLONY PLACE ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH GARFIELD STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BREWERY FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Waystone Brewing, LLC is requesting a Specific Use Designation with term for the sale of alcoholic beverages for on-premises consumption in a brewery at 2101 W Wadley Avenue, Suite 27, Midland, Texas 79701.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north, east, south, and west are all zoned RR, Regional Retail District, and the locations of restaurants, retail stores, a nail salon, a gas station, and a Community National Bank.

Discussion:

The applicant is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a brewery. 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 Waystone is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as “Exhibit A” illustrates that the establishment will have a total square footage of 1,674 square feet, with an alcohol serviceable area of 1,120 square feet. The Waystone is designed to be a family-friendly board game café and brewery. In addition to the sale of beer, the brewery will have board games to rent and serve small bites. This site will have adequate parking and restroom facilities.

The brewery will have the following hours of operation and alcohol service:

Thursday through Friday from 5:00 p.m. to 10:00 p.m.

Saturday from 9:00 a.m. to 10:00 p.m.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches 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 objection to zone change.

Transportation: (Approved)

No objection to zone change.

Building Code: (Approved)

The SUD for Waystone is acceptable. The property must adhere to the maximum occupant load of 74 patrons. 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 Waystone is an establishment that promotes a positive environment where Midland residents can gather and socialize.

This request was approved at the December 6, 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 brewery, subject to Condition A through G.

Conditions:

A. **That the alcoholic serviceable area of the brewery shall be limited to approximately 1,120 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:**

    Thursday through Friday from 5:00 p.m. to 10:00 p.m.

    Saturday from 9:00 a.m. to 10:00 p.m.

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of December 29, 2021, staff has received one letter of objection.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps

Morris William 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 1,674-SQUARE FOOT PORTION OF LOT 1-H, BLOCK 5, COLONY PLACE ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH GARFIELD STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BREWERY FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 1,674-square foot portion of Lot 1-H, Block 5, Colony Place Addition, Section 5, 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 brewery (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 1,120 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:

Thursday and Friday from 5:00 p.m. to 10:00 p.m.; and
Saturday from 9:00 a.m. to 10:00 p.m.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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

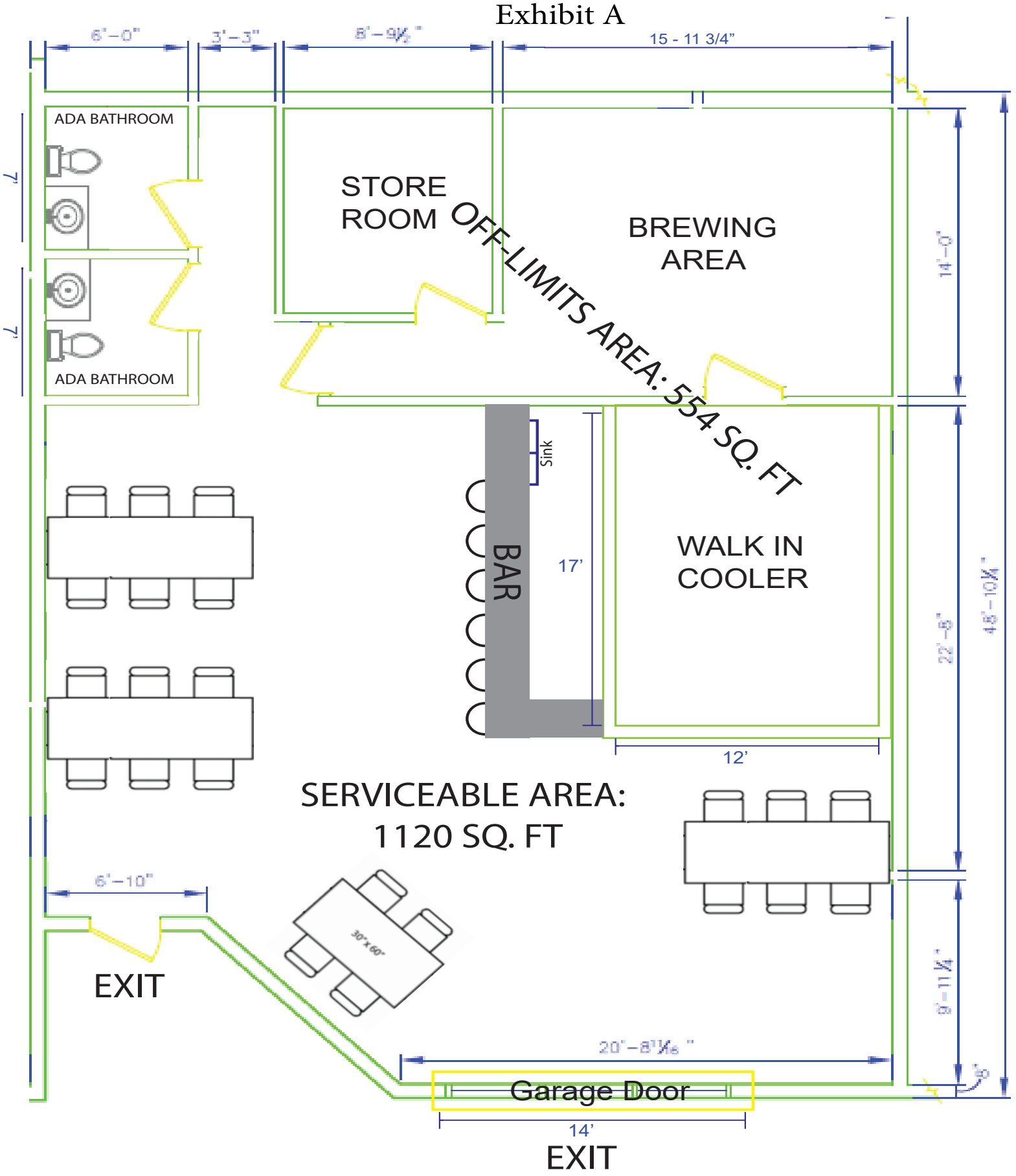
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit A



PLAZA OAKS SUITE #27 FLOOR PLAN

TOTAL:1,674 SQ. FT

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0116

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Waystone Brewing LLC		Phone (432-770-2322) Email Waystonebrew@gmail.com	
Address 3525 Andrews Hwy	City Midland	State TX	Zip 79703

Property Owner Printed Name: Plaza Oaks BPRE Investors, LLC		Phone (310) 993-2381 Email	
Address 1539 Sawtelle Blvd. Ste #9	City Los Angeles	State CA	Zip 90025

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 2101 W Wadley Ave, Suite 27, Midland, TX 79705

Business Name: The Waystone

Legal Description
Lot: 1C - J Block: 005 Subdivision: Colony Place

Current Zoning: RR, Regional Retail District

Reason for Request: I would like to sell craft beer to patrons at my board game cafe / brewpub
I need this SUD to acquire TABC licenses: Retail Dealers On-Premise (BE), and Brewpub (BP)

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Board Game Cafe / Brewpub

Proposed/Current Days and Hours of Operation: _____
Thursday (5pm-10pm), Friday (5pm-10pm), Saturday (9am-10pm)

Proposed Days and Hours of Alcohol Service: _____
Thursday (5pm-10pm), Friday (5pm-10pm), Saturday (9am-10pm)

Total Square Footage of Business: 1674

Square Footage of Alcohol Serviceable Area: 1120

Restroom Fixtures:			
	Men	**Toilets/Urinals:** 1 / 1	**Bathroom Sinks:** 1
	Women	**Toilets:** 1	**Bathroom Sinks:** 1

RECEIVED
NOV 09 2021
BY: .....

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: Nov 1 2021
Applicant (printed): Edward Morehouse	
Property Owner (signature):	Date: 11/3/21
Property Owner (printed): Shaun Krasowski - Director	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

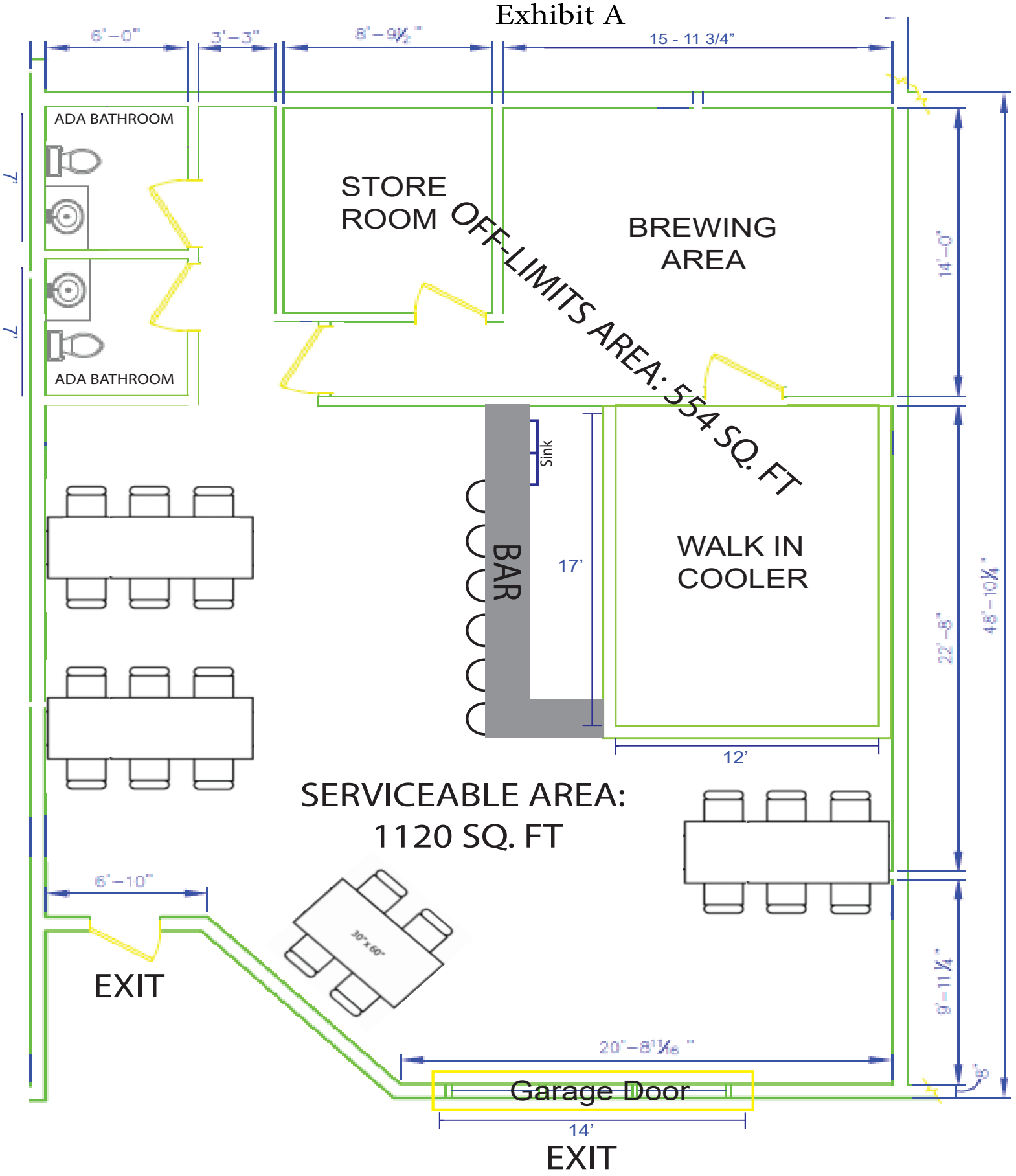
_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Floor Plan
☑ Application Fee	☐ Site Plan
Check # 1051	☐ Plans in Digital Format (PDF/JPEG)
Received By:	Date: 11-9-21

****Application will not be considered for scheduling until reviewed by a planner.****

Exhibit A



PLAZA OAKS SUITE #27 FLOOR PLAN

TOTAL:1,674 SQ. FT

6Dia NORTH ARROW & SCALE

1" = 40'
GRAPHIC SCALE
0 20' 40' 80'

6Dib LEGEND AND ABBREVIATIONS

	CONCRETE SURFACE	SQ. FT.	SQUARE FEET
	COVERED SURFACE	PS	PARKING SPACE(S)
	NO PARKING AREA	(R)	RECORD
	HANDICAPPED PARKING	WF	WOOD FENCE
	TELEPHONE RISER	HR	HAND RAIL
	CLEAN OUT	TF	TRANSFORMER
	IRRIGATION CONTROL VALVE	BH	BUILDING HEIGHT
	FIRE HYDRANT	BW	CONCRETE BLOCK WALL
	WATER VALVE	CW	CONCRETE WALL
	WATER METER		CHAIN LINK FENCE
	SIGN		METAL FENCE
	BOLLARD		WOOD FENCE
	GAS METER	OHU	OVERHEAD UTILITY LINE
	UTILITY POLE		SET 1/2" IRON ROD & CAP UNLESS OTHERWISE NOTED
	GUY ANCHOR		
	LIGHT POLE		
	MAIL BOX		
CTV	CABLE TV PEDESTAL		
	FLAGPOLE		
	AIR PUMP		

Exhibit B

SHEET 2 OF 2

LINE TABLE RECORD

LINE #	DIRECTION	LENGTH
L1	N74°42'33"E	37.00'
L2	S74°42'33"W	70.00'
L3	N15°21'00"W	45.00'
L4	N74°42'33"E	30.00'
L5	S15°21'00"E	65.00'
L6	N10°46'32"W	44.26'
L7	N15°21'00"W	107.00'

LINE TABLE MEASURED

LINE #	DIRECTION	LENGTH
L1	N74°42'33"E	37.00'
L2	S74°42'00"W	70.82'
L3	N15°18'00"W	45.00'
L4	N74°42'00"E	30.00'
L5	S15°18'00"E	65.00'
L6	N09°43'03"W	44.33'
L7	N15°21'00"W	107.00'

WEST WADLEY AVENUE
PUBLIC RIGHT OF WAY WIDTH VARIES
ASPHALT PAVEMENT

NORTH GARFIELD STREET
PUBLIC RIGHT OF WAY WIDTH VARIES
ASPHALT PAVEMENT

20' PUBLIC ALLEY

LOT 1-C, BLOCK 5 CABINET E PAGE 80
LOT 1-D, BLOCK 5 CABINET E PAGE 80
LOT 1-E, BLOCK 5 CABINET E PAGE 80
LOT 1-F, BLOCK 5 CABINET E PAGE 80
LOT 1-G, BLOCK 5 CABINET E PAGE 80
LOT 1-H, BLOCK 5 CABINET E PAGE 80
LOT 1-I, BLOCK 5 CABINET E PAGE 80
LOT 1-J, BLOCK 5 CABINET E PAGE 80

WAYSTONE

OWNER: FRANK LIGON
PARCEL NO. R000014447
VOLUME 1136 PAGE 492

OWNER: PLAZA OAKS BPRE INVESTORS LLC
PARCEL NO. R000014360
VOLUME 2848 PAGE 64

OWNER: CARMINE SCARCELLI
PARCEL NO. R000014373
VOLUME 1148 PAGE 405

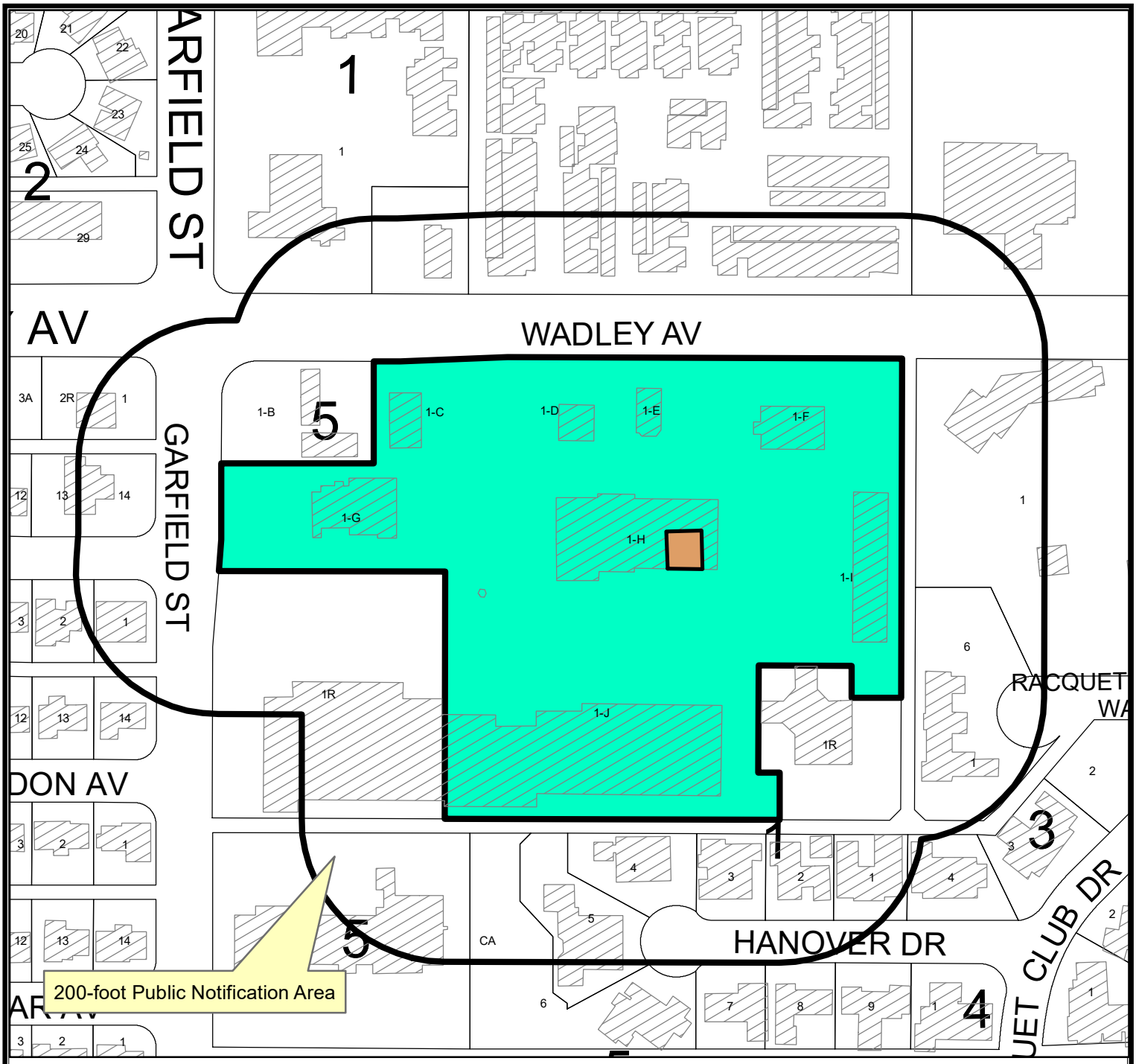
OWNER: CARTERS FURNITURE INC
PARCEL NO. R000014375BOOK
INSTRUMENT NO. 2009-17063

PACKET 24.14 January 11, 2022

6Dvi 2 ALTA/ACSM LAND TITLE SURVEY OF PLAZA OAKS SHOPPING CENTER 2101 WEST WADLEY AVENUE MIDLAND, TEXAS MIDLAND COUNTY

AMERICAN SURVEYING & MAPPING INC.
3191 MAGUIRE BLVD., SUITE 200 ORLANDO, FLORIDA 32803
PHONE (407) 426-7979 WWW.ASMCORPORATE.COM

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LOCATION MAP

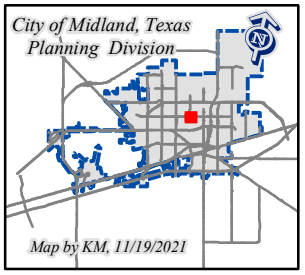
SUD-21-0116 **Scale: 1" = 200'**

Consider a request by Waystone Brewing LLC, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a brewery, on a 1,674 square foot portion of Lot 1-H, Block 5, Colony Place, Section 5, City and County of Midland, Texas.

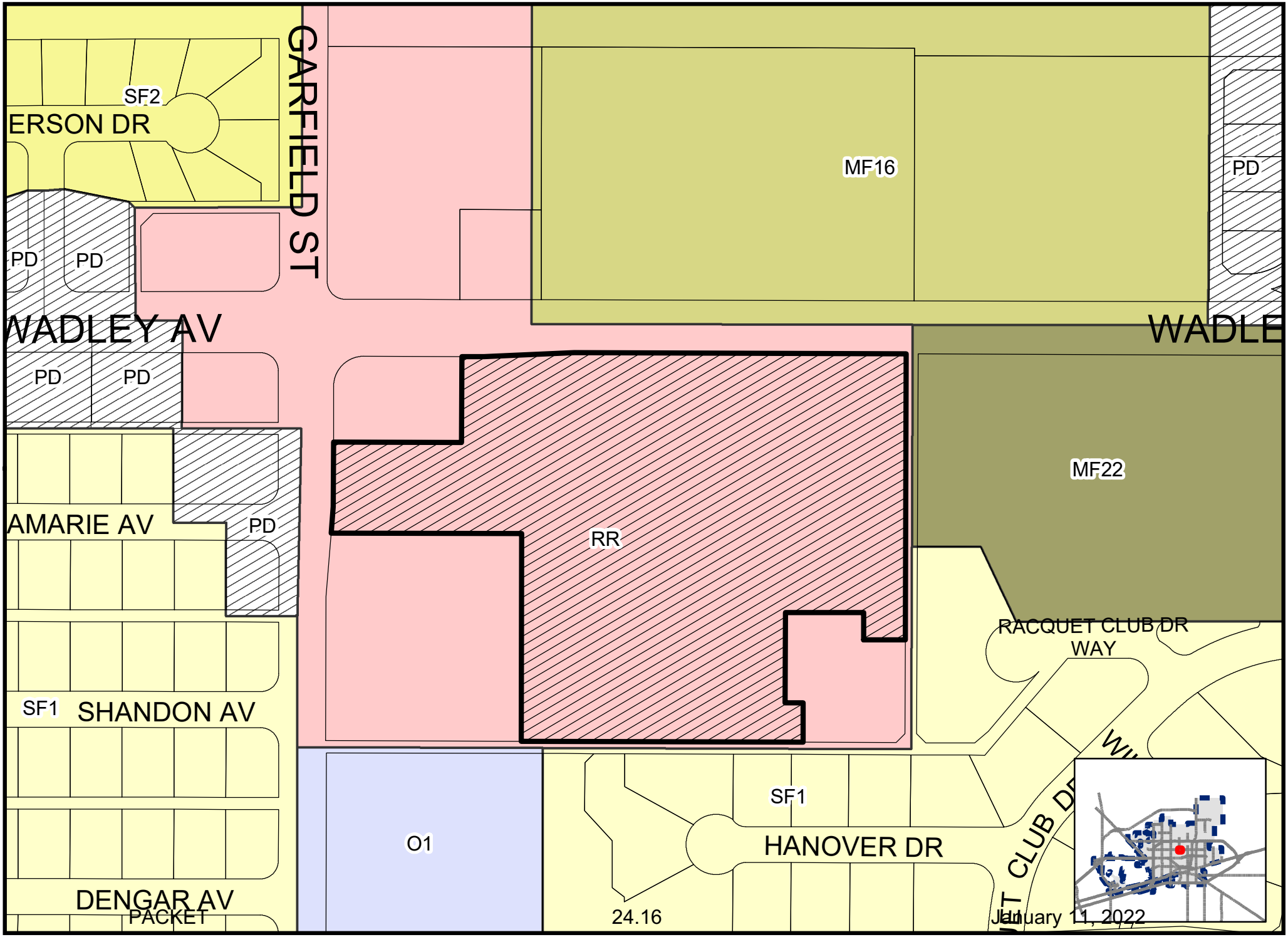
Generally located on the southeast corner of the intersection of W Wadley Avenue and N. Garfield Street. (Council District 3)

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.



Map By KM, 11/19/2021

SUD-21-0116

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.


Plush
Salon
COMING SOON!
THE WAYSTONE
BOARDGAME CAFE & NANOBREWERY


RUSSELL L. FREEMAN
& ASSOCIATES
INTERIOR DESIGN





City Council Meeting

Item Number: 25

Meeting Date: January 11, 2022

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 LOT 15, BLOCK 10, KIMBER-LEA ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 210 FEET EAST OF NORTH MIDKIFF 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 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting to rezone the property located at 3212 W. Wadley Avenue for the development of a coffee shop and retail development.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

PD, Planned Development for a Shopping Center (Ordinance number 8,287)

Surrounding Zoning and Land Use:

The properties to the north and east are zoned SF-2, Single-Family Dwelling District, and the location of residential homes. The property to the south across W. Wadley Avenue is zoned RR, Regional Retail District, and the location of a shopping center. The properties to the west are zoned RR, Regional Retail District and the location of a gas station and a shopping center.

Analysis:

The property is currently vacant and zoned PD, Planned Development District for a Shopping Center. This allows for the construction of a retail center according to Ordinance number 8287, which regulates the planned district. The applicant, Maverick Engineering, is requesting to rezone the property for added flexibility in the development process. Additionally, since the underlying zoning of this property is RR, Regional Retail District, this zone change does not change the composition of uses in this area. Instead, it allows for the development to occur on otherwise unused land.

If approved, the development will need to conform to section 5.05, Nonresidential Zoning District Dimensional Regulations and section 6.01 through 6.05, Zoning Development Regulations of the Zoning Ordinance.

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. 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)

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 fits with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character* Goal 2: Identify partnerships to produce neighborhood and commercial centers that are attractive, functional, and of high-quality. The proposed development will provide the community with a new coffee shop and retail center where consumers can enjoy their free time. In addition, the retail development would fit into the character of the area and provide a new retail service which will increase economic activity in this area.

Therefore, staff recommends approval of this zone change from PD, Planned Development District for a Shopping Center 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 December 29, 2021.

Attachments:

Application
Maps
Ordinance Number 8287

Morris William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 15, BLOCK 10, KIMBER-LEA ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 210 FEET EAST OF NORTH MIDKIFF ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 15, Block 10, Kimber-Lea Addition, Section 2, City and County of Midland, Texas (the "Property") to RR, Regional Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center 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., 2022; 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: 2-21-0272

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: 5G Legacy LLC		Phone ( ) Email	
Address 11 Hanover	City Midland	State TX	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Andrew Mellen		Phone (432) 262-0999 Email amellen@maverick-eng.com	
Address 1909 W Wall St Ste K	City Midland	State TX	Zip 79701

Street Address: 3212 W Wadley

Legal Description
Lot: 17 Block: 10 Subdivision: Kimber Lea

Current Zoning: PD	**Proposed Zone:** RR *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To develop a Black Rifle Coffee shop, retail site

Present Use of Property: Vacant

Proposed Use of Property: Coffee Shop plus retail development

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):	Date: 10/20/21
Property Owner (printed) : James gripp	

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 5G Legacy 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 20th day of October, 20 21, to certify which witness my hand and seal of office.

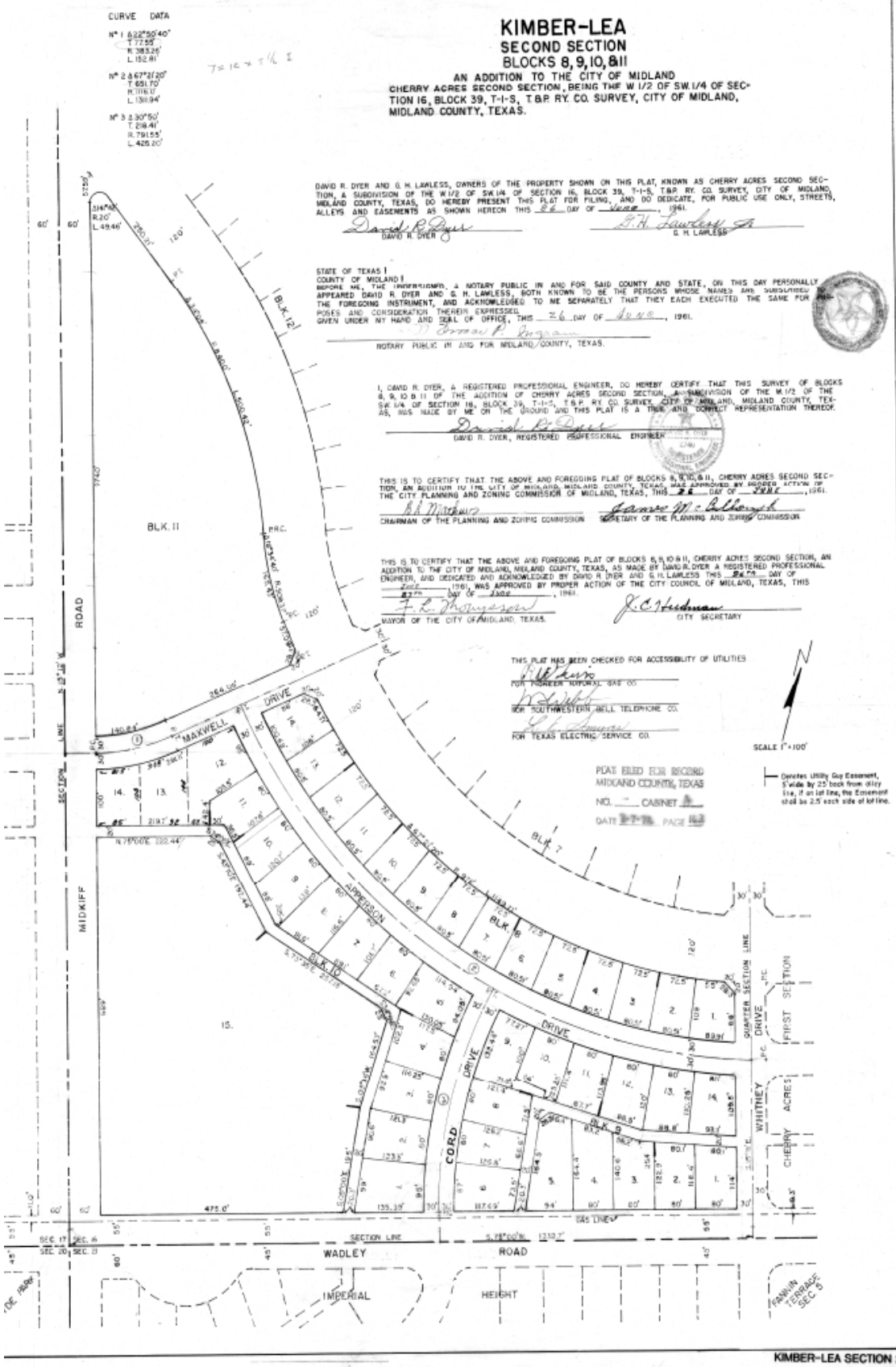
NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456388

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☐ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 3611	
Received By:	Date: RECEIVED OCT 26 2021

**Application will not be considered for scheduling until reviewed by a planner.


KIMBER-LEA
SECOND SECTION
BLOCKS 8, 9, 10, & 11
AN ADDITION TO THE CITY OF MIDLAND
CHERRY ACRES SECOND SECTION, BEING THE W 1/2 OF SW 1/4 OF SECTION 16, BLOCK 39, T-1-S, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.
CURVE DATA
DAVID R. DYER AND G. H. LAWLESS, OWNERS OF THE PROPERTY SHOWN ON THIS PLAT, KNOWN AS CHERRY ACRES SECOND SECTION, A SUBDIVISION OF THE W 1/2 OF SW 1/4 OF SECTION 16, BLOCK 39, T-1-S, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, DO HEREBY PRESENT THIS PLAT FOR FILING, AND DO DEDICATE, FOR PUBLIC USE ONLY, STREETS, ALLEYS AND EASEMENTS AS SHOWN HEREON THIS 26 DAY OF June, 1961.
DAVID R. DYER
G. H. LAWLESS
STATE OF TEXAS
COUNTY OF MIDLAND
BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED DAVID R. DYER AND G. H. LAWLESS, BOTH KNOWN TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME SEPARATELY THAT THEY EACH EXECUTED THE SAME FOR PURPOSES AND CONSIDERATION THEREIN EXPRESSED.
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 26 DAY OF June, 1961.
NOTARY PUBLIC IN AND FOR MIDLAND COUNTY, TEXAS.
I, DAVID R. DYER, A REGISTERED PROFESSIONAL ENGINEER, DO HEREBY CERTIFY THAT THIS SURVEY OF BLOCKS 8, 9, 10 & 11 OF THE ADDITION OF CHERRY ACRES SECOND SECTION, A SUBDIVISION OF THE W 1/2 OF THE SW 1/4 OF SECTION 16, BLOCK 39, T-1-S, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, WAS MADE BY ME ON THE GROUND AND THIS PLAT IS A TRUE AND CORRECT REPRESENTATION THEREOF.
DAVID R. DYER, REGISTERED PROFESSIONAL ENGINEER
THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF BLOCKS 8, 9, 10, & 11, CHERRY ACRES SECOND SECTION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF MIDLAND, TEXAS, THIS 26 DAY OF June, 1961.
CHAIRMAN OF THE PLANNING AND ZONING COMMISSION
SECRETARY OF THE PLANNING AND ZONING COMMISSION
THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF BLOCKS 8, 9, 10 & 11, CHERRY ACRES SECOND SECTION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS MADE BY DAVID R. DYER A REGISTERED PROFESSIONAL ENGINEER, AND DEDICATED AND ACKNOWLEDGED BY DAVID R. DYER AND G. H. LAWLESS THIS 26TH DAY OF June, 1961, WAS APPROVED BY PROPER ACTION OF THE CITY COUNCIL OF MIDLAND, TEXAS, THIS 27th DAY OF June, 1961.
MAYOR OF THE CITY OF MIDLAND, TEXAS.
CITY SECRETARY
THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES
FOR PIONEER NATURAL GAS CO.
FOR SOUTHWESTERN BELL TELEPHONE CO.
FOR TEXAS ELECTRIC SERVICE CO.
SCALE 1" = 100'
PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. 1 CABINET A
DATE 7-7-61 PAGE 43
Denotes Utility Guy Easement, 5' wide by 25' back from alley line, if on lot line, the Easement shall be 2.5' each side of lot line.
MAXWELL DRIVE
MIDKIFF ROAD
APPERSON DRIVE
CORD DRIVE
QUARTER SECTION LINE
FIRST SECTION
WHITNEY ACRES
CHERRY
WADLEY ROAD
IMPERIAL HEIGHT
BLK. 11
BLK. 12
BLK. 10
BLK. 9
BLK. 8
BLK. 7
SECTION LINE
SEC. 17 SEC. 16
SEC. 20 SEC. 21
S. 75°00'E. 1332.7'
475.0'
264.00'
190.8'
219.7'
155.39'
KIMBER-LEA SECTION 2

ORDINANCE NO. 8287

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING THE 4.66 ACRE TRACT OF LAND OUT OF LOT 15, BLOCK 10, KIMBER-LEA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS WHICH IS PRESENTLY ZONED MF-2, MULTIPLE FAMILY DWELLING DISTRICT TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT 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, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Shopping Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned MF-2, Multiple Family Dwelling District and it shall be used as a PD, Planned District for a Shopping Center, said property being described as follows:

> A 4.66 acre tract of land out of Lot 15, Block 10, Kimber-Lea, an addition to the City of Midland, Midland County, Texas. The property is described by metes and bounds on Exhibit "A", which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That said property shall be subject to the following conditions and restrictions: that the property shall be developed in accordance with the LR-2, Local Retail District use and development standards. The use and development of said property shall comply with the attached Exhibit "B", with the following exceptions:

1. That the parking layout shall be considered illustrative, with final approval to be made through the building permit process.

2. That all landscaping shall be irrigated and kept in a healthy and growing condition.

3. That all exterior lighting shall comply with the Midland Outdoor Lighting Policy.

4. That all signage shall comply with the Midland Sign Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 8th day of February, A.D., 2005; and passed to second reading on motion of Council member Dufford, seconded by Council member Perry, by the following vote:

Council members voting "AYE": Dufford, Perry, Morgan, Dingus, Canon, Simpson and Hailey

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Morgan, seconded by Council member Dufford, on the 22nd day of February, A.D., 2005, at a regular meeting of the City Council:

Council members voting "AYE": Morgan, Dufford, Perry, Dingus, Canon, Simpson and Hailey

Council members voting "NAY": None

PASSED AND APPROVED THIS 22nd day of February, A.D., 2005.

Michael J. Canon, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Field note description for a 4.66 acre tract of land out of Lot 15, Block 10, Kimber-Lea, an addition to the City of Midland, Midland County, Texas as recorded in Volume 2, Page 14, Midland County Plat Records, said 4.66 acres being more completely described below, represents a survey actually made on the ground under my supervision, and there are no encroachments or protrusions, or visible easements, except as shown hereon.

BEGINNING at a ½-inch iron rod for the southwest corner of this tract, in the south line of Lot 15, Block 10, Kimber-Lea, an addition to the City of Midland, Texas, from which point the platted southwest corner of Lot 15 bears S 75° 00' W, 150.0 feet;

THENCE N 15° 13' W, 315.0 feet to a "X" cut in concrete for an ell corner of this tract;

THENCE S 75° 00' W, 10.0 feet for a found ½-inch iron rod for an exterior corner of this tract;

THENCE N 15° 13' W, 374.0 feet to a found 5/8-inch iron rod for the northwest corner of this tract, said point is in the north line of Lot 15 at a point 140.0 feet from the northwest corner of Lot 15, and in the south line of a 20-foot alley;

THENCE along the south line of said 20-foot alley N 75° 00' E, 82.44 feet to a ½-inch iron rod for a corner of this tract;

THENCE S 74° 05' E, and said alley 25.0 feet to a ½-inch iron rod for a corner of this tract;

THENCE S 43° 19' E, with said alley 193.8 feet to a corner of this tract;

THENCE S 73° 37' E, and said alley 257.4 feet to a ½-inch iron rod for a corner of this tract;

THENCE S 34° 59' E, with said alley 25.0 feet to a ½-inch iron rod for a corner of this tract;

THENCE S 03° 36' W, with the west line of said 20-foot alley 164.53 feet to a ½-inch iron rod for a corner of this tract;

THENCE S 05° 01' E, with said alley 195.0 feet to a ½-inch iron rod for a southwest corner of Lot 15 and this tract said point being the west line of said 20-foot alley and in the north line of Wadley Avenue;

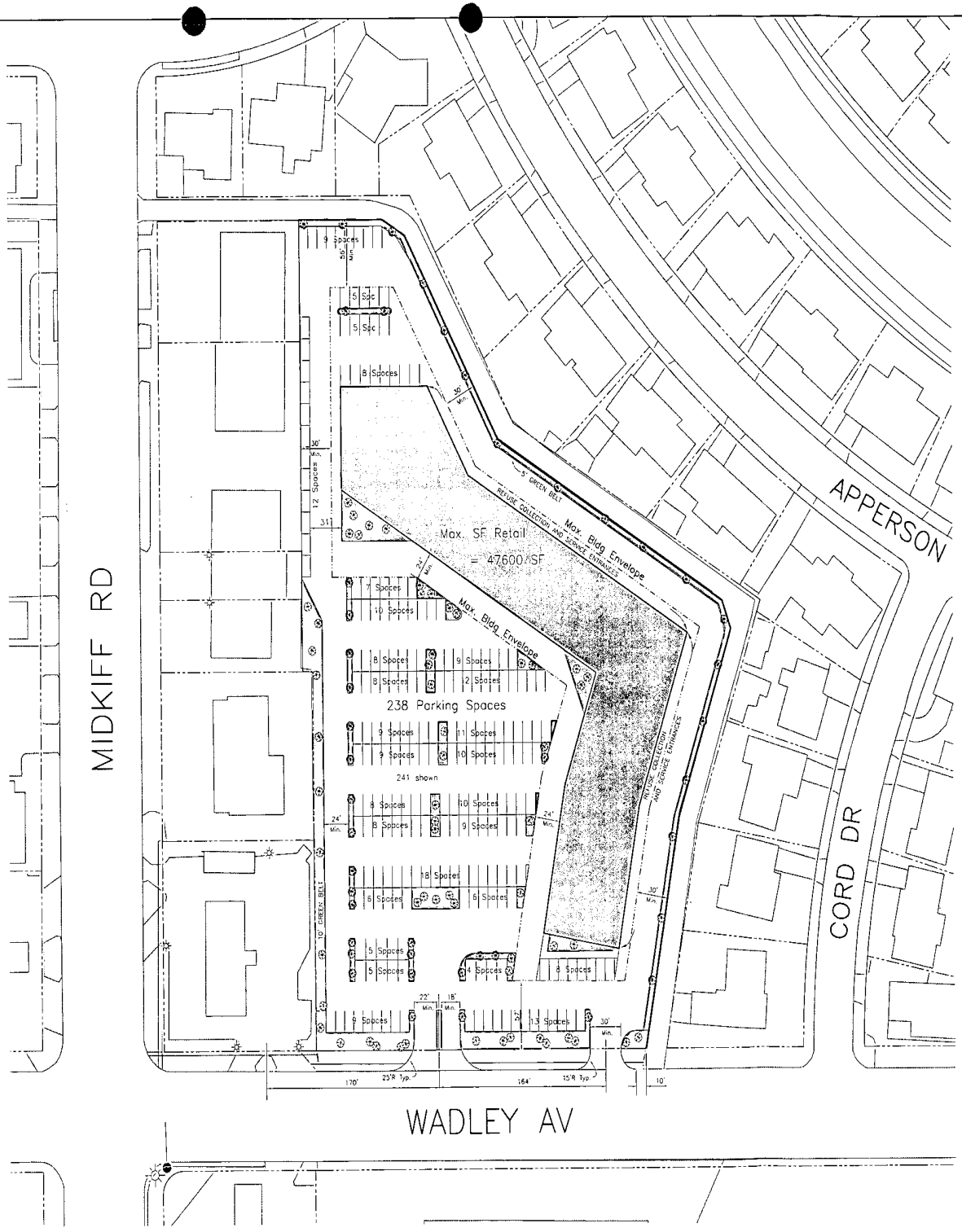
THENCE S 75° 00' W, along the south line of Lot 15 and north line of Wadley Avenue, 325.0 feet to the place of beginning and containing 4.66 acres of land.

RECEIVED
DEC 1 3 2004
PLANNING & DEVELOPMENT
CITY OF MIDLAND

Exhibit "A"

CASE NO. Z-04-024

Ord. 8287



PLANNED DISTRICT SITE PLAN

KIMBER-LEA ADDITION
SECTION 2

for

PART OF
LOT 15, BLOCK 10
KIMBER-LEA ADDITION
SECTION 2
MIDLAND, TEXAS

Original Scale: 1"=100'

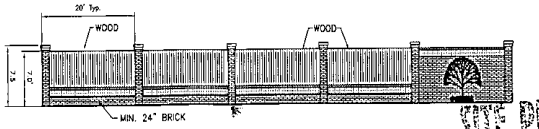
Site Plan submitted to P&Z on December 13, 2004.

Site Plan re-submitted to P&Z on January 31, 2005.

SITE DATA	
LOT AREA	203700.51 SF
LANDSCAPE AREA REQUIRED	20370.05 SF
LANDSCAPE AREA IN ROW	2613 SF
LANDSCAPED AREA SHOWN (NOT INCLUDING ROW)	30848 SF
TREES REQUIRED (ON PARKING LOT)	14
MAX. BUILDING AREA	47,600 SF
PARKING SPACES REQUIRED	238
PARKING SPACES SHOWN	241

NOTES:

- SHADED AREAS DENOTED BY ▭ TO BE PAVED.
- SHADED AREAS DENOTED BY ▭ TO BE SIDEWALK.
- SHADED AREAS DENOTED BY ▭ TO BE IRRIGATED GRASS & GROUND COVER.
- SHADED AREAS DENOTED BY ▭ TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- LANDSCAPED AREA (IN ADDITION TO R.O.W.S.) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA.
- SHADED AREAS DENOTED BY ▭ ARE BUILDINGS.
- PROPOSED SCREEN WALL DENOTED BY ——
- AT THE TIME OF ISSUANCE OF A BUILDING PERMIT, SIGNAGE SHALL CONFORM TO CITY OF MIDLAND SIGN CODE ORDINANCE, AS AMENDED.
- USE AND DEVELOPMENT SHALL CONFORM TO LR-2 REGULATIONS. MAXIMUM BUILDING HEIGHTS =28'-9" (NOT INCLUDING PARAPETS)
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION.
- ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
- ALL PARKING AND SITE WORK TO BE DESIGNED IN ACCORDANCE WITH TDLR STANDARDS.
- SECURITY LIGHTS ON THE NORTH AND EAST SIDES OF THE BUILDING SHALL BE MOUNTED 12' ABOVE PAVEMENT AND BE SHROUDED.
- ALL PARKING LOT LIGHTS SHALL BE A MAXIMUM HEIGHT OF 28'-9" AND PROVIDE FULL CUTOFF SHIELDS.



SCREEN WALL ELEVATION

Not to Scale

SITE PLAN

CASE NO. Z-04-02

RECEIVED
FEB 02
PLANNING & DEVELOPMENT
CITY OF MIDLAND

KIMBER-LEA ADDITION
SECTION 2

PREPARED BY:
Parkhill Smith & Cooper, Inc.
Engineers Architects Planners
January 2005

January 11, 2022
25.14
PACKET

Drawing File: 05_NB\NEc Midkiff & Wadley\kimberly formal site plan V4.dwg (TONY) 49.57 hrs
Date: 2/1/2005 Time: 17:45:10 UCS = World(PS)
Xrefs: (nov 1, water, sewer, parcels

Exhibit "B"

City Council Agenda

Approved for Agenda:
MJohnston
City Manager's Office

MEETING DATE: February 8, 2005

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-04-024; Parkhill, Smith and Cooper

Purpose:

Hold a public hearing at 11:00 a.m. and consider a request by Parkhill, Smith and Cooper for a zone change from MF-2, Multiple Family Dwelling District to PD, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

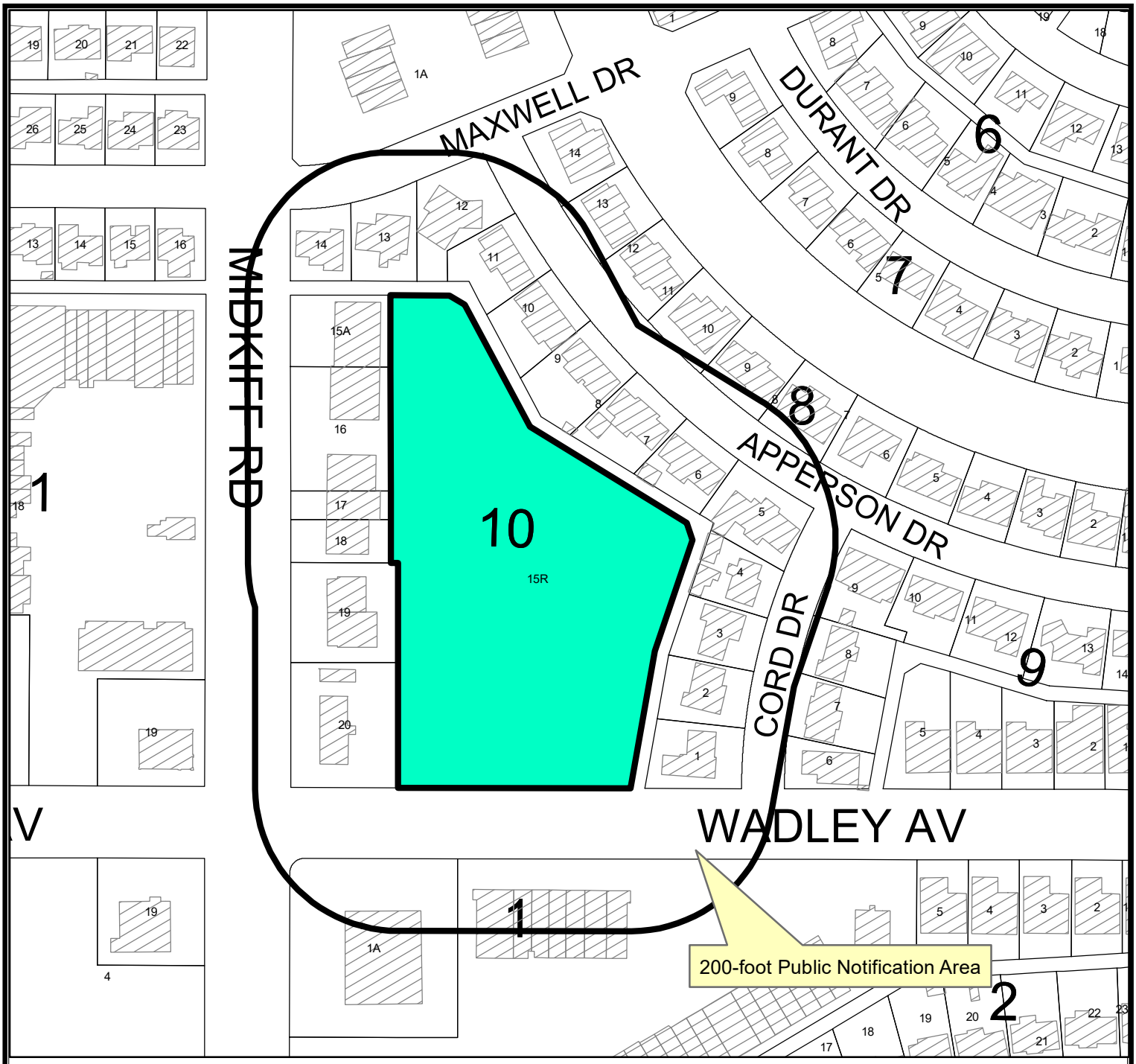
Discussion:

The developer plans to demolish the Trellis Apartments, built in 1976, and redevelop the tract with a retail center. The planned district would be subject to the LR-2, Local Retail District use and development standards. A site plan has been submitted for review.

The retail center will be 47,600 square feet in area, however, the final building design is uncertain. A larger building envelope is shown to accommodate flexibility in the layout. Elevation drawings are not available, but the list of building materials includes decorative or painted CMU, face brick, precast concrete, tilt-wall, stucco, and glazing. Landscaping, including grass, ground cover, trees, and shrubs, will cover at least ten percent of the total lot area. A solid screening fence and a row of trees will be put in between the building and the alley.

The LR-2 District allows professional offices, banks, restaurants, and other such businesses offering all types of new retail items for sale. Any request for on-premise alcoholic beverage sales would be considered under a separate application process.

CDS



LOCATION MAP

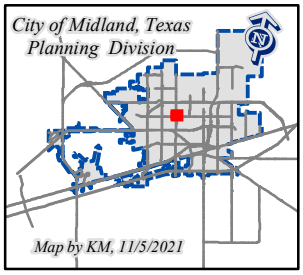
Z-21-0272 **Scale: 1" = 200'**

Consider a request by Maverick Engineering for a zone change from PD, Planned Development District for a Shopping Center to RR, Regional Retail District on Lot 15, Block 10, Kimber-Lea Addition, Section 2, City and County of Midland, Texas.

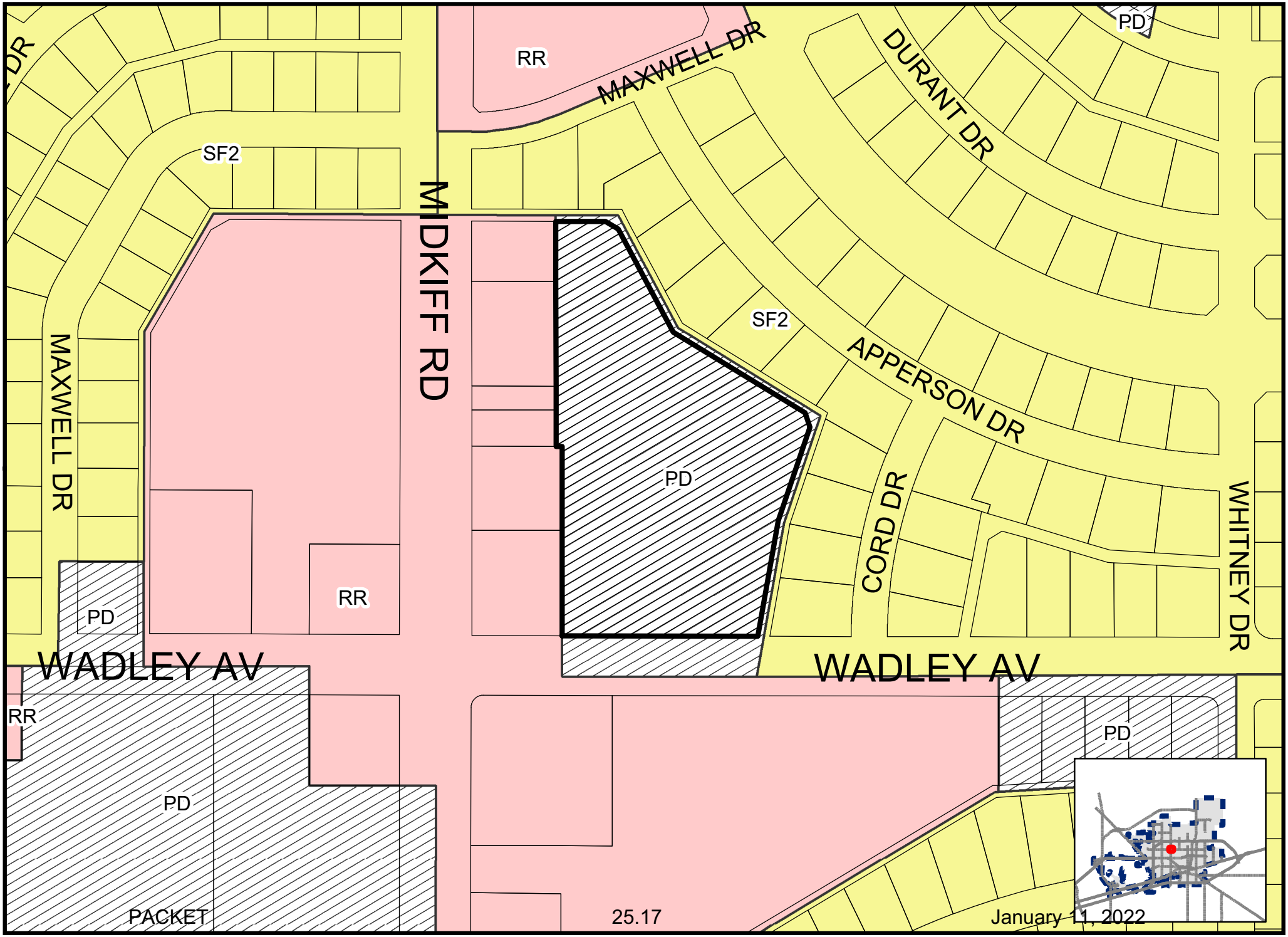
Generally located on the north side of W. Wadley Avenue, approximately 210-feet east of N. Midkiff Road. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM 11/11/2021

Z-21-0272

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.






tea nergy
BEAN&GRAPE
COFFEE • WINE • CRAFT BEER
NOTHING BUNDT CAKES
FULGER GALLERY
OPEN


KMB
ADOPT-A-SPOT
FIRST BASIN
CREDIT UNION

City Council Meeting

Item Number: 26

Meeting Date: January 11, 2022

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 LOTS 9-12, BLOCK 37, COLLEGE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF WEST FRONT STREET AND CARLTON STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL 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 2) (DEVELOPMENT SERVICES)

Details of the Request:

The applicant, Salvador Hernandez is requesting a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services to develop a used car dealership.

Current Zoning:

C, Commercial District

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Surrounding Zoning and Land Use:

The property to the north is zoned SF-2, Single Family District and is the location of single-family homes. The properties to the east, south, and west are zoned C, Commercial District, and the locations of commercial buildings including, a vacant building, Viva Villa Drive Thru, and Oncor Electric Delivery.

Analysis:

The applicant is requesting Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services located at 2500 Front Street. Per section 4.03 Use Chart of the zoning ordinance, a car dealership is allowed in the C, Commercial District with a Specific Use Designation without Term.

The property has five (5) existing buildings and structures. The existing buildings will remain on site, except for the removal of one structure as shown in Exhibit A. The office building has a square footage of 432 square feet. The site plan illustrates nineteen (19) parking spaces, including six (6) for customers and thirteen (13) for car sales.

The proposed hours of operation are the following:

Monday through Saturday, 8:00 a.m. to 6:00 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.

Transportation: (Approved)

No objection to zone change. [For the Applicant's information only.]

Building Code: (Approved)

No objections.

Planning:

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan calls for Urban-Medium uses in this area, encompassing a mix of housing types, neighborhood and community commercial, office, and service uses. Therefore, the development of a car dealership fit the recommendations of the Tall City Tomorrow Comprehensive Plan.

This request was approved at the December 20, 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 A) 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 8:00 a.m. to 6:00 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 January 5, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Morris William 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 WITHOUT TERM FOR LOTS 9-12, BLOCK 37, COLLEGE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF WEST FRONT STREET AND CARLTON STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL 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 Lots 9-12, Block 37, College Heights Addition, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for automobile or other motorized vehicle sales and service (the "Specific Use"), together with the uses permitted in the present C, Commercial 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 "A" 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 8:00 a.m. to 6:00 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., 2022; 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"

PACKET
26.9
January 11, 2022

MIDLAND Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUD-21-018

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Salvador Hernandez		Phone (432) 631 1324 Email Yesikacesar0302@hotmail.com	
Address 605 S. Mineola St	City Midland	State TX	Zip 79701
Property Owner Printed Name: Francisco J Villarreal		Phone (432) 853-5284 Email javierovillahe r78@gmail.com	
Address 401 W. Cowden	City Midland	State TX	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Type of Permit: SUD Zacatecas Auto Sales

For Office Use Only ☒ with Term ☐ without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☒ No

Street Address: 2500 W FRONT ST.

Legal Description Lot: 11 Block: 37 Subdivision: College Heights

Current Zoning: C

Maximum Floor Area: 100 FT x 90 FT **Maximum Occupancy:**

Proposed hours and days of use or operation: 8:00 AM – 6:00 PM MON – Sat

Reason for request: car dealership

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: N/A

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)

RECEIVED NOV 12 2021

BY: .....

Signatures	
Applicant (signature):	Date: 11/12/2021
Applicant (printed): SALVADOR HERNANDEZ	
Property Owner (signature): Francisco J Villareal	Date: 11/12/2021
Property Owner (printed): Francisco J Villareal	

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 Salvador Hernandez who, being by me duly sworn, upon oath says: That (s)he is authorized by Francisco J. Villareal 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 12 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

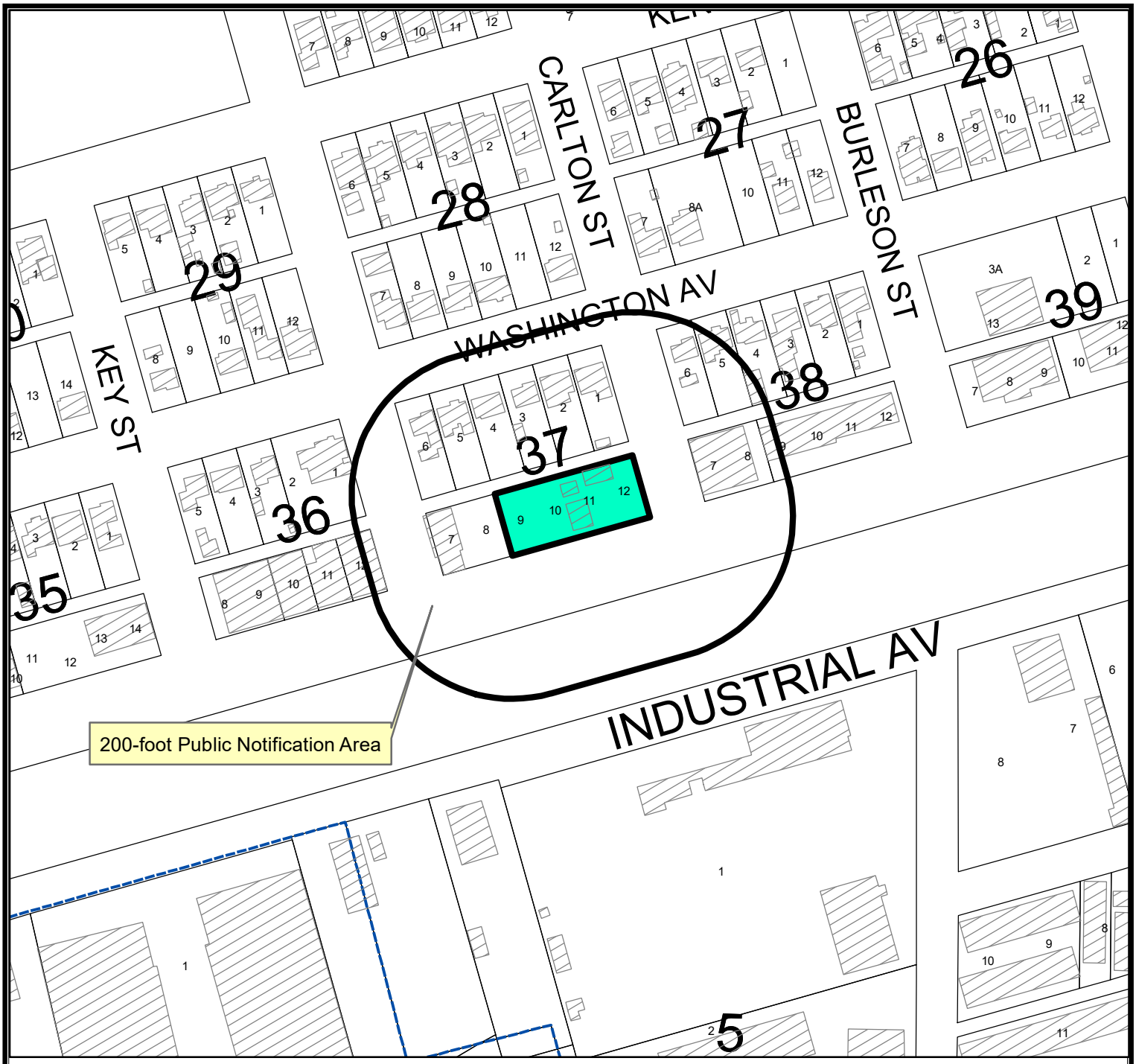
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Site Plan in Digital Format (PDF/JPEG)
Check # Cash	
Received By:	Date: RECEIVED NOV 12 2021

BY: .....

Application will not be considered for scheduling until reviewed by a planner.*


Remove
COSTUMES
CAR FOR SALE



LOCATION MAP

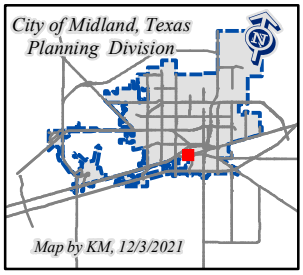
SUDwo-21-0118 **Scale: 1" = 200'**

Consider a request by Salvador Hernandez for a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Service on Lots 9-12, Block 37, College Heights, City and county of Midland, Texas.

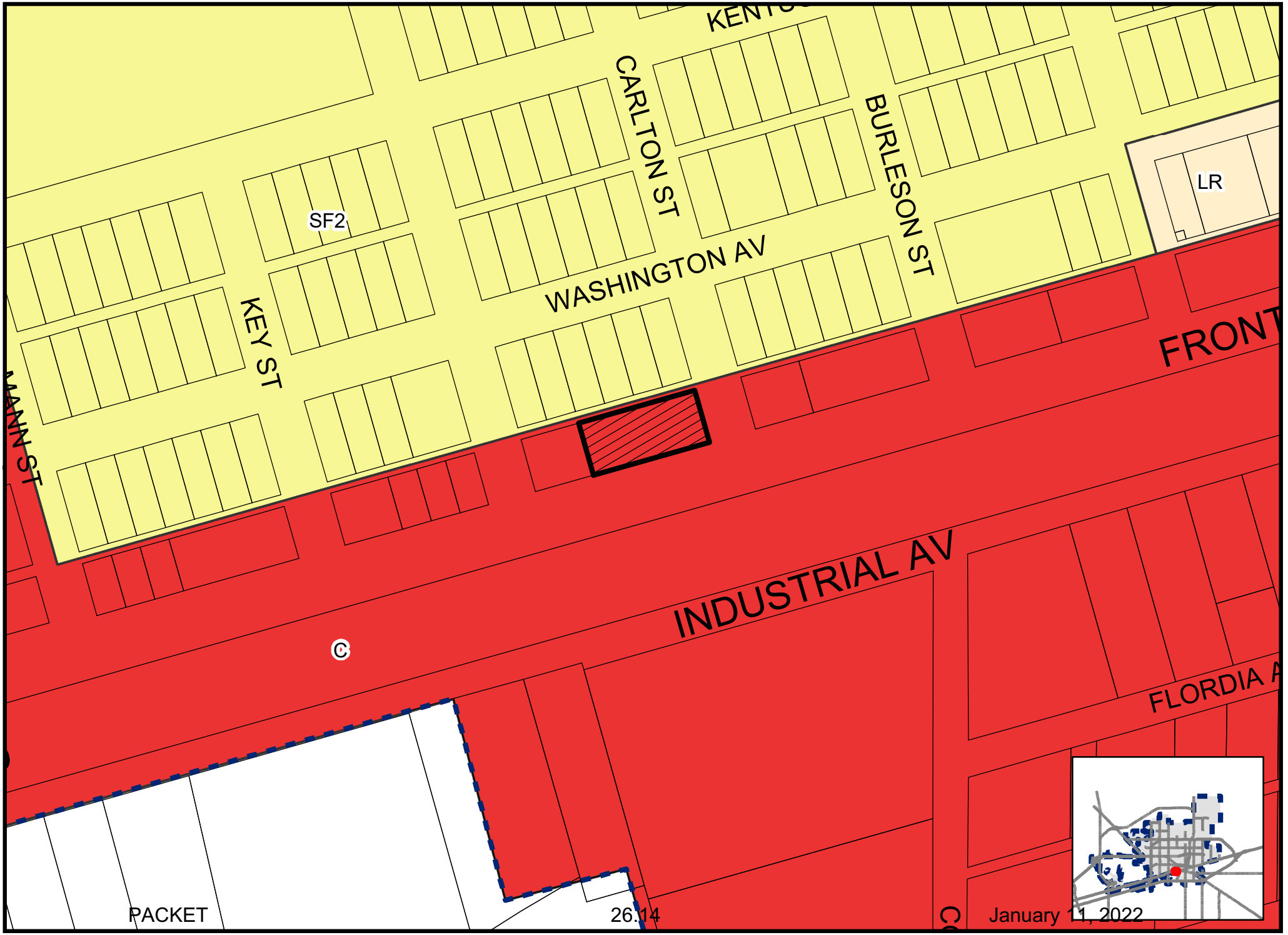
Generally located on the northwest corner of the intersection of W. Front Street and Carlton Street. (Council District 2)

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.



Map By KM, 12/3/2021

SUDwo-21-0118

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.


MONEY ORDERS
R.O.
ICE & WATER


R.O.
ICE & WATER
I-20BL




VIVA VILLA
I-20BL

City Council Meeting

Item Number: 27

Meeting Date: January 11, 2022

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 PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (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, Just a Closet #10, LLC, is requesting 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 for the development of a self-storage facility.

Current Zoning:

O-2, Office District

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Surrounding Zoning and Land Uses:

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 in the process of replatting. The applicant, Just a Closet #10, LLC, is requesting a 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. If approved, the development will need to conform to section 5.05, Nonresidential Zoning District Dimensional Regulations and section 6.01 through 6.05, Zoning Development Regulations of the Zoning Ordinance.

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 compliant with the *Tall City Tomorrow Comprehensive Plan, Chapter 3-An Integrated Land Use Vision.* This area is classified as the current development area, where the development of prime sites is encouraged along the 250 Loop. Furthermore, commercial uses should be directed along arterial streets. Therefore, this request follows the recommendations of the Tall City Tomorrow.

This request was deferred at the City Council Meeting on December 14, 2021. City Council recommended to rezone the property from O-2, Office District to PD, Planned Development District for an Office Center with an underlying zoning of C, Commercial District. However, the development of a storage facility will be the only commercial use allowed on this property. This request is set to be heard at the January 3, 2022, Panning and Zoning Commission Meeting.

Staff recommends approval of this request from O-2, Office District to PD, Planned Development District for an Office Center, subject to condition A through E.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the C, Commercial District, except as stated below.**

B. **That the development of storage units, mini shall be the only commercial use allowed.**

C. **That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**

D. **That all signage shall conform to the City of Midland Sign Code.**

E. **That this property shall significantly conform to the site plan, attached hereto and incorporated herein as Exhibit A.**

Letters of Objection:

Staff has not received any letters of objection as of December 29, 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 PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (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 PD, Planned Development District for an Office Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from O-2, Office District to PD, Planned Development District for an Office Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the C, Commercial District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the use and development of the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That the Property shall be used only for Storage Units, Mini, as that term is defined in Section 11-1-2.01 of the City Code.

C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

D. That all signage shall conform to the regulations set forth in Title XI, Chapter 7a of the City Code.

SECTION 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., 2022; 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

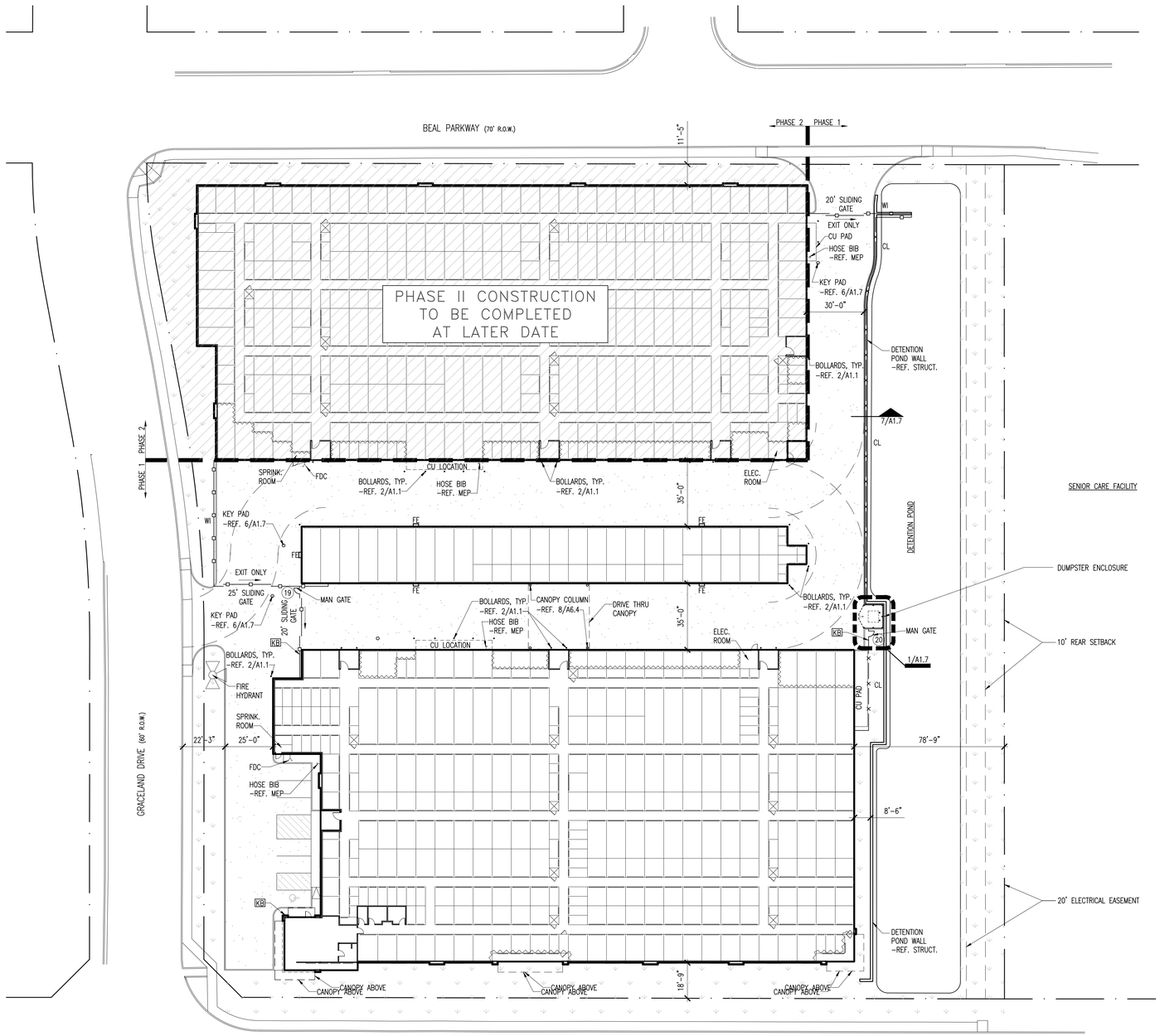
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



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
TEXAS REGISTRATION NUMBER 24004

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

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0277

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Just A Closet #10 LLC		Phone ( ) Email	
Address PO Box 610	City McAllen	State TX	Zip 78505

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: PD
(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)

DEC 15 2021

ES

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature):	Date: 12/14/2021
Property Owner (printed) : Joseph Holand - Managing Member	

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 Just A Closet #10 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 14th day of December, 20 21, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

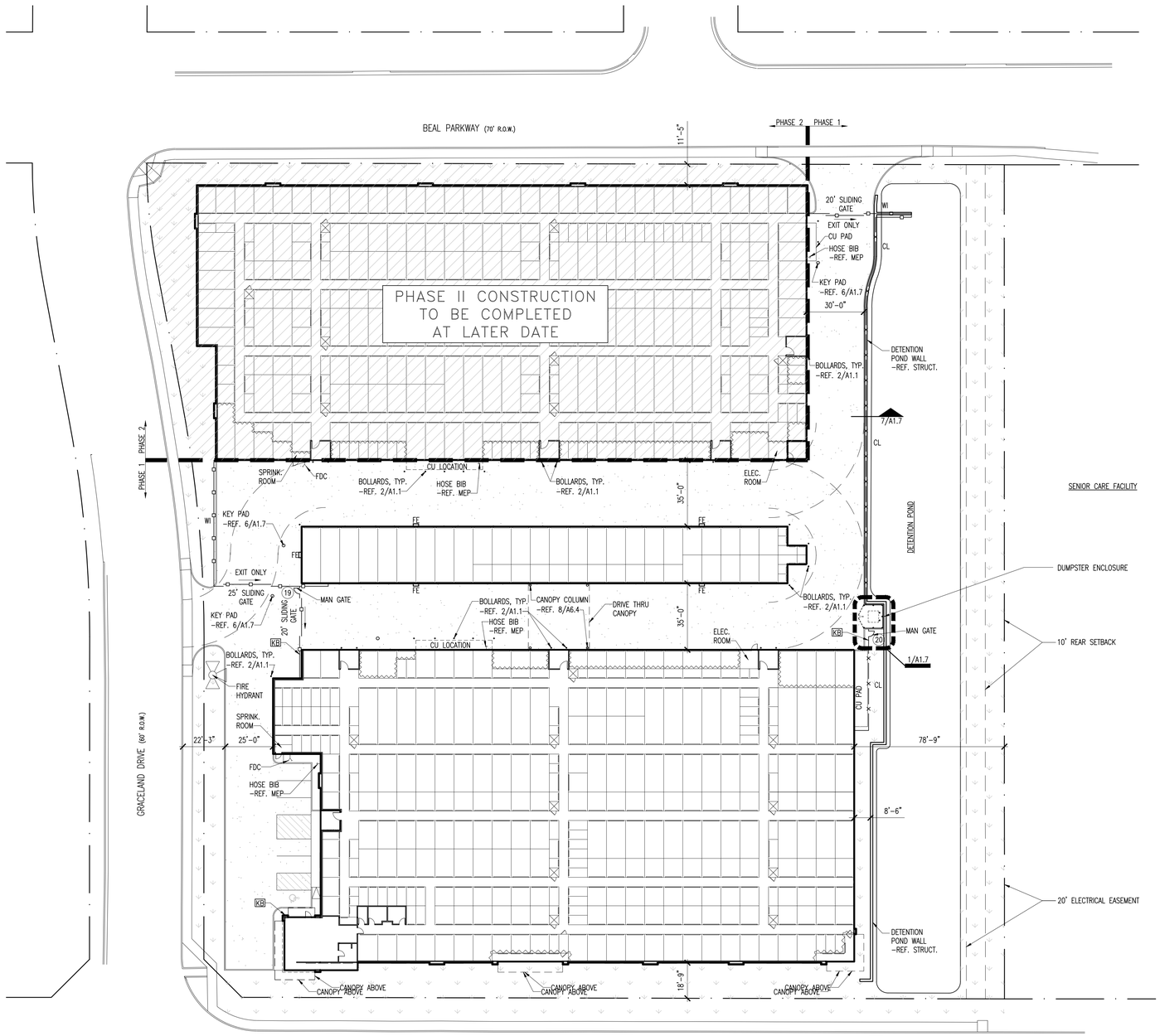
NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456388

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # No fee	
Received By: ES	Date:

DEC 15 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.
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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
ALLENBACH
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


2214
MIDLAND


STOP





City Council Meeting

Item Number: 28

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,241-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 605 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)

Purpose:

The applicant, Bill Cole, is requesting a Specific Use Designation with term for the sale of alcoholic beverages for on-premises consumption in a restaurant at 3303 N. Midkiff Street, Suite 197, 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 is located at 3303 N. Midkiff Road, Suite 152 in a RR, Regional Retail District. The property to the north is zoned SF-2, Single-Family Dwelling District and is utilized for single-family housing. The property to the east is zoned RR, Regional Retail District and is utilized for a variety of retail shops. The property to the south is zoned as PD, Planned Development and is the location of H-E-B. The property to the west is zoned SF-2 Single-Family Dwelling District and is utilized as single-family housing.

Discussion:

Rusty Taco Restaurant is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

Rusty Taco Restaurant 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 3,241 square feet, with an alcohol serviceable area of 1,825 square feet inside of the establishment and a serviceable area of 1,416 square feet in their patio. The site currently has adequate parking and restroom facilities.

The restaurant will have the following hours of operation:

Sunday through Thursday: 9:00 a.m. to 10:00 p.m
Friday and Saturday: 9:00 a.m. to 12:00 a.m (midnight)

The restaurant will have the following hours of alcohol service:

Monday through Thursday: 11:00 a.m. to 10:00 p.m
Friday and Saturday: 11:00 a.m. to 12:00 a.m (midnight)
Sunday: 12:00 p.m. to 10:00p.m.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches or schools within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Building Code: (Approved)

The occupant load passes the threshold for Fire Sprinklers. This is due to the occupant load being larger than 100 patrons for the dining areas. If a fire barrier is erected between the interior dining areas and the outdoor patio seating area, the occupant loads for each area will be less than 100 and will not trigger the need for fire sprinklers. The fire barrier would separate the two spaces into separate fire areas. The barrier must also consider openings such as windows and doors which would also need to be rated.

Oil and Gas: (Approved)

No objections.

Engineering: (Approved)

No objection.

Fire: (Approved)

No objections

Transportation: (Approved)

Patio appears to not extend into City right-of-way.

No objections to use.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-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) Rusty Tacos Restaurant will create a sophisticated atmosphere where Midland Residents can relax and enjoy drinks with their meal.

This request was approved at the November 15, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

A. **That the alcoholic serviceable area of the restaurant shall be limited to approximately 3,241 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

Monday through Thursday: 11:00 a.m. to 10:00 p.m
Friday and Saturday: 11:00 a.m. to 12:00 a.m (midnight)
Sunday: 12:00 p.m. to 10:00p.m.

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of December 27, 2021, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (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 3,241-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 605 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

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 3,241-square foot portion of Lot 18, Block 1, Providence Park Addition, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 3,241 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Thursday from 11:00 a.m. to 10:00 p.m.;
Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight); and
Sunday from 12:00 p.m. (noon) to 10:00 p.m.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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"

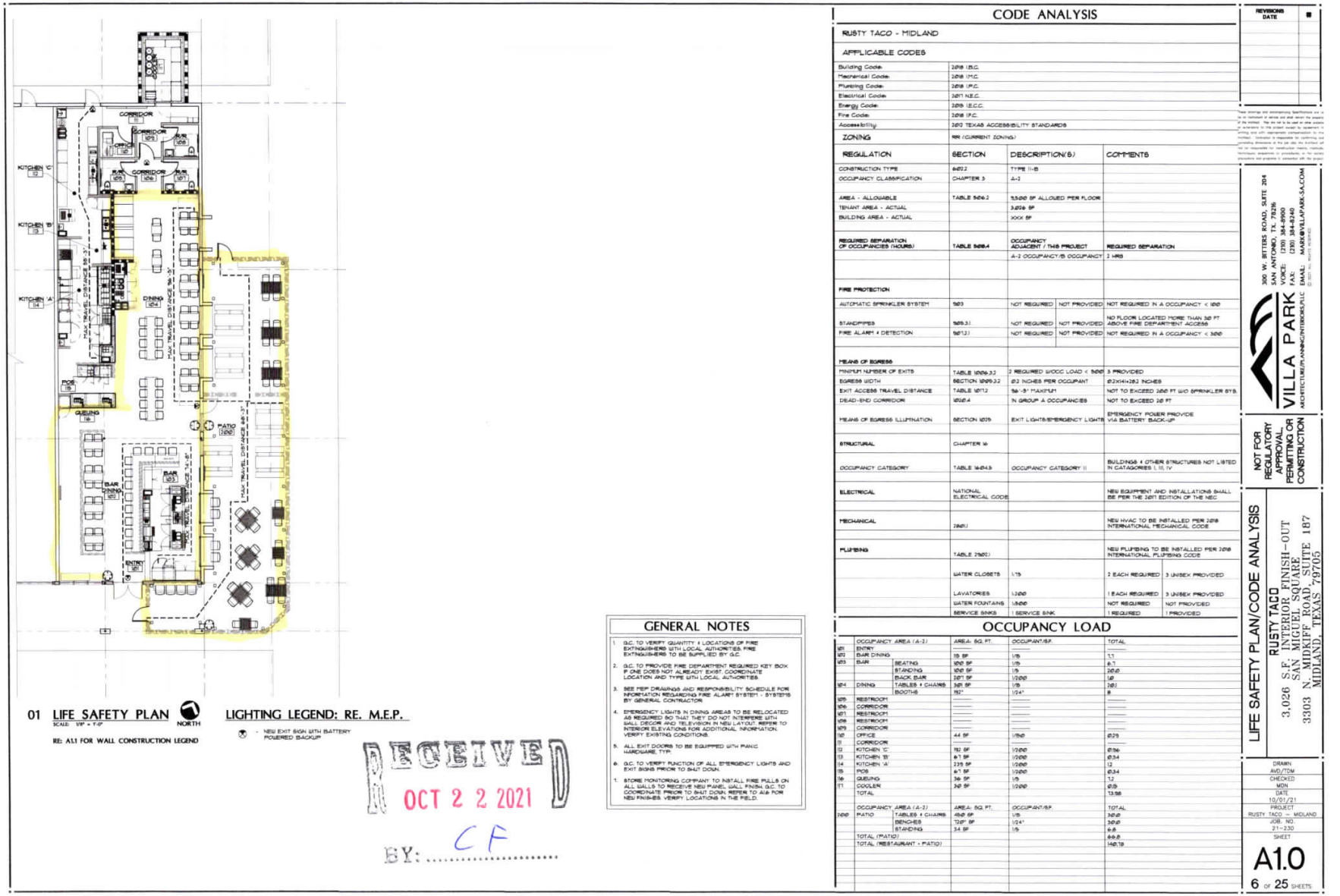
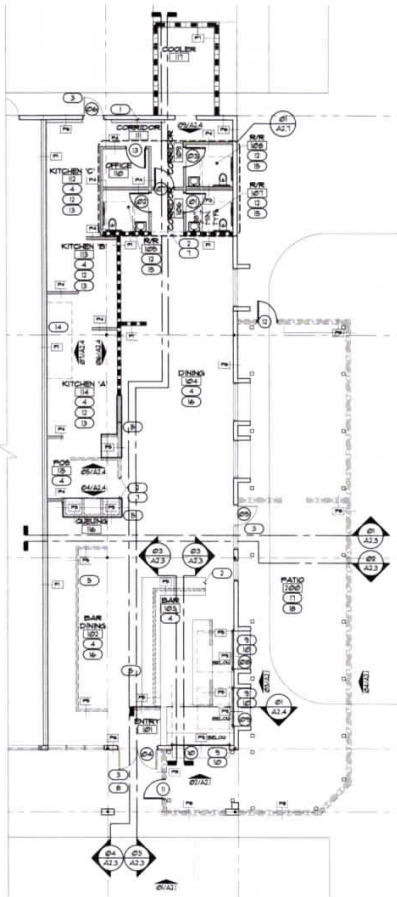
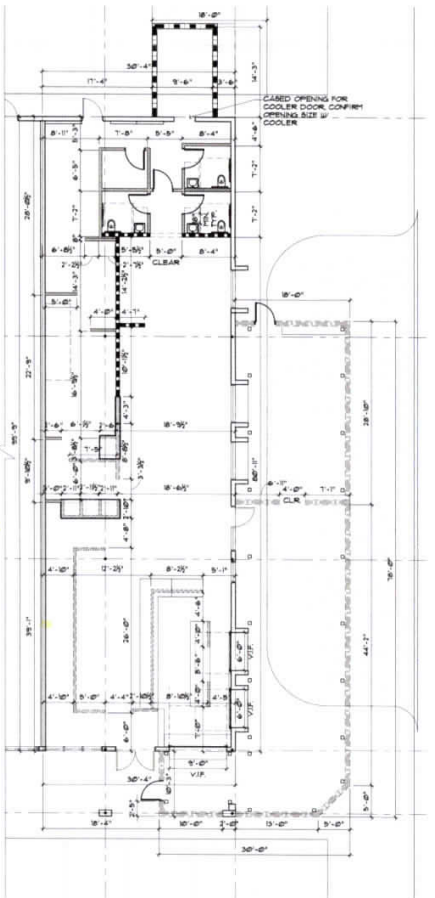

01 LIFE SAFETY PLAN
SCALE: 1/8" = 1'-0"
NORTH
RE: A1.1 FOR WALL CONSTRUCTION LEGEND
LIGHTING LEGEND: RE. M.E.P.
- NEW EXIT SIGN WITH BATTERY POWERED BACKUP
RECEIVED
OCT 2 2 2021
BY: CF
GENERAL NOTES
1. G.C. TO VERIFY QUANTITY & LOCATIONS OF FIRE EXTINGUISHERS WITH LOCAL AUTHORITIES. FIRE EXTINGUISHERS TO BE SUPPLIED BY G.C.
2. G.C. TO PROVIDE FIRE DEPARTMENT REQUIRED KEY BOX IF ONE DOES NOT ALREADY EXIST. COORDINATE LOCATION AND TYPE WITH LOCAL AUTHORITIES.
3. SEE MEP DRAWINGS AND RESPONSIBILITY SCHEDULE FOR INFORMATION REGARDING FIRE ALARM SYSTEM - SYSTEMS BY GENERAL CONTRACTOR.
4. EMERGENCY LIGHTS IN DINING AREAS TO BE RELOCATED AS REQUIRED SO THAT THEY DO NOT INTERFERE WITH WALL DECOR AND TELEVISION IN NEW LAYOUT. REFER TO INTERIOR ELEVATIONS FOR ADDITIONAL INFORMATION. VERIFY EXISTING CONDITIONS.
5. ALL EXIT DOORS TO BE EQUIPPED WITH PANIC HARDWARE TYP.
6. G.C. TO VERIFY FUNCTION OF ALL EMERGENCY LIGHTS AND EXIT SIGNS PRIOR TO SHUT DOWN.
7. STORE MONITORING COMPANY TO INSTALL FIRE PULLS ON ALL WALLS TO RECEIVE NEW PANEL. WALL FINISH. G.C. TO COORDINATE PRIOR TO SHUT DOWN. REFER TO A1.6 FOR NEW FINISHES. VERIFY LOCATIONS IN THE FIELD.
CODE ANALYSIS
RUSTY TACO - MIDLAND
APPLICABLE CODES
Building Code: 2018 I.B.C.
Mechanical Code: 2018 I.M.C.
Plumbing Code: 2018 I.P.C.
Electrical Code: 2017 N.E.C.
Energy Code: 2015 I.E.C.C.
Fire Code: 2018 I.F.C.
Accessibility: 2012 TEXAS ACCESSIBILITY STANDARDS
ZONING: RR (CURRENT ZONING)
REGULATION | SECTION | DESCRIPTION(S) | COMMENTS
CONSTRUCTION TYPE | 602.2 | TYPE II-B
OCCUPANCY CLASSIFICATION | CHAPTER 3 | A-2
AREA - ALLOWABLE | TABLE 506.2 | 9,500 SF ALLOWED PER FLOOR
TENANT AREA - ACTUAL | | 3,026 SF
BUILDING AREA - ACTUAL | | XXX SF
REQUIRED SEPARATION OF OCCUPANCIES (HOURS) | TABLE 508.4 | OCCUPANCY ADJACENT / THIS PROJECT | REQUIRED SEPARATION
A-2 OCCUPANCY/B OCCUPANCY | 2 HRS
FIRE PROTECTION
AUTOMATIC SPRINKLER SYSTEM | 903 | NOT REQUIRED | NOT PROVIDED | NOT REQUIRED IN A OCCUPANCY < 100
STANDPIPES | 905.3.1 | NOT REQUIRED | NOT PROVIDED | NO FLOOR LOCATED MORE THAN 30 FT ABOVE FIRE DEPARTMENT ACCESS
FIRE ALARM + DETECTION | 907.2.1 | NOT REQUIRED | NOT PROVIDED | NOT REQUIRED IN A OCCUPANCY < 300
MEANS OF EGRESS
MINIMUM NUMBER OF EXITS | TABLE 1006.3.3 | 2 REQUIRED W/OCC LOAD < 500 | 3 PROVIDED
EGRESS WIDTH | SECTION 1005.3.2 | @3 INCHES PER OCCUPANT | @2X14=28.2 INCHES
EXIT ACCESS TRAVEL DISTANCE | TABLE 1017.2 | 156'-3" MAXIMUM | NOT TO EXCEED 200 FT W/O SPRINKLER SYS.
DEAD-END CORRIDOR | 1020.4 | IN GROUP A OCCUPANCIES | NOT TO EXCEED 20 FT
MEANS OF EGRESS ILLUMINATION | SECTION 1008 | EXIT LIGHTS/EMERGENCY LIGHTS | EMERGENCY POWER PROVIDE VIA BATTERY BACK-UP
STRUCTURAL | CHAPTER 16
OCCUPANCY CATEGORY | TABLE 1604.5 | OCCUPANCY CATEGORY II | BUILDINGS & OTHER STRUCTURES NOT LISTED IN CATAGORIES I, III, IV
ELECTRICAL | NATIONAL ELECTRICAL CODE | | NEW EQUIPMENT AND INSTALLATIONS SHALL BE PER THE 2017 EDITION OF THE NEC
MECHANICAL | 2801.1 | | NEW HVAC TO BE INSTALLED PER 2018 INTERNATIONAL MECHANICAL CODE
PLUMBING | TABLE 2902.1 | | NEW PLUMBING TO BE INSTALLED PER 2018 INTERNATIONAL PLUMBING CODE
WATER CLOSETS | 1/75 | 2 EACH REQUIRED | 3 UNISEX PROVIDED
LAVATORIES | 1/200 | 1 EACH REQUIRED | 3 UNISEX PROVIDED
WATER FOUNTAINS | 1/500 | NOT REQUIRED | NOT PROVIDED
SERVICE SINKS | 1 SERVICE SINK | 1 REQUIRED | 1 PROVIDED
OCCUPANCY LOAD
OCCUPANCY AREA (A-2) | AREA- SQ. FT. | OCCUPANT/S.F. | TOTAL
101 ENTRY | ____ | ____ | ____
102 BAR DINING | 115 SF | 1/15 | 7.7
103 BAR: BEATING | 100 SF | 1/15 | 6.7
STANDING | 100 SF | 1/5 | 20.0
BACK BAR | 267 SF | 1/200 | 1.3
104 DINING: TABLES + CHAIRS | 3421 SF | 1/15 | 228.1
BOOTHS | 192" | 1/24" | 8
105 RESTROOM | ____ | ____ | ____
106 CORRIDOR | ____ | ____ | ____
107 RESTROOM | ____ | ____ | ____
108 RESTROOM | ____ | ____ | ____
109 CORRIDOR | ____ | ____ | ____
110 OFFICE | 44 SF | 1/150 | @.29
111 CORRIDOR | ____ | ____ | ____
112 KITCHEN 'C' | 192 SF | 1/200 | @.96
113 KITCHEN 'B' | 67 SF | 1/200 | @.34
114 KITCHEN 'A' | 239 SF | 1/200 | 1.2
115 POS | 67 SF | 1/200 | @.34
116 QUEUING | 36 SF | 1/15 | 2.4
117 COOLER | 349 SF | 1/200 | @1.9
TOTAL | | | 13.98
OCCUPANCY AREA (A-2) | AREA- SQ. FT. | OCCUPANT/S.F. | TOTAL
200 PATIO: TABLES + CHAIRS | 1848 SF | 1/15 | 340.0
BENCHES | 1261 SF | 1/24" | 349.0
STANDING | 34 SF | 1/5 | 6.8
TOTAL (PATIO) | | | 696.8
TOTAL (RESTAURANT + PATIO) | | | 1481.78
REVISIONS
NO. | DATE
300 W. BITTERS ROAD, SUITE 204
SAN ANTONIO, TX. 78216
VOICE: (210) 384-8900
FAX: (210) 384-8240
EMAIL: MARK@VILLAPARK-SA.COM
ARCHITECTURE/PLANNING/INTERIORS/LLC
VILLA PARK
NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION
LIFE SAFETY PLAN/CODE ANALYSIS
RUSTY TACO
3,026 S.F. INTERIOR FINISH-OUT
SAN MIGUEL SQUARE
3303 N. MIDKIFF ROAD, SUITE 187
MIDLAND, TEXAS 79705
DRAWN: AVD/TDM
CHECKED: MDN
DATE: 10/01/21
PROJECT: RUSTY TACO - MIDLAND
JOB NO.: 21-230
SHEET: A1.0
6 OF 25 SHEETS

EXHIBIT "A" (cont'd)



01 KEYED FLOOR PLAN
SCALE: 1/8" = 1'-0"
NORTH
RE: A2.1 FOR DOOR AND WINDOW TYPES



02 DIMENSIONED FLOOR PLAN
SCALE: 1/8" = 1'-0"
NORTH

WALL CONSTRUCTION LEGEND:

- P1 — 2-HOUR DEMISING WALL: IN ACCORDANCE WITH UL DESIGN NO: U465, ADD 2-LAYERS 5/8" TYPE 'X' GWB. ON TENANT'S SIDE OF EXISTING DEMISING WALL. SEALED TO ROOF DECK WITH R-19 BATT INSULATION.
- P2 — NEW FULL HEIGHT PARTITION: 6" METAL STUDS @ 16" O.C. WITH SOUND BATTS INSULATION TO BOTTOM OF ROOF DECK W/ 1-LAYER 5/8" GWB. ON EACH SIDE TO 12" ABOVE CEILING GRID AND TO BOTTOM OF DECK AT EXPOSED CEILING. PROVIDE WATER RESISTANT GWB. @ WET WALLS.
- P3 — NEW PARTITION: 6" MTL. STUDS @ 16" O.C. TO 12" ABOVE CEILING GRID W/ 1-LAYER 5/8" GWB. ON EACH SIDE W/ SOUND BATTS INSULATION TO 12" ABOVE CEILING GRID. PROVIDE WATER RESISTANT GWB. @ WET WALLS. PROVIDE 3-5/8" MTL. STUD BRACING TO ADJACENT WALL.
- P4 — NEW PARTITION: 3-5/8" MTL. STUDS @ 16" O.C. TO 12" ABOVE CEILING GRID W/ 1-LAYER 5/8" GWB. ON EACH SIDE TO 12" ABOVE CEILING GRID. PROVIDE WATER RESISTANT GWB. @ WET WALLS. PROVIDE 3-5/8" MTL. STUD BRACING TO ADJACENT WALL.
- P5 — NEW LOW PARTITION: 3-5/8" MTL. STUDS @ 16" O.C. TO BOTTOM OF COUNTER W/1-LAYER 5/8" GWB. ON EACH SIDE TO BOTTOM OF COUNTER. RE: A2.3-A2.9 FOR HEIGHTS
- P6 — EXISTING WALL: TO REMAIN. PROVIDE 1 LAYER 5/8" GWB ON INSIDE FACE WHERE NOT EXISTING.
- P7 — NEW EXTERIOR WALL: 1/2" F.R. STUCCO ON SELF FURRING METAL LATH ON EACH SIDE OF 8" SMOOTH FACE CMU WALL TO 9'-6" AFF. PAINT TO MATCH EXISTING BUILDING.
- P8 — NEW EXTERIOR WALL: 1/2" F.R. STUCCO ON SELF FURRING METAL LATH ON EACH SIDE OF 8" SMOOTH FACE CMU WALL TO 5'-0" AFF. PAINT TO MATCH EXISTING BUILDING.
- P9 — INFILL WALL: TO MATCH EXISTING.

GENERAL NOTES:

1. GENERAL CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS AT THE JOB SITE BEFORE COMMENCING ANY PHASE OF THE WORK. ADJUSTMENTS FOR FIT AND COORDINATION SHALL BE MADE AT NO ADDITIONAL COST TO THE OWNER. NOTIFY ARCHITECT OF ANY CONFLICTS, DISCREPANCIES OR OMISSIONS PRIOR TO COMMENCEMENT OF THE CONTRACT WORK.
2. ALL INTERIOR DIMENSIONS ARE FROM FINISHED FACE OF WALL, UNLESS OTHERWISE NOTED. ALL EXTERIOR DIMENSIONS ARE FROM FACE OF EXISTING WOOD STUDS, UNLESS OTHERWISE NOTED.
3. SEALANT COLOR TO MATCH WALL COLOR. DO NOT PAINT.
4. PROVIDE NECESSARY BLOCKING IN WALLS WHERE FIXTURES, SIGNAGE, SHELVING, CABINETS, COUNTERS, CHAIR RAIL, CORNICE TRIM, AND OTHER MISCELLANEOUS ITEMS THAT REQUIRE A RIGID AND SECURE ATTACHMENT TO SAID WALL.
5. UNLESS NOTED OTHERWISE, ALL DOORS ARE TO BE LOCATED AT 4" FROM INSIDE FACE OF PARTITION TO EDGE OF JAMB.
6. CONTRACTOR TO SUPPLY ALL FIRE EXTINGUISHERS, EMERGENCY SIGNAGE AND KNOX BOX TO SATISFY LOCAL BUILDING CODES.
7. ALL CONTRACTORS/SUB-CONTRACTORS SHALL REVIEW THE OUTLINED SPECIFICATIONS FOR WORK RELATED TO THEIR CONTRACT/TRADE.

KEY NOTES

1. LOCATION OF NEW ELECTRICAL PANELS; COORDINATE WITH ELECTRICAL DRAWINGS FOR FURTHER INFORMATION.
2. BULKHEAD OR SOFFIT ABOVE, REFER TO REFLECTED CEILING PLAN AND STRUCTURAL DRAWINGS, WHERE APPLICABLE. FOR FURTHER INFORMATION. BOX OUT NEW STRUCTURAL BEAMS WITH GYP. BD. AS REQ.
3. G.C. TO ENSURE EXISTING HARDWARE COMPLIES WITH LOCAL CODES AND MEETS HARDWARE REQUIREMENTS LISTED IN DOOR SCHEDULE; SUPPLEMENT WHERE REQUIRED.
4. PROVIDE WOOD BLOCKING AT ALL WALL MOUNTED ITEMS SUCH AS SHELVING, TOILET ACCESSORIES, AV, ETC. COORDINATE LOCATIONS WITH A1.2, A2.3, A2.4, A2.7, AND APPROPRIATE VENDORS AS REQUIRED.
5. PARTIAL HEIGHT WALL POSTS TO BE FULL HEIGHT OF WALLS AND ARE TO BE INSTALLED AT ENDS AND CORNERS OF WALLS AND AT 42" O.C.
6. NOT USED.
7. NEW WALL/BULKHEAD/SOFFIT CONSTRUCTION TO ALIGN WITH WALL/CORNER, TRANSITION TO BE SEAMLESS.
8. GC TO PROVIDE BLOCKING AND FINAL ELECTRICAL CONNECTIONS FOR EXTERIOR SIGNAGE. COORDINATE WITH OWNER'S SIGN VENDOR.
9. GC TO PROVIDE AND INSTALL HEADER, GARAGE DOORS AND RUBBER WEATHER STRIPPING AT EXISTING/NEW OPENING. REFER TO A2.4 FOR SECTION DETAIL.
10. FINISH THREE SIDES AT GARAGE DOOR OPENING WITH BREAK METAL, COLOR TO BE BRONZE, FLASH AND SEAL WITH CLEAR SILICONE SEALANT. COORDINATE WITH STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION ON OPENING.
11. LOCATION OF FIRE EXTINGUISHER, MINIMUM ONE 2A10BC CLASS FIRE EXTINGUISHER AND ONE TYPE 'K' FIRE EXTINGUISHER SHALL BE LOCATED WITH 75 FEET OF TRAVEL DISTANCE. VERIFY FINAL LOCATION & CLASSIFICATION REQUIREMENTS W/ LOCAL AREA FIRE INSPECTOR.
12. G.C. TO PROVIDE AND INSTALL 5/8" CEMENTIOUS BOARD UP TO 24" AND 5/8" WATER RESISTANT GYP. WALLBOARD (PURPLE BOARDS) ABOVE IN WET LOCATIONS. REFER TO INTERIOR ELEVATIONS AND DETAILS. BLOCKING REQUIRED FOR SHELVES OR WALL MOUNTED EQUIPMENT IS TO BE LOCATED WITHIN WALL CAVITY IN THESE AREAS. REFER TO A2.3, A2.6, AND A2.7 FOR FURTHER INFORMATION.
13. G.C. TO PROVIDE AND INSTALL 5/8" PLYWOOD IN LIEU OF WATER RESISTANT GYP. WALLBOARD THROUGHOUT THE KITCHEN (UNLESS OTHERWISE NOTED). PLYWOOD TO SERVE AS BLOCKING. G.C. TO ENSURE PLYWOOD IS PRIMED PRIOR TO RECEIVING FRP FINISH.
14. G.C. TO PROVIDE AND INSTALL 5/8" CEMENTIOUS BOARD FROM FLOOR TO DECK BEHIND HOOD AND EXHAUST DUCT (EXTENTS OF BOARD RUN 18" PAST HOOD IN EITHER DIRECTION). REFER TO MECHANICAL DRAWINGS AND INTERIOR ELEVATIONS FOR FURTHER INFORMATION.
15. TOILET IN A.D.A. ACCESSIBLE STALLS MUST COMPLY WITH A.D.A. REQUIREMENTS. TOP OF SEAT MUST BE 17"-19" A.F.F. SEE A2.7 AND PLUMBING SHEETS FOR FURTHER INFORMATION.
16. G.C. TO PROVIDE AND INSTALL PLYWOOD TO 4'-0" THROUGHOUT DINING ROOM WHERE CORRUGATED METAL CHAIR RAIL IS INSTALLED. COORDINATE WITH SHEETS A1.5 & A2.8 FOR ALL LOCATIONS.
17. NEW PATIO FENCING AND GATE TO BE PROVIDED AND INSTALLED, REFER TO DETAILS ON SHEET A2.1.
18. CABLE SYSTEM TO BE INSTALLED AT PERIMETER OF PATIO, FINISH HEIGHT TO BE 9'-0" A.F.F. SYSTEM TO RUN PARALLEL BETWEEN PATIO RAILING AND BUILDING FACADE FOR STRING LIGHT INSTALLATION. SECURE CABLE TO WALL AND POST WITH EYE BOLT, BOLT AT WALL TO BE INSTALLED AT MORTAR JOINTS, REFER TO DETAILS ON A2.1 AND ELECTRICAL DRAWINGS.

RECEIVED
OCT 2 2 2021
BY: CF

REVISIONS
DATE

VILLA PARK
ARCHITECTURE/PLANNING/INTERIORS/LLC
300 W. BITTERS ROAD, SUITE 204
SAN ANTONIO, TX. 78216
VOICE: (210) 384-8900
FAX: (210) 384-8240
EMAIL: MARK@VILLAPARK-SA.COM

NOT FOR REGULATORY APPROVAL PERMITTING OR CONSTRUCTION

FLOOR PLAN
RUSTY TACO
3,026 S.F. INTERIOR FINISH-OUT
SAN MIGUEL SQUARE
3303 N. MIDKIFF ROAD, SUITE 197
MIDLAND, TEXAS 79705

DRAWN: AVG/TCM
CHECKED: MDN
DATE: 10/01/21
PROJECT: RUSTY TACO — MIDLAND
JOB NO: 21-230
SHEET: A1.1
7 OF 25 SHEETS

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-21-0115

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Bill Cole		Phone 832-248-9295 Email bcole@rustytacowest/com	
Address 1510 S Gregg Street	City Big Spring	State TX	Zip 79720

Property Owner Printed Name: San Miguel Midland Partners, LLC		Phone 214-960-4545 Email daniel@shopcompanies.com	
Address 4809 Cole Avenue, Suite 330	City Dallas	State TX	Zip 75205

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone Email	
Address	City	State	Zip

Street Address: 3303 N Midkiff, Suite 197, Midland, TX 79705

Business Name: Rusty Taco

Legal Description
Lot: 18 Block: 1 Subdivision: Providence Park

Current Zoning: Commercial

Reason for Request:
Opening restaurant with small bar

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation:
Sunday-Thursday: 9:00AM-10:00PM; Friday-Saturday: 9:00AM-12:00AM

Proposed Days and Hours of Alcohol Service: Monday-Thursday: 11:00AM-10:00PM;
Friday-Saturday: 11:00AM-12:00AM; Sunday: 12:00PM-10:00PM **option to close or stop serving earlier

Total Square Footage of Business: 3,026 SF

Square Footage of Alcohol Serviceable Area: Dining Room: 1,825 S; Patio: 1,416 SF

Restroom Fixtures: *Men*	**Toilets/Urinals:** 1 / 1	**Bathroom Sinks:** 1
Women	**Toilets:** 1	**Bathroom Sinks:** 1

RECEIVED
OCT 26 2021
BY: CF

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): William Cole	Date: 10/21/2021
Applicant (printed): William Cole	
Property Owner (signature): DF	Date: 10/20/2021
Property Owner (printed) : Daniel Fuller	

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~~ HOWARD

Before me, the undersigned authority, on this day personally appeared William Cole who, being by me duly sworn, upon oath says: That (s)he is authorized by Daniel Fuller, 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.

William Cole

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 21 day of October, 2021, to certify which witness my hand and seal of office.

Anna M Gutierrez
My Commission Expires
08/10/2024
ID No 11634797

Anna M

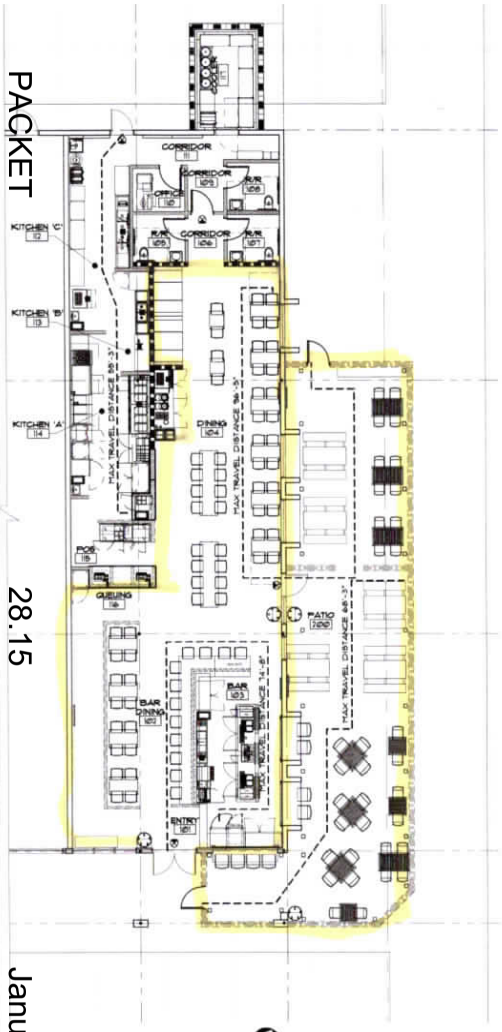
NOTARY PUBLIC, ~~MIDLAND COUNTY~~, TEXAS
HOWARD

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Floor Plan
☑ Application Fee	☐ Site Plan
Check # 1005	☑ Plans in Digital Format (PDF/JPEG)
Received By: Alla Finger	Date: 10-22-21

****Application will not be considered for scheduling until reviewed by a planner.****

PACKET 28.15 January 11, 2022



01 LIFE SAFETY PLAN
SCALE: 1/8" = 1'-0"

NORTH

RE: A1.1 FOR WALL CONSTRUCTION LEGEND

LIGHTING LEGEND: RE. M.E.P.

- NEW EXIT SIGN WITH BATTERY POWERED BACKUP

RECEIVED
OCT 2 2 2021
BY: CF

GENERAL NOTES

1. G.C. TO VERIFY QUANTITY & LOCATIONS OF FIRE EXTINGUISHERS WITH LOCAL AUTHORITIES. FIRE EXTINGUISHERS TO BE SUPPLIED BY G.C.
2. G.C. TO PROVIDE FIRE DEPARTMENT REQUIRED KEY BOX IF ONE DOES NOT ALREADY EXIST. COORDINATE LOCATION AND TYPE WITH LOCAL AUTHORITIES.
3. SEE MEP DRAWINGS AND RESPONSIBILITY SCHEDULE FOR INFORMATION REGARDING FIRE ALARM SYSTEM - SYSTEMS BY GENERAL CONTRACTOR.
4. EMERGENCY LIGHTS IN DINING AREAS TO BE RELOCATED AS REQUIRED SO THAT THEY DO NOT INTERFERE WITH WALL DECOR AND TELEVISION IN NEW LAYOUT. REFER TO INTERIOR ELEVATIONS FOR ADDITIONAL INFORMATION. VERIFY EXISTING CONDITIONS.
5. ALL EXIT DOORS TO BE EQUIPPED WITH PANIC HARDWARE, TYP.
6. G.C. TO VERIFY FUNCTION OF ALL EMERGENCY LIGHTS AND EXIT SIGNS PRIOR TO SHUT DOWN.
7. STORE MONITORING COMPANY TO INSTALL FIRE PULLS ON ALL WALLS TO RECEIVE NEW PANEL. WALL FINISH: G.C. TO COORDINATE PRIOR TO SHUT DOWN. REFER TO A1.0 FOR NEW FINISHES. VERIFY LOCATIONS IN THE FIELD.

CODE ANALYSIS

RUSTY TACO - MIDLAND

APPLICABLE CODES

Building Code:	2018 I.B.C.
Mechanical Code:	2018 I.M.C.
Plumbing Code:	2018 I.P.C.
Electrical Code:	2017 N.E.C.
Energy Code:	2015 I.E.C.C.
Fire Code:	2018 I.F.C.
Accessibility:	2012 TEXAS ACCESSIBILITY STANDARDS
ZONING	RR (CURRENT ZONING)

REGULATION	SECTION	DESCRIPTION(S)		COMMENTS	
CONSTRUCTION TYPE	602.2	TYPE II-B			
OCCUPANCY CLASSIFICATION	CHAPTER 3	A-2			
AREA - ALLOWABLE	TABLE 506.2	9,500 SF ALLOWED PER FLOOR			
TENANT AREA - ACTUAL		3,026 SF			
BUILDING AREA - ACTUAL		XXXX SF			
REQUIRED SEPARATION OF OCCUPANCIES (HOURS)	TABLE 508.4	OCCUPANCY ADJACENT / THIS PROJECT		REQUIRED SEPARATION	
		A-2 OCCUPANCY/B OCCUPANCY		2 HRS	
FIRE PROTECTION					
AUTOMATIC SPRINKLER SYSTEM	903	NOT REQUIRED	NOT PROVIDED	NOT REQUIRED IN A OCCUPANCY < 100	
STANDPIPES	905.3.1	NOT REQUIRED	NOT PROVIDED	NO FLOOR LOCATED MORE THAN 30 FT ABOVE FIRE DEPARTMENT ACCESS	
FIRE ALARM & DETECTION	907.2.1	NOT REQUIRED	NOT PROVIDED	NOT REQUIRED IN A OCCUPANCY < 300	
MEANS OF EGRESS					
MINIMUM NUMBER OF EXITS	TABLE 1006.3.3	2 REQUIRED W/OCC LOAD < 500		3 PROVIDED	
EGRESS WIDTH	SECTION 1005.3.2	.2 INCHES PER OCCUPANT		.2(X)41+.2(.2 INCHES	
EXIT ACCESS TRAVEL DISTANCE	TABLE 1017.2	56'-3" MAXIMUM		NOT TO EXCEED 200 FT W/O SPRINKLER SYS.	
DEAD-END CORRIDOR	1020.4	IN GROUP A OCCUPANCIES		NOT TO EXCEED 20 FT	
MEANS OF EGRESS ILLUMINATION	SECTION 1008	EXIT LIGHTS/EMERGENCY LIGHTS		EMERGENCY POWER PROVIDE VIA BATTERY BACK-UP	
STRUCTURAL	CHAPTER 16				
OCCUPANCY CATEGORY	TABLE 1604.5	OCCUPANCY CATEGORY II		BUILDINGS & OTHER STRUCTURES NOT LISTED IN CATAGORIES I, III, IV	
ELECTRICAL	NATIONAL ELECTRICAL CODE			NEW EQUIPMENT AND INSTALLATIONS SHALL BE PER THE 2017 EDITION OF THE NEC	
MECHANICAL	2801.1			NEW HVAC TO BE INSTALLED PER 2018 INTERNATIONAL MECHANICAL CODE	
PLUMBING	TABLE 2902.1			NEW PLUMBING TO BE INSTALLED PER 2018 INTERNATIONAL PLUMBING CODE	
	WATER CLOSETS	1/75		2 EACH REQUIRED	3 UNISEX PROVIDED
	LAVATORIES	1/200		1 EACH REQUIRED	3 UNISEX PROVIDED
	WATER FOUNTAINS	1/500		NOT REQUIRED	NOT PROVIDED
	SERVICE SINKS	1 SERVICE SINK		1 REQUIRED	1 PROVIDED

OCCUPANCY LOAD

	OCCUPANCY AREA (A-2)		AREA: SQ. FT.	OCCUPANT/S.F.	TOTAL
101	ENTRY				
102	BAR DINING		35 SF	1/15	3.3
103	BAR	SEATING	100 SF	1/15	6.7
		STANDING	100 SF	1/5	20.0
		BACK BAR	20.1 SF	1/200	1.0
104	DINING	TABLES & CHAIRS	3.01 SF	1/15	20.1
		BOOTHS	192"	1/24"	8
105	RESTROOM				
106	CORRIDOR				
107	RESTROOM				
108	RESTROOM				
109	CORRIDOR				
110	OFFICE		44 SF	1/150	0.29
111	CORRIDOR				
112	KITCHEN 'C'		152 SF	1/200	0.96
113	KITCHEN 'B'		671 SF	1/200	0.34
114	KITCHEN 'A'		239 SF	1/200	1.2
115	POS		671 SF	1/200	0.34
116	QUEUING		36 SF	1/15	1.2
117	COOLER		241 SF	1/200	0.15
	TOTAL				13.98

	OCCUPANCY AREA (A-2)		AREA: SQ. FT.	OCCUPANT/S.F.	TOTAL
2.00	PATIO	TABLES & CHAIRS	40.0 SF	1/15	2.0.0
		BENCHES	72.0" SF	1/24"	3.0.0
		STANDING	3.4 SF	1/5	6.8
	TOTAL (PATIO)				6.6.8
	TOTAL (RESTAURANT + PATIO)				1.4.0.78

300 W. BITTERS ROAD, SUITE 204
SAN ANTONIO, TX. 78216
VOICE: (210) 384-8900
FAX: (210) 384-8240
EMAIL: MARK@VILLAPARK-SA.COM
ARCHITECTURE/PLANNING/INTERIORS,PLLC

VILLA PARK

These drawings and accompanying Specifications are at all times the property of the Architect and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect. Contractor is responsible for confirming and correlating dimensions at the job site; the Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

REVISIONS DATE	#

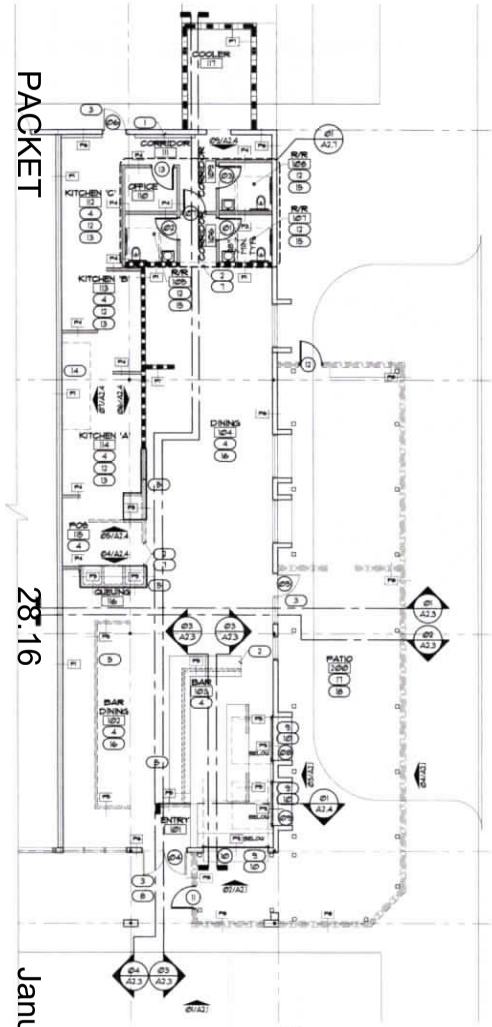
NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION

LIFE SAFETY PLAN/CODE ANALYSIS

RUSTY TACO
3,026 S.F. INTERIOR FINISH-OUT
SAN MIGUEL SQUARE
3303 N. MIDKIFF ROAD, SUITE 187
MIDLAND, TEXAS 79705

DRAWN	AVD/TDM
CHECKED	MDN
DATE	10/01/21
PROJECT	RUSTY TACO – MIDLAND
JOB NO	21-230
SHEET	A1.0

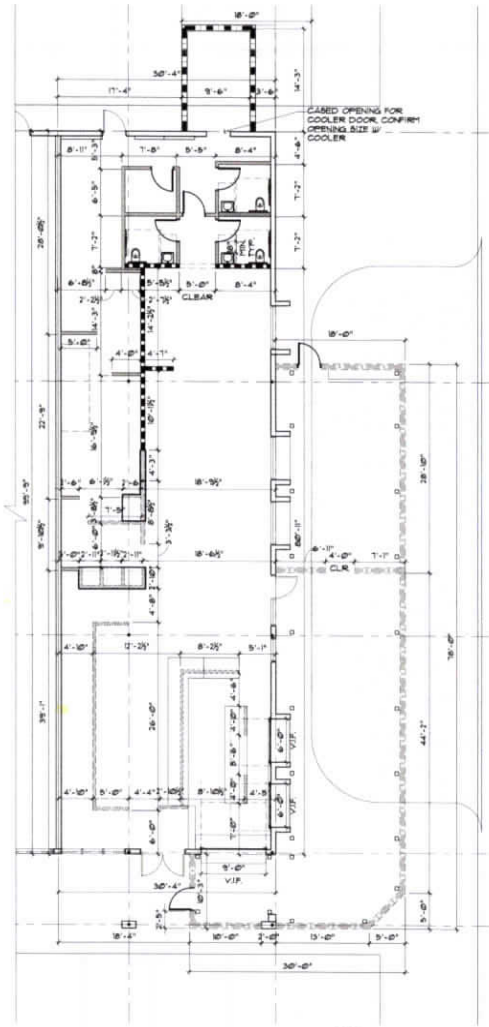
PACKET 28.16 January 11, 2022



01 KEYED FLOOR PLAN
SCALE: 1/8" = 1'-0"

NORTH

RE: A2.1 FOR DOOR AND WINDOW TYPES



02 DIMENSIONED FLOOR PLAN
SCALE: 1/8" = 1'-0"

NORTH

WALL CONSTRUCTION LEGEND:

P1	2-HOUR DEMISING WALL: IN ACCORDANCE WITH UL DESIGN NO. U408; ADD 2-LAYERS 5/8" TYPE 'X' GWB. ON TENANT'S SIDE OF EXISTING DEMISING WALL. SEALED TO ROOF DECK WITH R-19 BATT INSULATION.
P2	NEW FULL HEIGHT PARTITION: 6" METAL STUDS @ 16" O.C. WITH SOUND BATTS INSULATION TO BOTTOM OF ROOF DECK W/1-LAYER 5/8" GWB. ON EACH SIDE TO 12" ABOVE CEILING GRID AND TO BOTTOM OF DECK AT EXPOSED CEILING. PROVIDE WATER RESISTANT G.W.B. @ WET WALLS.
P3	NEW PARTITION: 6" MTL. STUDS @ 16" O.C. TO 12" ABOVE CEILING GRID W/ 1-LAYER 5/8" GWB. ON EACH SIDE W/ SOUND BATTS INSULATION TO 12" ABOVE CEILING GRID. PROVIDE WATER RESISTANT GWB. @ WET WALLS. PROVIDE 3-5/8" MTL. STUD BRACING TO ADJACENT WALL.
P4	NEW PARTITION: 3-5/8" MTL. STUDS @ 16" O.C. TO 12" ABOVE CEILING GRID W/ 1-LAYER 5/8" GWB. ON EACH SIDE TO 12" ABOVE CEILING GRID. PROVIDE WATER RESISTANT GWB. @ WET WALLS. PROVIDE 3-5/8" MTL. STUD BRACING TO ADJACENT WALL.
P5	NEW LOW PARTITION: 3-5/8" MTL. STUDS @ 16" O.C. TO BOTTOM OF COUNTER W/1-LAYER 5/8" GWB. ON EACH SIDE TO BOTTOM OF COUNTER. RE: A2.3-A2.5 FOR HEIGHTS
P6	EXISTING WALL: TO REMAIN. PROVIDE 1 LAYER 5/8" GWB ON INSIDE FACE WHERE NOT EXISTING.
P7	NEW EXTERIOR WALL: 1/2" F.R. STUCCO ON SELF FURRING METAL LATH ON EACH SIDE OF 8" SMOOTH FACE CMU WALL TO 5'-6" A.F.F. PAINT TO MATCH EXISTING BUILDING.
P8	NEW EXTERIOR WALL: 1/2" F.R. STUCCO ON SELF FURRING METAL LATH ON EACH SIDE OF 8" SMOOTH FACE CMU WALL TO 5'-6" A.F.F. PAINT TO MATCH EXISTING BUILDING.
P9	INFILL WALL: TO MATCH EXISTING.

GENERAL NOTES:

1. GENERAL CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS AT THE JOB SITE BEFORE COMMENCING ANY PHASE OF THE WORK. ADJUSTMENTS FOR FIT AND COORDINATION SHALL BE MADE AT NO ADDITIONAL COST TO THE OWNER. NOTIFY ARCHITECT OF ANY CONFLICTS, DISCREPANCIES OR OMISSIONS PRIOR TO COMMENCEMENT OF THE CONTRACT WORK.
2. ALL INTERIOR DIMENSIONS ARE FROM FINISHED FACE OF WALL, UNLESS OTHERWISE NOTED. ALL EXTERIOR DIMENSIONS ARE FROM FACE OF EXISTING WOOD STUDS, UNLESS OTHERWISE NOTED.
3. SEALANT COLOR TO MATCH WALL COLOR. DO NOT PAINT.
4. PROVIDE NECESSARY BLOCKING IN WALLS WHERE FIXTURES, SIGNAGE, SHELVING, CABINETS, COUNTERS, CHAIR RAIL, CORNICE TRIM, AND OTHER MISCELLANEOUS ITEMS THAT REQUIRE A RIGID AND SECURE ATTACHMENT TO SAID WALL.
5. UNLESS NOTED OTHERWISE, ALL DOORS ARE TO BE LOCATED AT 4" FROM INSIDE FACE OF PARTITION TO EDGE OF JAMB.
6. CONTRACTOR TO SUPPLY ALL FIRE EXTINGUISHERS, EMERGENCY SIGNAGE AND KNOX BOX TO SATISFY LOCAL BUILDING CODES.
7. ALL CONTRACTORS/SUB-CONTRACTORS SHALL REVIEW THE OUTLINED SPECIFICATIONS FOR WORK RELATED TO THEIR CONTRACT/TRADE.

KEY NOTES

1. LOCATION OF NEW ELECTRICAL PANELS.; COORDINATE WITH ELECTRICAL DRAWINGS FOR FURTHER INFORMATION.
2. BULKHEAD OR SOFFIT ABOVE; REFER TO REFLECTED CEILING PLAN AND STRUCTURAL DRAWINGS, WHERE APPLICABLE, FOR FURTHER INFORMATION. BOX OUT NEW STRUCTURAL BEAMS WITH GYP. BD. AS REQ.
3. G.C. TO ENSURE EXISTING HARDWARE COMPLIES WITH LOCAL CODES AND MEETS HARDWARE REQUIREMENTS LISTED IN DOOR SCHEDULE; SUPPLEMENT WHERE REQUIRED.
4. PROVIDE WOOD BLOCKING AT ALL WALL MOUNTED ITEMS SUCH AS SHELVING, TOILET ACCESSORIES, AV, ETC. COORDINATE LOCATIONS WITH A1.2, A2.3, A2.4, A2.7, AND APPROPRIATE VENDORS AS REQUIRED.
5. PARTIAL HEIGHT WALL POSTS TO BE FULL HEIGHT OF WALLS AND ARE TO BE INSTALLED AT ENDS AND CORNERS OF WALLS AND AT 42" O.C.
6. NOT USED.
7. NEW WALL/BULKHEAD/SOFFIT CONSTRUCTION TO ALIGN WITH WALL/CORNER, TRANSITION TO BE SEAMLESS.
8. GC TO PROVIDE BLOCKING AND FINAL ELECTRICAL CONNECTIONS FOR EXTERIOR SIGNAGE. COORDINATE WITH OWNER'S SIGN VENDOR.
9. GC TO PROVIDE AND INSTALL HEADER, GARAGE DOORS AND RUBBER WEATHER STRIPPING AT EXISTING/NEW OPENING. REFER TO A2.4 FOR SECTION DETAIL.
10. FINISH THREE SIDES AT GARAGE DOOR OPENING WITH BREAK METAL, COLOR TO BE BRONZE. FLASH AND SEAL WITH CLEAR SILICONE SEALANT. COORDINATE WITH STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION ON OPENING.
11. LOCATION OF FIRE EXTINGUISHER. MINIMUM ONE 2A10BC CLASS FIRE EXTINGUISHER AND ONE TYPE 'K' FIRE EXTINGUISHER SHALL BE LOCATED WITH 75 FEET OF TRAVEL DISTANCE. VERIFY FINAL LOCATION & CLASSIFICATION REQUIREMENTS W/ LOCAL AREA FIRE INSPECTOR.
12. G.C. TO PROVIDE AND INSTALL 5/8" CEMENTICIOUS BOARD UP TO 24" AND 5/8" WATER RESISTANT GYP. WALLBOARD (PURPLE BOARDS) ABOVE IN WET LOCATIONS. REFER TO INTERIOR ELEVATIONS AND DETAILS. BLOCKING REQUIRED FOR SHELVES OR WALL MOUNTED EQUIPMENT IS TO BE LOCATED WITHIN WALL CAVITY IN THESE AREAS. REFER TO A2.3, A2.6, AND A2.7 FOR FURTHER INFORMATION.
13. G.C. TO PROVIDE AND INSTALL 5/8" PLYWOOD IN LIEU OF WATER RESISTANT GYP. WALLBOARD THROUGHOUT THE KITCHEN (UNLESS OTHERWISE NOTED). PLYWOOD TO SERVE AS BLOCKING. G.C. TO ENSURE PLYWOOD IS PRIMED PRIOR TO RECEIVING FRP FINISH.
14. G.C. TO PROVIDE AND INSTALL 5/8" CEMENTICIOUS BOARD FROM FLOOR TO DECK BEHIND HOOD AND EXHAUST DUCT (EXTENTS OF BOARD RUN 18" PAST HOOD IN EITHER DIRECTION). REFER TO MECHANICAL DRAWINGS AND INTERIOR ELEVATIONS FOR FURTHER INFORMATION.
15. TOILET IN A.D.A. ACCESSIBLE STALLS MUST COMPLY WITH A.D.A. REQUIREMENTS. TOP OF SEAT MUST BE 17"-19" A.F.F. SEE A2.7 AND PLUMBING SHEETS FOR FURTHER INFORMATION.
16. G.C. TO PROVIDE AND INSTALL PLYWOOD TO 4'-0" THROUGHOUT DINING ROOM WHERE CORRUGATED METAL CHAIR RAIL IS INSTALLED. COORDINATE WITH SHEETS A1.5 & A2.6 FOR ALL LOCATIONS.
17. NEW PATIO FENCING AND GATE TO BE PROVIDED AND INSTALLED. REFER TO DETAILS ON SHEET A2.1.
18. CABLE SYSTEM TO BE INSTALLED AT PERIMETER OF PATIO. FINISH HEIGHT TO BE 9'-0" A.F.F. SYSTEM TO RUN PARALLEL BETWEEN PATIO RAILING AND BUILDING FACADE FOR STRING LIGHT INSTALLATION. SECURE CABLE TO WALL AND POST WITH EYE BOLT. BOLT AT WALL TO BE INSTALLED AT MORTAR JOINTS. REFER TO DETAILS ON A2.1 AND ELECTRICAL DRAWINGS.

RECEIVED
OCT 2 2 2021
BY: CF

REVISIONS	DATE

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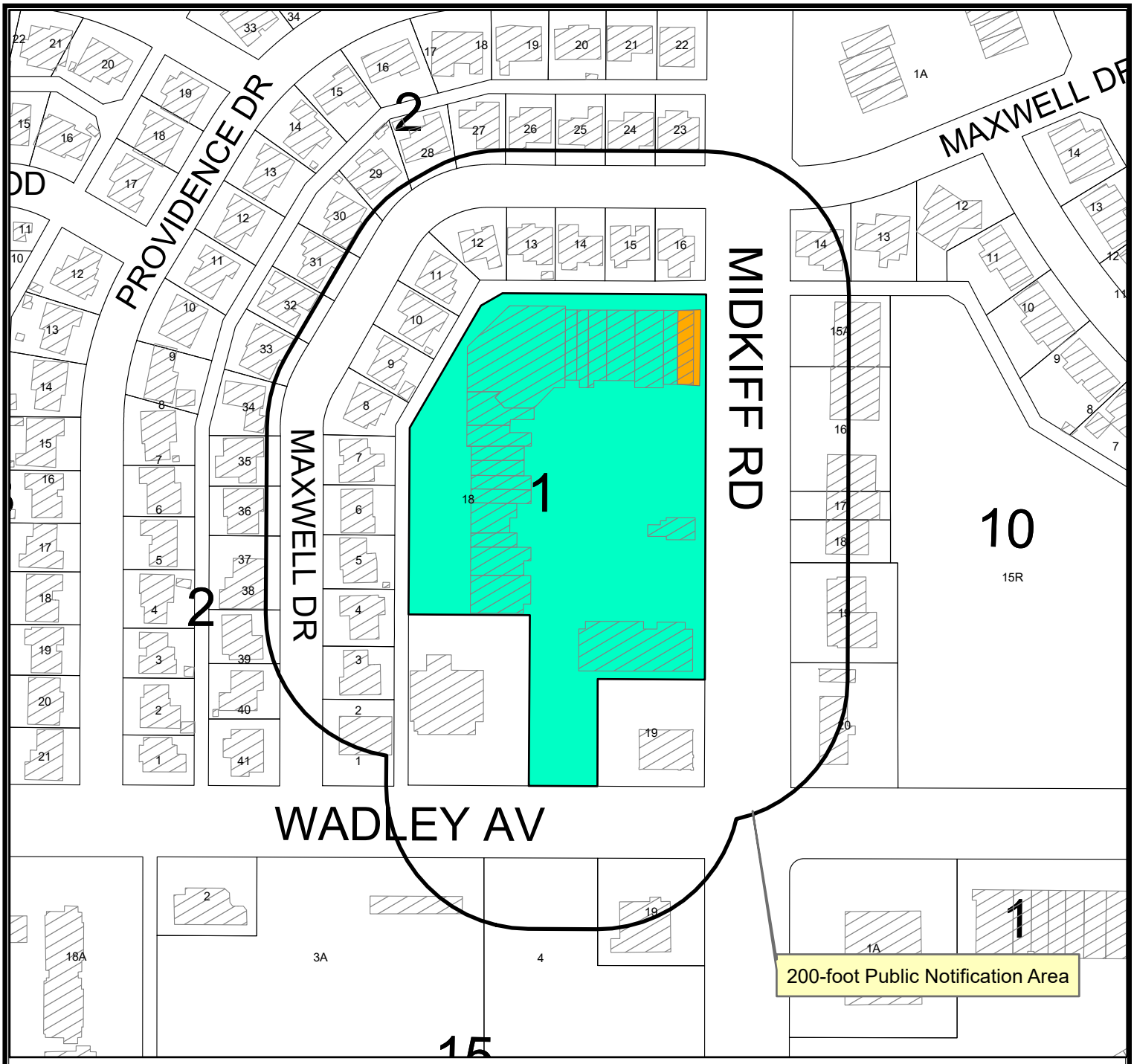
FLOOR PLAN

RUSTY TACO
3,026 S.F. INTERIOR FINISH-OUT
SAN MIGUEL SQUARE
3303 N. MIDKIFF ROAD, SUITE 197
MIDLAND, TEXAS 79705

DRAWN	AVG/TDM
CHECKED	MDN
DATE	10/01/21
PROJECT	RUSTY TACO – MIDLAND
JOB. NO.	21-230
SHEET	A1.1
	7 OF 25 SHEETS

Site Plan (Exhibit B)





LOCATION MAP

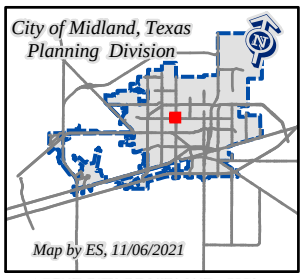
SUD-21-0115 **Scale: 1" = 200'**

Consider a request by Rusty Taco Restaurant, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a restaurant, on a 3,241 square foot portion of Lot 18, Block 1, Providence Park Addition, City and County of Midland, Texas.

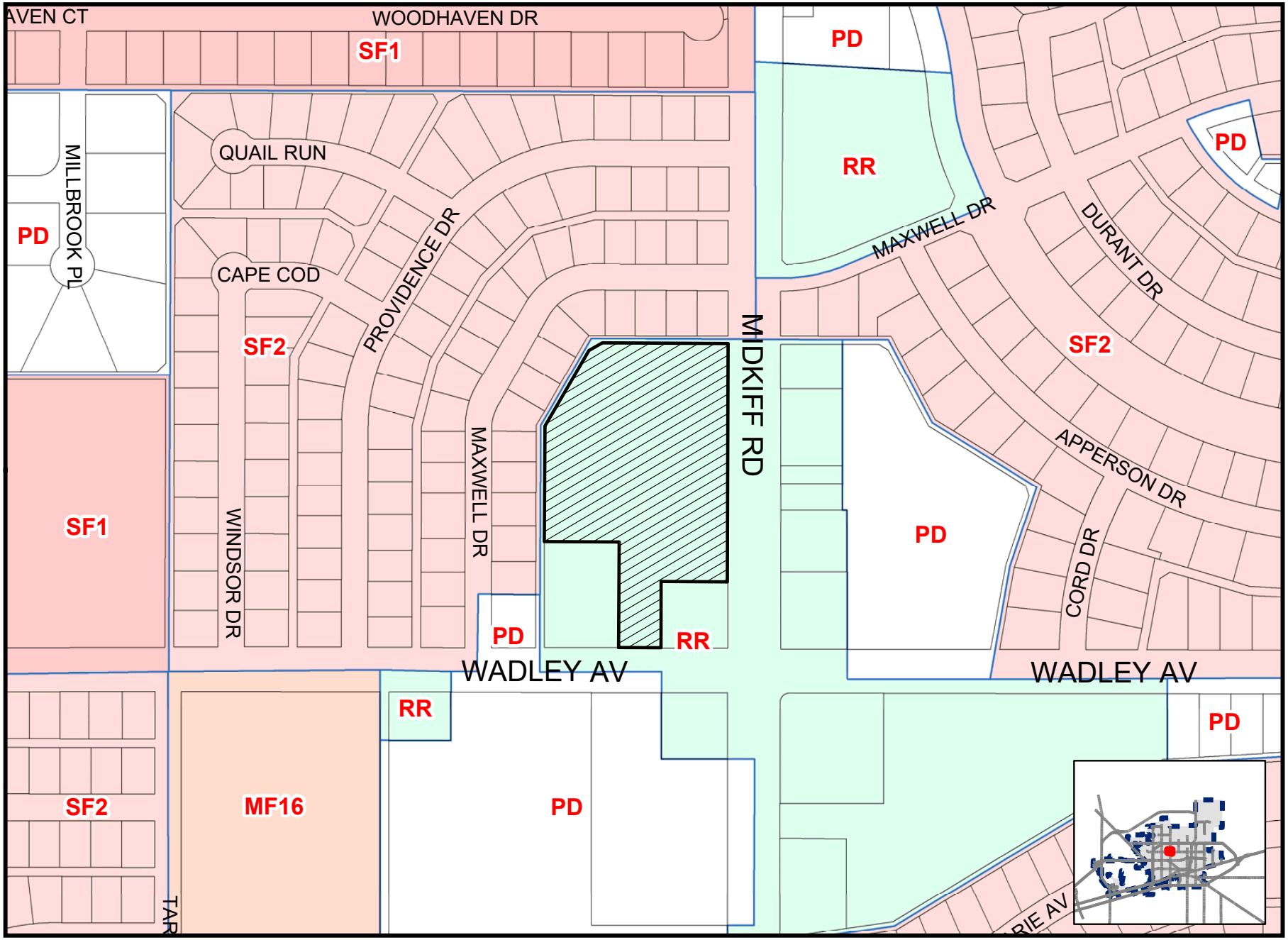
Generally located on the west side of N. Midkiff Road, approximatly 605 feet north of W. Wadley Avenue. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



January 11, 2022



Map By ES, 11/06/2021

SUD-21-0115

Scale: 1" = 200'

ZONING MAP

PACKET
28.19
January 11, 2022




A&A NAILS


CNB
Community National Bank
ATM



City Council Meeting

Item Number: 29

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 1, OVERSTREET ADDITION, AND LOTS 6, 23, 24, AND 25, BLOCK 33, UNRECORDED CAROL CREST ADDITION, SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 255 FEET SOUTH OF GARDEN CITY HIGHWAY AND APPROXIMATELY 261 FEET EAST OF HENDERSON BOULEVARD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $8,712.00; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Ed Aleman, is requesting to vacate a 0.08-acre portion of the alley right-of-way, located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, and Lots 6, 23, 24 and 25, Block 33, Unrecorded Carol Crest Addition, City and County of Midland, Texas, for replatting purposes.

Recommended City Council Action:

Approve

Fiscal Impact:

The 2021 appraised value of the right-of-way is $2.50 per square foot, for a total value of $8,712.

Discussion:

The property is currently in the process of being replatted. The approximated area that will be vacated is 3,621 square feet (0.08-acres). The vacation will aid their client in utilization of this area for their projected future development.

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 $2.50 per square foot or $8,712.

The alley right-of-way to the west of this vacating request was vacated in July 2014. Ordinance Number 9282.

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 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 objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

AT&T: (Approved with Conditions)

We do have utilities on the power poles where they are wanting it vacated. If they want it

vacated, they will need to pay to have the utilities rerouted.

Atmos: (Approved with Conditions)

Atmos Energy currently has facilities located within the above-described alley Right of Way between New Jersey and Garden City Hwy. and east of Henderson Blvd. We currently have a 3in. & 4in. steel gas main that extends along the length of this alley. Atmos could vacate the referenced portion however since we are currently serving customers off this line, we would need to either relocate facilities or maintain a utility easement. Any relocation costs would be passed onto individual or entity requesting the vacate.

Grande: (Approved)

Grande Communications does not have any utilities at this location.

Oncor: (Approved with Conditions)

Oncor is retaining the easement at this location.

Suddenlink: (Approved)

We do not have plant in this location, and we are good with this request

Midland Central Appraisal District:

The vacation area indicated has a current value of $2.50 per square foot or $16,335.00.

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 0.08-acre portion of the alley right-of-way, located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, City and County of Midland, Texas, for replatting purposes to be subject to conditions A through C.

Conditions:

A. **That the City of Midland has received from the property owner the sum of $8,712.00.**

B. **That an accessible nonexclusive utility easement is retained.**

C. **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 January 5, 2022, 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

Monte William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 1, OVERSTREET ADDITION, AND LOTS 6, 23, 24, AND 25, BLOCK 33, UNRECORDED CAROL CREST ADDITION, SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 255 FEET SOUTH OF GARDEN CITY HIGHWAY AND APPROXIMATELY 261 FEET EAST OF HENDERSON BOULEVARD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $8,712.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.08-acre portion of alley right-of-way located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, and Lots 6, 23, 24, and 25, Block 33, Unrecorded Carol Crest Addition, Section 1, Block 39, T-2-S, T&P RR Co. 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 $8,712.00, 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 from the abutting property owner(s) the sum of $8,712.00; and

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.

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 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., 2022; 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

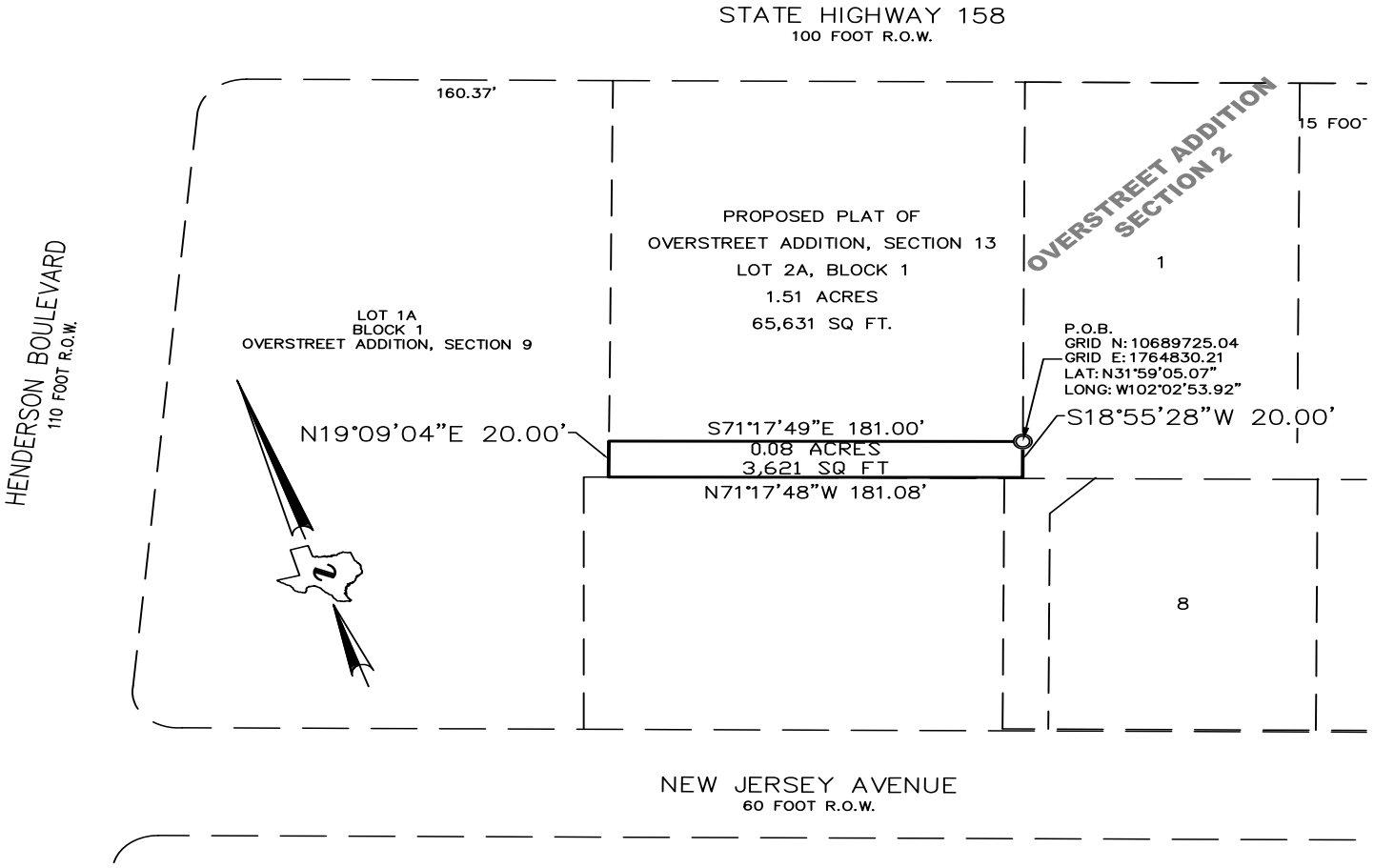
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



FIELD NOTE DESCRIPTION OF AN ALLEY BEING A 0.08 ACRE TRACT OF LAND , OUT OF SECTION 1, BLOCK 39, T–2–S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.08 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR SET FOR THE NORTHEAST CORNER OF THIS TRACT, ALSO BEING THE SOUTHWEST CORNER OF LOT 1 BLOCK 2, OVERSTREET ADDITION SECTION 2;

THENCE SOUTH 18°55'28" WEST 20.00 FEET TO A THE SOUTHEAST CORNER OF THIS TRACT;

THENCE NORTH 71°17'48" WEST 181.08 FEET TO THE SOUTHWEST CORNER OF THIS TRACT;

THENCE NORTH 19°09'04" EAST 20.00 FEET TO THE NORTHWEST CORNER OF THIS TRACT;

THENCE SOUTH 71°17'49" EAST 181.00 FEET TO THE PLACE OF BEGINNING.

Surveyor Certification

TO THE LIENHOLDERS, TWO DOG INVESTMENTS 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 25TH DAY OF AUGUST 2021

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

ALLEY VACATION

A 0.08 ACRE 20' ALLEY ROW VACATION

OUT OF THE PROPOSED PLAT OF

OVERSTREET ADDITION, SECTION 13

LOT 2A, BLOCK 1

MIDLAND COUNTY, TEXAS

January 11, 2022

SCALE: 1" = 80'

PROJECT: 77872
JOB NO.: 77872

MIDLAND
Feel the Energy!

Office of the City Manager

December 27, 2021

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.08-acre portion of alley right-of-way located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, and Lots 6, 23, 24, and 25, Block 33, Unrecorded Carol Crest Addition, Section 1, Block 39, T-2-S, T&P RR Co. 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 $8,712.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

Robert Patrick
City Manager

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-21-0037

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Ed Aleman		Phone (432) 684-5548 Email ealeman@schumannonline.net	
Address 800 N Marienfeld, Suite 100	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: 2308 GARDEN CITY HWY

Alley south of Lots 1, 2, Block 1, Overstreet Addition, and Lot 6, Block 33, Carol Crest (Unrecorded)

Reason for Request: In the process of re-platting all 6 lots into 1 lot and will be including the alley portion with the re-plat.

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: Alley is not being used. Adjoining tract to the west has vacated their portion also.

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.

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): Eduardo J. Aleman - Ed Aleman (Schumann Engineering)		Date: 8-26-21
Affected Property Owners:		
Signature: Stan Mulkey	Print: Stan Mulkey	Date: 8/27/21
Signature: Darin L. Clements	Print: Darin L. Clements	Date 10-12-21
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)

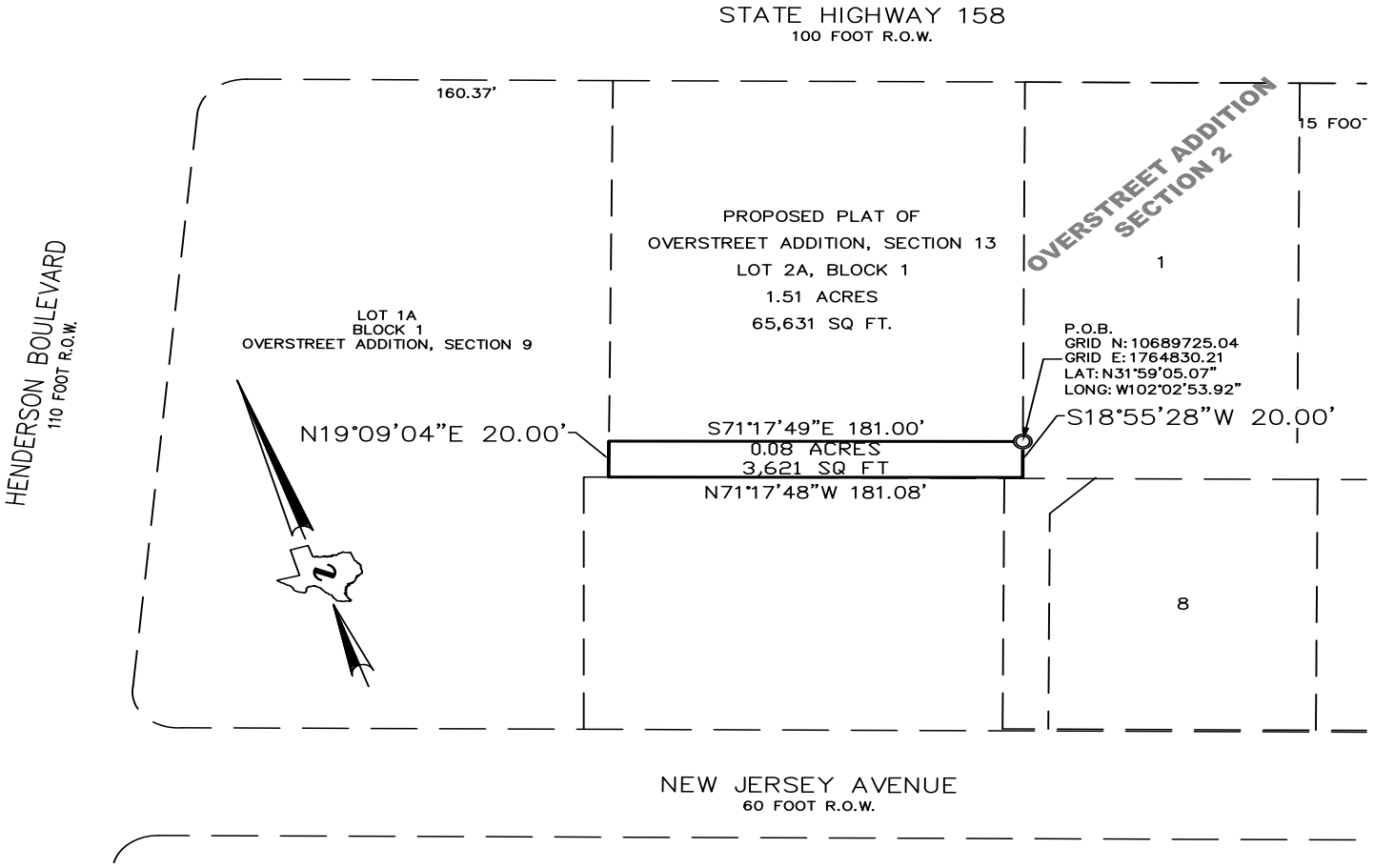
☑ Application Fee

Check # 16084

Received By: Date RECEIVED AUG 26 2021

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****



FIELD NOTE DESCRIPTION OF AN ALLEY BEING A 0.08 ACRE TRACT OF LAND , OUT OF SECTION 1, BLOCK 39, T–2–S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.08 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

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THENCE SOUTH 18°55'28" WEST 20.00 FEET TO A THE SOUTHEAST CORNER OF THIS TRACT;

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DATED THIS 25TH DAY OF AUGUST 2021

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

PACKET

ALLEY VACATION

A 0.08 ACRE 20' ALLEY ROW VACATION

OUT OF THE PROPOSED PLAT OF

OVERSTREET ADDITION, SECTION 13

LOT 2A, BLOCK 1

MIDLAND COUNTY, TEXAS

January 11, 2022

SCALE: 1" = 80'

PROJECT: 77872
JOB NO.: 77872

ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Kelly Martinez
Senior Planner/Planning Division
300 N. Loraine
Midland, Texas 79701

November 9, 2021

Re: Case Name: 2308 Garden City Hwy.
Case Number: V-21-0037

Kelly,

Atmos Energy currently has facilities located within the above-described alley Right of Way between New Jersey and Garden City Hwy. and east of Henderson Blvd. We currently have a 3in. & 4in. steel gas main that extends along the length of this alley. Atmos could vacate the referenced portion however since we are currently serving customers off this line, we would need to either relocate facilities or maintain a utility easement. Any relocation costs would be passed onto individual or entity requesting the vacate.
Please let me know if you have any further questions.

Sincerely,

Mark Lieb

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
432-617-3447 office
mark.lieb@atmosenergy.com

Kelly Martinez

From: UNDERWOOD, JERRY D <ju1659@att.com>
Sent: Thursday, November 18, 2021 8:43 AM
To: Kelly Martinez
Subject: RE: Vacation Request

We do have utilities on the power poles where they are wanting it vacated. If they want it vacated they will need to pay to have the utilities rerouted.

Thanks,
Jerry

From: Kelly Martinez <kmartinez@midlandtexas.gov>
Sent: Thursday, November 18, 2021 8:37 AM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: RE: Vacation Request

Good Morning,

The applicant has resubmitted an updated plat for the vacation of 2308 Garden City Highway. They will no longer be vacating the north/south portion of the alley. I have attached the exhibit. Please advise if your company has utilities within this right-of-way.

Thank you,
Kelly Martinez
Planner|Development Services
O. 432-685-7915
E. kmartinez@midlandtexas.gov

MIDLAND
Feel the Energy!

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: UNDERWOOD, JERRY D <ju1659@att.com>
Sent: Thursday, November 4, 2021 8:53 AM
To: Kelly Martinez <kmartinez@midlandtexas.gov>
Subject: RE: Vacation Request

Yes, that would be ok. If they want anything moved they would need to pay, I am guessing it will be the same with power since we are on their poles.

Thanks,
Jerry

From: Kelly Martinez <kmartinez@midlandtexas.gov>
Sent: Thursday, November 4, 2021 8:50 AM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: RE: Vacation Request

Okay would you be okay with them vacating and keeping a utility easement?

Kelly Martinez
Planner|Development Services
O. 432-685-7915
E. kmartinez@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: UNDERWOOD, JERRY D <ju1659@att.com>
Sent: Thursday, November 4, 2021 8:44 AM
To: Kelly Martinez <kmartinez@midlandtexas.gov>
Subject: RE: Vacation Request

AT&T does have facilities in this ROW.

Thanks,
Jerry

From: Kelly Martinez <kmartinez@midlandtexas.gov>
Sent: Thursday, November 4, 2021 8:23 AM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: Vacation Request

Dear Mr. Underwood,

Ed Aleman 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) 685-7915 if you have any questions. You can send your response via email to kmartinez@midlandtexas.gov.

Thank you,
Kelly Martinez

Planner|Development Services
O. 432-685-7915
E. kmartinez@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Kelly Martinez

From: Ruben Guerra <ruben.guerra@mygrande.com>
Sent: Friday, November 5, 2021 5:30 PM
To: Kelly Martinez
Subject: Re: Vacation Request



Grande Communications does not have any utilities at this location.

Thank You

Ruben Guerra
Construction Coordinator
C-432-653-9369
T-432-272-3088
Grande Communications

On Thu, Nov 4, 2021 at 8:28 AM Kelly Martinez <kmartinez@midlandtexas.gov> wrote:

> Dear Mr. Guerra,
>
> Ed Aleman 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) 685-7915 if you have any questions. You can send your response via email to kmartinez@midlandtexas.gov.
>
> Thank you,
>
> Kelly Martinez
>
> Planner|Development Services
>
> O. 432-685-7915
>
> E. kmartinez@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Kelly Martinez

From: Arguello, Martin <Martin.Arguello@oncor.com>
Sent: Friday, November 5, 2021 9:55 AM
To: Kelly Martinez
Cc: Blankenship, Chad
Subject: FW: Vacation Request
Attachments: V-21- 0037, Utilities Letters Oncor.pdf.html.pdf; V-21-0037, Exhibit A.pdf.html.pdf; V-21-0037, Location Map.pdf.html.pdf

Good Morning Kelly! Per our phone conversation, and speaking with our ROW group. Oncor is retaining the easement at this location.

From: Blankenship, Chad
Sent: Thursday, November 4, 2021 12:10 PM
To: Arguello, Martin <Martin.Arguello@oncor.com>
Subject: FW: Vacation Request

FYI..Please work with Carissa on this.

Thanks,

Chad Blankenship
PMDS Manager|WTX
Oncor Electric Delivery
325-456-2674

My Director: James Blanton-(817) 905-6455
James.blanton@oncor.com

From: Kelly Martinez [mailto:kmartinez@midlandtexas.gov]
Sent: Thursday, November 4, 2021 8:25 AM
To: Henderson, Jeffrey <Jeffrey.Henderson@oncor.com>; Blankenship, Chad <Chad.Blankenship@oncor.com>
Subject: Vacation Request

Dear Mr. Henderson and Mr. Blankenship,

Ed Aleman 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) 685-7915 if you have any questions. You can send your response via email to kmartinez@midlandtexas.gov.

Thank you,
Kelly Martinez
Planner|Development Services

O. 432-685-7915
E. kmartinez@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Kelly Martinez

From: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Sent: Thursday, November 4, 2021 11:15 AM
To: Kelly Martinez
Subject: RE: External E-mail - Vacation Request

We do not have plant in this location and 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: Kelly Martinez <kmartinez@midlandtexas.gov>
Sent: Thursday, November 4, 2021 8:26 AM
To: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: External E-mail - Vacation Request

[External Email]

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Dear Mr. Ritter,

Ed Aleman 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) 685-7915 if you have any questions. You can send your response via email to kmartinez@midlandtexas.gov.

Thank you,
Kelly Martinez
Planner|Development Services
O. 432-685-7915
E. kmartinez@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Kelly Martinez

From: drambo@midcad.org
Sent: Thursday, November 18, 2021 3:15 PM
To: Kelly Martinez
Subject: RE: Vacation Request

KELLY...THE VACATION REQUEST OF THE .08 ACRE ALLEY IS VALUED AT....$ 2.5 /SF OR $8,712

Dennis Rambo
Assistant Chief Appraiser
Midland Central Appraisal District
432 699 4991 ext 3030
432 689 7185 fax

From: Kelly Martinez <kmartinez@midlandtexas.gov>
To: "drambo@midcad.org" <drambo@midcad.org>
Date: 11/18/2021 08:35 AM
Subject: RE: Vacation Request

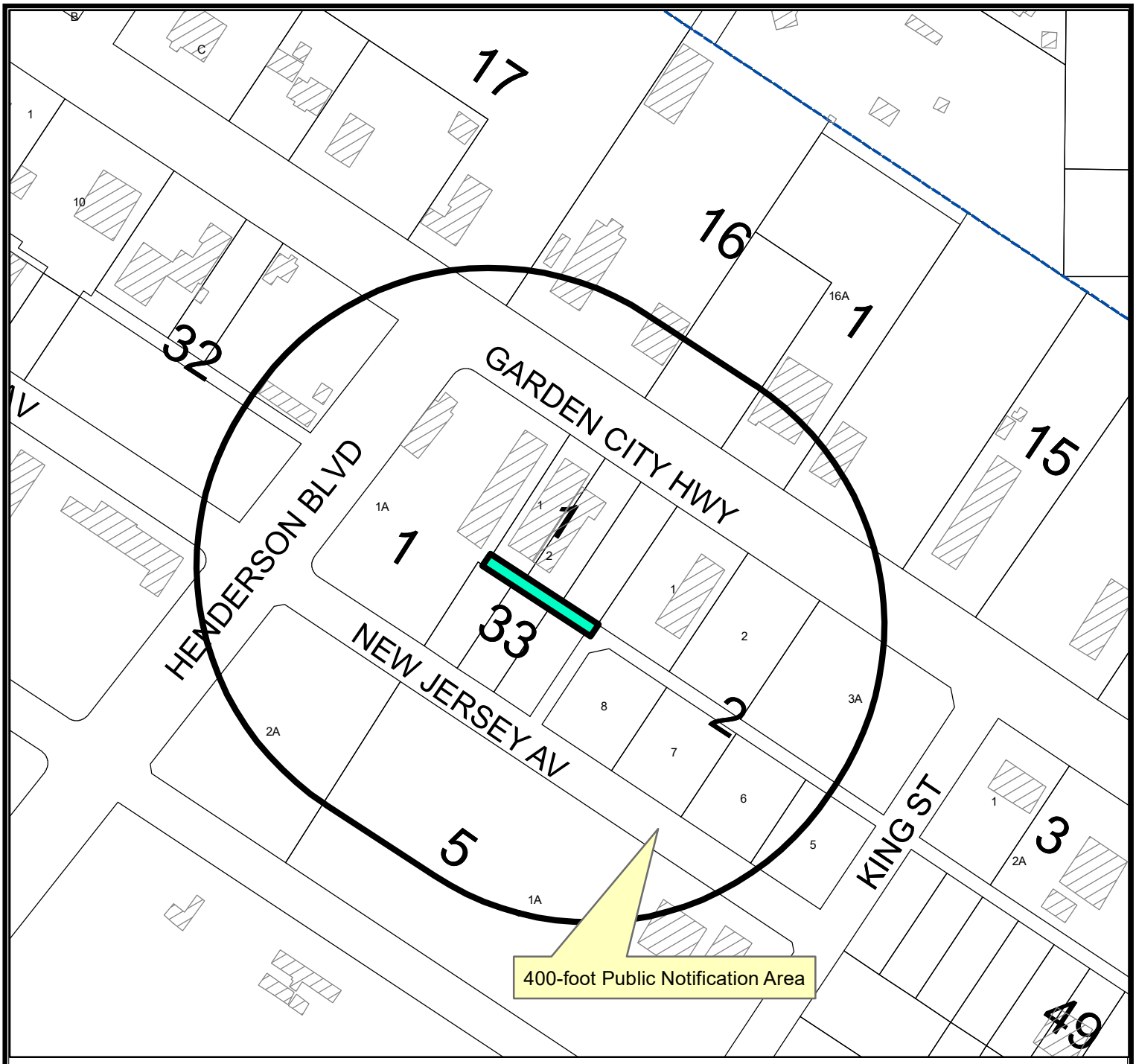
Good Morning Mr. Rambo,

The applicant has resubmitted an updated plat for the vacation of 2308 Garden City Highway. They will no longer be vacating the north/south portion of the alley. I have attached the exhibit. Please prepare the estimated market value of this parcel so that the City Council may have this information during its consideration of this request.

CASE NUMBER	GENERAL LOCATION	AREA SQ. FT.	CURRENT ZONING
V-21-0037	On the south side of Garden City Highway, approximately 261-feet east of Henderson Drive. (Council District 2)	0.08-acre portion of the alley right-of-way, located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, and Lots 24 and 25, Block 33, Unrecorded Carol Crest Addition, City and County of Midland, Texas.	LI, Light Industrial District

Thank you,

Kelly Martinez
Planner|Development Services
O. 432-685-7915
E. kmartinez@midlandtexas.gov



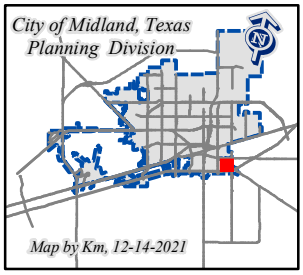
LOCATION MAP

V-21-0037 **Scale: 1" = 200'**

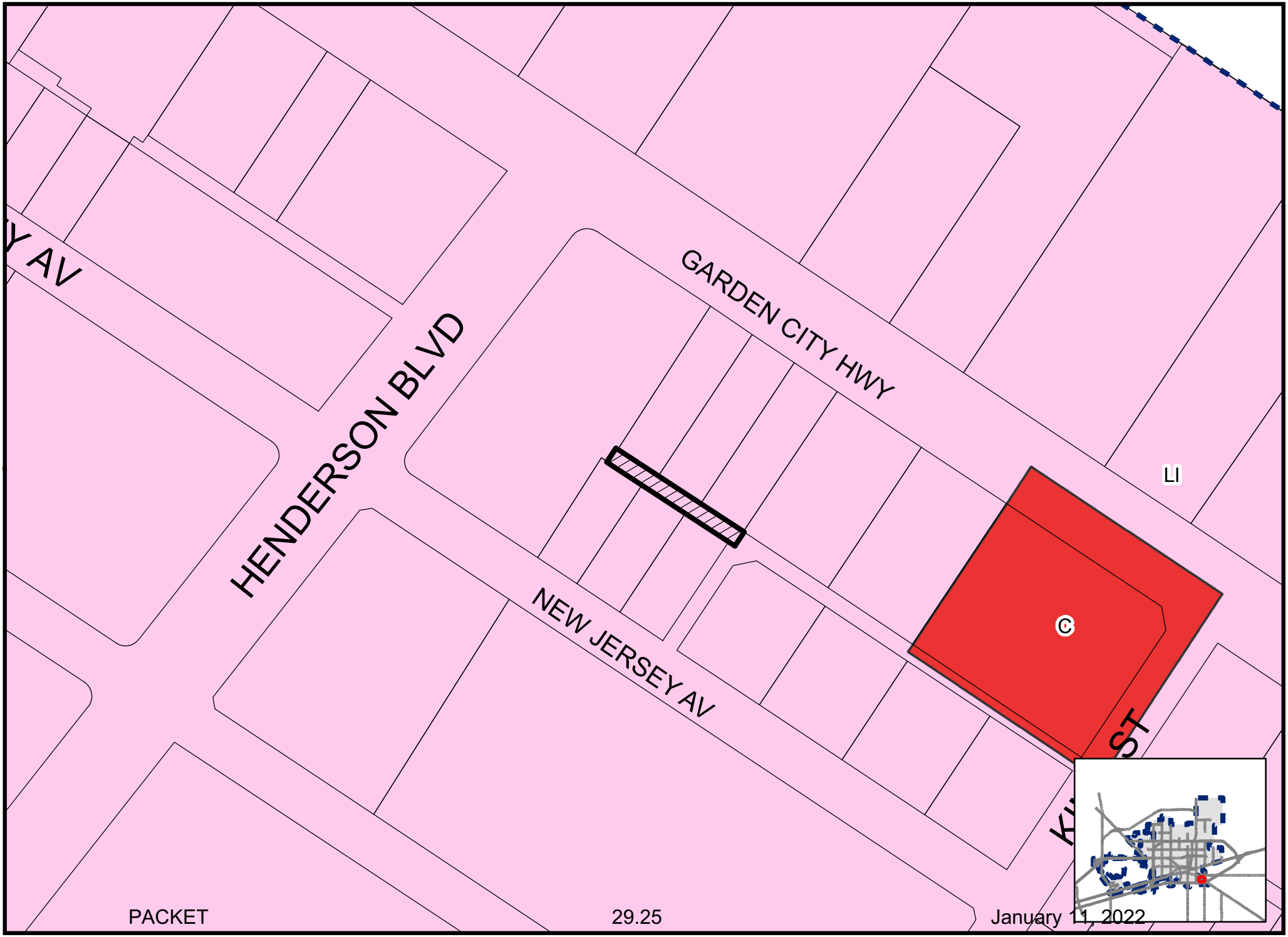
Consider a request for a vacation of a 0.08-acre portion of the alley right-of-way, located adjacent to Lots 1 and 2, Block 1, Overstreet Addition, and Lots 6, 23, 24, and 25, Block 33, Unrecorded Carol Crest Addition, City and County of Midland, Texas. Generally located on the south side of Garden City Highway, approximately 261-feet east of Henderson Boulevard. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By KM, 12/14/2021

V-21-0037

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 30

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Cole Furqueron,

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 19 AND 20, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST CALIFORNIA AVENUE AND SOUTH BUNCHE 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, Marc Colvin, is requesting a zone change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District on the properties located at 801 and 803 S. Bunche Street to allow for the construction of a new single-family residence.

Recommended City Council Action:

☒ **Approve** ☐ **Deny** ☐ **Direction/Informational**

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The properties to the north across E. California Avenue is zoned MF-22, Multiple-Family Dwelling District, and the location of single-family housing. The properties to the east and are zoned SF-3, Single-Family Dwelling District and SF-3, Single-Family Dwelling District, and the location of single-family residences. The properties to the south and west are zoned MF-22, Multiple-Family Dwelling District, and the location of a single-family residence and a vacant lot, respectively.

Analysis:

The properties are located at 801 & 803 S. Bunche Street and are currently vacant. The applicant, Marc Colvin, is requesting this zone change to allow for the construction of a single-family residence on each of the properties. The current zoning of this property is MF-22, Multiple-Family Dwelling District. Per the previous zoning ordinance, single-family detached dwellings were allowed within this zoning district. As of July 1, 2019, the new zoning ordinance does not allow the use of single-family detached dwellings within the MF-22 Multiple-Family Dwelling District.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. 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)

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:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City Tomorrow comprehensive plan as this area calls for Urban Residential- Medium. This designation emphasizes a mix of housing styles, including single-family detached, single-family attached, and townhouses. Therefore, the construction of single-family housing at this location is in conformance with the recommendations of the Tall City Tomorrow plan as it provides for the integration of uses. It would also support the existing neighborhood characteristics and uses of the area.

Staff recommends approval of this zone change from MF-22 Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District, subject to condition A.

Condition:

A. That the use and development of the property shall conform to the regulations of the SF-3, Single-Family Dwelling District.

Letters of Objection:

As of December 1, 2021, staff has not received any letters of objection.

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 19 AND 20, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST CALIFORNIA AVENUE AND SOUTH BUNCHE 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 19 and 20, Block 64, Park Avenue Heights, Second Section, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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: 2-21-0273

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Marc Colvin		Phone (281) 235-5794 Email marc363b@hotmail.com	
Address 6504 Acorn Ct.	City Pearland	State TX	Zip 77584

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address:

Legal Description
Lot: 19+20 Block: 64 Subdivision: PARK AVENUE HEIGHTS

Current Zoning: MULTI-FAMILY 22

Proposed Zone: SINGLE FAMILY 3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Building SINGLE FAMILY HOME COMMUNITY INVESTMENT

Present Use of Property: NA- EMPTY LOT

Proposed Use of Property: Building SINGLE FAMILY HOUSING

How would this zone change affect the public health, safety and welfare? NO

Describe how conditions affecting the property have changed since present zoning designation: PRESENT ZONING, MF22, LIMITS REAL ESTATE INVESTMENT IN ~~SINGLE~~ SINGLE FAMILY HOUSING. EXISTING LOT SIZES ARE NOT LARGE ENOUGH OR DO NOT MEET the requirements for MF INVESTMENTS

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): Marc Colvin	Date: ~~10/26/21~~ (2)
Applicant (printed):	
Property Owner (signature): Marc Colvin	Date: 10/26/21
Property Owner (printed) : MARC Colvin	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

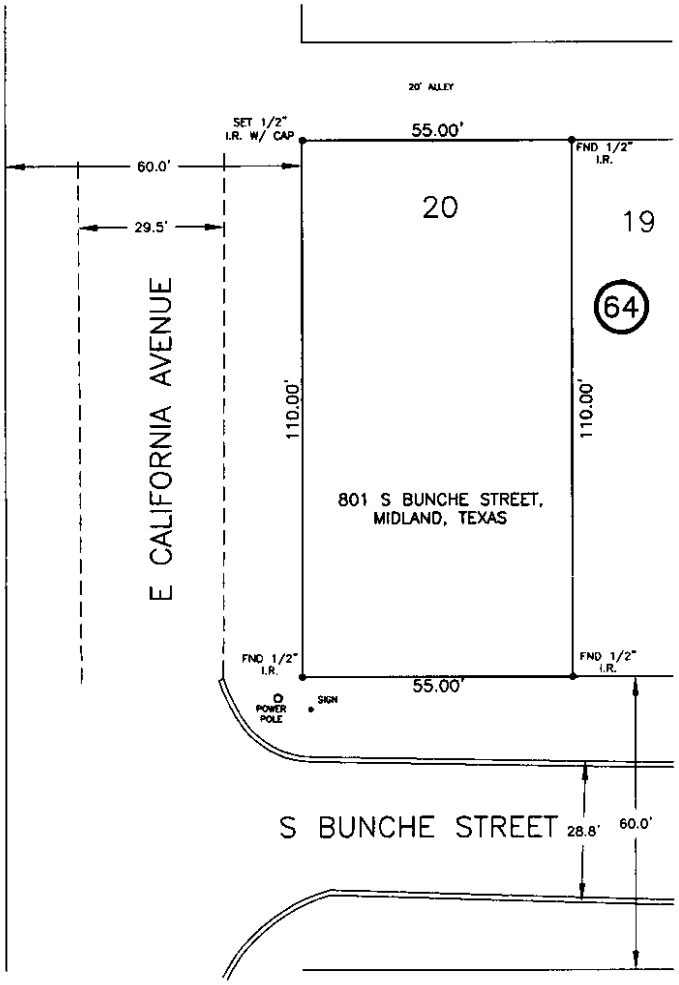
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 47229	
Received By: DS	Date:

RECEIVED
OCT 29 2021
BY:

Application will not be considered for scheduling until reviewed by a planner.


Properties to be Re-zoned
E CALIFORNIA
S CARVER
BUNCHE
1409
1407
1405
1403
1401
1311
709
800
802
803
804
805
806
807
808
809
810
811
812



PLAT

OF

LOT 20, BLOCK 64, PARK AVENUE HEIGHTS SECOND SECTION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

30 0 30 60 90 Feet

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT NOR WAS THIS PARCEL ABSTRACTED FOR EASEMENTS OF RECORD AND/OR RIGHTS OF WAY. BRADSHAW AND ASSOCIATES, INC. (FIRM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYOR, MAKE NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREIN PERTAINING TO EASEMENTS, RESERVATIONS, SET-BACK LINES, AGREEMENTS, RIGHTS-OF-WAY OR OTHER SIMILAR MATTERS OTHER THAN THOSE SHOWN UPON THIS SURVEY. THE UNDERSIGNED SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR ANY TITLES, DEEDS, RESERVATIONS, EASEMENTS, RIGHTS OF WAY, SETBACK LINES, AGREEMENTS OR OTHER SIMILAR MATTERS, OTHER THAN WHAT IS READILY IDENTIFIABLE THROUGH THE COUNTY GIS MAPS, RAILROAD COMMISSION GIS MAPS, AND GENERAL LAND OFFICE GIS MAPS. THE USE OF THESE GIS MAPS IS BY NO MEANS TO BE CONSTRUED AS A PROPER OR THOROUGH INVESTIGATION OF THE PUBLIC RECORDS, AS WOULD BE ACCOMPLISHED BY AN ABSTRACT OF TITLE, AND/OR OPINION OF TITLE BY AN ATTORNEY AT LAW.

BRADSHAW AND ASSOCIATES, INC (FIRM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYOR ALSO MAKE NO REPRESENTATION AS TO THE STATUS OF TITLE TO THE PROPERTY DESCRIBED HEREIN.

TO LIEN HOLDER ISSUING THE INSURANCE UNDERWRITER

THIS SURVEY PLAT IS PROVIDED SOLELY FOR THIS TRANSACTION

PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER TRANSACTION.

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS OR RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND THIS SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY AS SHOWN.

STATE OF TEXAS
REGISTERED
MICHAEL L. McBRAYER
4161
PROFESSIONAL
LAND SURVEYOR

REGISTERED PROFESSIONAL LAND SURVEYOR

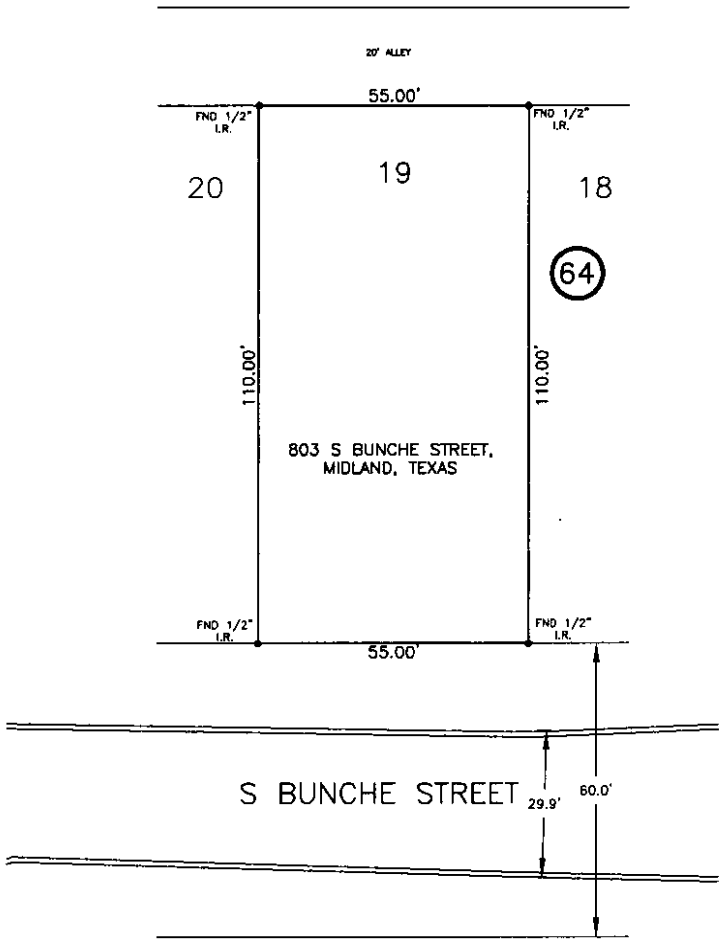
FILED IN CABINET B, PAGE 114, PLAT RECORDS, MIDLAND COUNTY, TEXAS.

THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL 48329C0206 F. DATED SEPTEMBER 18, 2005.

Stored: 21031382

BRADSHAW AND ASSOCIATES, INC.
CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS
FIRM # 10122900/10122901
4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
(432) 682-4400 FAX (432)682-7997

	Drawn	Chkd	Surveyed
By	VR	MLM	CH/BP
Date	3-30-2021	3-30-2021	3-29-2021



PLAT

OF

LOT 19, BLOCK 64, PARK AVENUE HEIGHTS SECOND SECTION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

30 0 30 60 90 Feet

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STATE OF TEXAS
REGISTERED
MICHAEL L. McBRAYER
4161
PROFESSIONAL
LAND SURVEYOR

REGISTERED PROFESSIONAL LAND SURVEYOR

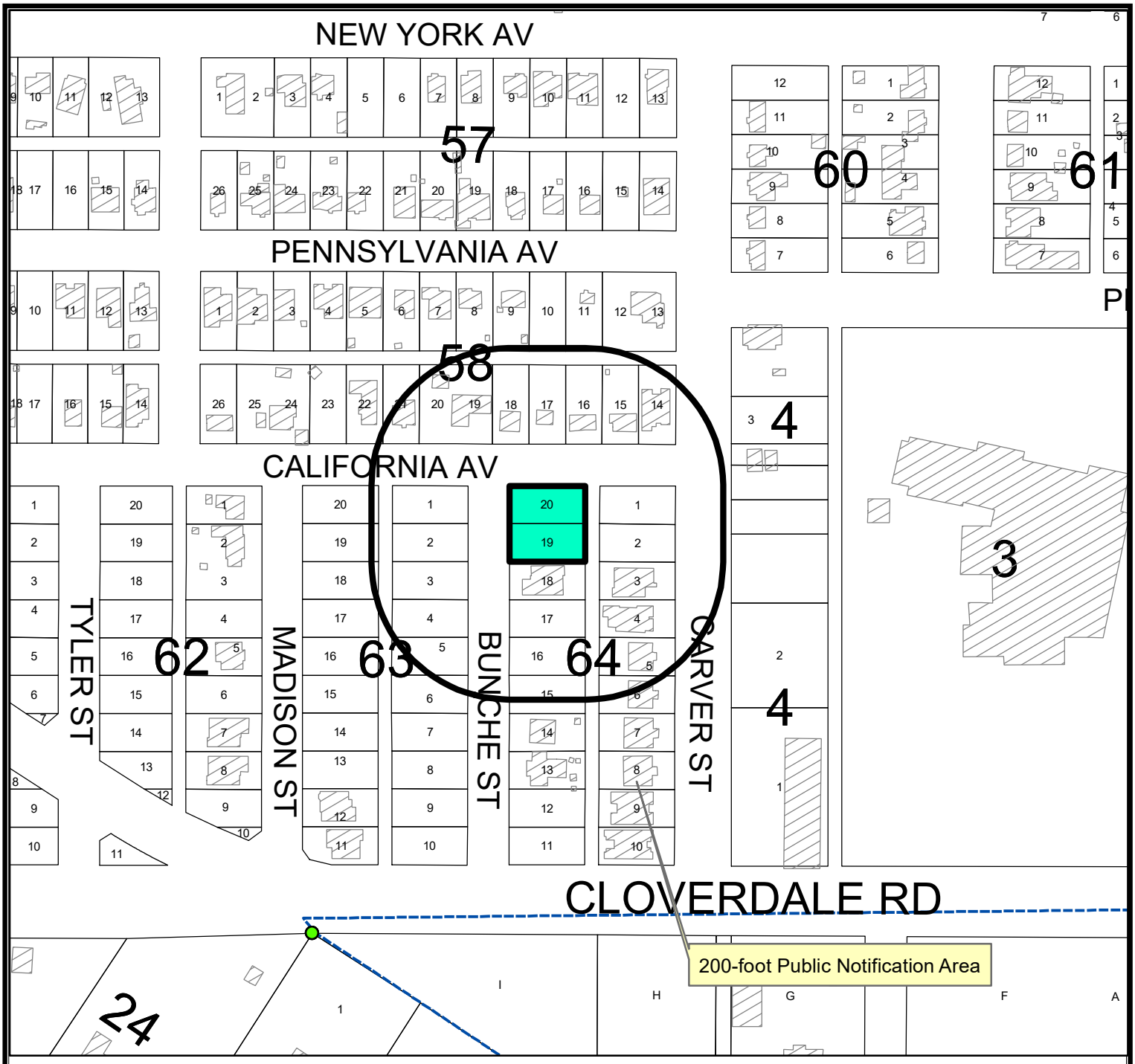
FILED IN CABINET B, PAGE 114, PLAT RECORDS, MIDLAND COUNTY, TEXAS.

THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL 48329C0208 F. DATED SEPTEMBER 16, 2005.

Stored: 21031382

BRADSHAW AND ASSOCIATES, INC.
CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS
FIRM # 10122900/10122901
4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
(432) 682-4400 FAX (432)682-7997

	Drawn	Chkd	Surveyed
By	VR	MLM	CH/BP
Date	3-30-2021	3-30-2021	3-29-2021



LOCATION MAP

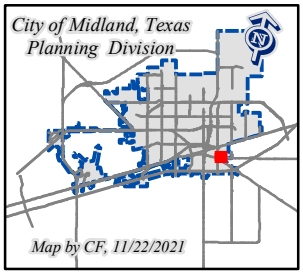
Z-21-0273 **Scale: 1" = 200'**

Consider a request by Marc Colvin for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Sigle-Family Dwelling District on Lots 19 & 20, Block 64, Park Avenue Heights Second Section, City and County of Midland, Texas.

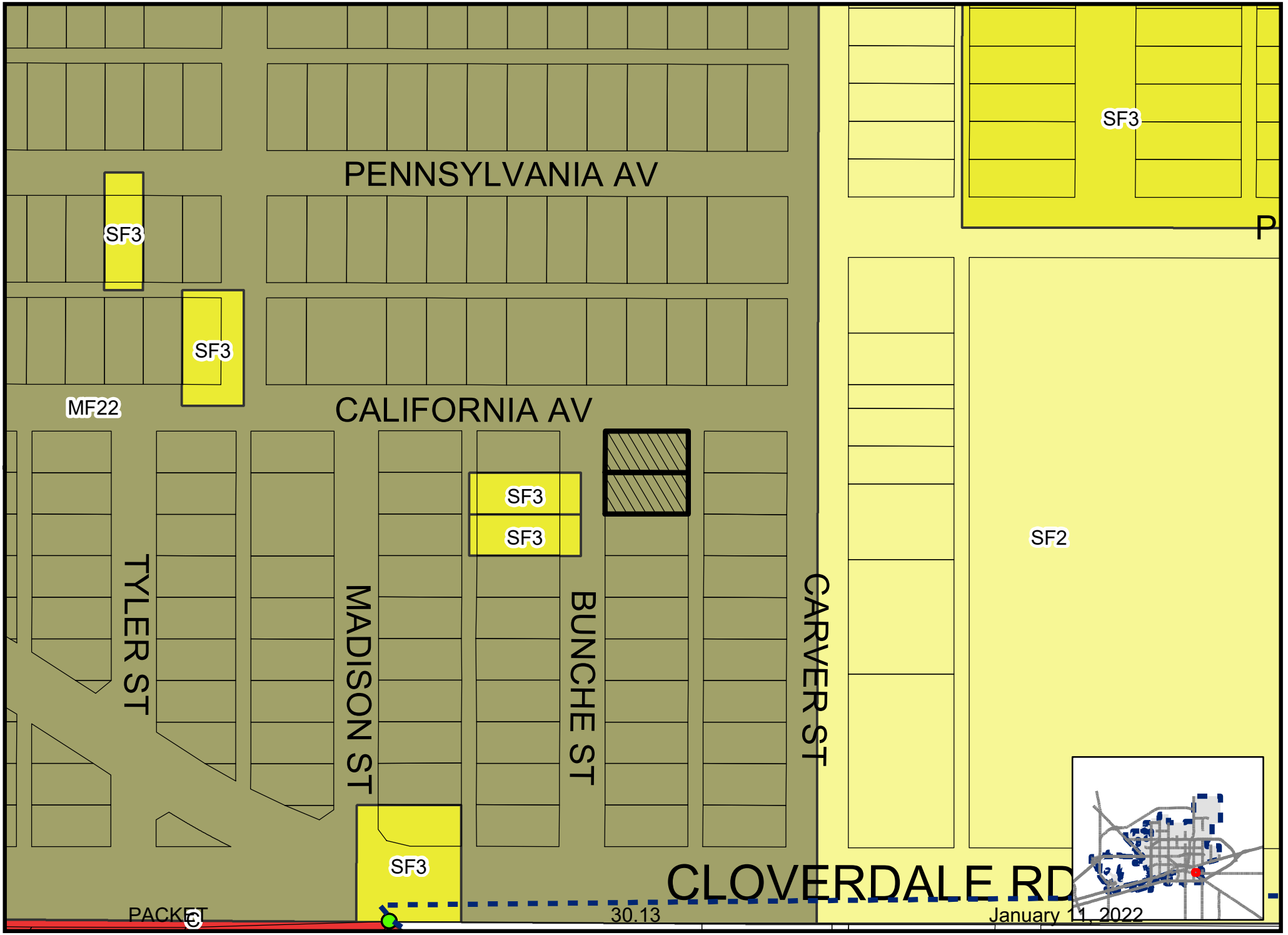
Generally located on the southeast corner of the intersection of E. California Avenue and S. Bunche Street -- (Council District 2)

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.



Map By CF, 11/22/2021

Z-21-0273

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.


STOP







City Council Meeting

Item Number: 31

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Cole Furqueron, 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 2,150-SQUARE FOOT PORTION OF LOT 10, BLOCK 56, PERMIAN ESTATES, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 670 FEET EAST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Enrique Solis, is requesting a Specific Use Designation with term for the sale of all alcoholic beverages for on-premises consumption in a restaurant at 4305 W. Illinois Avenue, Midland, Texas 79703.

Recommended City Council Action:

☒ **Approve** ☐ **Deny** ☐ **Direction/Informational**

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 is located at 4305 W. Illinois Avenue, in a RR, Regional Retail District. The property to the north is zoned RR, Regional Retail District and is utilized as a shopping center. The property to the east is zoned O-1, Office District and is the location of an un-occupied building. The property to the south is zoned as SF-1, Single-Family Dwelling District and is the location of residential housing. The property to the west is zoned RR, Regional Retail District and is the location of a shopping center.

Discussion:

J. Peno's Cafe is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

J. Peno's Cafe is currently 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 2,150 square feet, with an alcohol serviceable area of 960 square feet. The site currently has adequate restroom facilities. However, the restaurant will have an occupancy of 60 people, therefore, 21 parking spaces will be required. Currently, the building only has 11 parking spaces. There is a parking agreement in place with the business to the west that states the two businesses will be allowed to share parking spaces. These two businesses are owned by the same individual.

The restaurant will have the following hours of operation:

Monday through Saturday: 6:30 a.m. to 9:00 p.m.
Sunday: 7:00 a.m. to 3:00 p.m.

The restaurant will have the following hours of alcohol service:

Monday and Saturday: 10:00 a.m. to 9:00 p.m.
Sunday: 10:00 a.m. to 3:00 p.m.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches or schools within 300 feet of the property.

This project has been circulated to all City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

No objections.

The SUD for J Peno's Cafe is acceptable. The property must adhere to the current maximum occupant load of 60 persons. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Oil and Gas: (Approved)

No objections.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-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) J Peno's Cafe will create a fun and relaxing environment where Midland Residents can enjoy drinks with their meal.

This request meets all requirements; therefore, staff recommends approval of a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

A. That the alcoholic serviceable area of the restaurant shall be limited to approximately 960 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday Through Saturday from 7:00 a.m. to 9:00 p.m.
Sunday from 10:00 a.m. to 3:00 p.m.

C. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

D. That the establishment shall meet all requirements of the Fire Department and Code Administration.

E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of December 1, 2021, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (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 2,150-SQUARE FOOT PORTION OF LOT 10, BLOCK 56, PERMIAN ESTATES, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 670 FEET EAST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 2,150-square foot portion of Lot 10, Block 56, Permian Estates, Section 1, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 960 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Saturday from 10:00 a.m. to 9:00 p.m.; and
Sunday from 10:00 a.m. to 3:00 p.m.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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:

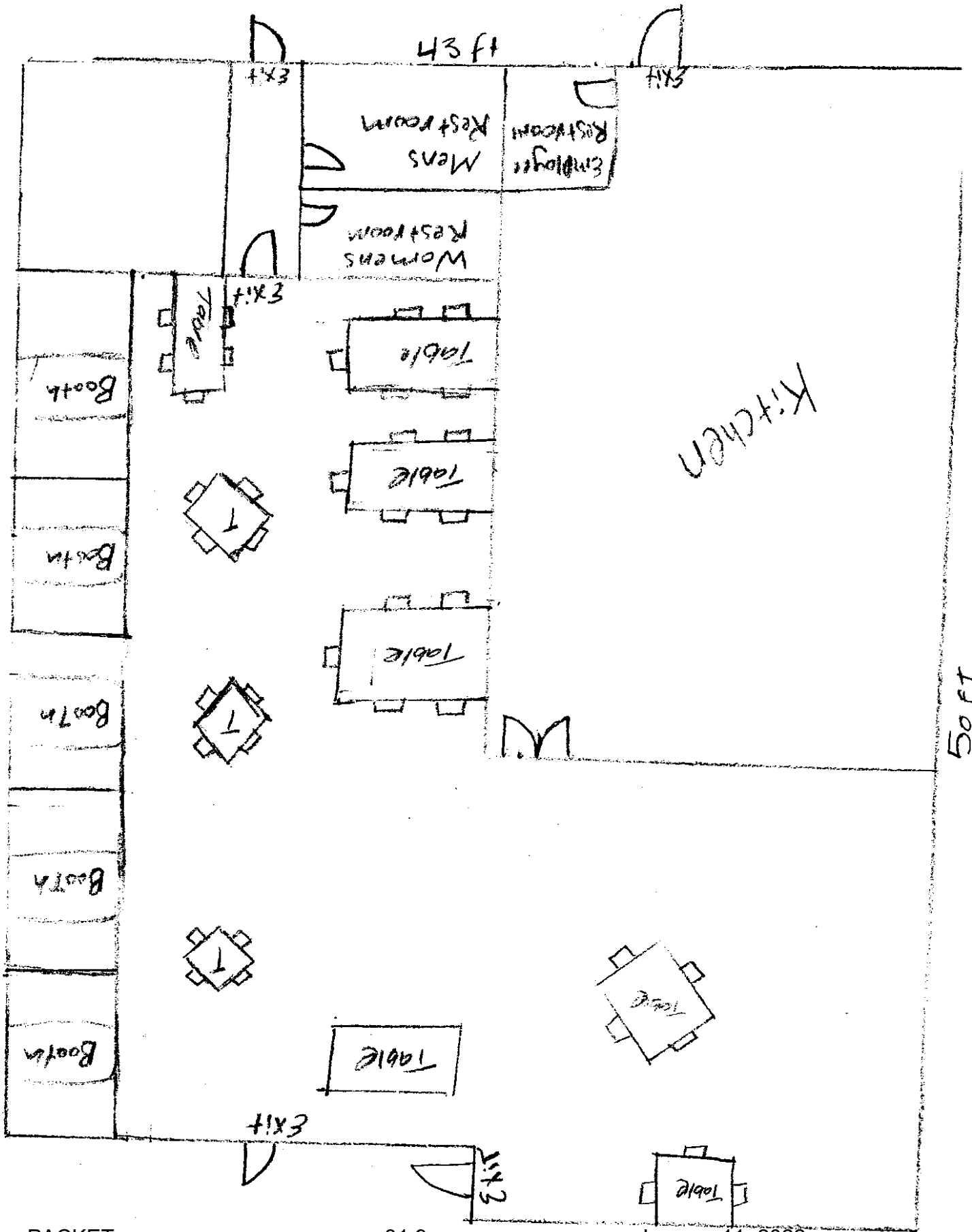
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Floor Planing

EXHIBIT "A"



Total : 2,150 sqft

Serviceable : 960 sqft

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0117

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jose Hernandez		Phone (432) 4134238 Email TonyBo2450@yahoo.com	
Address 7018 McPherson ln	City Midland	State TX	Zip 79703
Property Owner Printed Name: Enrique Solis		Phone (432) 894-2454 Email	
Address 3941 Lyndale Dr	City odessa	State TX	Zip 79762
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4305 W. Illinois

Business Name: J-Peños Cafe

Legal Description
Lot: 010 Block: 056 Subdivision: Per main Est

Current Zoning:

Reason for Request: To sell beer and Wine

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: _____
Monday - Saturday - 6:30 AM 9pm Sunday 7 AM - 3pm

Proposed Days and Hours of Alcohol Service: _____
~~Monday - Saturday~~ Monday - Saturday 7AM - 9PM Sunday - 10 AM - 3PM

Total Square Footage of Business: 6,839

Square Footage of Alcohol Serviceable Area: 960

Restroom Fixtures: *Men*	**Toilets/Urinals:** 1 / 6	**Bathroom Sinks:** 1
Women	**Toilets:** 1	**Bathroom Sinks:** 1

RECEIVED
NOV 09 2021
BY: _____

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): Jose Hernandez	Date:
Applicant (printed): Jose Hernandez	
Property Owner (signature): Ricky Solis	Date: 11-7-21
Property Owner (printed) :	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Jose Hernandez who, being by me duly sworn, upon oath says: That (s)he is authorized by Ricky Solis, 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.

Jose Hernandez
Authorized Agent (*signature*)

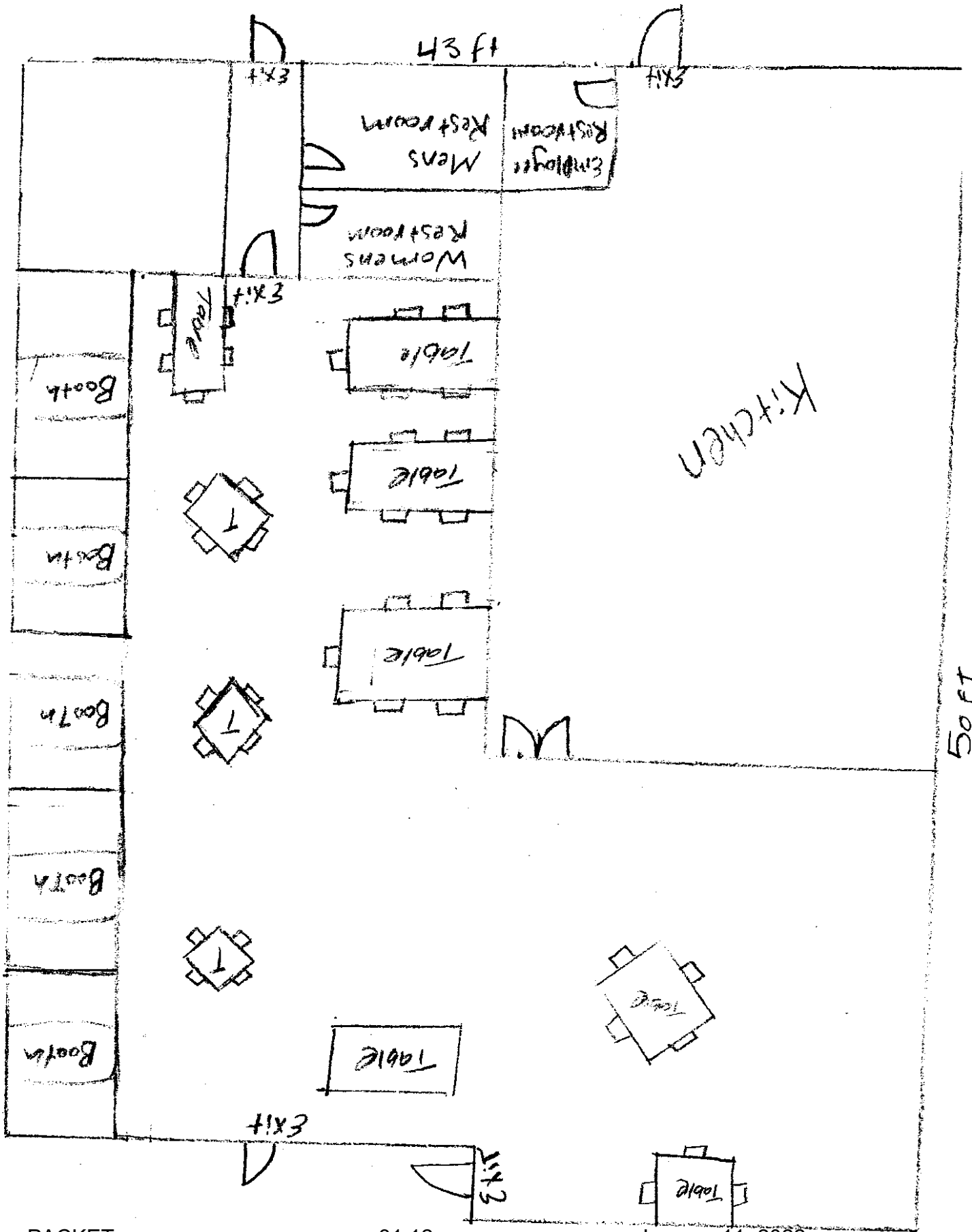
Subscribed and sworn to before me, this 9th day of Nov, 20 21, to certify which witness my hand and seal of office.

DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

Dalia Salinas
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

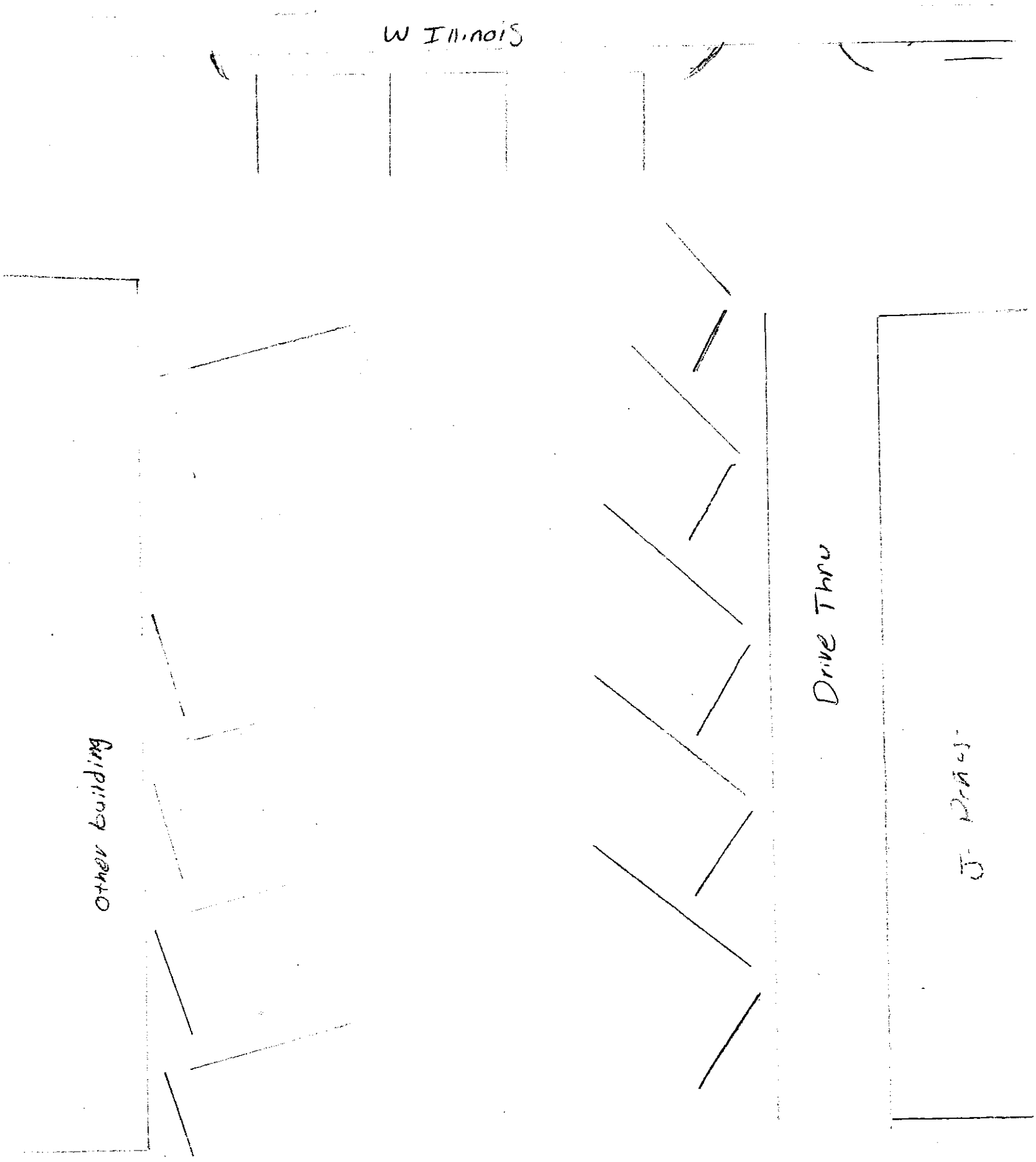
Floor Planing

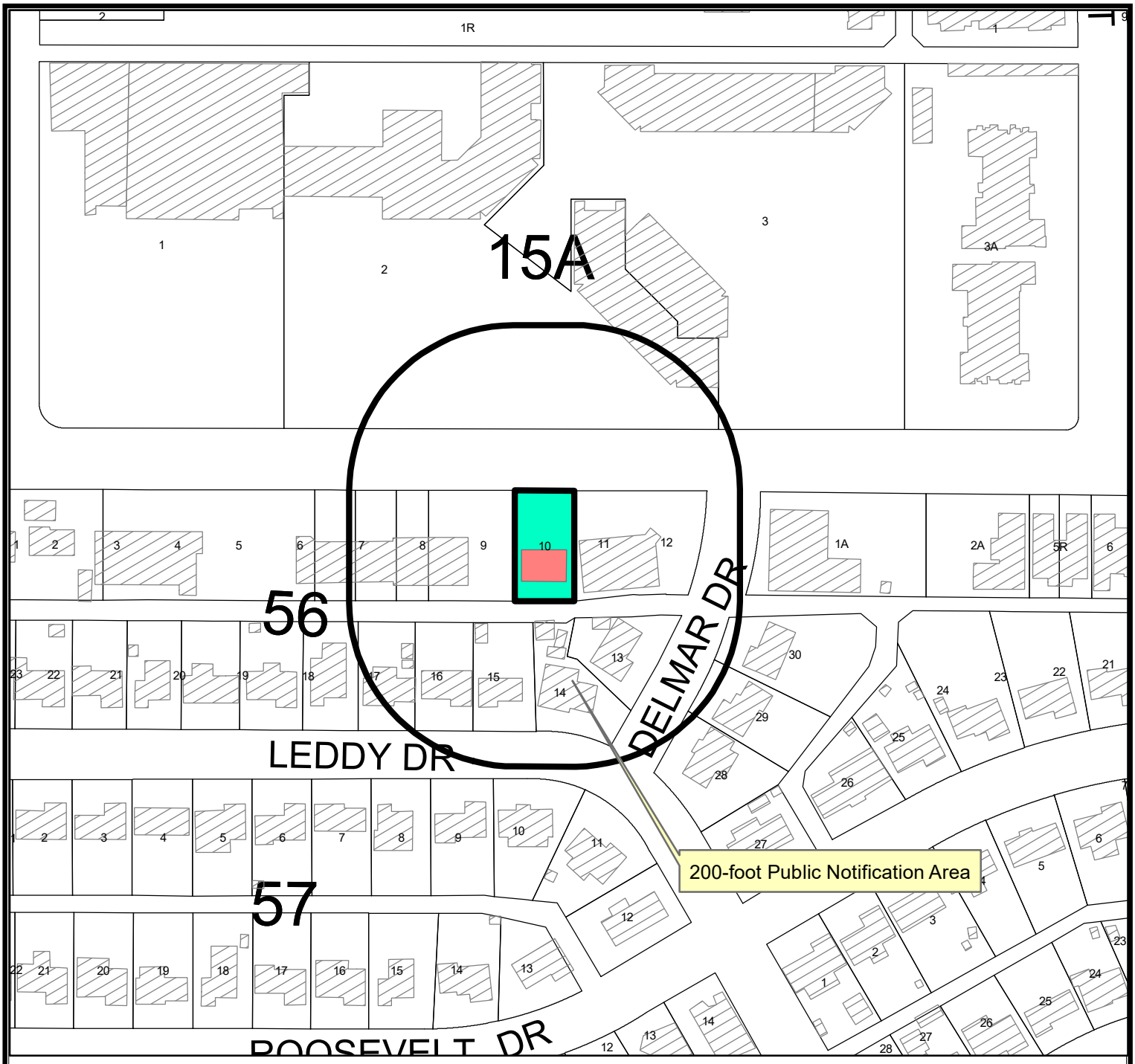

43 ft
50 ft
Exit
Exit
Exit
Exit
Exit
Mens Rest room
Employee Rest room
Womens Rest room
Table
Table
Table
Table
Table
Table
Table
Booth
Booth
Booth

Dementioned site plan



Demensioned site Plan (Additional Parking)





LOCATION MAP

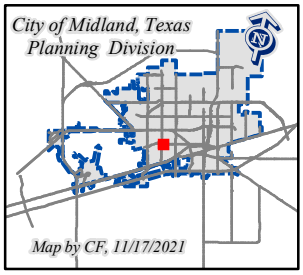
SUD-21-0117 **Scale: 1" = 200'**

Consider a request by J Peno's Cafe for a Specidfic Use Designation with Term, for the sale of all alcoholic beverages on a 2,150 square foot portion of Lot 10, Block 56, Permian Estates, Section 1, City and County of Midland, Texas.

Generally located on the South side of W. Illinois Avenue, approximately 670 feet east of N. Midland Drive - (Council District 4)

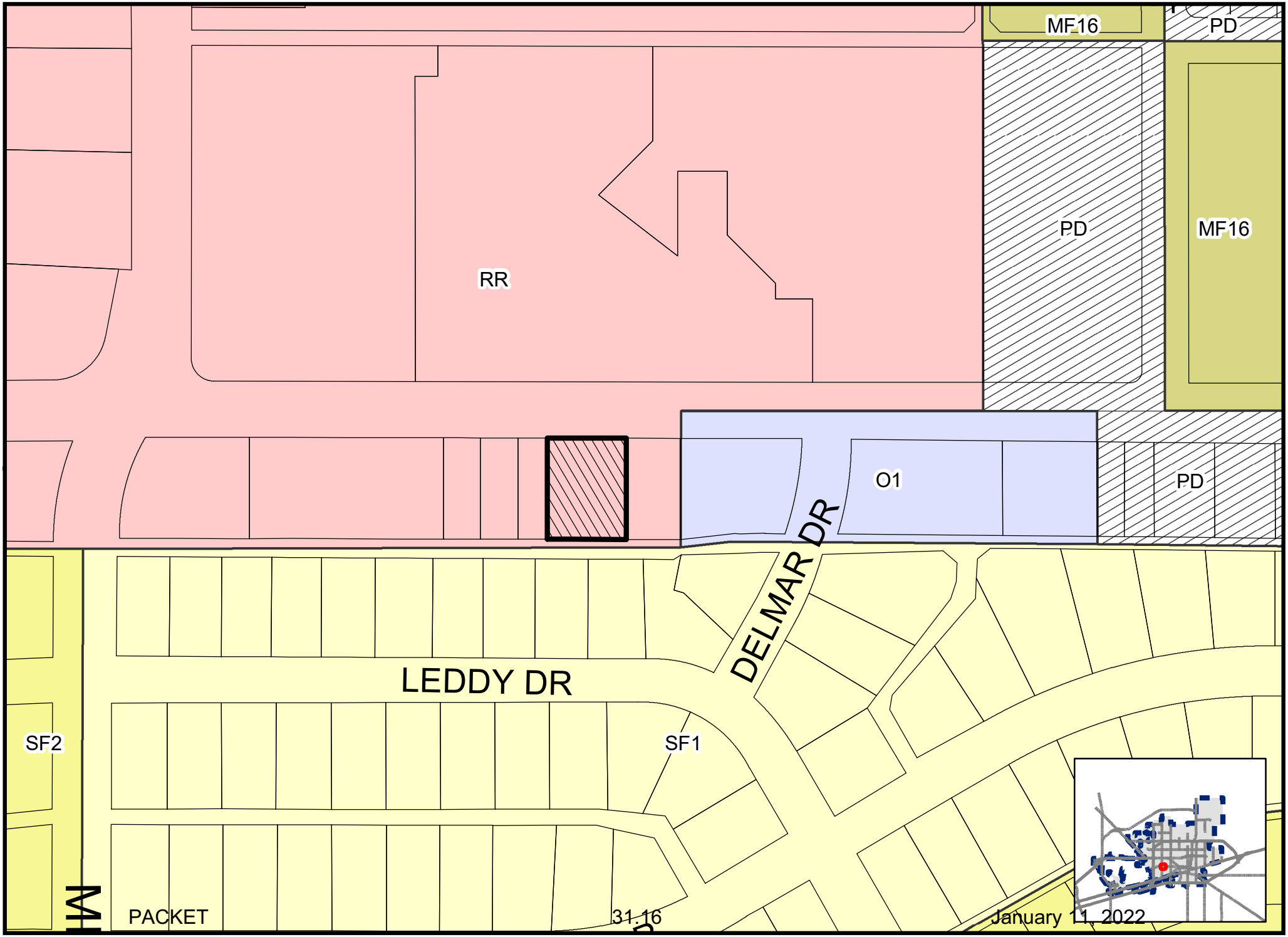
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

January 11, 2022



Map By CF, 11/17/2021

SUD-21-0117

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.


pepsi
FAMILY DOLLAR
Rent-A-Center


Westwood
Village


MASSAGE
Peño's
OPEN


Westwood
Village
GOODWILL
FAMILY DOLLAR
SUBWAY
Rent-A-Center
BARBER SHOP
PRATER'S
JEWELRY
RENT
RENTAL
CAFE

City Council Meeting

Item Number: 32

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Cole Furqueron,

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 200-SQUARE FOOT PORTION OF LOT 3, BLOCK 1, POLO CLUB ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND BLUEBIRD LANE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; 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)**

Purpose:

The applicant, Faulk & Foster, is requesting a Specific Use Designation without term for the installation of a 100-foot-tall mono-pole cell tower at 5110 N. Garfield Street, Midland, Texas 79705, the location of Holy Cross Evangelical Lutheran Church of Midland.

Recommended City Council Action:

☐ **Approve** ☒ **Deny** ☐ **Direction/Informational**

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

AE, Agricultural Estates District

Surrounding Zoning and Land Use:

The property is located at 5110 N. Garfield Street in an AE, Agricultural Estates District. The property to the north, east, and west are zoned AE, Agricultural Estates District and are utilized for single-family housing and livestock barns. The properties to the south across Bluebird Lane are zoned PD, Planned Development District for a housing development and are utilized for single-family housing.

Discussion:

The applicant, Faulk and Foster is requesting a Specific Use Designation to be able to install and operate a 100-froot tall mono-pole cell tower on a lot owned by Holy Cross Evangelical Lutheran Church of Midland. The mono-pole cell tower will have an enclosed area of 50' by 40' and will have a 6-ft. block wall along the perimeter of the proposed area. The property is zoned AE, Agricultural Estates District, which allows for the installation of a mono-pole cell tower as long as the appropriate SUD permit has been issued. Per our City Zoning Ordinance, Section 4: Zoning Land use Regulations (20)(a)(i)(a) the site location does meet the 110' radius for clearing for the fall of the tower. If the tower where to fall it would be contained within the church's property, however, if it does fall, one of their structures is within 110 feet. That structure is located on the northwest portion of the parking lot.

The City Zoning Code states the regulation of Wireless Communications Systems should: "Discourage the location of towers in residential areas and minimize the total number of towers throughout the City", City Zoning Ordinance, Section 4: Zoning Land use Regulations (20)(a)(i)(a). This proposed site is in direct opposition of that premise. The applicant stated in public hearing that the effective range is only one-half mile. At that rate, the number of towers would be rather large to cover the north and west portions of Midland. Most communication providers are now going to micro-cell sites that can be located in and near residential areas without intrusion. These sites are typically located on existing utility poles. Height is therefore restricted to approximately thirty-five feet.

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)

No objections.

Oil and Gas: (Approved)

No objections.

Planning:

The request is not in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, which classifies this area as Urban Residential, Large Lot or UR-LL. This area use emphasizes residential housing and open spaces. Furthermore, the City Zoning Code states that this type of construction should be discouraged in and around residential developments. Furthermore, there are other options available that would have less impact on surrounding residential areas.

This request was denied at the December 20 Planning and Zoning Commission meeting.

If this request of a Specific Use Designation without Term for the installation of a 100-foot tall mono-pole cell tower is approved, that it shall be subject to Condition A.

Conditions:

A. **That the site shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

Letters of Objection:

As of December 15, 15, 2021, staff has received 6 letters of objection.

Attachments:

Application
Site Plan (Exhibit A)
Architectural Details (Exhibit B)
Inventory Report (Exhibit C)
Coverage Tower Locations
Dish Network Letter
Photomontage of Proposed Project
Objection Letters
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 WITHOUT TERM FOR A 200-SQUARE FOOT PORTION OF LOT 3, BLOCK 1, POLO CLUB ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND BLUEBIRD LANE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; 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 200-square foot portion of Lot 3, Block 1, Polo Club Addition, Section 3, City and County of Midland, Texas (the "Property") as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for wireless communication systems, including a monopole antenna structure (the "Specific Use"), together with the uses permitted in the present AE, Agricultural Estate District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

That the use and development of the Property for the Specific Use:

A. shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

B. shall conform to all applicable City ordinances and state and federal laws, rules and regulations.

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., 2022; 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:

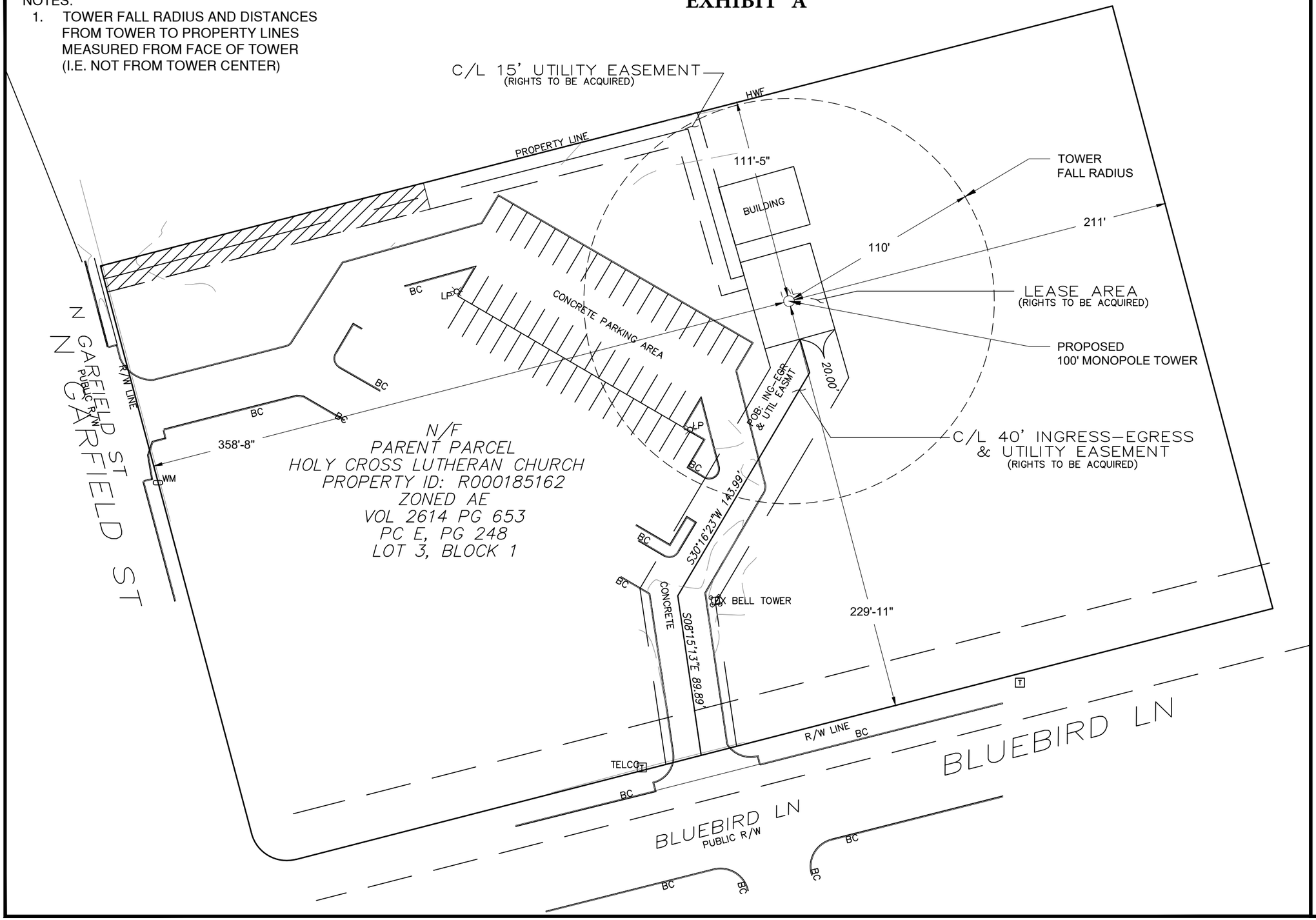
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

NOTES:
1. TOWER FALL RADIUS AND DISTANCES FROM TOWER TO PROPERTY LINES MEASURED FROM FACE OF TOWER (I.E. NOT FROM TOWER CENTER)

EXHIBIT "A"



HEMPHILL®
1305 NORTH LOUISVILLE AVE
TULSA, OK 74115
(918) 834-2200

sts
13431 BROADWAY EXT.,
SUITE 120, OKLAHOMA CITY,
OK 73114
405.753.7167

PROJECT NO:	1673
PROJECT NAME:	BLACK EAGLE
911 ADDRESS:	TBD
DRAWN BY:	RGH
CHECKED BY:	MK/SLT/JRH

ISSUED FOR:
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

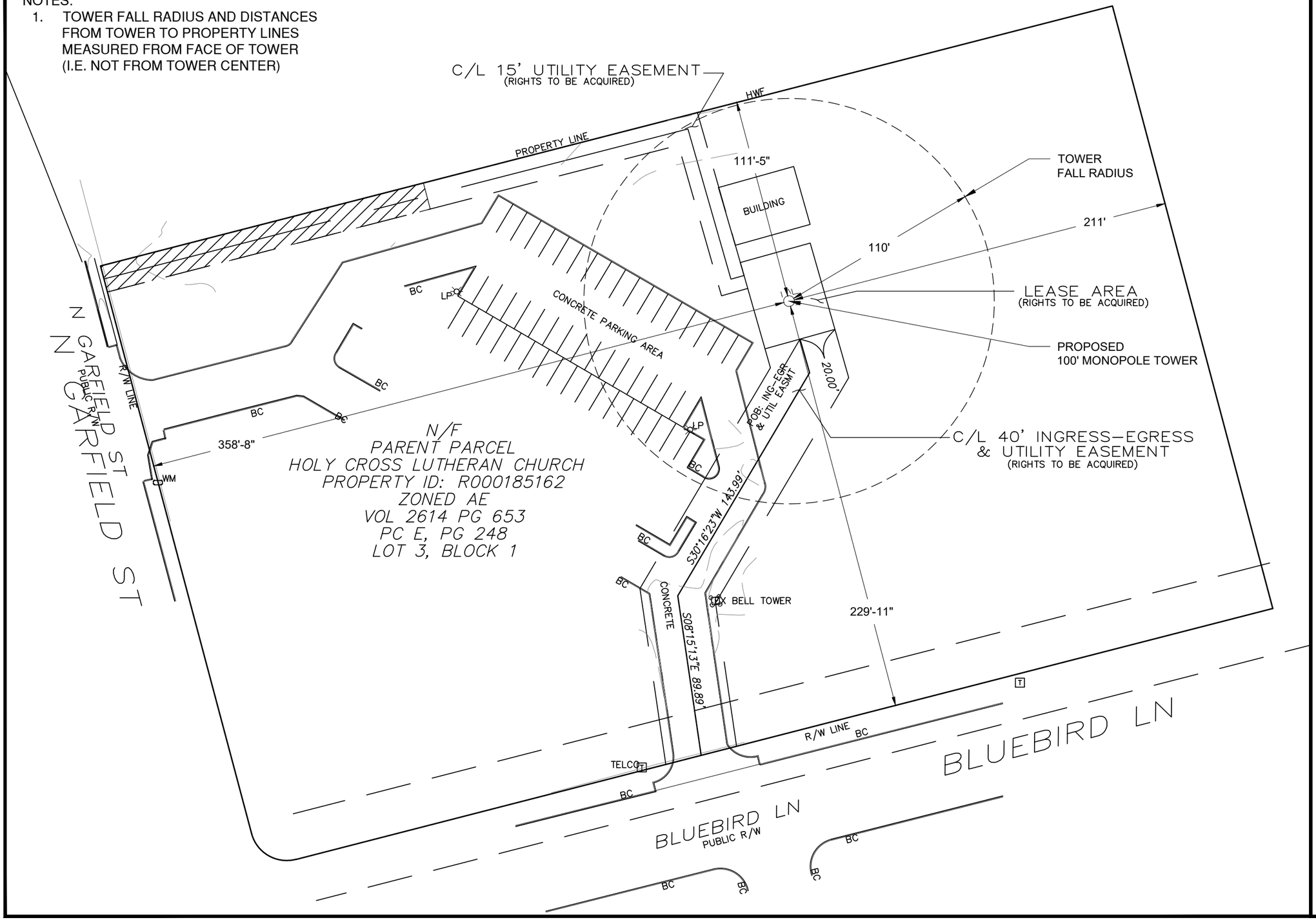
SAMUAL T. CURTIS, P.E.
LICENSED PROFESSIONAL
ENGINEERTEXAS NO. 117377

SCALE
############

OVERALL SITE PLAN

SHEET NUMBER:	REVISION:
C1-1	0

NOTES:
1. TOWER FALL RADIUS AND DISTANCES FROM TOWER TO PROPERTY LINES MEASURED FROM FACE OF TOWER (I.E. NOT FROM TOWER CENTER)



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0	11/01/21	FOR APPROVAL

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

SAMUAL T. CURTIS, P.E.
LICENSED PROFESSIONAL
ENGINEERTEXAS NO. 117377

SCALE
############

OVERALL SITE PLAN

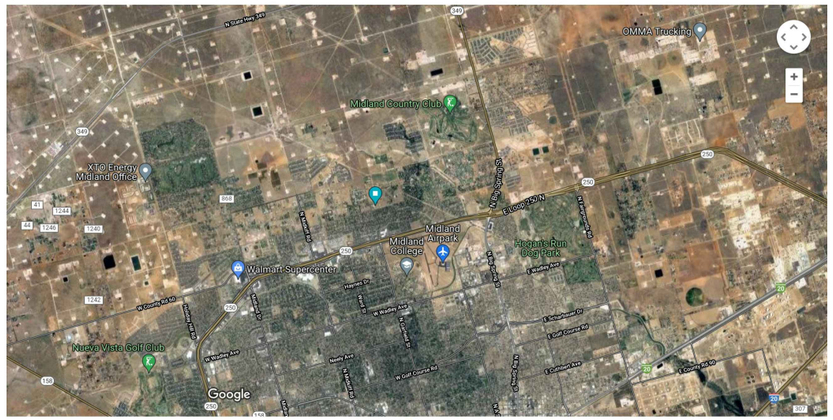
SHEET NUMBER:	REVISION:
C1-1	0

BLACK EAGLE
SITE: 1673

100' MONOPOLE TOWER

FOR MULTIPLE WIRELESS CARRIERS

VICINITY MAP



CONSULTING ENGINEER

STS
13431 BROADWAY EXT., SUITE 120,
OKLAHOMA CITY, OK 73114
405.753.7167

PROJECT DATA

SITE NUMBER	1673
SITE NAME	BLACK EAGLE
SITE ADDRESS	TBD, MIDLAND, TX
COUNTY	MIDLAND
ZONING CLASS	
POWER COMPANY	RELIANT ENERGY
CONTACT NAME	
TELEPHONE	866.222.7100
TELCO COMPANY	
CONTACT NAME	
TELEPHONE	
PROPERTY OWNER	HOLY CROSS LUTHERAN CHURCH
TELEPHONE	432.570.8149
HEMPHILL CONTACT	JOHN HEMPHILL
TELEPHONE	918.605.5639
SURVEY CONTACT	POINT TO POINT LAND SURVEYORS
TELEPHONE	678.565.4440

2C COORDINATES

LAT 32° 02' 44.2" LONG -102° 06' 50.7"

SURVEY AND 2C PROVIDED BY POINT TO POINT LAND SURVEYORS AND INCLUDED IN THIS SET OF DRAWINGS FOR REFERENCE ONLY.

DIRECTIONS

HEADING TO MIDLAND, TX VIA I-44 / 1-20 W, TAKE EXIT 144 FOR 1-20 TOWARD TX-250 MIDLAND. IN 1.3 MI. TURN RIGHT ONTO RAMP TO STATE HWY 250 LOOP. IN 2.1 MI. KEEP LEFT. THEN IN 0.9 MI. SLIGHT LEFT ONTO STATE HWY 250 LOOP W / E LOOP 250 N / LOOP 250 FRONTAGE ROAD. IN 0.9 MI. KEEP LEFT, THEN IN 1.2 MI. SLIGHT LEFT ONTO HWY 250 W / E LOOP 250 N.

CONTINUE ON STATE HWY 250 LOOP W FOR 2.4 MI. THEN TAKE THE EXIT TOWARD GARFIELD ST. MERGE ONTO W LOOP 250 N / LOOP 250 FRONTAGE RD. IN 0.2 MI. TURN RIGHT ONTO N GARFIELD ST. THEN IN 0.5 MI. TURN RIGHT ONTO HOLY CROSS LUTHERAN CHURCH PARKING LOT. SITE LEASE AREA IS ADJACENT TO NE CORNER OF PARKING LOT. SEE SHEETS C1-1 AND C1-2 FOR SITE INGRESS / EGRESS DETAILS.

PROJECT NOTES

HEMPHILL TOWER SITE DEVELOPMENT SPECIFICATIONS SUPPLEMENT THE CONSTRUCTION DRAWINGS. FACILITY IS NOT STAFFED AND NORMALLY NOT OCCUPIED.

CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY THE CONSTRUCTION MANAGER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR THE SAME

ENGINEER OF RECORD

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

SAMUAL T. CURTIS, P.E.
TEXAS NO. 117377
LICENSED PROFESSIONAL ENGINEER
TEXAS NO. 117377

ONE CALL SYSTEM

Texas 811
Know what's below. Call before you dig.

BEFORE YOU DIG, CALL MIDLAND LINE LOCATION FOR LOCATION OF UNDERGROUND UTILITIES. CALL 811

DRAWING INDEX

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S1-2	SITE SURVEY	0
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C1-1	OVERALL SITE PLAN	0
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HEMPHILL
1305 NORTH LOUISVILLE AVE
TULSA, OK 74115
(918) 834-2200

REECO
DRAFTING SERVICES
9 E 4TH ST. SUITE C-4
TULSA, OK 74103
918-215-7575

PROJECT NO:	1673
PROJECT NAME:	BLACK EAGLE
911 ADDRESS:	TBD
DRAWN BY:	RGH
CHECKED BY:	MK/SLT/JRH

ISSUED FOR:
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

SAMUAL T. CURTIS, P.E.
TEXAS NO. 117377

SCALE
N.T.S.

TITLE SHEET

SHEET NUMBER:	REVISION:
TS	0

PARENT PARCEL

OWNER: HOLY CROSS EVANGELICAL LUTHERAN CHURCH OF MIDLAND,
A TEXAS NON-PROFIT CORPORATION AKA HOLY CROSS LUTHERAN CHURCH

SITE ADDRESS: 5110 N GARFIELD, MIDLAND, TEXAS 79701

PROPERTY ID: R000185162

AREA: 4.590 ACRES (PER TAX ASSESSOR)

ZONING: AE (AGRICULTURAL ESTATE DISTRICT)

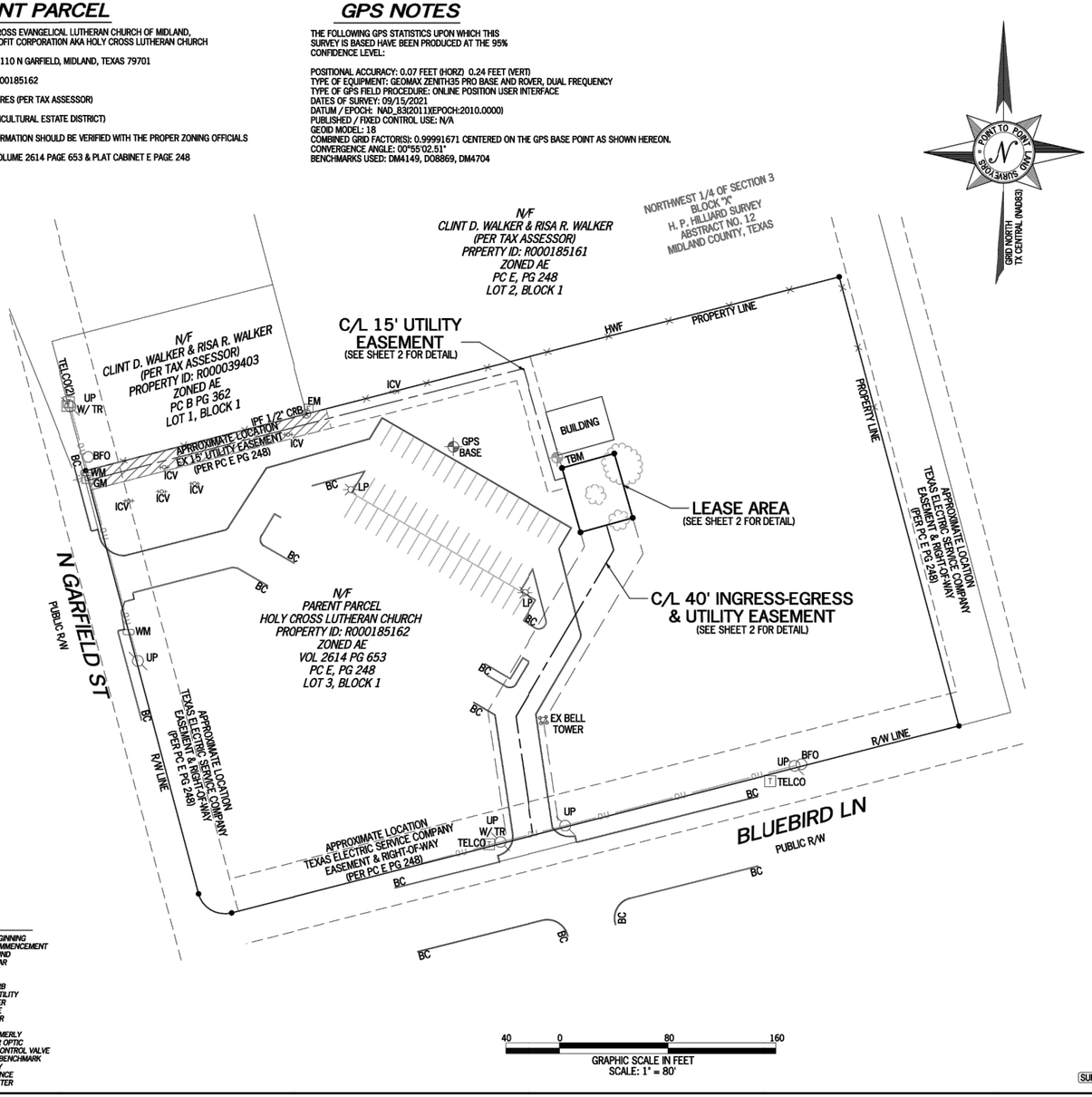
ALL ZONING INFORMATION SHOULD BE VERIFIED WITH THE PROPER ZONING OFFICIALS

REFERENCES: VOLUME 2614 PAGE 653 & PLAT CABINET E PAGE 248

GPS NOTES

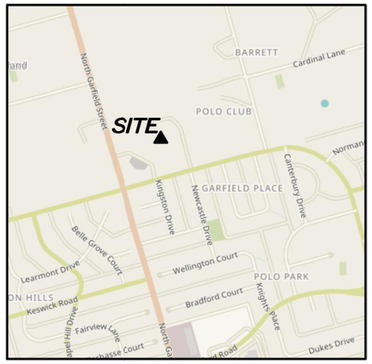
THE FOLLOWING GPS STATISTICS UPON WHICH THIS SURVEY IS BASED HAVE BEEN PRODUCED AT THE 95% CONFIDENCE LEVEL:

POSITIONAL ACCURACY: 0.07 FEET (HORZ) 0.24 FEET (VERT)
TYPE OF EQUIPMENT: GEOMAX ZENITH35 PRO BASE AND ROVER, DUAL FREQUENCY
TYPE OF GPS FIELD PROCEDURE: ONLINE POSITION USER INTERFACE
DATES OF SURVEY: 09/15/2021
DATUM / EPOCH: NAD_83(2011)(EPOCH:2010.0000)
PUBLISHED / FIXED CONTROL USE: N/A
GEOID MODEL: 18
COMBINED GRID FACTOR(S): 0.99991671 CENTERED ON THE GPS BASE POINT AS SHOWN HEREON.
CONVERGENCE ANGLE: 00°55'02.51"
BENCHMARKS USED: DM4149, DO8869, DM4704



LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
IPF	IRON PIN FOUND
CRB	CAPPED REBAR
UP	UTILITY POLE
LP	LIGHT POLE
BC	BACK OF CURB
OU	OVERHEAD UTILITY
TR	TRANSFORMER
WV	WATER VALVE
WM	WATER METER
GM	GAS METER
N/F	NOW OR FORMERLY
BFO	BURIED FIBER OPTIC
ICV	IRRIGATION CONTROL VALVE
TBM	TEMPORARY BENCHMARK
R/W	RIGHT-OF-WAY
HWF	HOG WIRE FENCE
EM	ELECTRIC METER



VICINITY MAP

NOT TO SCALE

GENERAL NOTES

* THIS SPECIFIC PURPOSE SURVEY IS FOR THE LEASED PREMISES AND EASEMENTS ONLY. THIS SPECIFIC PURPOSE SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF HEMPHILL, LLC AND EXCLUSIVELY FOR THE TRANSFERRAL OF THE LEASED PREMISES AND THE RIGHTS OF EASEMENT SHOWN HEREON AND SHALL NOT BE USED AS AN EXHIBIT OR EVIDENCE IN THE FEE SIMPLE TRANSFERRAL OF THE PARENT PARCEL NOR ANY PORTION OR PORTIONS THEREOF. BOUNDARY INFORMATION SHOWN HEREON HAS BEEN COMPILED FROM TAX MAPS AND DEED DESCRIPTIONS ONLY. NO BOUNDARY SURVEY OF THE PARENT PARCEL WAS PERFORMED.

THIS DRAWING DOES NOT REPRESENT A BOUNDARY SURVEY.

THIS SPECIFIC PURPOSE SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT WHICH MAY REVEAL ADDITIONAL CONVEYANCES, EASEMENTS, OR RIGHTS-OF-WAY NOT SHOWN HEREON.

BASIS OF BEARING: GPS OBSERVATIONS CONDUCTED AT THE TIME OF SURVEY.

BASIS OF ELEVATION: GPS OBSERVATIONS CONDUCTED AT THE TIME OF SURVEY.

EQUIPMENT USED FOR ANGULAR & LINEAR MEASUREMENTS: LEICA TPS 1200 ROBOTIC & GEOMAX ZENITH 35 [DATE OF LAST FIELD VISIT: 09/15/2021]

THE 1' CONTOURS AND SPOT ELEVATIONS SHOWN ON THIS SPECIFIC PURPOSE SURVEY ARE ADJUSTED TO NAVD 88 DATUM (COMPUTED USING GEOID18) AND HAVE A VERTICAL ACCURACY OF ± 0.5'. CONTOURS OUTSIDE THE IMMEDIATE SITE AREA ARE APPROXIMATE.

BEARINGS SHOWN ON THIS SPECIFIC PURPOSE SURVEY ARE BASED ON TEXAS GRID NORTH (NAD 83) CENTRAL ZONE.

PER THE FEMA FLOODPLAIN MAPS, THE SITE IS LOCATED IN AN AREA DESIGNATED AS ZONE X (AREA OF MINIMAL FLOOD HAZARD). COMMUNITY PANEL NO. : 48329C0086F DATED: 09/16/2005

NO WETLAND AREAS HAVE BEEN INVESTIGATED BY THIS SPECIFIC PURPOSE SURVEY.

ALL ZONING INFORMATION SHOULD BE VERIFIED WITH THE PROPER ZONING OFFICIALS.

ANY UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM ABOVE GROUND FIELD SURVEY INFORMATION. THE SURVEYOR MAKES NO GUARANTEES THAT ANY UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN-SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT ANY UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED ANY UNDERGROUND UTILITIES.

TEXAS REGISTRATION NO. 10194197

I DO HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND UNDER MY SUPERVISION. THE HORIZONTAL DATUM (COORDINATES) ARE IN THE TERMS OF THE NORTH AMERICAN DATUM OF 1983 (NAD83) AND ARE EXPRESSED AS DEGREES, MINUTES AND SECONDS, TO THE NEAREST HUNDREDTH OF A SECOND. THE VERTICAL DATUM (HEIGHTS) ARE IN TERMS OF NORTH AMERICAN VERTICAL DATUM OF 1988 AND ARE DETERMINED TO THE NEAREST TENTH OF A FOOT.

SURVEY NOT VALID WITHOUT SHEET 2 & 3 OF 3

811 Know what's below. Call before you dig.

STATE OF TEXAS
REGISTERED
JUSTIN KYLE LAWRENCE
6589
PROFESSIONAL
LAND SURVEYOR

09/29/2021

NO.	DATE	REVISION

* SPECIFIC PURPOSE SURVEY PREPARED BY:

POINT TO POINT LAND SURVEYORS
100 Governors Trace, Ste. 103
Peachtree City, GA 30269
(p) 678.565.4440 (f) 678.565.4497
(w) pointtopointsurvey.com
Texas Registration NO. 10194197

SPECIFIC PURPOSE SURVEY PREPARED FOR:

HEMPHILL
1305 N. LOUISVILLE AVENUE
TULSA, OK 74115

BLACK EAGLE
SITE NO. 1673
NW 1/4 SECTION 3, BLOCK "X",
H.P. HILLIARD SURVEY, ABSTRACT 12,
CITY OF MIDLAND,
MIDLAND COUNTY,TEXAS

DRAWN BY:	MK
CHECKED BY:	JKL
APPROVED:	D. MILLER
DATE:	SEPTEMBER 29, 2021
P2P JOB #:	211355TX

SHEET: 1 OF 3

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(918) 834-2200

SURVEY PROVIDED BY:

POINT TO POINT LAND SURVEYORS
100 GOVERNORS TRACE,
STE. 103 PEACHTREE CITY,
GA 30269
678.565.4440

PROJECT NO:	1673
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ISSUED FOR:

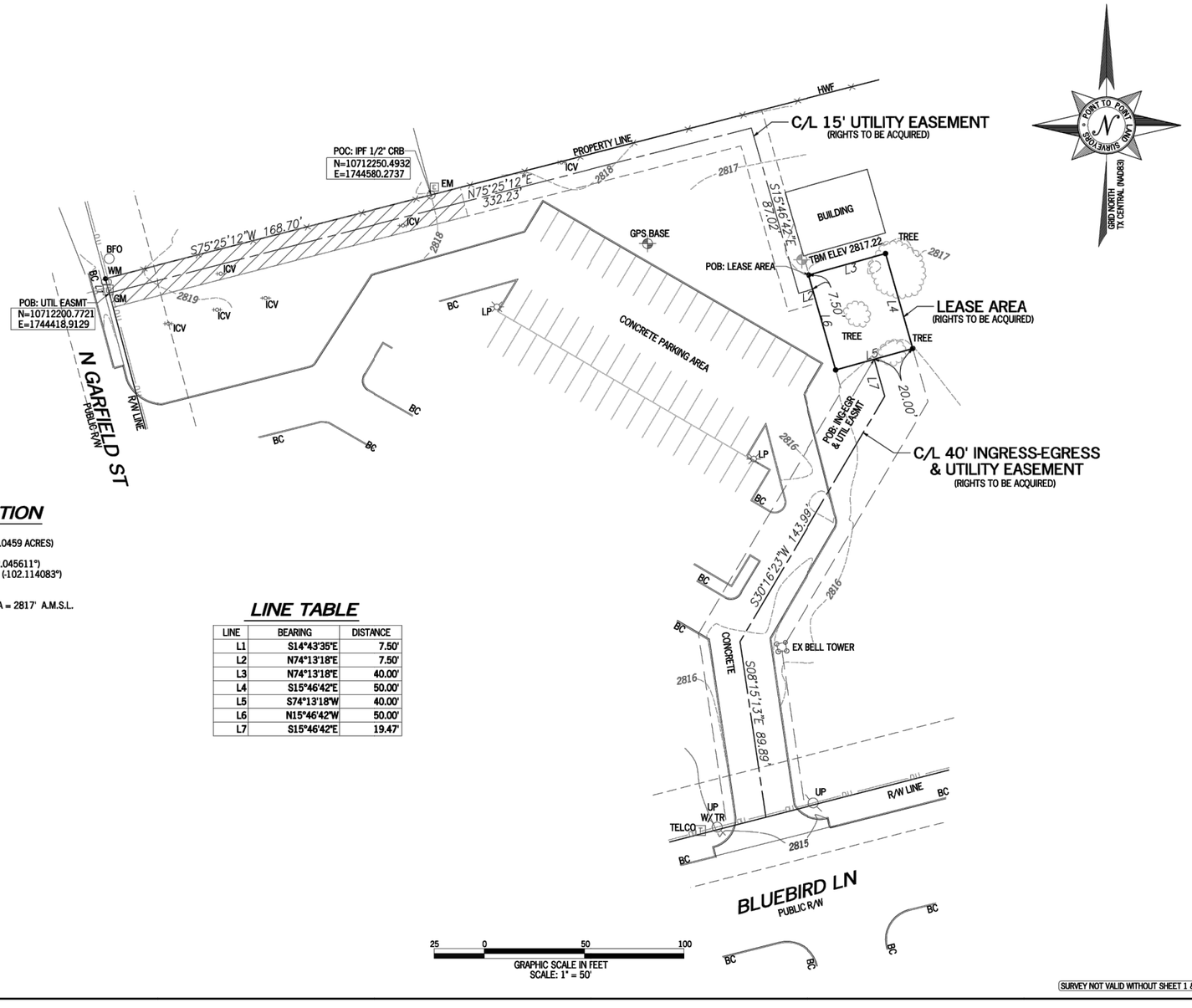
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

SCALE
N.T.S.

SITE SURVEY

SHEET NUMBER:	REVISION:
S1-1	0



GRAPHIC SCALE IN FEET
SCALE: 1" = 50'

SITE INFORMATION

LEASE AREA = 2,000 SQUARE FEET (0.0459 ACRES)

LATITUDE = 32°02'44.2" (NAD 83) (32.045611°)
LONGITUDE = -102°06'50.7" (NAD 83) (-102.114083°)
AT CENTER LEASE AREA

ELEVATION AT CENTER OF LEASE AREA = 2817' A.M.S.L.

LINE TABLE

LINE	BEARING	DISTANCE
L1	S14°43'35"E	7.50'
L2	N74°13'18"E	7.50'
L3	N74°13'18"E	40.00'
L4	S15°46'42"E	50.00'
L5	S74°13'18"W	40.00'
L6	N15°46'42"W	50.00'
L7	S15°46'42"E	19.47'

LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
IPF	IRON PIN FOUND
CRB	CAPPED REBAR
UP	UTILITY POLE
LP	LIGHT POLE
BC	BACK OF CURB
OU	OVERHEAD UTILITY
TR	TRANSFORMER
WV	WATER VALVE
WM	WATER METER
GM	GAS METER
N/F	NOW OR FORMERLY
BFO	BURIED FIBER OPTIC
ICV	IRRIGATION CONTROL VALVE
TBM	TEMPORARY BENCHMARK
R/W	RIGHT-OF-WAY
HWF	HOG WIRE FENCE
EM	ELECTRIC METER

SURVEY NOT VALID WITHOUT SHEET 1 & 3 OF 3

STATE OF TEXAS
REGISTERED
JUSTIN KYLE LAWRENCE
6589
PROFESSIONAL
LAND SURVEYOR

09/29/2021

NO.	DATE	REVISION

GRID NORTH
TX CENTRAL (NAD83)

* SPECIFIC PURPOSE SURVEY PREPARED BY:

POINT TO POINT
LAND SURVEYORS

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Peachtree City, GA 30269
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TULSA, OK 74115

BLACK EAGLE

SITE NO. 1673

NW 1/4 SECTION 3, BLOCK "X",
H.P. HILLIARD SURVEY, ABSTRACT 12,
CITY OF MIDLAND,
MIDLAND COUNTY,TEXAS

DRAWN BY: MK	SHEET: 2
CHECKED BY: JKL	
APPROVED: D. MILLER	
DATE: SEPTEMBER 29, 2021	
P2P JOB #: 211355TX	OF 3

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SCALE
N.T.S.

SITE SURVEY

SHEET NUMBER:	REVISION:
S1-2	0

LEGAL DESCRIPTION SHEET

LEASE AREA

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING PART OF LOT 3, BLOCK 1, POLO CLUB ADDITION, A SUBDIVISION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN PLAT CABINET E, PAGE 248, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, LYING IN THE NORTHWEST QUARTER OF SECTION 3, BLOCK "X", H.P. HILLIARD SURVEY, ABSTRACT 12, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A 1/2-INCH CAPPED REBAR FOUND LYING ON THE NORTHERN PROPERTY LINE OF SAID LOT 3, SAID REBAR MARKING THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, POLO CLUB ADDITION, A SUBDIVISION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN PLAT CABINET B, PAGE 362, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, AND HAVING A TEXAS GRID NORTH, NAD 83, CENTRAL ZONE VALUE OF N: 10712250.4932 E: 1744580.2737;

THENCE RUNNING ALONG SAID PROPERTY LINE, SOUTH 75°25'12" WEST, 168.70' FEET TO A POINT ON THE RIGHT-OF-WAY LINE OF N GARFIELD STREET;

THENCE RUNNING ALONG SAID RIGHT-OF-WAY LINE, SOUTH 14°43'35" EAST, 7.50 FEET TO A POINT HAVING A TEXAS GRID NORTH, NAD 83, CENTRAL ZONE VALUE OF N: 10712200.7721 E: 1744418.9129;

THENCE LEAVING SAID RIGHT-OF-WAY LINE AND RUNNING NORTH 75°25'12" EAST, 332.23 FEET TO A POINT;

THENCE, SOUTH 15°46'42" EAST, 87.02 FEET TO A POINT;

THENCE, NORTH 74°13'18" EAST, 7.50 FEET TO A POINT ON THE LEASE AREA;

THENCE RUNNING ALONG SAID LEASE AREA, NORTH 15°46'42" WEST, 7.50 FEET TO A POINT AND THE TRUE POINT OF BEGINNING;

THENCE, NORTH 74°13'18" EAST, 40.00 FEET TO A POINT;

THENCE, SOUTH 15°46'42" EAST, 50.00 FEET TO A POINT;

THENCE, SOUTH 74°13'18" WEST, 40.00 FEET TO A POINT;

THENCE, NORTH 15°46'42" WEST, 50.00 FEET TO A POINT AND THE POINT OF BEGINNING.

BEARINGS BASED ON TEXAS GRID NORTH, NAD 83, CENTRAL ZONE.

SAID TRACT CONTAINS 0.046 ACRES (2,000 SQUARE FEET), MORE OR LESS.

15' UTILITY EASEMENT

TOGETHER WITH A 15-FOOT WIDE UTILITY EASEMENT, MEASURING 7.5 FEET EACH SIDE OF CENTERLINE LYING AND BEING PART OF LOT 3, BLOCK 1, POLO CLUB ADDITION, A SUBDIVISION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN PLAT CABINET E, PAGE 248, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, LYING IN THE NORTHWEST QUARTER OF SECTION 3, BLOCK "X", H.P. HILLIARD SURVEY, ABSTRACT 12, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A 1/2-INCH CAPPED REBAR FOUND LYING ON THE NORTHERN PROPERTY LINE OF SAID LOT 3, SAID REBAR MARKING THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, POLO CLUB ADDITION, A SUBDIVISION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN PLAT CABINET B, PAGE 362, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, AND HAVING A TEXAS GRID NORTH, NAD 83, CENTRAL ZONE VALUE OF N: 10712250.4932 E: 1744580.2737;

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THENCE, SOUTH 15°46'42" EAST, 87.02 FEET TO A POINT;

THENCE, NORTH 74°13'18" EAST, 7.50 FEET TO THE ENDING AT A POINT ON THE LEASE AREA.

BEARINGS BASED ON TEXAS GRID NORTH, NAD 83, CENTRAL ZONE.

40' INGRESS-EGRESS & UTILITY EASEMENT

TOGETHER WITH A 40-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT, MEASURING 20 FEET EACH SIDE OF CENTERLINE LYING AND BEING PART OF LOT 3, BLOCK 1, POLO CLUB ADDITION, A SUBDIVISION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN PLAT CABINET E, PAGE 248, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, LYING IN THE NORTHWEST QUARTER OF SECTION 3, BLOCK "X", H.P. HILLIARD SURVEY, ABSTRACT 12, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

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THENCE RUNNING ALONG SAID LEASE AREA, NORTH 15°46'42" WEST, 7.50 FEET TO A POINT;

THENCE, NORTH 74°13'18" EAST, 40.00 FEET TO A POINT;

THENCE, SOUTH 15°46'42" EAST, 50.00 FEET TO A POINT;

THENCE, SOUTH 74°13'18" WEST, 20.00 FEET TO A POINT AND THE TRUE POINT OF BEGINNING;

THENCE LEAVING SAID LEASE AREA AND RUNNING, SOUTH 15°46'42" EAST, 19.47 FEET TO A POINT;

THENCE, SOUTH 30°16'23" WEST, 143.99 FEET TO A POINT;

THENCE, SOUTH 08°15'13" EAST, 89.89 FEET TO THE ENDING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF BLUEBIRD LANE.

BEARINGS BASED ON TEXAS GRID NORTH, NAD 83, CENTRAL ZONE.

SURVEY NOT VALID WITHOUT SHEETS 1 & 2 OF 3

STATE OF TEXAS
REGISTERED
JUSTIN KYLE LAWRENCE
6589
PROFESSIONAL
LAND SURVEYOR

09/29/2021

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SPECIFIC PURPOSE SURVEY PREPARED FOR:

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1305 N. LOUISVILLE AVENUE
TULSA, OK 74115

BLACK EAGLE
SITE NO. 1673
NW 1/4 SECTION 3, BLOCK "X",
H.P. HILLIARD SURVEY, ABSTRACT 12,
CITY OF MIDLAND,
MIDLAND COUNTY,TEXAS

DRAWN BY: MK
CHECKED BY: JKL
APPROVED: D. MILLER
DATE: SEPTEMBER 29, 2021
P2P JOB #: 211355TX

SHEET: 3 OF 3

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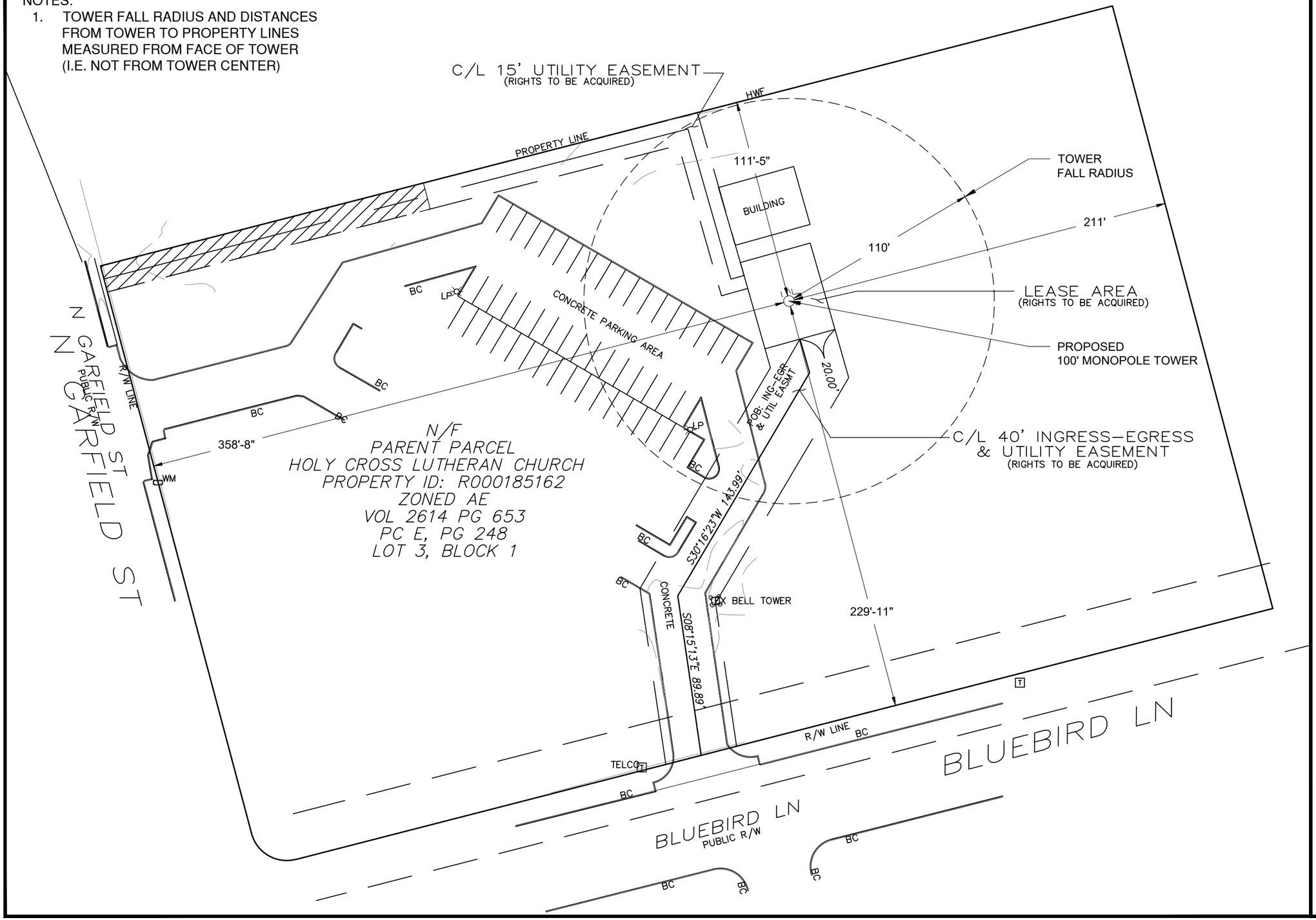
REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

SCALE
N.T.S.

SITE SURVEY

SHEET NUMBER: S1-3
REVISION: 0

NOTES:
1. TOWER FALL RADIUS AND DISTANCES FROM TOWER TO PROPERTY LINES MEASURED FROM FACE OF TOWER (I.E. NOT FROM TOWER CENTER)



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sts
13431 BROADWAY EXT.,
SUITE 120, OKLAHOMA CITY,
OK 73114
405.753.7167

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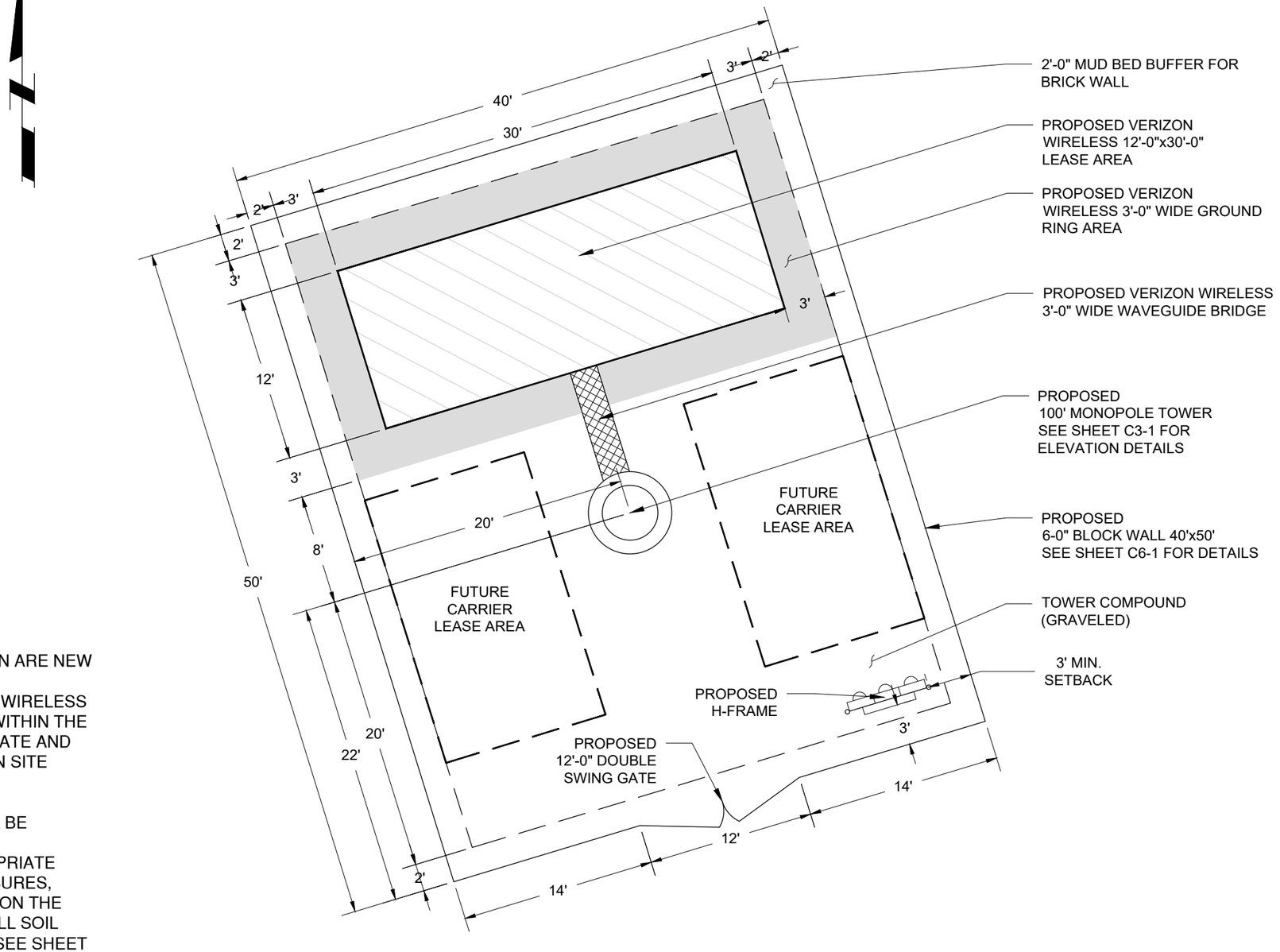
STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

SAMUAL T. CURTIS, P.E.
LICENSED PROFESSIONAL
ENGINEERTEXAS NO. 117377

SCALE
############

OVERALL SITE PLAN

SHEET NUMBER:	REVISION:
C1-1	0



NOTES:

1. ALL COMPONENTS SHOWN ARE NEW CONSTRUCTION
2. PLACEMENT OF VERIZON WIRELESS BUILDING AND H-FRAME WITHIN THE COMPOUND IS APPROXIMATE AND MAY VARY DEPENDING ON SITE CONDITIONS AT TIME OF CONSTRUCTION.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE INSTALLATION OF APPROPRIATE EROSION CONTROL MEASURES, INCLUDING SILT FENCES, ON THE DOWN SLOPE SIDES OF ALL SOIL DISTURBING ACTIVITIES. SEE SHEET C4-1 DETAIL 1.
4. THE GATE SHALL BE PAINTED WOOD

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sls
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LICENSED PROFESSIONAL
ENGINEERTEXAS NO. 117377**

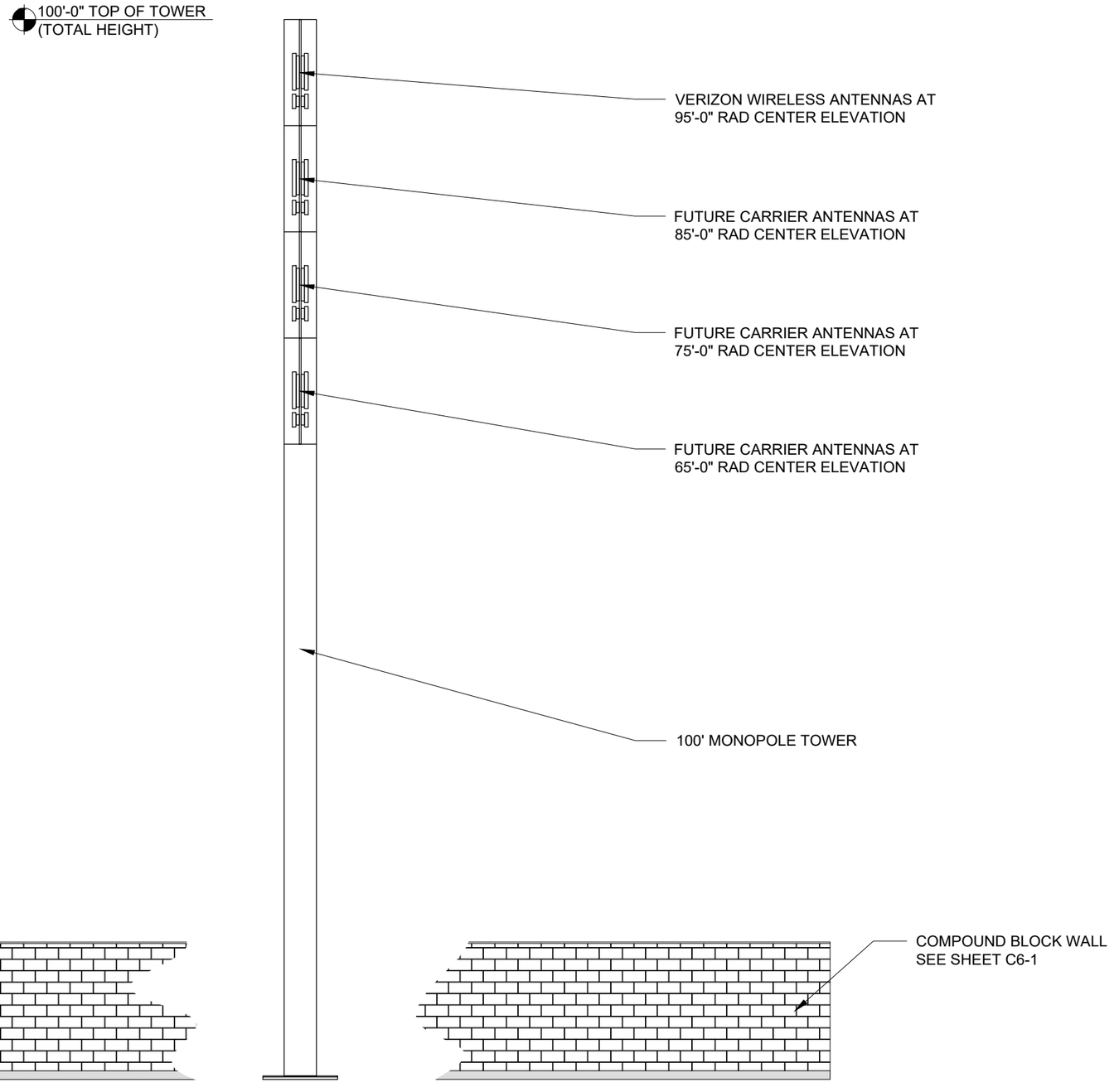
SCALE

1/8" = 1'-0"

COMPOUND LAYOUT

SHEET NUMBER:	REVISION:
C2-1	0

THESE DRAWINGS ARE NOT INTENDED TO REFLECT THE STRUCTURAL INTEGRITY OF THE TOWER. THE PROPOSED ANTENNAS AND TRANSMISSION LINES SHOWN ARE REPRESENTATIVE IN NATURE AND DO NOT REFLECT THE ACTUAL CONFIGURATIONS REQUIRED. THE CONTRACTOR SHALL REFER TO THE STRUCTURAL ANALYSIS OF THIS TOWER SITE FOR THE APPROVED LOCATION AND CONFIGURATION OF ALL ANTENNAS AND TRANSMISSION LINES. ALL ANTENNAS MUST BE MOUNTED AND THE TRANSMISSION LINES CONFIGURED IN STRICT ACCORDANCE WITH THE STRUCTURAL ANALYSIS.



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405.753.7167

PROJECT NO:	1673
PROJECT NAME:	BLACK EAGLE
911 ADDRESS:	TBD
DRAWN BY:	RGH
CHECKED BY:	MK/SLT/JRH

ISSUED FOR:
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

STATE OF TEXAS
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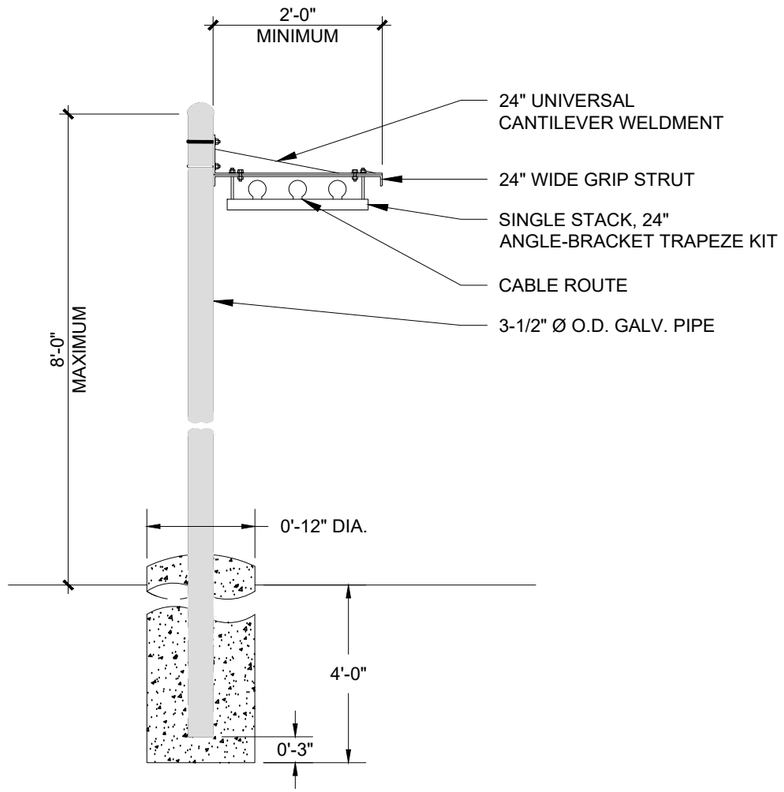
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SCALE
N.T.S.

TOWER ELEVATION

SHEET NUMBER:	REVISION:
C3-1	0

POSTS TO BE SPACED MINIMUM 4'-0" O.C. AND MAXIMUM 10'-0" O.C.



WAVEGUILDE BRIDGE DETAIL

1
C3-3

SCALE: N.T.S.

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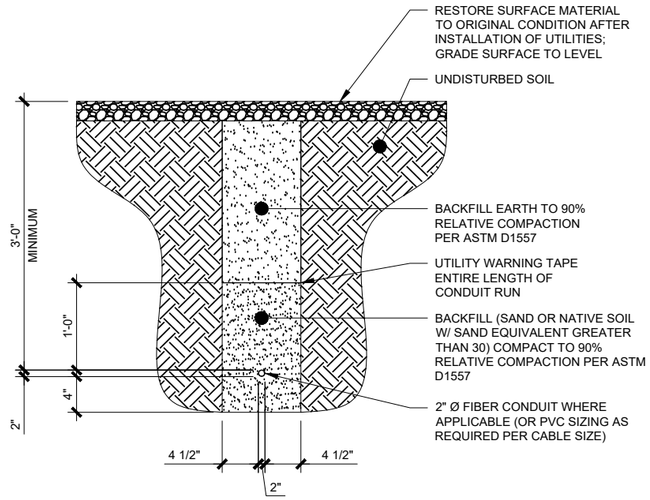
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GROUND EQUIPMENT DETAILS

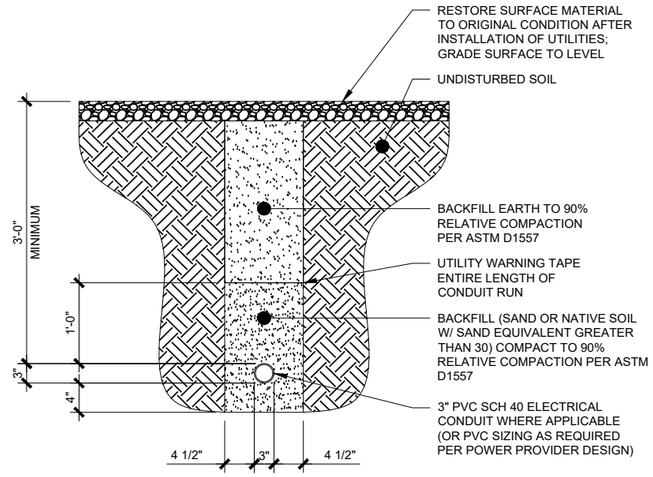
SHEET NUMBER:	REVISION:
C3-3	0



FIBER TRENCH DETAIL

SCALE: N.T.S.

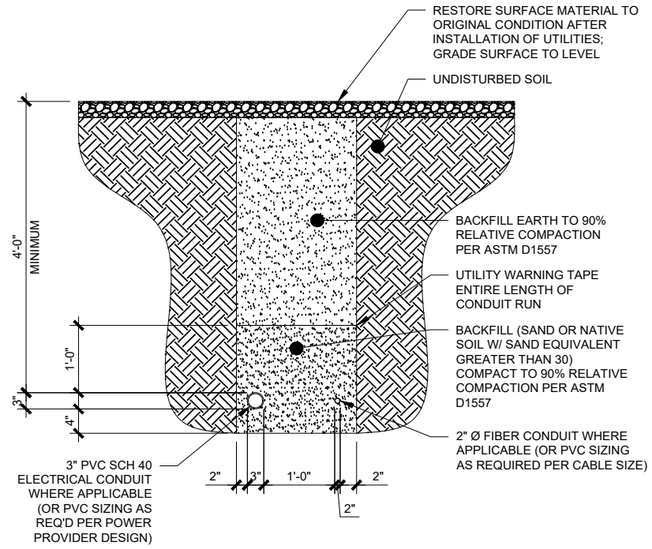
1 C3-6



ELECTRICAL TRENCH DETAIL

SCALE: N.T.S.

2 C3-6



DUAL TRENCH DETAIL

SCALE: N.T.S.

3 C3-6

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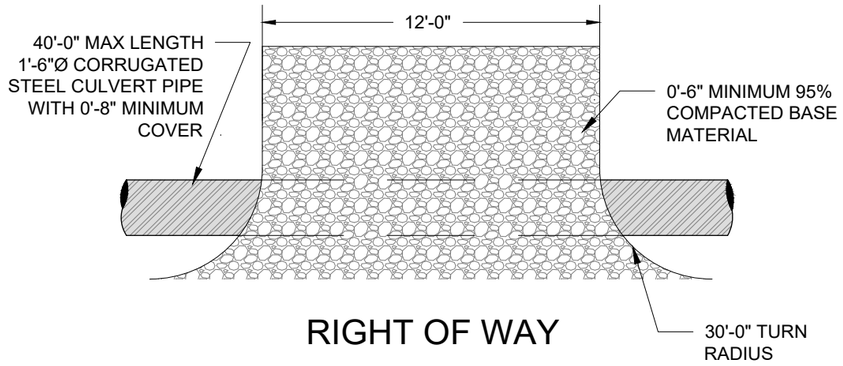


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TRENCHING DETAILS

SHEET NUMBER:	REVISION:
C3-6	0

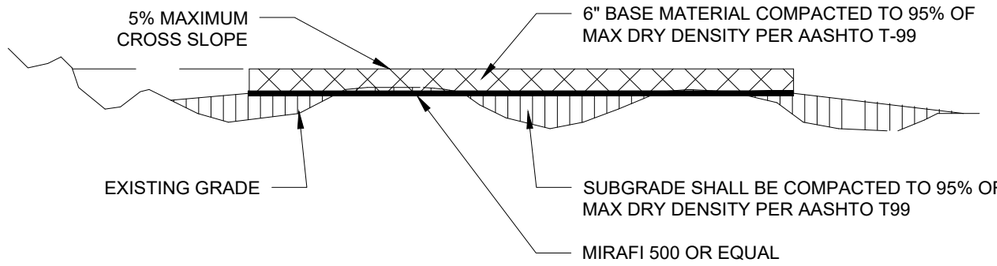


ENTRANCE DETAIL

SCALE: N.T.S.

1 / C4-1

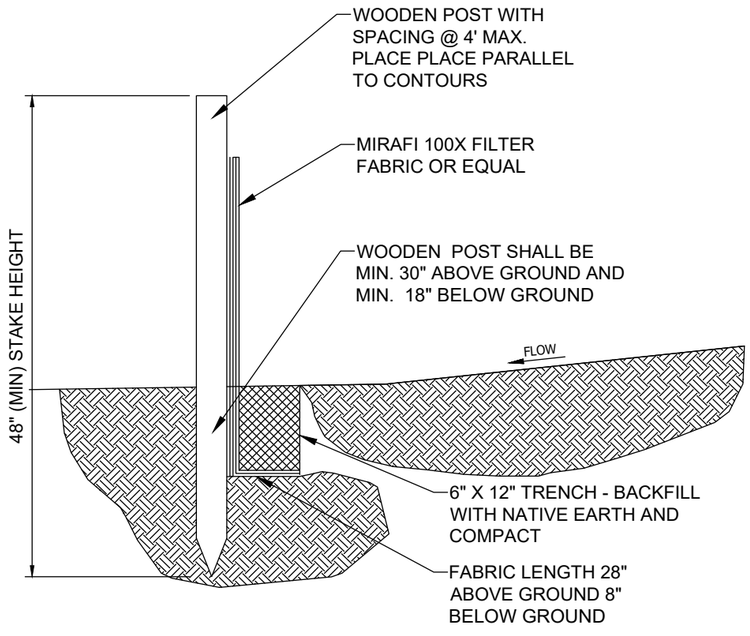
NOTE: IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN ALL NECESSARY PERMITS TO ENSURE THAT THE ENTRANCE MEETS ALL GOVERNING SPECIFICATIONS.



COMPOUND DETAIL

SCALE: N.T.S.

2 / C4-1

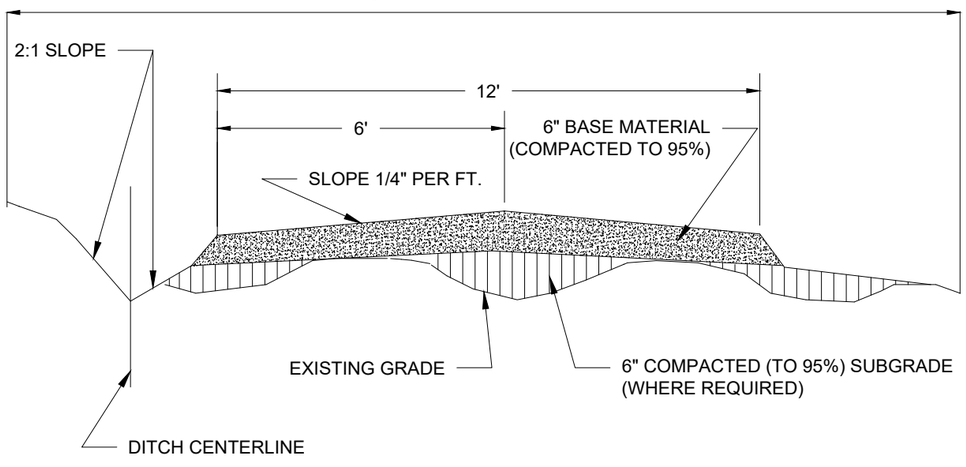


SILT FENCE DETAIL

SCALE: N.T.S.

1 / C4-1

ROADWAY EASEMENT



ROADWAY DETAIL

SCALE: N.T.S.

3 / C4-1

CONSTRUCTION SEQUENCE

1- INSTALLATION OF SILT FENCE - PRIOR TO ANY EARTH MOVING OPERATIONS, AS REQUIRED.
2- INSTALLATION OF STABILIZED CONSTRUCTION ENTRANCE.
3- STRIPPING AND STOCK PILING OF TOPSOIL AND ROUGH GRADING. TEMPORARY STABILIZATION WITHIN 15 DAYS.
4- CONSTRUCTION OF UNDERGROUND IMPROVEMENTS.

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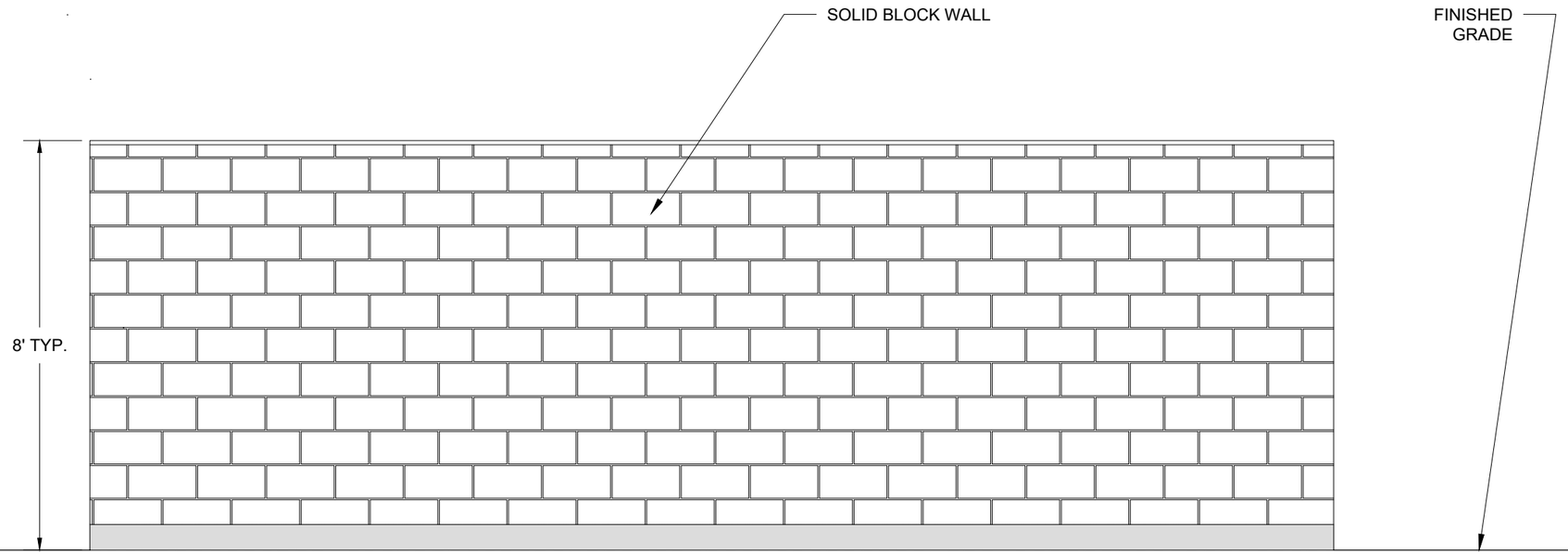
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SCALE

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ROADWAY AND COMPOUND DETAILS

SHEET NUMBER:	REVISION:
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ELEVATION VIEW (1 / C6-1)
SCALE: N.T.S.

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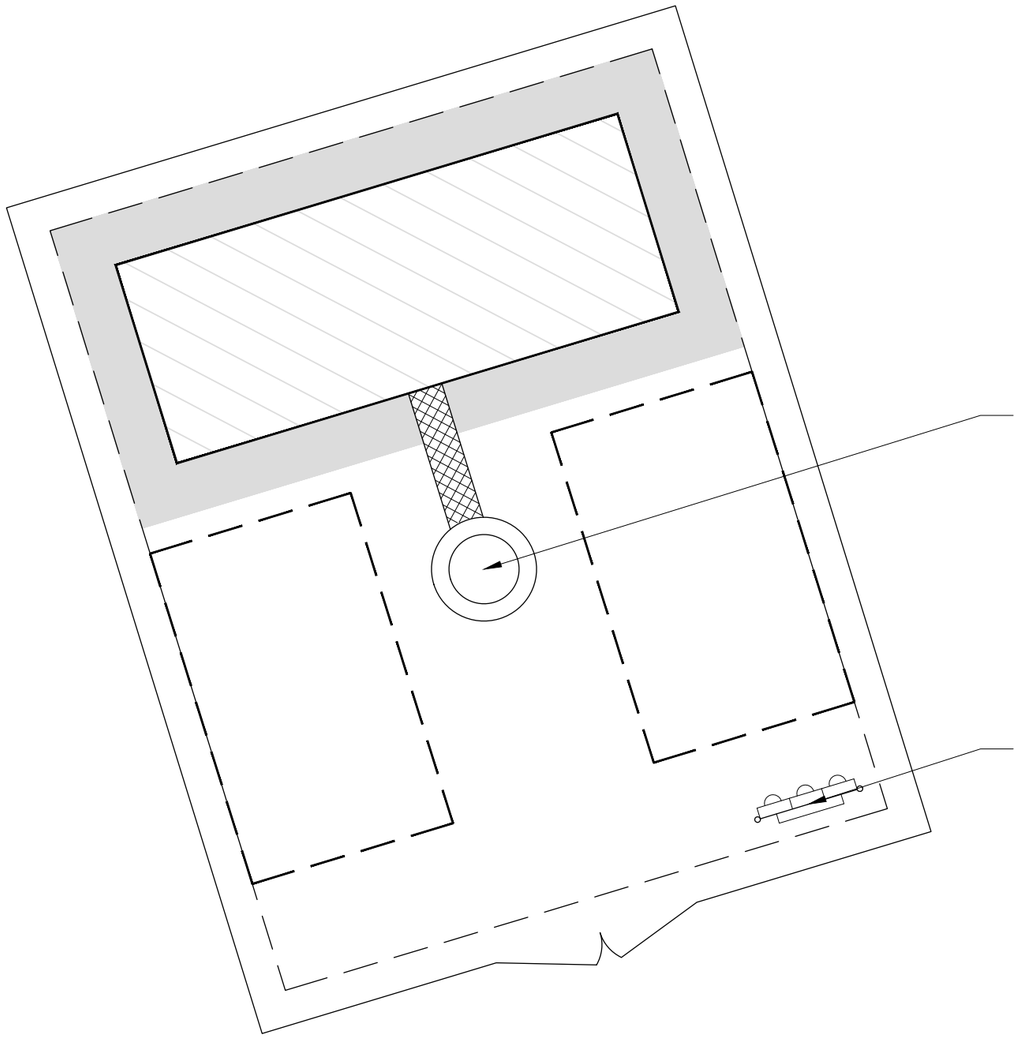
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SCALE
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COMPOUND FENCE DETAILS

SHEET NUMBER:	REVISION:
C6-1	0

PACKET
32.20
January 11, 2022



NOTES:

1. FOR ADDITIONAL INFORMATION REFERENCE C2-1

2. COMPLETION OF ELECTRICAL SERVICE SHALL BE PERFORMED BY LICENSED ELECTRICAL CONTRACTOR

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SCALE
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ELECTRIC, LIGHTING AND TELCO PLAN

SHEET NUMBER:	REVISION:
E1-1	0

NOTES

1 CONTRACTOR SHALL PROVIDE AND INSTALL MODULAR METERING MAIN, 120/240V, 400A, NEMA 3R WITH FOUR METER SOCKETS. METER CENTER SHALL BE FURNISHED WITH 200A METER AND 200A CIRCUIT BREAKER. CIRCUIT BREAKERS SHALL BE COVERED WITH LEXAN METER COVER.

2 CONTRACTOR SHALL PROVIDE AND INSTALL TELCO DEMARCATION BOX TO INCLUDE 48" X 48" X 12" NEMA 3R ENCLOSURE WITH BACKPLATE AND GFI RECEPTACLE (120V, 5A).

3 TOWER LIGHTING SHALL BE REQUIRED ON ALL TOWERS EXCEEDING 200' IN HEIGHT OR AS OTHERWISE REQUIRED BY FAA.

4 DIMENSIONS SHOWN ARE APPROXIMATE AND MAY BE ALTERED IN THE FIELD TO BETTER SUIT ACTUAL CONDITIONS OR EQUIPMENT RECEIVED.

5 ALL CONDUIT SHALL BE SCH. 40 PVC UNDERGROUND.

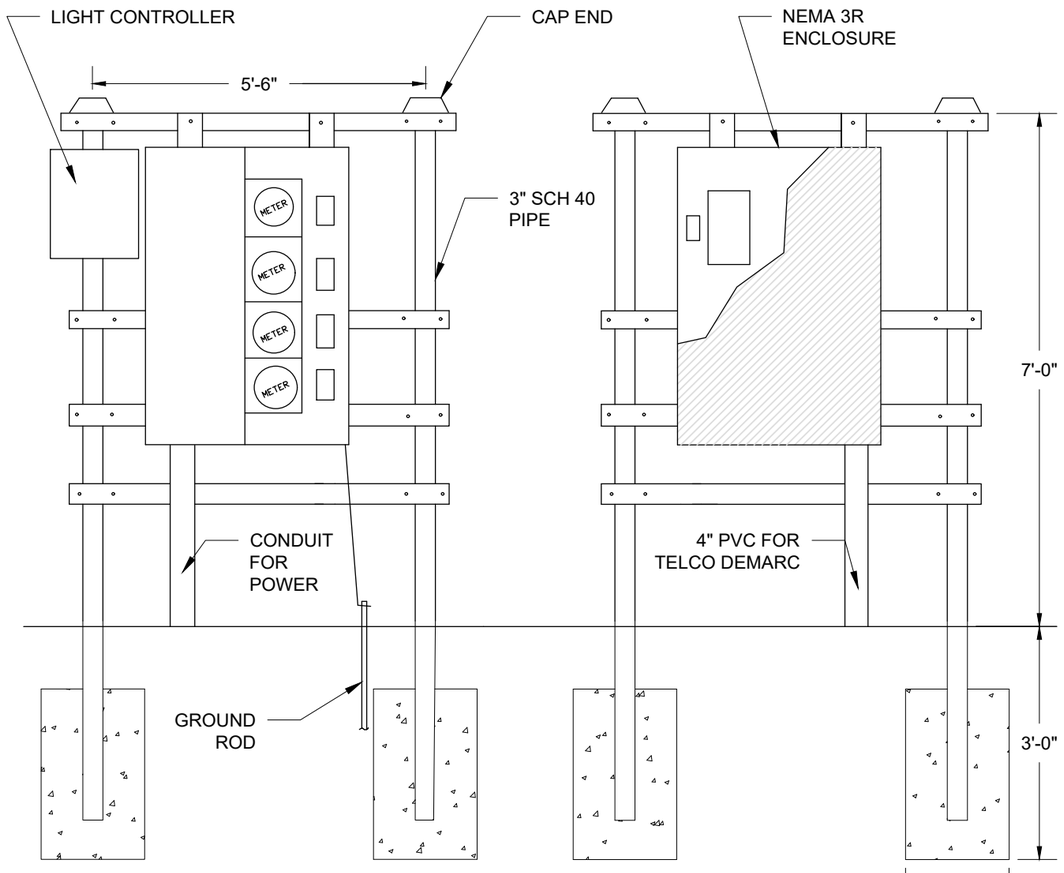
6 ALL MATERIALS AND EQUIPMENT SHALL BE NEW AND IN GOOD WORKING CONDITION WHEN INSTALLED AND SHALL BE OF THE BEST GRADE AND BY THE SAME MANUFACTURER THROUGHOUT FOR EACH CLASS OR GROUP OF EQUIPMENT. MATERIALS SHALL MEET WITH APPROVAL OF ALL GOVERNING ENTITIES HAVING JURISDICTION. MATERIALS SHALL BE MANUFACTURED IN ACCORDANCE WITH APPLICABLE STANDARDS AS ESTABLISHED BY ANSI, NEMA, NSFU, AND "UL" LISTED.

7 ALL CONDUIT SHALL HAVE A PULL STRING.

8 THE ENTIRE ELECTRICAL INSTALLATION SHALL BE GROUNDED AS REQUIRED BY IBC, NEC, AND APPLICABLE CODES.

9 UNDERGROUND AND/OR OVERHEAD LINES SHALL BE OF THE SIZE AND MATERIAL NECESSARY TO MEET THE LOCAL CODE REQUIREMENTS.

10 ALL FRAME MEMBERS TO BE 1-5/8" X 1-5/8" P1000 UNISTRUT (EXCEPT FOR LEGS). CONNECT TO LEGS WITH U BOLTS



FRONT VIEW
SCALE: N.T.S.
1 E2-1

REAR VIEW
SCALE: N.T.S.
2 E2-1

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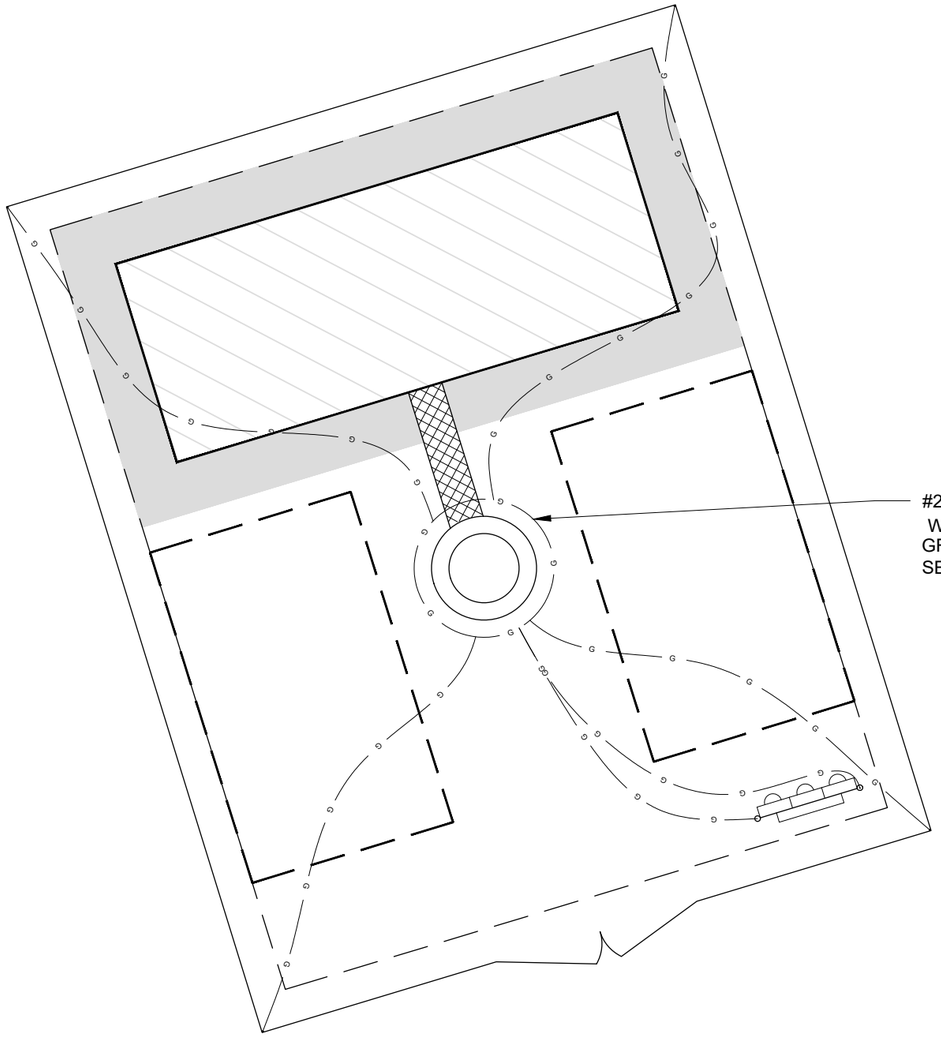
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SCALE
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ELECTRICAL DETAILS

SHEET NUMBER:	REVISION:
E2-1	0



#2 TINNED AWG GROUND RING
WITH $\frac{5}{8}$" X 10'-0" COPPER CLAD
GROUNDING RODS
SEE SHEET E4-1 DETAILS 1 & 4

NOTES:
1. INFORMATION SHOWN IS FOR INFORMATION PURPOSES ONLY. DESIGN OF GROUNDING SYSTEM IS TO BE CONFIRMED BY LYNCOLE PRIOR TO INSTALLATION

2. REFERENCE LYNCOLE DESIGN FOR INSTALLATION OF GROUNDING

3. REFERENCE SHEET C2-1 FOR ADDITIONAL INFORMATION

THIS PLAN IS PROPOSED CONSTRUCTION FOR THE SUBJECT SITE.

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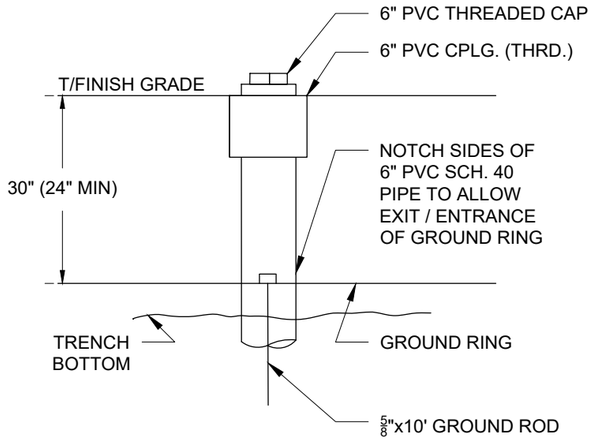
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GROUNDING PLAN

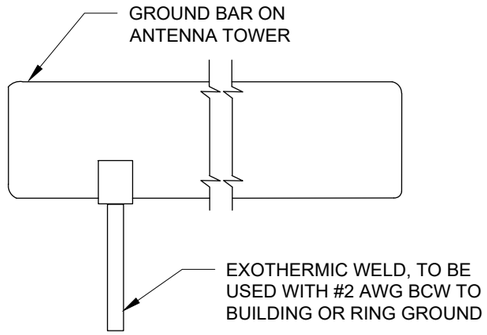
SHEET NUMBER:	REVISION:
E3-1	0



GROUNDING WELL

SCALE: N.T.S.

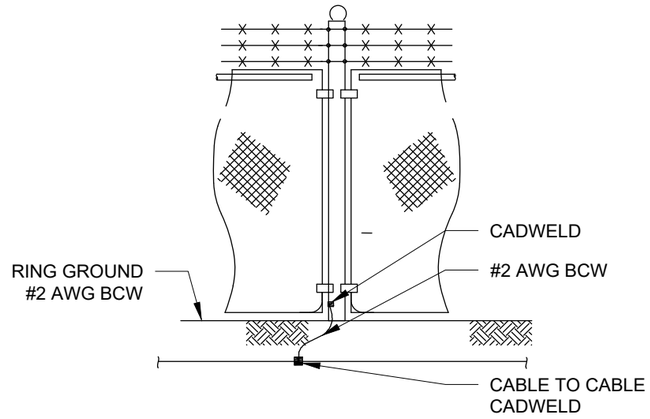
1 E4-1



INSTALLATION OF GROUND WIRE TO GROUND BAR

SCALE: N.T.S.

2 E4-1

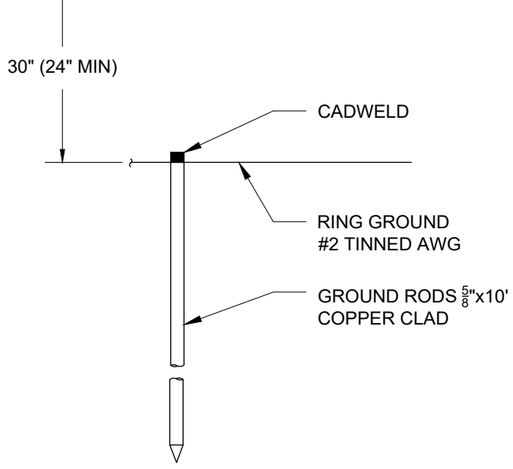


1. THE #2 AWG, BCW, FROM THE RING GROUND SHALL BE CADWELDED TO THE POST, ABOVE GRADE.
2. VERTICAL POST SHALL BE BONDED TO THE RING AT EACH CORNER AND AT EACH GATE POST. AS A MINIMUM, ONE VERTICAL POST SHALL BE BONDED TO THE GROUND RING IN EVERY 100 FEET

FENCE GROUNDING

SCALE: N.T.S.

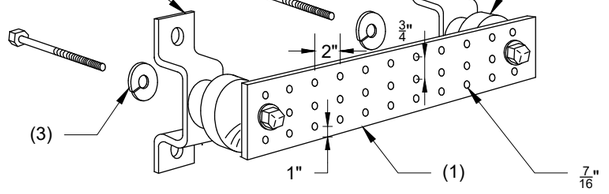
3 E4-1



ROD AND RING GROUNDING

SCALE: N.T.S.

4 E4-1



LEGEND

(1) COPPER GROUND BAR, 1/4"x4"x20". HOLE CENTERS TO MATCH NEMA DOUBLE LUG CONFIGURATION
(2) INSULATORS
(3) 5/8" LOCKWASHERS
(4) WALL MOUNTING BRACKET
(5) 5/8-11x1" H.H.C.S. BOLTS

GROUND BAR DETAIL

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5 E4-1

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N.T.S.

GROUNDING DETAILS

SHEET NUMBER:	REVISION:
E4-1	0

PACKET
32.24
January 11, 2022

CONSTRUCTION

GENERAL

General construction, electrical, tower and foundation drawings are interrelated. In performance of the work each contractor must refer to all drawings. Coordination is the responsibility of the general contractor.

SITE WORK

PART 1 - GENERAL
1. Work included: See Site Plan

2. Access road, turnaround areas and sites are constructed to provide a well-drained, easily maintained, even surface for material and equipment deliveries and maintenance personnel access.

3. SEQUENCING
A. Confirm survey stakes and set elevation stakes prior to any construction.
B. Grub the complete road (if applicable) and site area prior to foundation construction or placement of backfill or subbase materials.
C. Construct temporary construction zone along access drive.
D. Bring the site area to subbase course elevation and bring the access road to base course elevation prior to forming foundation.
E. Soil stabilizer shall be Mirafi - 500X or equal.
F. Grade, seed, fertilize and mulch disturbed areas immediately after bringing site and access road to base course elevation.
G. Remove gravel from temporary construction zone to an authorized area or as directed by the owner's representative.

4. SUBMITTALS
A. Before construction:
   i. If landscaping is applicable to contract, submit two copies of the landscape plan under nursery letterhead. If a landscape allowance was included in the contract, provide an itemized listing of proposed costs on nursery letterhead (refer to plans for landscaping requirements).

5. WARRANTY
A. In addition to the warranty on all construction covered in the contract documents, the contractor shall repair all damage and restore area as close to original condition as possible at site and surroundings.
B. Disturbed area will reflect growth of new grass cover prior to final inspection.

PART 2 - PRODUCTS

1. MATERIALS
A. Road and site materials shall conform to DOT specifications fill material - acceptable select fill shall be in accordance with State Department of Highway and Transportation standard specifications and approved by the owner's representative.
B. Soil stabilizer shall be Mirafi - 500X or equal.

PART 3 - EXECUTION

1. INSPECTIONS
Local building inspectors shall be notified no less than 24 hours in advance of concrete pours, unless otherwise specified by jurisdiction.

2. PREPARATION
A. Clear trees, brush and debris from site area and access road right-of-way.
B. Prior to other excavation and construction, grub organic material to a minimum of six (6) inches below grade.
C. Prior to placement of fill or base materials, roll the soil.
D. Where unstable soil conditions are encountered, line the areas with stabilizer mat prior to placement of fill or base material.

3. INSTALLATION
A. The site and turnaround areas shall be at the subbase course elevation prior to forming foundation. Grade or fill the site and access road as required in order that upon distribution of spoils resulting from foundation excavations, the resulting grade will correspond with said subbase course, elevations are to be calculated from finished grades or slopes indicated.
B. Clear excess spoils, if any, from job site and do not spread beyond the limits of project area unless authorized by the owner's representative and agreed to by landowner.
C. Bring the access road to base course elevations prior to use to permit construction and observation during construction of the site.
D. Avoid creating depressions where water may pond.
E. The contract shall include grading, banking and ditching, unless otherwise indicated.
F. When improving an existing access road, grade the existing road to remove any organic matter and smooth the surface before placing fill or stone.
G. Place fill or stone in six inch maximum lifts and compact before placing next lift.
H. The top surface course shall extend a minimum of six inches beyond the site fence and shall cover the area as indicated.
I. Apply riprap gravel to the slopes of all fenced areas and parking areas and all other slopes greater than 2:1.
J. Apply seed, fertilizer and straw cover to all other disturbed areas, ditches, drainage and swales not otherwise riprapped.
K. Apply seed and fertilizer to surface conditions which will encourage rooting. Rake areas to be seeded to even the surface and loosen the soil.
L. Sow seed in two directions to twice the quantity recommended by the seed producer.

4. PROTECTION
A. Protect seeded areas from erosion by spreading straw to a uniform loose depth of 1 - 2 inches, stake and tie down as required. Use of erosion control mesh or mulch net will be an acceptable alternate.

B. Protect all exposed areas against washouts and soil erosion, place straw bales at the inlet approaches to all new or existing culverts. Where the site or road areas have been elevated immediately adjacent to the rail line, stake erosion control fabric full length in the swale to prevent contamination of the rail ballast.

5. The required structural fill operation to the grades indicated for PCS equipment shelters shall be performed as follows:
A. The structural fill material shall be placed in lifts not exceeding six inches in loose thickness.
B. Each layer of structural fill material placed shall be compacted to a minimum of 95° of maximum density obtainable by ASTM compaction test designation D-337-66T for cohesive fill or 75% relative as determined by ASTM D-2049-64T for cohesionless fill, whichever is greater.
C. The final grade of structural fill for all footings shall be capable of supporting the design soil bearing pressure load of 3,000 lbs. per square foot minimum.

FENCING AND GATE(S)

PART 1 - GENERAL

1. Work included: See plan for location of fence and gate(s).

2. QUALITY ASSURANCE
All steel materials utilized in conjunction with this specification will be galvanized or stainless steel. Weight of zinc coating of the fabric shall not be less than 12 ounces per square foot of material covered. Posts shall be hot-dipped galvanized.

3. SEQUENCING
If the site has been brought up to surface course elevation prior to the fence construction, fence post excavation spoils must be controlled to preclude contamination of said surface course.

4. SUBMITTALS
A. Manufacturer's descriptive literature.
B. Certificate or statement of compliance with the specifications.

PART 2 - PRODUCTS

1. FENCE MATERIAL
A. All fabric wire, rails, hardware and other steel materials shall be hot-dipped galvanized.
B. Fabric shall be six-foot height two-inch chain link mesh of No. 9 gauge wire. The fabric shall have a knuckled finish for the top selvages. Fabric shall conform to the specifications of ASTM A-392 Class 1.
C. Barbed wire shall be double-strand, 12-1/2 gauge twisted wire strand with 14-gauge, 4-point round barbs spaced on five-inch centers, conforming to ASTM A121 Design # 12-4-5-14R Type 2.
D. All posts shall be mechanical service pipe and shall be Type 1 ASTM F1083, High Strength (50 Ksi) Schedule 40 pipe, ASTM F1043 Group 1A, and of the following diameter (I.D. per fence industry standards).
   Line 2 inches
   Corner 3 inches
   Gate 4 inches
E. Gate posts shall be extended 12 inches, including dome cap, to provide for attachment of barbed wire.
F. All top and brace rails shall be 1-1/2" diameter mechanical service pipe. Frames shall have welded corners.
G. Gate frame and braces shall be 1-5/8" diameter Schedule 40 mechanical service pipe. Frames shall have welded corners.
H. Gate frame shall have a full height vertical brace and a full width horizontal brace, secured in place by use of gate brace clamps.
I. Gate hinges shall be Merchants Metal Model 6-4386-hinge adapter with Model 6-409, 188 degree attachment.
J. The quide (latch assembly) shall be heavy industrial gate latch. Master Halco #17221.
K. Latches and stops shall be provided for all gates.
L. All stops shall have keepers capable of holding the gate leaf in the open position.
M. A No. 7 gauge zinc coated tension wire shall be used at the bottom of the fabric terminated with bank clips at corner and gateposts, conforming to ASTM A824 Type II.
N. A six-inch by 1/2-inch diameter eyebolt to hold tension wire shall be placed at the line posts.
O. Stretcher bars shall be 3/16-inch by 3/4-inch or have equivalent cross-sectional area, and conform to ASTM F626, having a minimum zinc coating of 1.2oz/sq-ft.
P. All corner gate and panels shall have a 3/8-inch truss rod with turnbuckles.
Q. All posts except gateposts shall have a combination cap and barbed wire supporting arm. Gateposts shall have a dome cap.
R. Other hardware includes but may not be limited to the clips, band clips and tension band clips.
S. Barbed wire gate guards shall be fitted with dome caps.
T. Barbed wire support arms shall be cast iron with set bolt and lock wire in the arm.
U. All caps shall be cast steel.
V. Where the use of concertina has been specified, 24-inch diameter coil barbed tape, stainless steel, cyclone fence model gap to Type III shall be furnished. It shall be supported above the top rail by use of six wire barbed wire arms positioned atop each line/corner post.

HEMPHILL®
1305 NORTH LOUISVILLE AVE
TULSA, OK 74115
(918) 834-2200

sls
13431 BROADWAY EXT.,
SUITE 120, OKLAHOMA CITY,
OK 73114
405.753.7167

PROJECT NO:	1673
PROJECT NAME:	BLACK EAGLE
911 ADDRESS:	TBD
DRAWN BY:	RGH
CHECKED BY:	MK/SLT/JRH

ISSUED FOR:
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

SAMUAL T. CURTIS, P.E.
LICENSED PROFESSIONAL
ENGINEERTEXAS NO. 117377

SCALE
N.T.S.

GENERAL NOTES

SHEET NUMBER:	REVISION:
G1-1	0

PART 3 - EXECUTION

1. **INSPECTION**
To confirm proper depth and diameter of post hole excavations, all post holes will be excavated as per construction documents.

2. **INSTALLATION**
A. Foundations shall have a minimum six-inch concrete cover under post.
B. All fence posts shall be vertically plumb plus/minus one-quarter inch.
C. At corner posts, gateposts and sides of gate frame, fabric shall be attached with stretcher and tension band-clips at fifteen inch intervals.
D. At line posts, fabric shall be attached with band-clips at fifteen inch intervals.
E. Fabric shall be attached to brace rails, tension wire and truss rods with tie clips at two foot intervals.
F. A maximum gap of two inches will be permitted between the chain link fabric and the final grade.
G. Gate shall be installed so locks are accessible from both sides.
H. Gate hinge bolts shall have their threads peened or welded to prevent unauthorized removal.
I. Concrete to be a minimum of 3,000 psi.

3. **PROTECTION**
Upon completion of erection, inspect fence material and paint field cuts or galvanizing breaks with zinc-based paint, color to match the galvanized metal.

Applicable Standards:
ASTM-A120 Specification for pipe, steel black and hot-dipped, zinc coated (galvanized) welded and seamless.
ASTM-A123 Zinc (hot-dipped galvanized) coated steel chain link fence fabric.
ASTM-A153 Specification for zinc coating (hot-dip) on iron and steel hardware.
ASTM-A392 Specification for zinc-coated steel chain link fence fabric.
ASTM-A431 Specification for aluminum-coated steel chain link fence fabric.
ASTM-A525 Standard specification for steel sheet zinc coated (galvanized) by the hot-dipped process.
ASTM-A535 Specification for aluminum coated steel barbed wire.
ASTM-A570 Specification for hot-rolled carbon steel sheet and strip, structural quality.
Federal Specification RR-F-191 Fencing Wire and Post Metal (and Gates, Chain Link Fence Fabric and Accessories)

ELECTRICAL
1. Contractor shall review the contract documents prior to the ordering of the electrical equipment and starting the actual construction. Contractor shall issue a written notice of all findings to the architect listing any discrepancies or conflicting information.

2. Verify exact locations and mounting heights of electrical equipment with owner prior to installation.

3. All materials and equipment shall be new and in good working condition when installed and shall be of the best grade and of the same manufacturer throughout for each class or group of equipment. Materials shall be listed "J" where applicable. Materials shall meet with approval of all governing bodies having jurisdiction. Materials shall be manufactured in accordance with applicable standards established by ANSI, NEMA, NSFU and "UL" listed.

4. All conduit shall have a pull string.

5. Provide Project Manager with one set of complete electrical "As Installed" drawings at the completion of the job showing actual dimensions, routing and circuits.

6. The entire electrical installation shall be grounded as required by IBC, NEC and all applicable codes.

7. Patch, repair and paint any area that has been damaged in the course of the electrical work.

8. Wire and cable conductors shall be copper 600 amp, type THHN or THWN with a minimum size of #2 AWG color-coded. All rectifier drops shall be stranded to accept crimp connectors.

9. All chemical ground rods shall be "UL" approved.

10. Meter socket amperes, voltage, number of phases shall be as noted on the drawings, manufactured by Milbank or approved equal and shall be utility company approved.

11. **CONDUIT**
A. Electrical metallic tubing shall have UL label; fitting shall be gland ring compression type.
B. Flexible metallic conduit shall have UL listed label and may be used where permitted by code. Fittings shall be "Jake" or "Squeeze" type. All flexible conduits shall have full length ground wire.
C. All underground conduit shall be PVC Schedule 40 with UV protection (unless noted otherwise) at a minimum depth of 24" below grade.

12. Contractor to coordinate with utility company for connection of temporary and permanent power to the site. The temporary power and all hookup costs are to be paid by the contractor.

13. All electrical equipment shall be labeled with permanent engraved plastic labels with white on blue background lettering (minimum letter height shall be 1/4"). Nameplates shall be fastened with stainless steel screws, not adhesive.

14. **GROUNDING ELECTRODE SYSTEM**
A. PREPARATION
i. Surface Preparation:
All connections shall be made to bare metal. All painted surfaces shall be field inspected and modified to ensure proper contact. No washers are allowed between the items being grounded. All connections are to have a non-oxidizing agent applied prior to installation.
ii. Ground Bar Preparation:
All copper ground bars shall be cleaned, polished and a non-oxidizing agent applied. No fingerprints or discolored copper will be permitted.
iii. All grounding conductors shall run through seal tight wherever conductors run through walls, floors or ceilings. If conductors
must run through EMT, both ends of conduit shall be grounded. Seal both ends of conduit with silicone caulk.
B. GROUND BARS
i. All ground bars shall be 1/4" thick copper and of size indicated on drawings.
C. EXTERNAL CONNECTIONS
i. All grounding connections shall be made by the exothermic weld process. Connections shall include all cable, splices, tee's, x's, etc. All cable to ground rods, ground rod splices and lightning protection systems are to be as indicated. All materials used (molds, welding metal, tools, etc.) shall be cadweld and installed per manufacturer's recommended procedures.
D. GROUND RODS
i. All ground rods shall be 5/8" diameter by 10'-0" long "copperweld" or approved equal of the number and locations indicated.
Ground rods shall be driven full length vertically in undisturbed earth.
E. GROUND CONDUCTORS
i. All ground conductors shall be standard tinned, solid bare copper, annealed and size indicated on drawings.
F. GROUND RING
i. The external ground ring encircling the tower (if applicable) and future carrier shall be minimum size of No. 2 AWG solid tinned, bare copper conductor in direct contact with the earth at a depth specified on plan sheets and details. Conductor bends shall have a minimum bending radius of eight inches.
ii. All external ground rings are to be joined together and all connections must be cadwelded. No lugs or clamps will be accepted.
G. FENCE / GATE
i. Ground each gatepost, corner post and gate as indicated on drawing. Ground connections to fence posts and all other connections for the ground grid system shall be made by exothermic weld process and installed per manufacturer's recommendations and procedures and sprayed and cold-galvanized paint.

HEMPHILL®
1305 NORTH LOUISVILLE AVE
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sts
13431 BROADWAY EXT.,
SUITE 120, OKLAHOMA CITY,
OK 73114
405.753.7167

PROJECT NO:	1673
PROJECT NAME:	BLACK EAGLE
911 ADDRESS:	TBD
DRAWN BY:	RGH
CHECKED BY:	MK/SLT/JRH

ISSUED FOR:
APPROVAL

REV	DATE	DESCRIPTION
0	11/01/21	FOR APPROVAL

STATE OF TEXAS
SAMUAL T. CURTIS
117377
LICENSED PROFESSIONAL ENGINEER

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SCALE
N.T.S.

GENERAL NOTES

SHEET NUMBER:	REVISION:
G1-2	0

ONE-MILE INVENTORY REPORT

Applicant: Hemphill, LLC
Applications: Section 4.04.A.20.c.iii.(c)(i.) Interpretation/Specific Use Designation
Hemphill Site Name: 1673 Black Eagle
Project: 100' Stealth Monopole Tower with 8' lightning rod. Tower and ground equipment will be within a 40' x 50' masonry walled compound
Address: 5110 N Garfield Street, Midland, TX 79701
Property ID: R000185162
PIN: 707000010030
Zoning District: AE Agricultural Estate District
Land Owners: Holy Cross Evangelical Lutheran Church of Midland

In support of its Specific Use Designation application, Hemphill, LLC respectfully presents this report as required by Section 4.04.A.20.c.ii.(b):

> (b) The applicant shall submit a report inventorying existing antenna support structures and antenna sites within a one-mile distance from the proposed site outlining opportunities for shared use as an alternative to the proposed one. In the case of co-location, the pro rata reimbursement to the initial applicant from the future provider shall not exceed 55 percent of the original cost for construction of the antenna support structure.

This proposed Hemphill site is being constructed to accommodate multiple providers but Verizon Wireless is the first provider committed to this location. Verizon's RF engineer has provided plots inventorying their existing site locations in the vicinity and showing the coverage (signal strength) and service footprints (best server) with and without the proposed Hemphill "Black Eagle" site at Holy Cross Evangelical Lutheran Church of Midland.

A one-mile radius search has disclosed two existing sites:

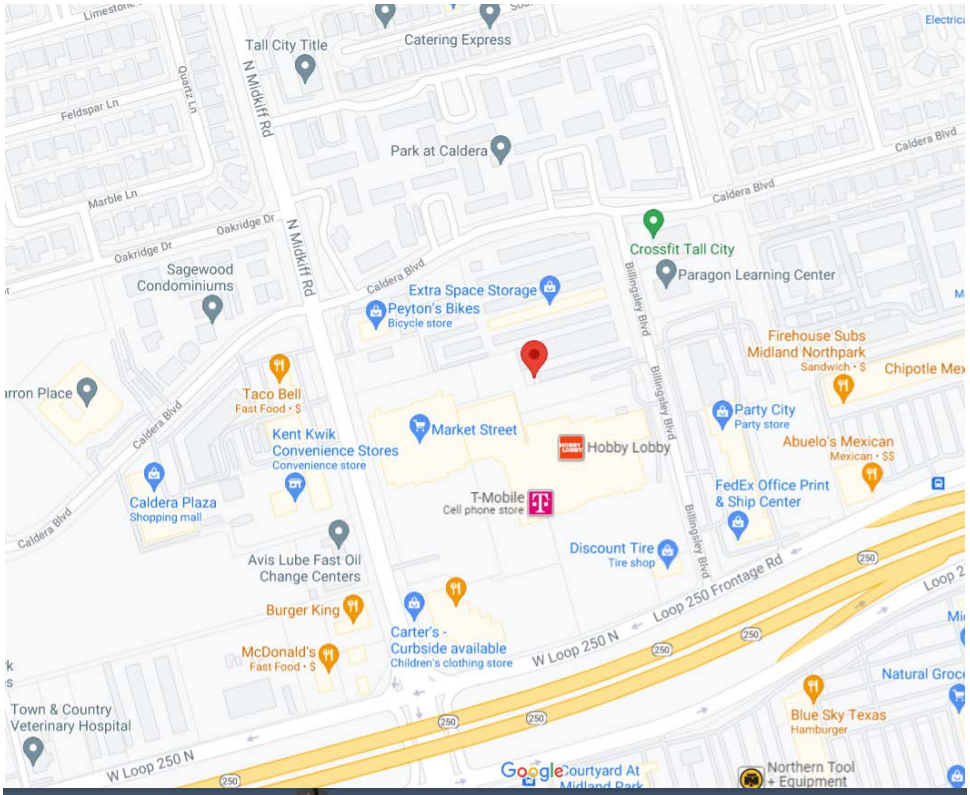
1. Crown Castle Standard Monopole
A 128' standard monopole with external antennas owned by Crown Castle is located at 32°02'12.1"N 102°07'41.7"W (West of Billingsley Blvd at the storage facility north of Hobby Lobby). A map and photo are included below.

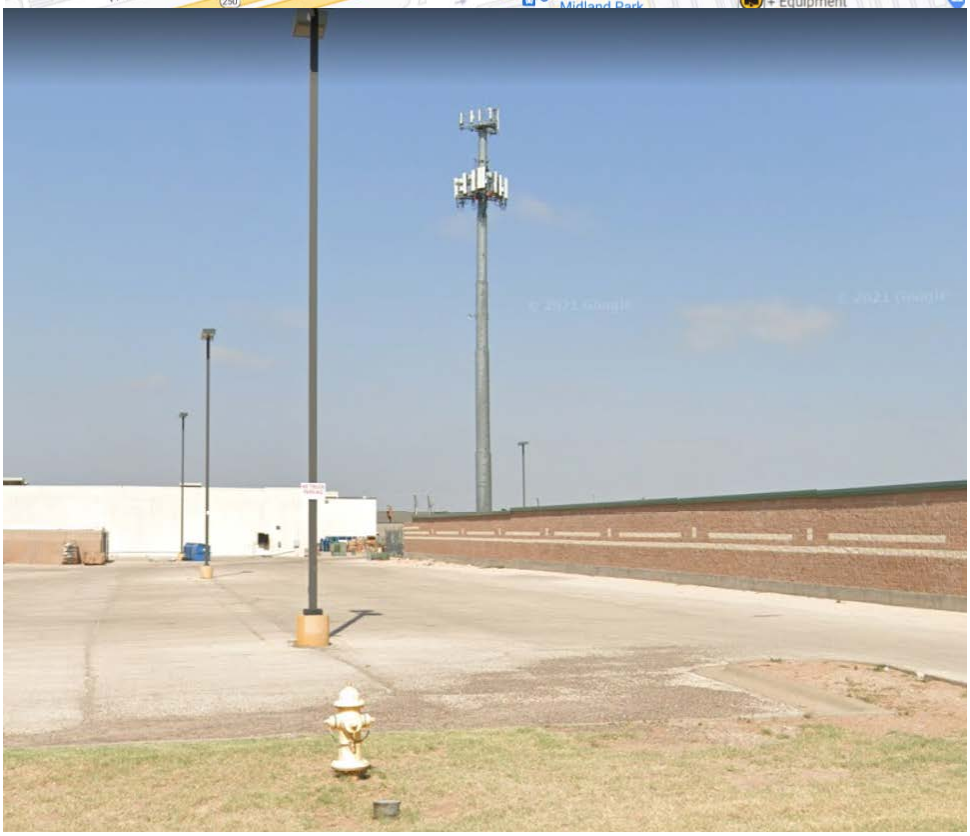
This location is outside of the proposed Hemphill location's service area where Verizon Wireless already has coverage from other locations (see excerpts from Verizon RF plots with relative site locations indicated below).

2. SBA Stealth Monopole
A 57' stealth monopole owned by SBA is located at 32°02'24.6"N 102°06'46.3"W (Southeast of the intersection of N Garfield Street and Castleford Drive in the Colonnade at Polo Park shopping mall area). A map and photo are included below.

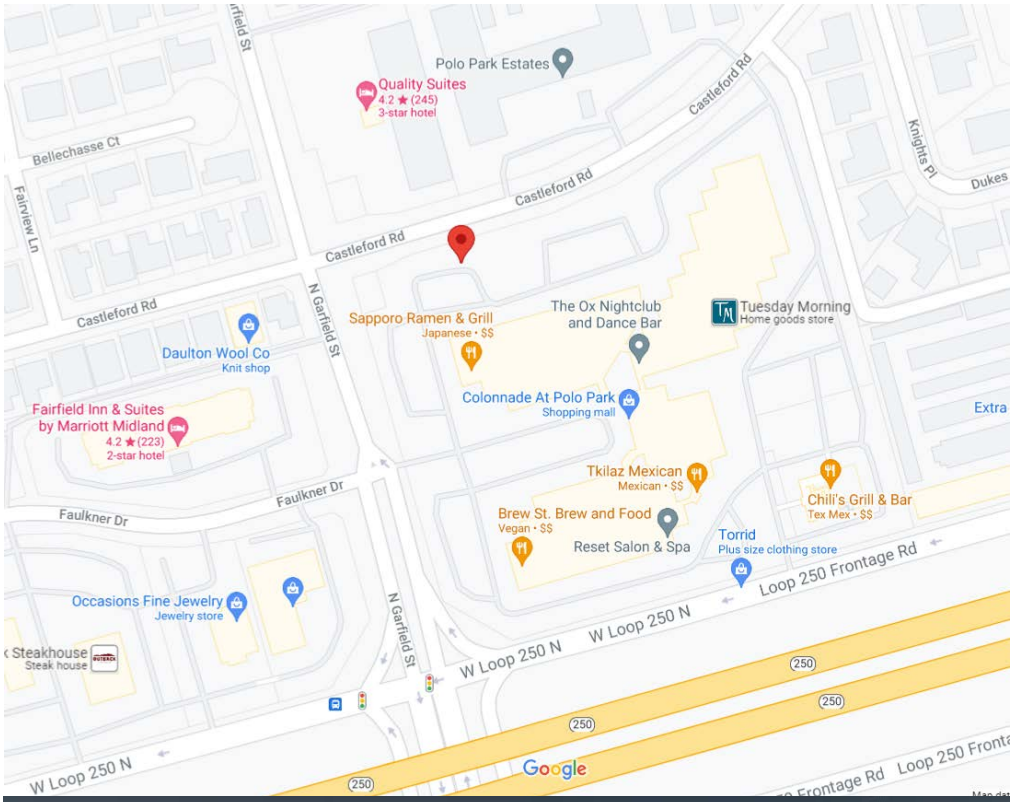
This location is short in height and outside of the proposed Hemphill location's service area where Verizon Wireless already has coverage from other locations (see excerpts from Verizon RF plots with relative site locations indicated below).

Crown Castle 128’ Monopole Map & Photo





SBA 57' Stealth Monopole Map & Photo

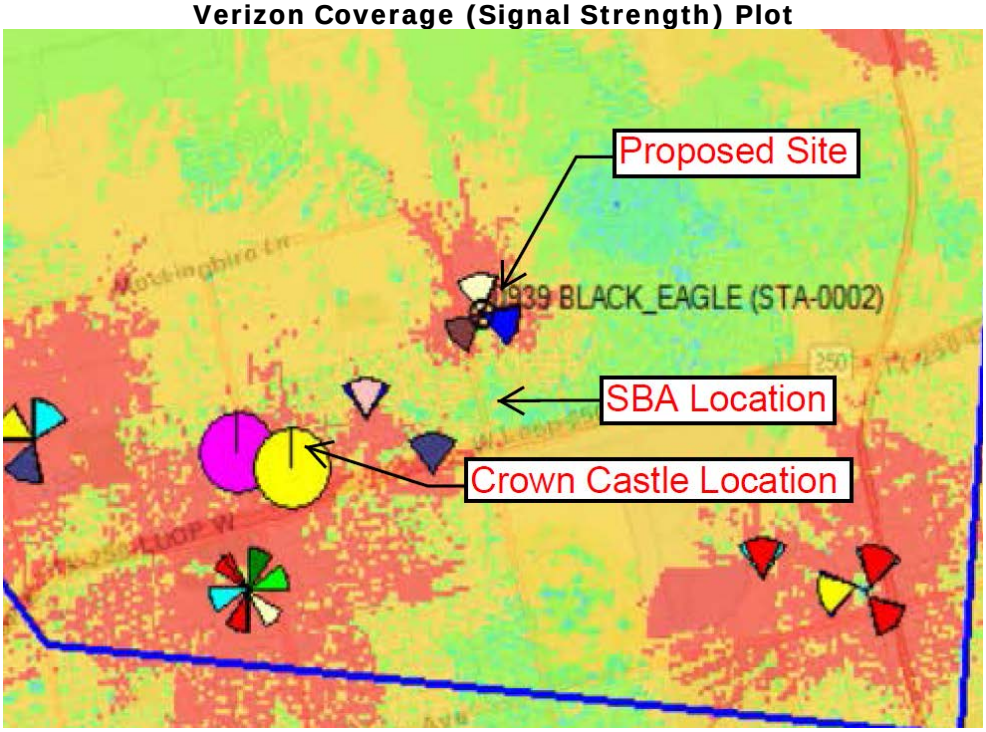




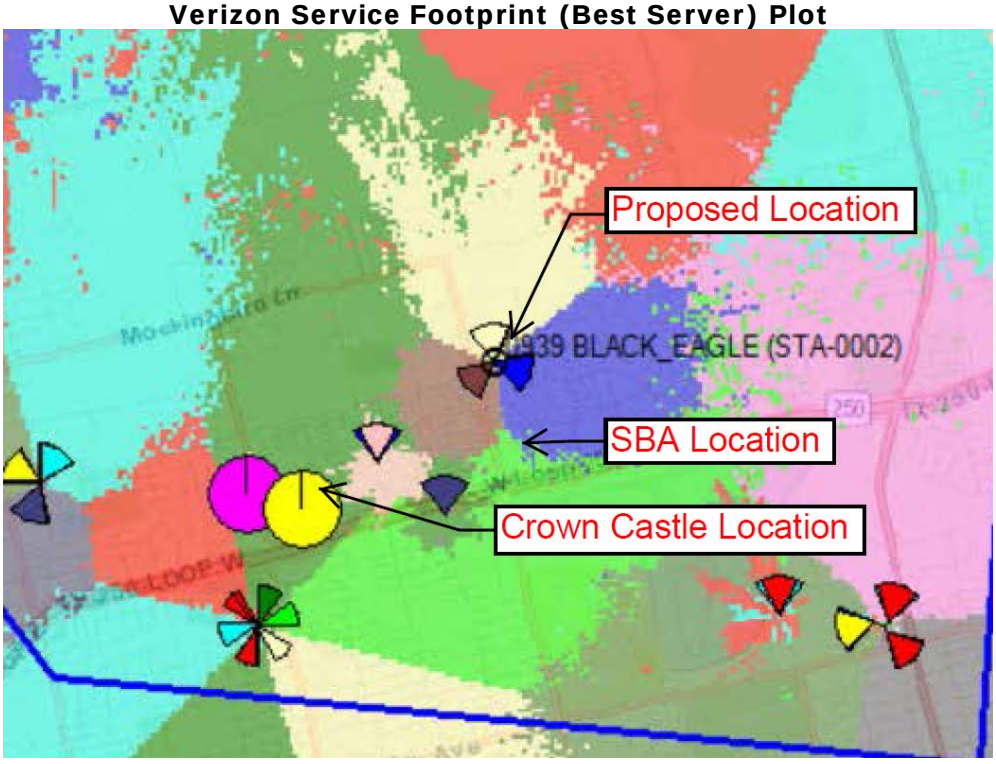
Crown Castle & SBA Locations Are Outside of Proposed Hemphill Site Service Area and Covered by Existing Verizon Sites

The Crown Castle and SBA sites are located outside of the proposed Hemphill site's service area where Verizon Wireless already has coverage from other locations. Consequently, they are not feasible alternatives to the proposed location.

Verizon Coverage (Signal Strength) Plot



Verizon Service Footprint (Best Server) Plot



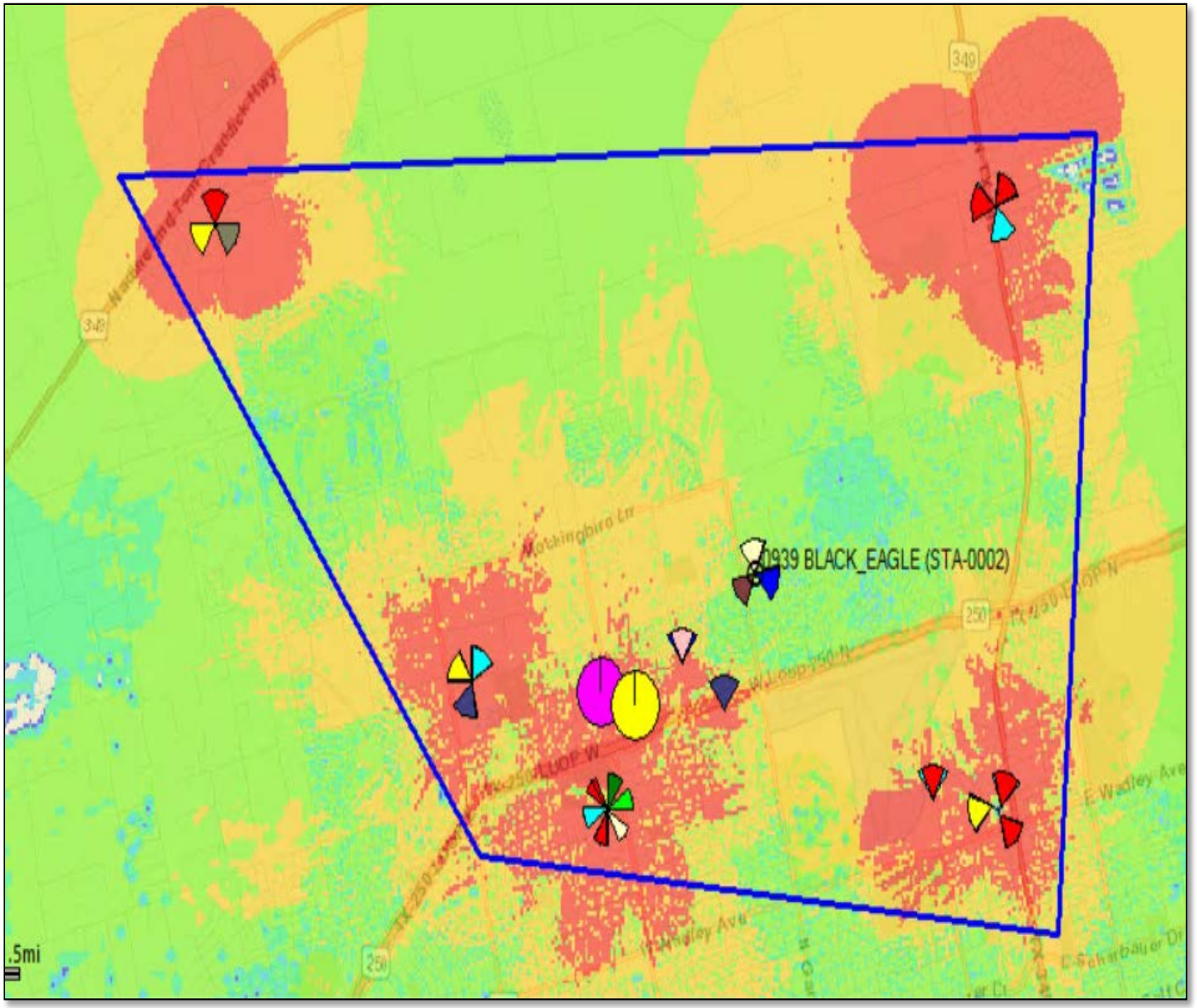
Black_Eagle Plots

Prepared by: Smit Shah

October 26, 2021

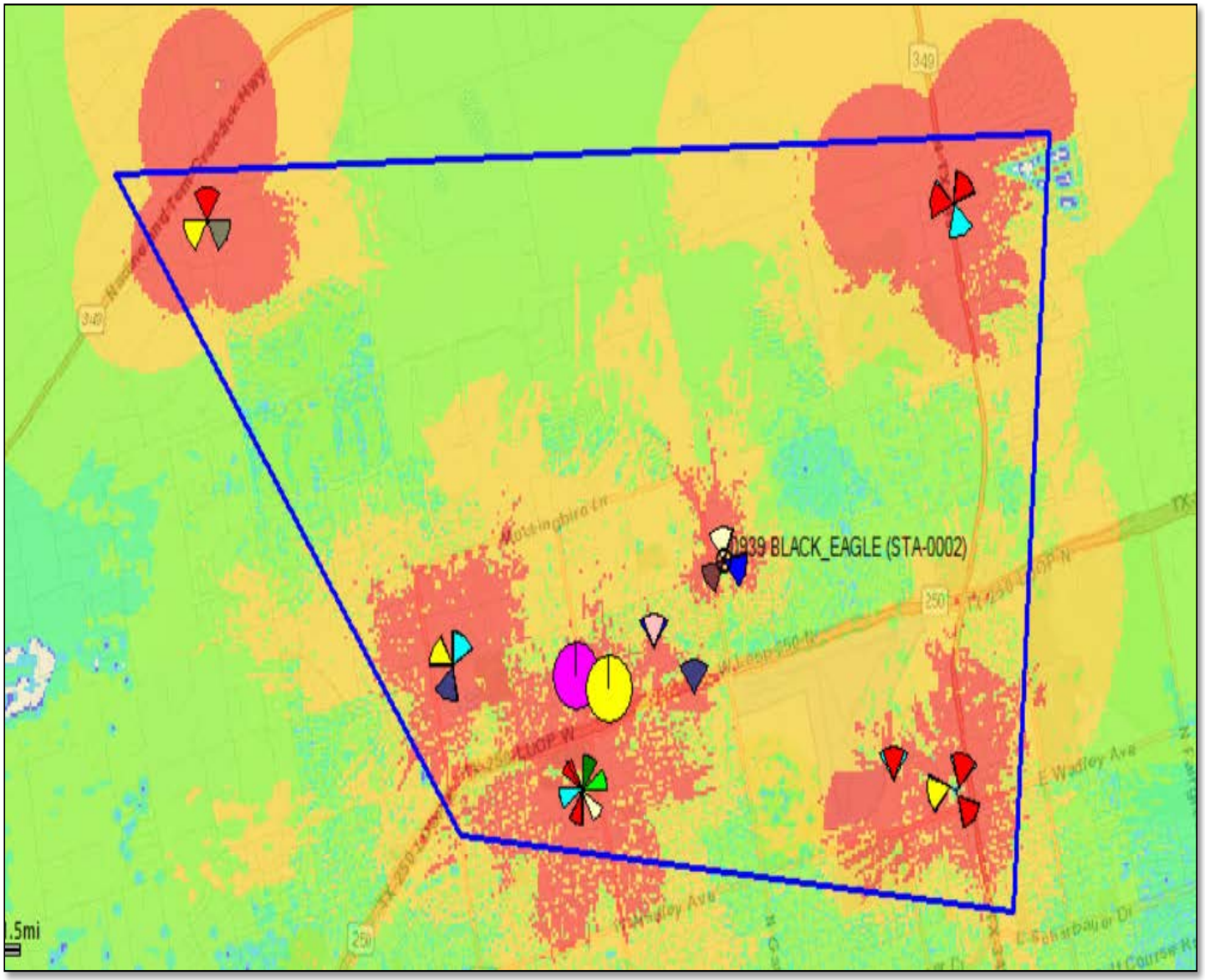
Confidential and proprietary materials for authorized Verizon personnel and outside agencies only. Use, disclosure or distribution of this material is not permitted to any unauthorized persons or third parties except by written agreement.

Coverage Plot – On air sites only



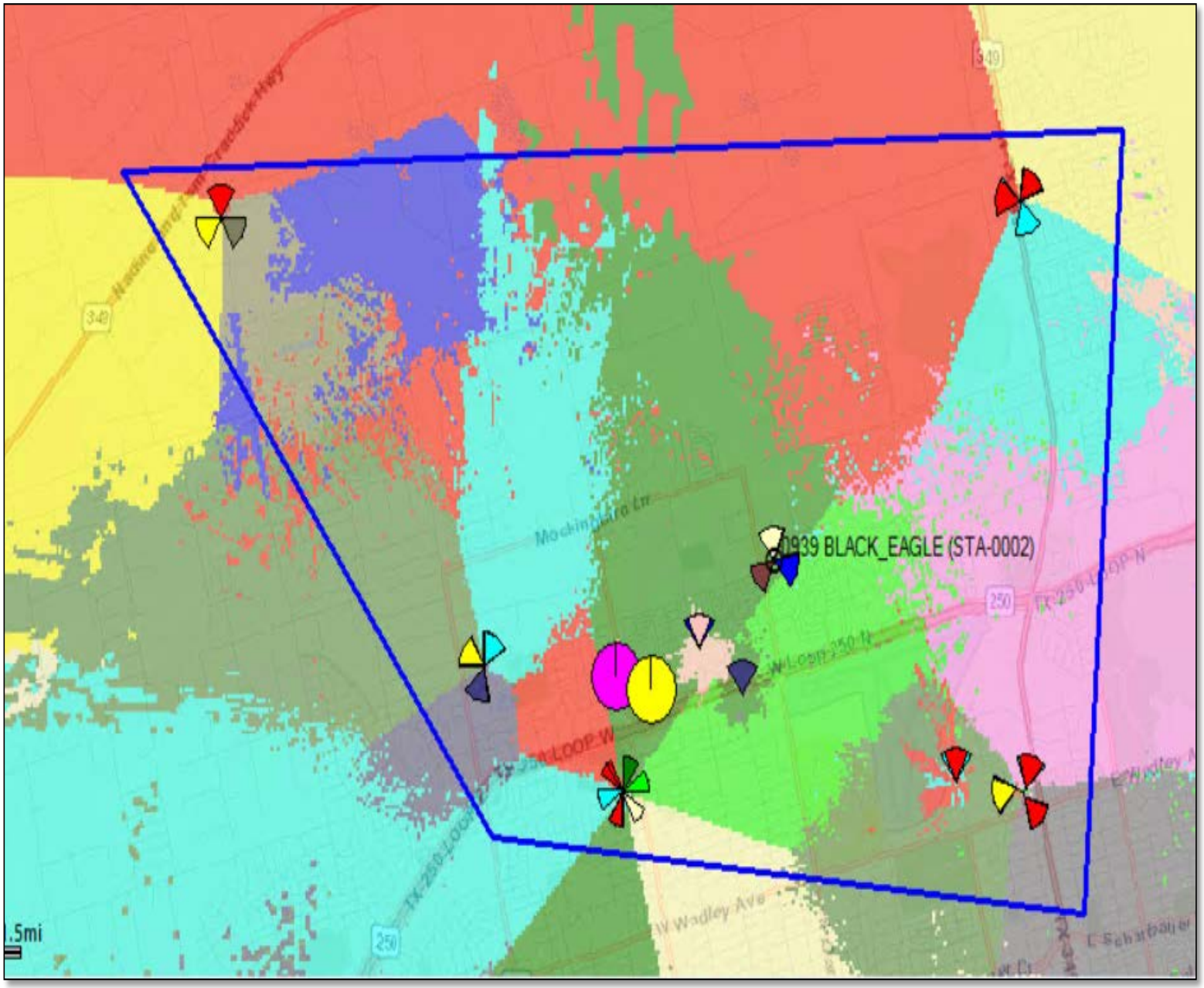
LTE_NW-Mobility_RSRP-dBm (0)
- RSRP Level (DL) (dBm) >=-70
- RSRP Level (DL) (dBm) >=-80
- RSRP Level (DL) (dBm) >=-90
- RSRP Level (DL) (dBm) >=-100
- RSRP Level (DL) (dBm) >=-110
- RSRP Level (DL) (dBm) >=-120

Coverage Plot – On air sites and proposed Hemphill location (Black_Eagle)



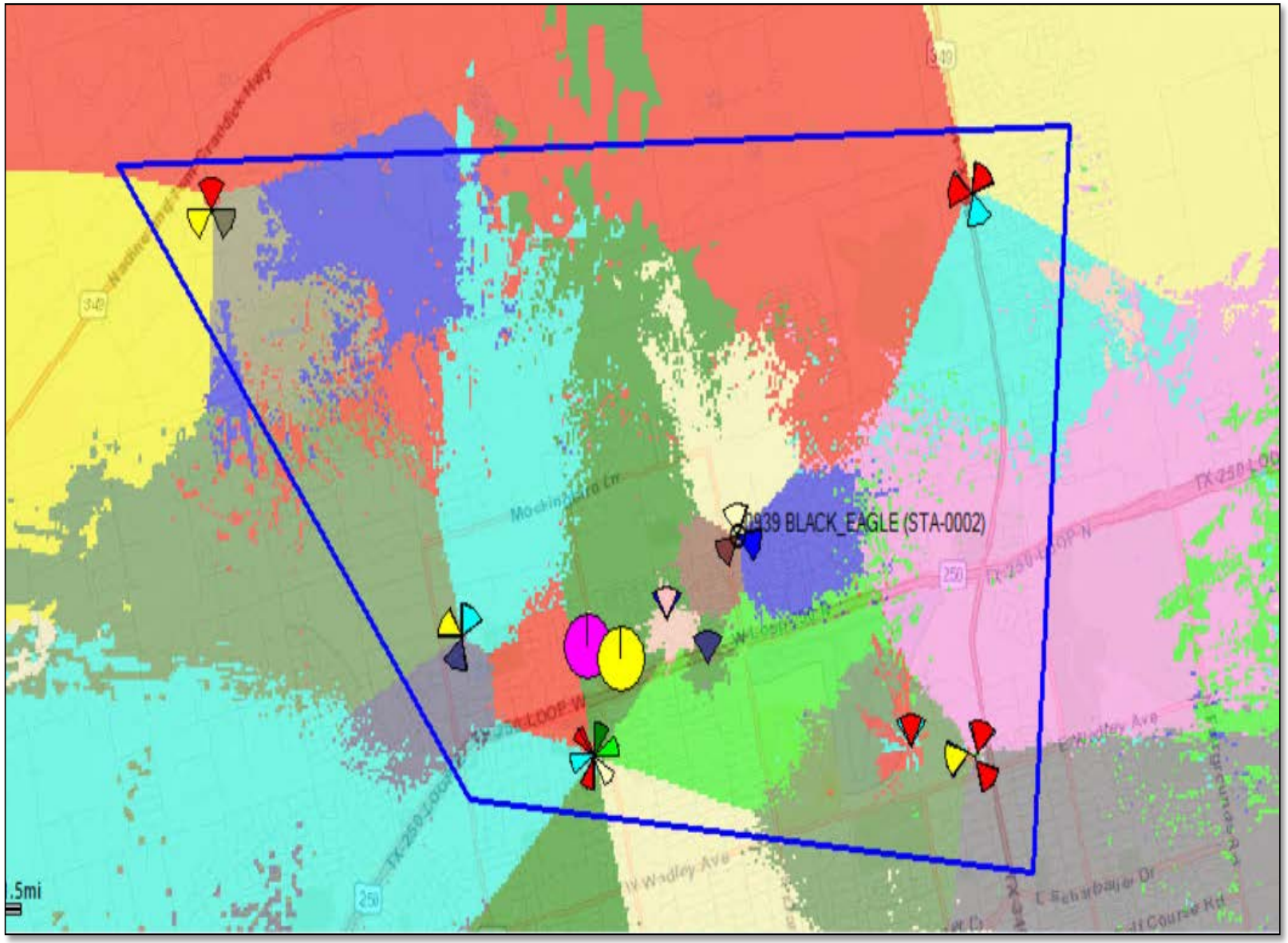
LTE_NW-Mobility_RSRP-dBm (0)
- RSRP Level (DL) (dBm) >=-70
- RSRP Level (DL) (dBm) >=-80
- RSRP Level (DL) (dBm) >=-90
- RSRP Level (DL) (dBm) >=-100
- RSRP Level (DL) (dBm) >=-110
- RSRP Level (DL) (dBm) >=-120

Best Server – On air sites only



verizon

Best Server – On air sites and proposed Hemphill location (Black_Eagle)



HEMPHILL®

November 15, 2021

Ron Corley
Sr. Site Acquisition Specialist
Dish Network
5701 S. Santa Fe Drive
Littleton, CO 80120

469-667-9584

NOTICE OF CO-LOCATION OPPORTUNITY
5110 N Garfield Street, Midland, TX 79701
Hemphill Site Name: 1673 Black Eagle

Dear Mr. Corley:

In compliance with City of Midland Zoning Ordinance Section 4.04.A.20.c.ii.(a) and as a part of our application for a Specific Use Designation we are providing this notice inviting you to apply for space on a proposed Hemphill site at 5110 N Garfield Street, Midland, TX 79701.

Detailed Site Information
Hemphill Site Name: 1673 Black Eagle
Latitude: 32° 02' 44.20" N
Longitude: 102° 06' 50.70" W
Ground Elevation: 2817' AMSL
Height: 100' AGL
Design: Stealth unipole with compartments at centerlines of 95' (Verizon), 85', 75', and 65' AGL.

Thank you for considering this opportunity. For more information, please contact me at your earliest convenience.

Monty Prewit
Hemphill LLC
mprewit@hemphill.com
512-992-5361

CC: Jeff Pinkstaff, Building Official
Elizabeth Shaughnessy, Planning Manager
Chuck Harrington, Development Services Director

Phone: 918-834-2200 1305 N Louisville Ave, Tulsa, OK 74115 Fax: 918-836-6918

Hemphill - 1673 Black Eagle - 100' Stealth Monopole - Photo Sims



VIEW 1: BEFORE




VIEW 1: AFTER

VIEW 2: BEFORE




VIEW 2: AFTER

VIEW 3: BEFORE




VIEW 3: AFTER

VIEW 4: BEFORE



VIEW 4: AFTER



VIEW 5: BEFORE



VIEW 5: AFTER



VIEW 6: BEFORE




VIEW 6: AFTER


VIEW 7: BEFORE
N Garfield St


VIEW 7: AFTER
N Garfield St

2303 Texland Circle
Midland, Texas 79705
(432) 557-0961 Cell

CHARLIE QUALIA

December 15, 2021

City of Midland Planning Division
300 N. Loraine
Midland, TX 79702

Re: Public Notice Regarding Specific Use Designation Without Term Mono-pole Cell Tower
P&Z Hearing on Monday, December 20, 2021 at 3:30pm
Case Number: SUDwo-21-0025
Case Name: Faulk & Foster

Gentlemen:

I am responding to the above referenced Planning and Zoning Commission Public Notice regarding the proposal to build a mono-pole cell tower near the intersection of Bluebird Lane and North Garfield Street, Midland, Midland County, Texas.

I am president of the Texland Estates Homeowners Association. Texland Estates is a neighborhood comprised of 17 homes on 2 acre lots located across the street west of the proposed tower site. This neighborhood is within the confines of the "Green Belt" zone of Midland, Texas which specifically requires no lots be less than 2 acres in size and no commercial enterprises/properties be established.

The Texland Estates neighborhood is unanimously and enthusiastically against the proposed mono-pole cell tower location.

The proposed tower site is located in an established neighborhood of single family homes where nobody wants to see a tower. Cell tower sites that I have seen are located on undeveloped land or farm and ranch land.

Having such a tower in an established neighborhood would likely devalue the property in the vicinity since nobody wants to see a shadow of a tower across their home as well as any blinking lights through the house.

I am sure an alternate site can be chosen so not to interfere with the surrounding neighborhood values or aesthetics.

Respectfully,

Charlie

Charlie Qualia

mailed 12/13/21

RECEIVED
DEC 15 2021
BY:

MIDLAND
Planning Divisi

DAGENHART KEITH
5515 NEWCASTLE DR
MIDLAND TX 79705

PUBLIC NOTICE

The **Planning & Zoning Commission** of the City of Midland, Texas, will hold a public hearing at **3:30 p.m.** on **Monday, December 20, 2021,** in the Council Chamber, City Hall, 300 N. Loraine Street, Midland, TX 79701, on a request by **Faulk & Foster** for a **Specific Use Designation without Term** on the following described property:

LEGAL DESCRIPTION: A portion of Lot 3, Block 1, Polo Club Addition, Section 3, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of N. Garfield Street and Bluebird Lane- (Council District 1)

CURRENT ZONING: AE, Agricultural Estate District

SPECIFIC USE: For the installation of a mono-pole cell tower

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ✓ **Comments:**

Required Information:

Keith Dagenhart
Property Owner's Signature

Keith Dagenhart
Printed Name

5515 Newcastle Dr. Midland, TX 79705
Property Address (**No P. O. Boxes**)

If any further information is desired, please contact the Planning Division at (432) 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : (432) 685-7400.

Notices Mailed: 17
Date Mailed: December 10, 2021
Case Number: SUDwo-21-0025
Case Name: Faulk & Foster
CF Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989. 0

MIDLAND
Planning Divisi

WALKER CLINT D & RISA R
WALKER
2108 BLUEBIRD LN
MIDLAND TX 79705

PUBLIC NOTICE

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I object to this request ✓ **Comments:** SEE ATTACHED DOCUMENT

Required Information:

Clint D Walker — Property Owner's Signature

CLINT D. WALKER — Printed Name

2108 BLUEBIRD LANE MIDLAND, TEXAS 79705 — Property Address (**No P. O. Boxes**)

If any further information is desired, please contact the Planning Division at (432) 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : (432) 685-7400.

Notices Mailed: 17
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December 15, 2021

City of Midland Planning Division
P.O. Box 1152
Midland, Texas 79702-1152

I am responding to the notification received via mail on December 14, 2021. The notification is brief as we have only 6 total days to respond and attend the meeting even though vacation was planned.

I am NOT in favor of the proposed 110' "stealth" tower at the proposed location.

The proposed site is in the "Green Belt" which is specifically sites no less than 2 acres with homes and agriculture crops and animals except for pigs. No commercial properties in the Green Belt unless related to farm or equine activities (i.e., barns).

The proposed site is just North of an established neighborhood and directly in front of my home. The majority of cell tower sites throughout Midland and Odessa are located on retail or commercial sites. The exception is a tower on a city of Midland water facility on the south side of Bluebird near Midland drive. Once again, not in the "Green Belt". The other cell tower sites that I have seen are on undeveloped land or farm and ranch land. Also, the proposed "stealth" tower will be visible from every window in front of my house and backyard as well as from multiple homes and residential developments.

The proposed cell tower is in direct air traffic patterns from Midland Airpark.

The proposed cell "stealth" tower would trespass across my property line in the event of a failure fall.

The proposed "stealth" cell tower will devalue my property as no one wants a shadow of a tower across their home as well as a blinking red light throughout their house. The construction of the proposed 110' "stealth" tower would be considered as a "Substantial Taking" from my point of view if the proposed construction moved forward.

I hope an alternative site could be chosen as to not affect anyone's value or aesthetics of their property.

Respectfully,

Clint Walker
2108 Bluebird Lane
Midland, Texas 79705

MIDLAND
Planning Divis

RECEIVED
DEC 15 2021
BY:.....

SINGH LALLBAHADUR
2206 STRATFORD CT
MIDLAND TX 79705-1712

PUBLIC NOTICE

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CURRENT ZONING: AE, Agricultural Estate District

SPECIFIC USE: For the installation of a mono-pole cell tower

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ✓ **Comments:**

1. Eyesore 2. Significant amount of cancer causing RF signal.

Required Information:

Lallbahadur Singh — Property Owner's Signature

Lallbahadur Singh — Printed Name

2206 Stratford Ct. — Property Address (**No P. O. Boxes**)

If any further information is desired, please contact the Planning Division at (432) 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : (432) 685-7400.

Notices Mailed: 17
Date Mailed: December 10, 2021
Case Number: SUDwo-21-0025
Case Name: Faulk & Foster
CF Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989. 0

MIDLAND
Planning Division

RECEIVED
DEC 15 2021
BY:

PUBLIC NOTICE

The **Planning & Zoning Commission** of the City of Midland, Texas, will hold a public hearing at **3:30 p.m.** on **Monday, December 20, 2021,** in the Council Chamber, City Hall, 300 N. Loraine Street, Midland, TX 79701, on a request by **Faulk & Foster** for a **Specific Use Designation without Term** on the following described property:

LEGAL DESCRIPTION: A portion of Lot 3, Block 1, Polo Club Addition, Section 3, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of N. Garfield Street and Bluebird Lane- (Council District 1)

CURRENT ZONING: AE, Agricultural Estate District

SPECIFIC USE: For the installation of a mono-pole cell tower

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ✓ **Comments:**

Required Information:

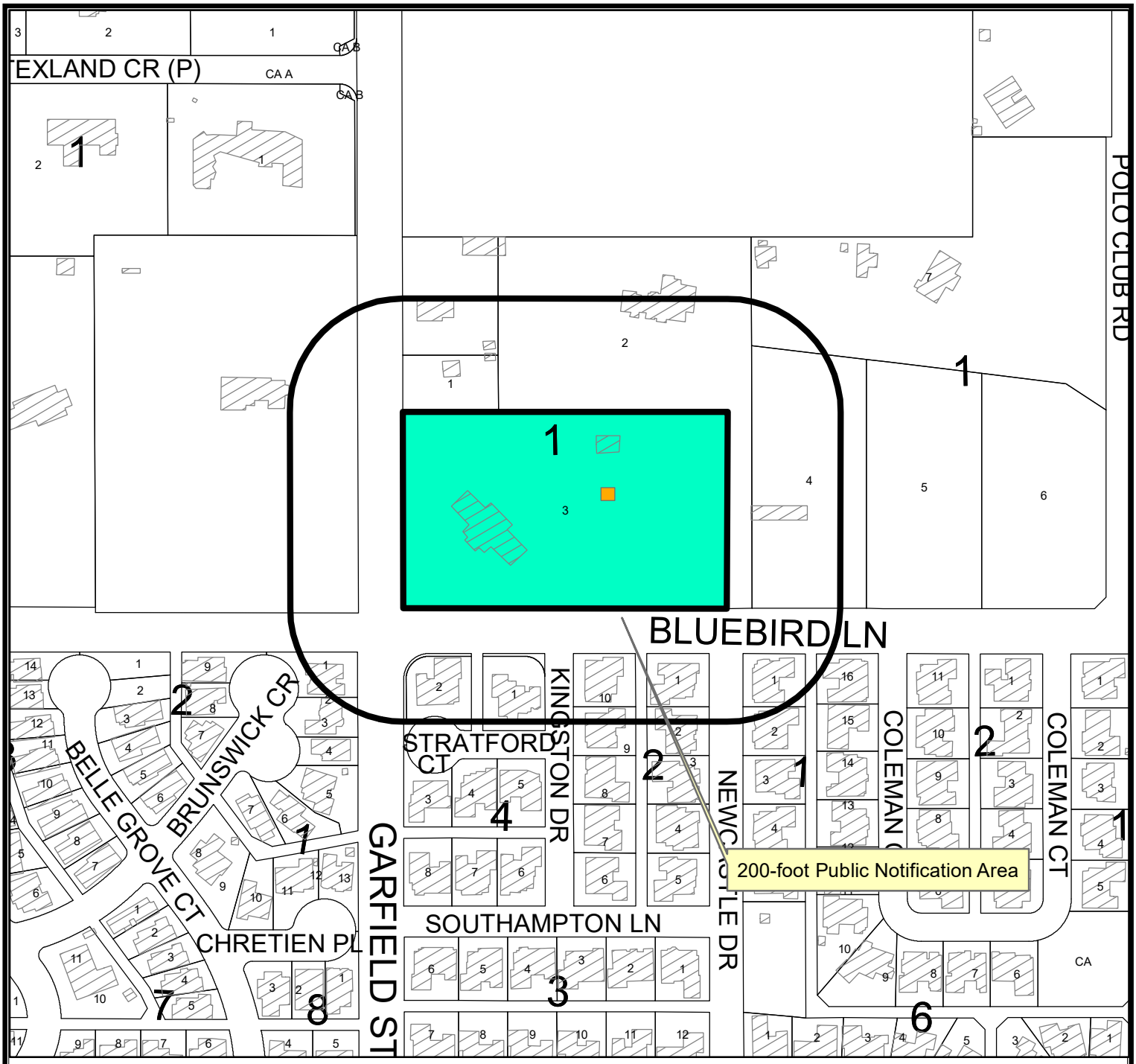
Property Owner's Signature — Sherry Riddle (Printed Name) — 5514 Newcastle Midland, TX 79705 (Property Address **(No P. O. Boxes)**)

If any further information is desired, please contact the Planning Division at (432) 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : (432) 685-7400.

Notices Mailed: 17
Date Mailed: December 10, 2021
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Case Name: Faulk & Foster
CF Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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LOCATION MAP

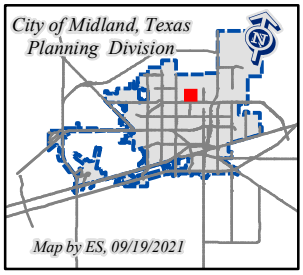
SUD-21-0025 **Scale: 1" = 200'**

A request by Faulk & Foster for a Specific Use Desiganation without Term for the installation of a Mono-pole Cell Tower on a portion of Lot 3, Block 1, Polo Club Addition, Section 3, City and County of Midland, Texas.

Generally located on the norheast corner of the intersection of N. Garfield Street and Bluebird Lane - (Council District 2)

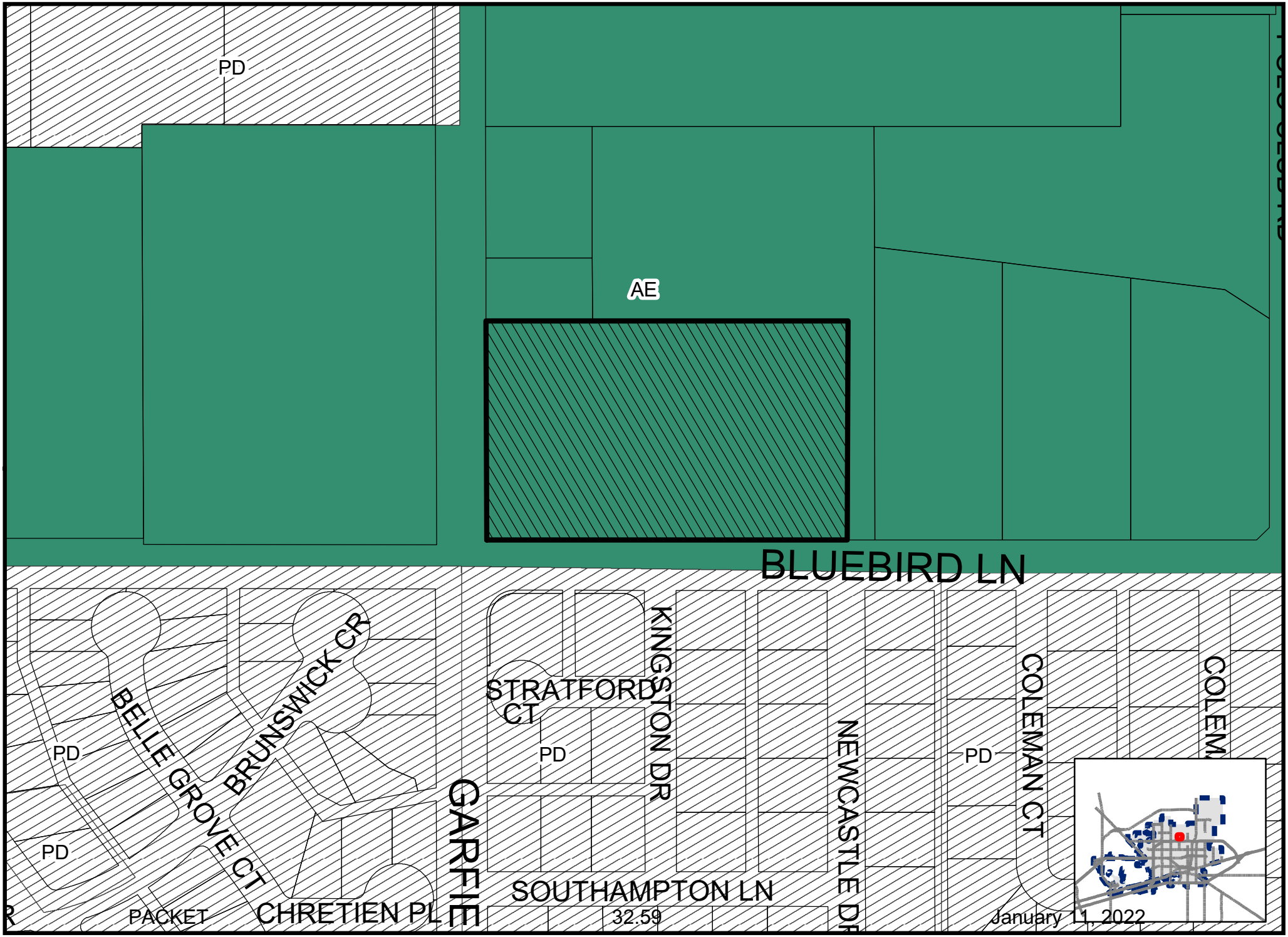
LEGEND

- 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.

January 11, 2022



Map By CF, 11/30/2021

SUDwo-21-0025

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.






STOP


STOP




Kingston
25





City Council Meeting

Item Number: 33

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,000-SQUARE FOOT PORTION OF LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Chip Hight, is requesting a Specific Use Designation with term for the sale of alcoholic beverages for on-premises consumption in a restaurant at 3607 N. Colorado Street, Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

Current Zoning:

CB, Central Business District

Surrounding Zoning and Land Use:

This property is located at 607 N. Colorado Street in the CB, Central Business District. To the north, east, south, and west is also zoned CB, Central Business District. The property to the north is an office building. The property to the east is the City of Midland Police Department. The property to the south is a parking lot uses by Midland Police Department. The property to the west is a retail center that has a Subway and The Fuel Bar.

Discussion:

Chip Hight business owner of Hight Hospitality, INC. AKA Mister Chip's Kitchen is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned CB, Central Business District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

Mister Chip's Kitchen is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. However, this location previously has an approved SUD that lapsed over a year ago under the business of Basin Burger, ordinance number 9628. The floor plan attached hereto as "Exhibit A" illustrates that the establishment will have a total square footage of 5,000 square feet, with an alcohol serviceable area of 4,386 square feet. The site currently has adequate parking that is being shared with the parking lot to the south and restroom facilities.

The restaurant will have the following hours of operation:

Monday through Sunday: 11:00 a.m. to 2:00 p.m.
and 4:00 p.m. to 10:00 p.m.

The restaurant will have the following hours of alcohol service:

Monday and Saturday: 11:00 a.m. to 12:00 a.m. (midnight)
Sunday: 11:00 a.m. to 10:00p.m.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches or schools within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Building Code: (Approved with Conditions)

The occupant load passes the threshold for Fire Sprinklers. This is due to the occupant load being larger than 100 patrons for the dining areas. If a fire barrier is erected between the interior dining areas and the outdoor patio seating area, the occupant loads for each area will be less than 100 and will not trigger the need for fire sprinklers. The fire barrier would separate the two spaces into separate fire areas. The barrier must also consider openings such as windows and doors which would also need to be rated.

Oil and Gas: (Approved)

No objections.

Engineering: (Approved)

No objection.

Fire: (Approved)

No objections

Transportation: (Approved with Conditions)

Patio appears to extend into City right-of-way. Separate ROW License required, if so.

No objections to use.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-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) Mister Chip's Kitchen will create a sophisticated atmosphere where Midland Residents can relax and enjoy drinks with their meal.

This request meets all requirements; therefore, staff recommends approval of a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

A. **That the alcoholic serviceable area of the restaurant shall be limited to approximately 4,386 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

Monday and Saturday: 11:00 a.m. to 12:00 a.m. (midnight)
Sunday: 11:00 a.m. to 10:00p.m

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of January 5, 2022, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps
Ordinance # 9628

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 5,000-SQUARE FOOT PORTION OF LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 5,000-square foot portion of Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present CB, Central Business District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 4,386 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Saturday from 11:00 a.m. to 12:00 a.m. (midnight); and Sunday from 11:00 a.m. to 10:00 p.m.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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"

GENERAL NOTES

A. PROVIDE A COMPLETE AND OPERATIONAL FIRE ALARM SYSTEM AS INDICATED ON THE DRAWINGS AND AS DETAILED IN SECTION 16721 OF THE SPECIFICATIONS.

B. PROVIDE ALL FIRE ALARM WIRING IN 3/4" CONDUIT. PROVIDE COMPLETE CONDUIT LAYOUT WITH FIRE ALARM SUBMITTAL.

C. VERIFY THE EXACT LOCATION AND QUANTITY OF ALL SMOKE DAMPERS WITH MECHANICAL DRAWINGS. CONNECT ALL SMOKE DAMPERS TO THE FIRE ALARM CONTROL SYSTEM.

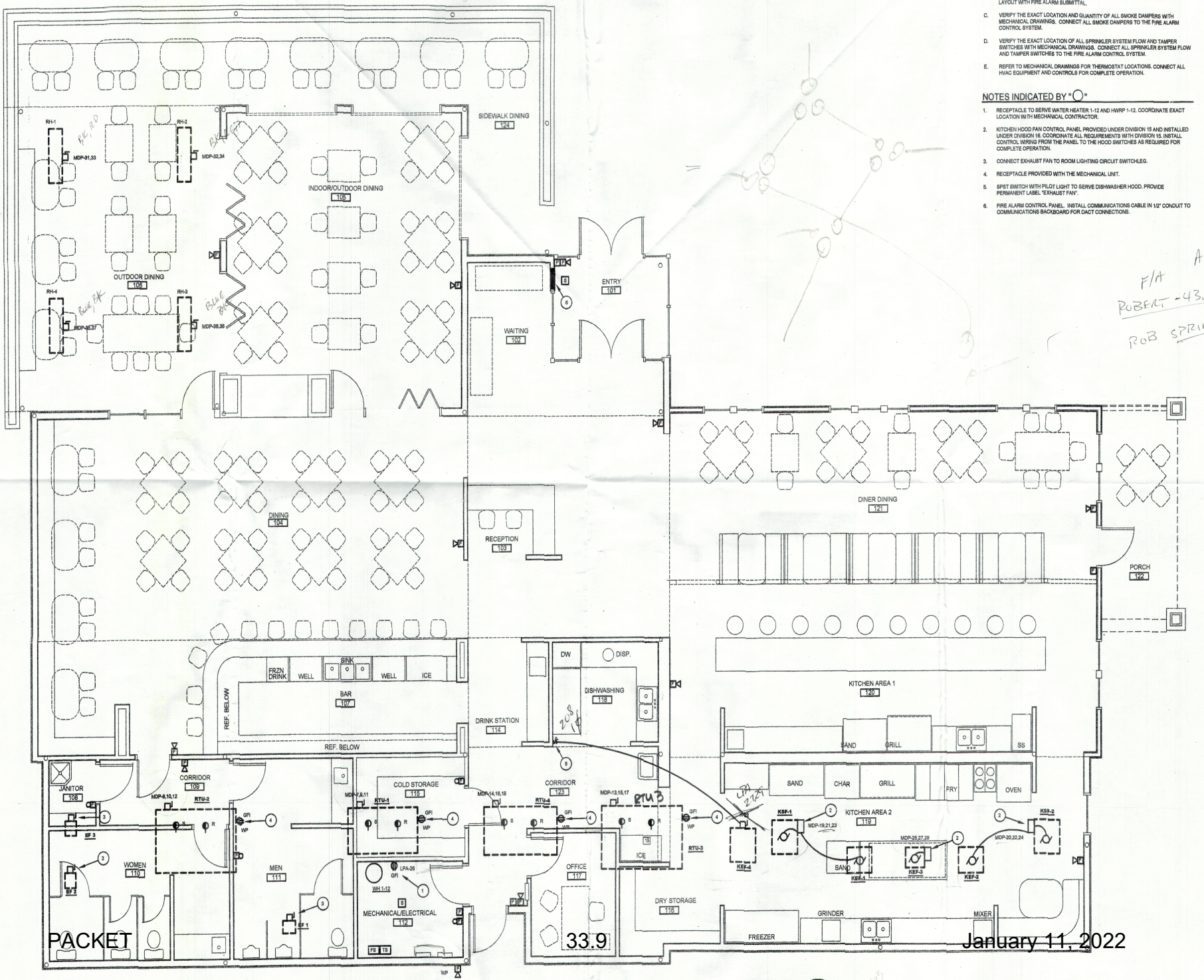
D. VERIFY THE EXACT LOCATION OF ALL SPRINKLER SYSTEM FLOW AND TAMPER SWITCHES WITH MECHANICAL DRAWINGS. CONNECT ALL SPRINKLER SYSTEM FLOW AND TAMPER SWITCHES TO THE FIRE ALARM CONTROL SYSTEM.

E. REFER TO MECHANICAL DRAWINGS FOR THERMOSTAT LOCATIONS. CONNECT ALL HVAC EQUIPMENT AND CONTROLS FOR COMPLETE OPERATION.

NOTES INDICATED BY "○"

1. RECEPTACLE TO SERVE WATER HEATER 1-12 AND HWRP 1-12. COORDINATE EXACT LOCATION WITH MECHANICAL CONTRACTOR.
2. KITCHEN HOOD FAN CONTROL PANEL PROVIDED UNDER DIVISION 15 AND INSTALLED UNDER DIVISION 16. COORDINATE ALL REQUIREMENTS WITH DIVISION 15. INSTALL CONTROL WIRING FROM THE PANEL TO THE HOOD SWITCHES AS REQUIRED FOR COMPLETE OPERATION.
3. CONNECT EXHAUST FAN TO ROOM LIGHTING CIRCUIT SWITCHLEG.
4. RECEPTACLE PROVIDED WITH THE MECHANICAL UNIT.
5. SPST SWITCH WITH PILOT LIGHT TO SERVE DISHWASHER HOOD. PROVIDE PERMANENT LABEL "EXHAUST FAN".
6. FIRE ALARM CONTROL PANEL. INSTALL COMMUNICATIONS CABLE IN 1/2" CONDUIT TO COMMUNICATIONS BACKBOARD FOR DACT CONNECTIONS.

ABCO
F/A
ROBERT - 432-934-1373
ROB SPRINKLER



1 FLOOR PLAN - FIRE ALARM & EQUIPMENT
1/4" = 1'-0"

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0122

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: LEONARD (CHIP) HIGHT		Phone (832) 496-2640 Email CHIP@MISTERCHIPSKITCHEN.COM	
Address 206 CLUB DRIVE	City MIDLAND	State TX	Zip 79701

Property Owner A & D ~~ENT~~ ALLIANCE ENERGY MNGMT Printed Name: DUKE EDWARDS / ~~ALAN~~ MANQUEZ		Phone (432) 349 6410 Email	
Address 706 N COLORADO	City MIDLAND	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 607 NORTH COLORADO MIDLAND, TX 79701

Business Name: HIGHT HOSPITALITY, INC. dba MISTER CHIP'S KITCHEN

Legal Description
Lot: 1A Block: 29 Subdivision: HOMESTEAD ~~EDIT~~ ADDITION SEC. 8

Current Zoning:

Reason for Request: OPENING NEW RESTAURANT

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: RESTAURANT

Proposed/Current Days and Hours of Operation: MONDAY - SUNDAY
11-2 PM & 4-10:30 PM

Proposed Days and Hours of Alcohol Service: MONDAY - SUNDAY
11-2 PM 4-10:30 PM

Total Square Footage of Business: 5,600

Square Footage of Alcohol Serviceable Area: 4,600

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	1 1 2	**Bathroom Sinks:** 1
	Women	**Toilets:**	3	**Bathroom Sinks:** 1

RECEIVED
DEC 15 2021

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)

RECEIVED
DEC 15 2021
BY:

Signatures

Applicant (signature):	Date: 12/14/21
Applicant (printed): Leonard (CHIP) Hight	
Property Owner (signature):	Date:
Property Owner (printed): Duke Edwards, Pres. White Star Energy Inc	

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 Leonard Hight who, being by me duly sworn, upon oath says: That (s)he is authorized by Duke Edwards, 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 15 day of December, 20 21, to certify which witness my hand and seal of office.

NOTARY PUBLIC STATE OF TEXAS
Ivannia Estela Castro
My Commission Expires
12/11/2023
ID No. 132280743

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

GENERAL NOTES

A. PROVIDE A COMPLETE AND OPERATIONAL FIRE ALARM SYSTEM AS INDICATED ON THE DRAWINGS AND AS DETAILED IN SECTION 16721 OF THE SPECIFICATIONS.

B. PROVIDE ALL FIRE ALARM WIRING IN 3/4" CONDUIT. PROVIDE COMPLETE CONDUIT LAYOUT WITH FIRE ALARM SUBMITTAL.

C. VERIFY THE EXACT LOCATION AND QUANTITY OF ALL SMOKE DAMPERS WITH MECHANICAL DRAWINGS. CONNECT ALL SMOKE DAMPERS TO THE FIRE ALARM CONTROL SYSTEM.

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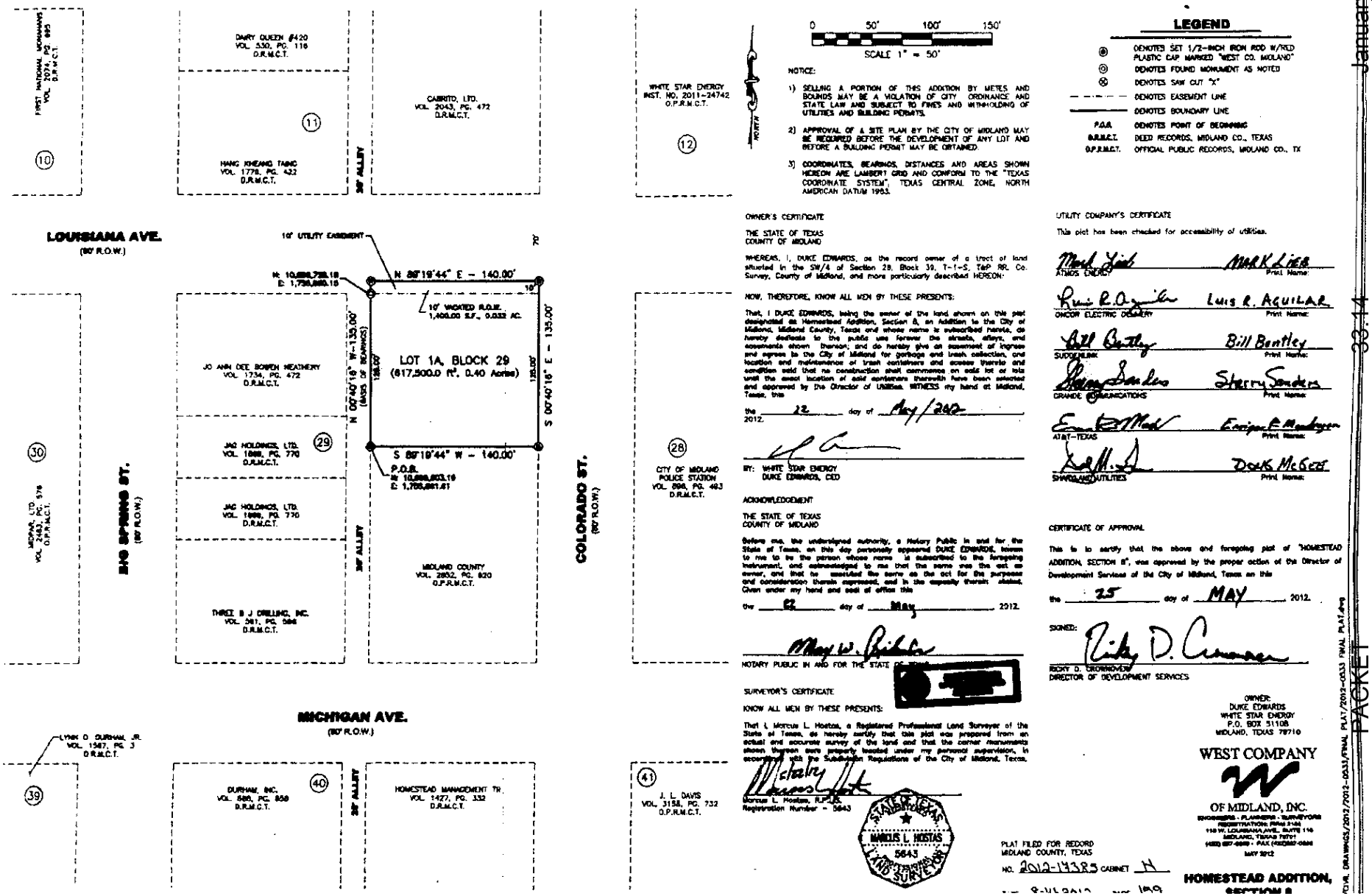
SIDEWALK DINING 124
INDOOR/OUTDOOR DINING 106
OUTDOOR DINING 105
ENTRY 101
WAITING 102
DINING 104
RECEPTION 103
DINER DINING 121
PORCH 122
BAR 107
DRINK STATION 114
DISHWASHING 118
KITCHEN AREA 1 120
KITCHEN AREA 2 119
JANITOR 108
CORRIDOR 109
COLD STORAGE 115
CORRIDOR 123
WOMEN 110
MEN 111
MECHANICAL/ELECTRICAL 112
OFFICE 117
DRY STORAGE 116
ICE
FREEZER
GRINDER
MIXER
RTU-1
RTU-2
RTU-3
RTU-4
KEF-1
KEF-2
KEF-3
KEF-4
EF 1
EF 2
EF 3
WH 1-12
LPA-26

1 FLOOR PLAN - FIRE ALARM & EQUIPMENT
1/4" = 1'-0"


1A

HOMESTEAD ADDITION, SECTION 8

BEING A REPLAT OF THE NORTH 125 FEET OF THE EAST HALF OF BLOCK 29, AND THE ADJACENT 10 FEET TO THE NORTH VACATED RIGHT-OF-WAY, BEING A 0.032-ACRE PORTION OF W. LOUISIANA AVE, HOMESTEAD ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS



NOTICE:

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) COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

LEGEND

- ◉ DENOTES SET 1/2-INCH IRON ROD W/"RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- ◎ DENOTES FOUND MONUMENT AS NOTED
- ⊗ DENOTES SAW CUT "X"
- DENOTES EASEMENT LINE
- DENOTES BOUNDARY LINE
- P.O.B. DENOTES POINT OF BEGINNING
- D.R.M.C.T. DEED RECORDS, MIDLAND CO., TEXAS
- O.P.R.M.C.T. OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, I, DUKE EDWARDS, as the record owner of a tract of land situated in the SW/4 of Section 28, Block 39, T-1-S, T&P RR. Co. Survey, County of Midland, and more particularly described HEREON:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, I DUKE EDWARDS, being the owner of the land shown on this plat designated as Homestead Addition, Section 8, an Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon; and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of trash containers and access thereto and condition said that no construction shall commence on said lot or lots until the exact location of said containers therewith have been selected and approved by the Director of Utilities. WITNESS my hand at Midland, Texas, this

the 22 day of May / 2012.

BY: WHITE STAR ENERGY
DUKE EDWARDS, CEO

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared DUKE EDWARDS, 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 purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this

the 22 day of May 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Marcus L. Hostas, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plat was prepared from an actual and accurate survey of the land and that the corner monuments shown thereon were properly located under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

Marcus L. Hostas, R.P.L.S.
Registration Number - 5643

STATE OF TEXAS
MARCUS L. HOSTAS
5643
LAND SURVEYOR

UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

ATMOS ENERGY — MARK LIEB — Print Name:
ONCOR ELECTRIC DELIVERY — LUIS R. AGUILAR — Print Name:
SUDDENLINK — Bill Bentley — Print Name:
GRANDE COMMUNICATIONS — Sherry Sanders — Print Name:
AT&T-TEXAS — Enrique E. Mendoza — Print Name:
SWEETWATER UTILITIES — DOUG McGEE — Print Name:

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "HOMESTEAD ADDITION, SECTION 8", was approved by the proper action of the Director of Development Services of the City of Midland, Texas on this

the 25 day of MAY 2012.

SIGNED:
RICKY D. CROWNOVER
DIRECTOR OF DEVELOPMENT SERVICES

OWNER:
DUKE EDWARDS
WHITE STAR ENERGY
P.O. BOX 51108
MIDLAND, TEXAS 79710

WEST COMPANY OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM # 146
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432)682-0866
MAY 2012

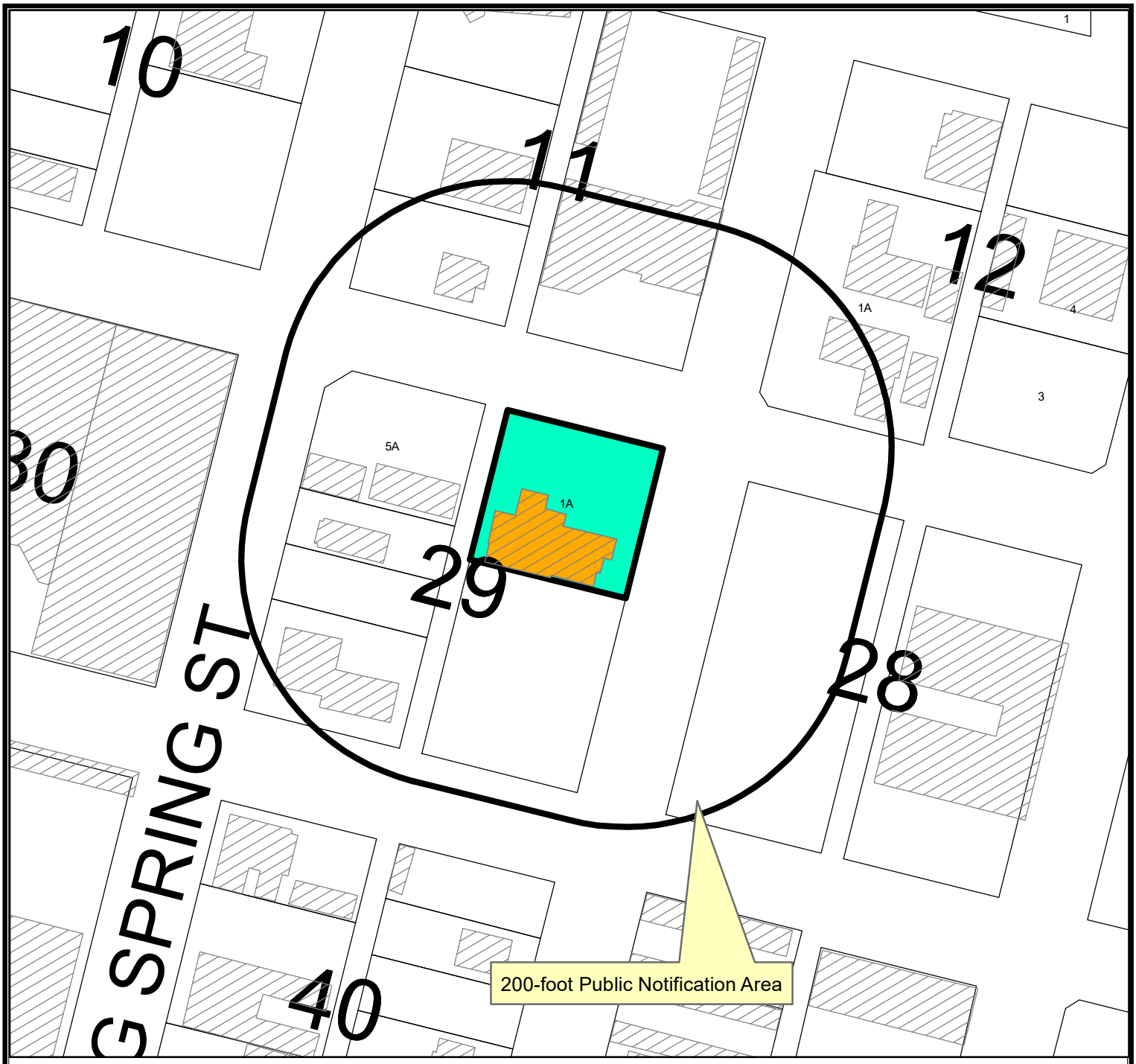
PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. 2012-19385 CABINET H
8-31-2012 AT 1:00

HOMESTEAD ADDITION, SECTION 8

FINAL PLAT

COPYRIGHT 2012 WEST COMPANY OF MIDLAND

P:\VIL DRAWINGS\2012\7012-0333\FINAL PLAT\7012-0333_FINAL PLAT.dwg January 11, 2013 - 08:14



LOCATION MAP

SUD-21-0122 **Scale: 1" = 1500'**

Consider a request by Master Chip's Kitchen, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a restaurant, on a 5,000 square foot portion of Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

Generally located southwest of the intersection of N. Colorado Street and W. Louisiana Avenue. (Council District 2)

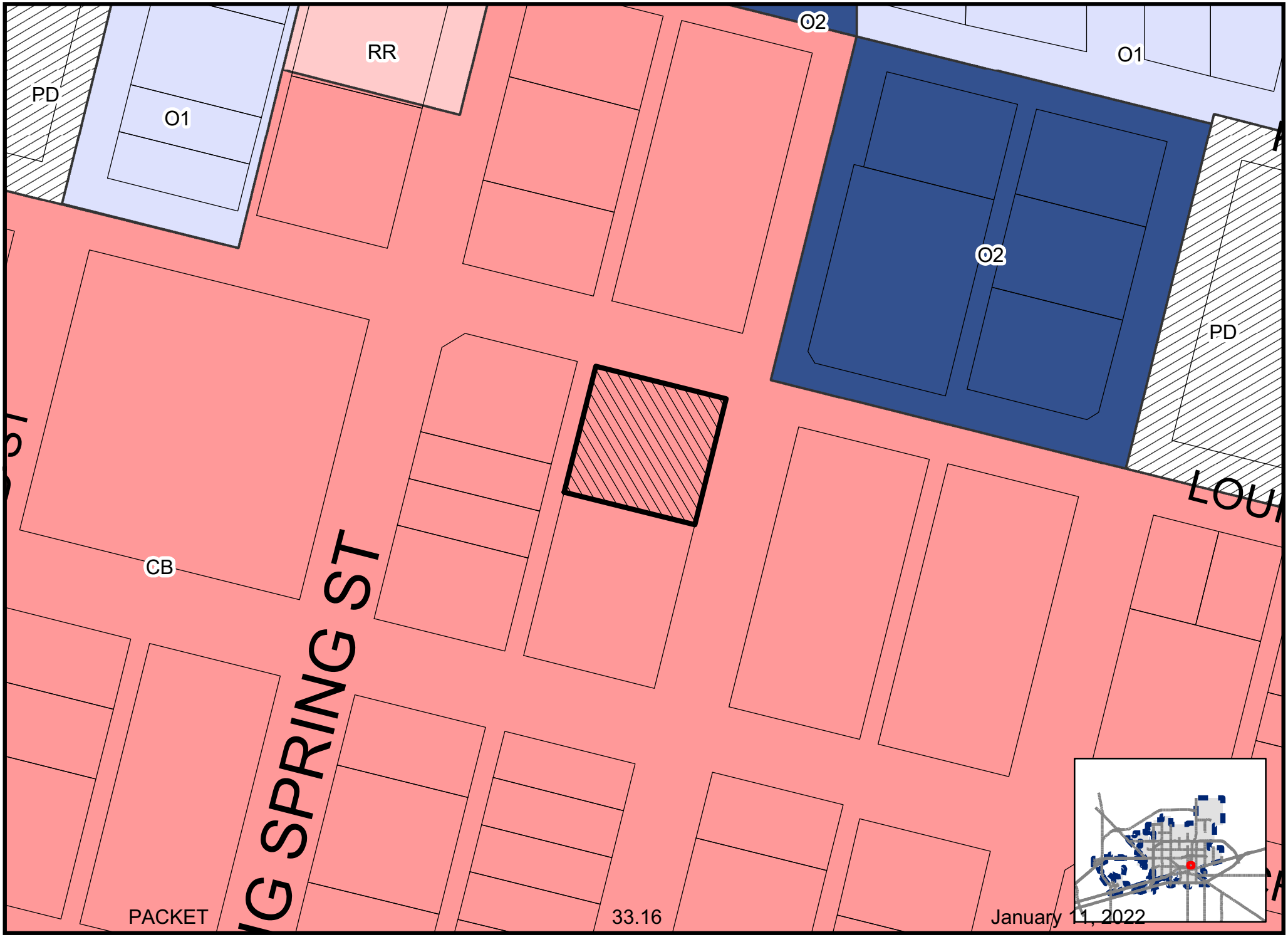
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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January 11, 2022



Map By JS, 12/28/2021

SUD-21-0122

Scale: 1" = 1500'

ZONING MAP

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W Louisiana


Louisiana Ave



ORDINANCE NO. 9628

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT 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 and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

> Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the serviceable area of the restaurant shall be limited to approximately 4,386 contiguous square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the occupancy of the restaurant shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the restaurant shall meet all requirements of the Fire Department and the Code Administration Division.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

E. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 10:00 a.m. to 12:00 a.m. (midnight).

F. That Ordinance No. 9107 is hereby repealed.

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 10th day of January, A.D., 2017; and passed to second reading on motion of Council member Robnett, seconded by Council member Love, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Morales, Dufford, Robnett

Council members voting "NAY": Sparks, Lacy

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Hotchkiss, seconded by Council member Love, on the 24th day of January, A.D., 2017, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Morales, Dufford, Robnett

Council members voting "NAY": Sparks, Lacy

PASSED AND APPROVED THIS 24th day of January, A.D., 2017.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

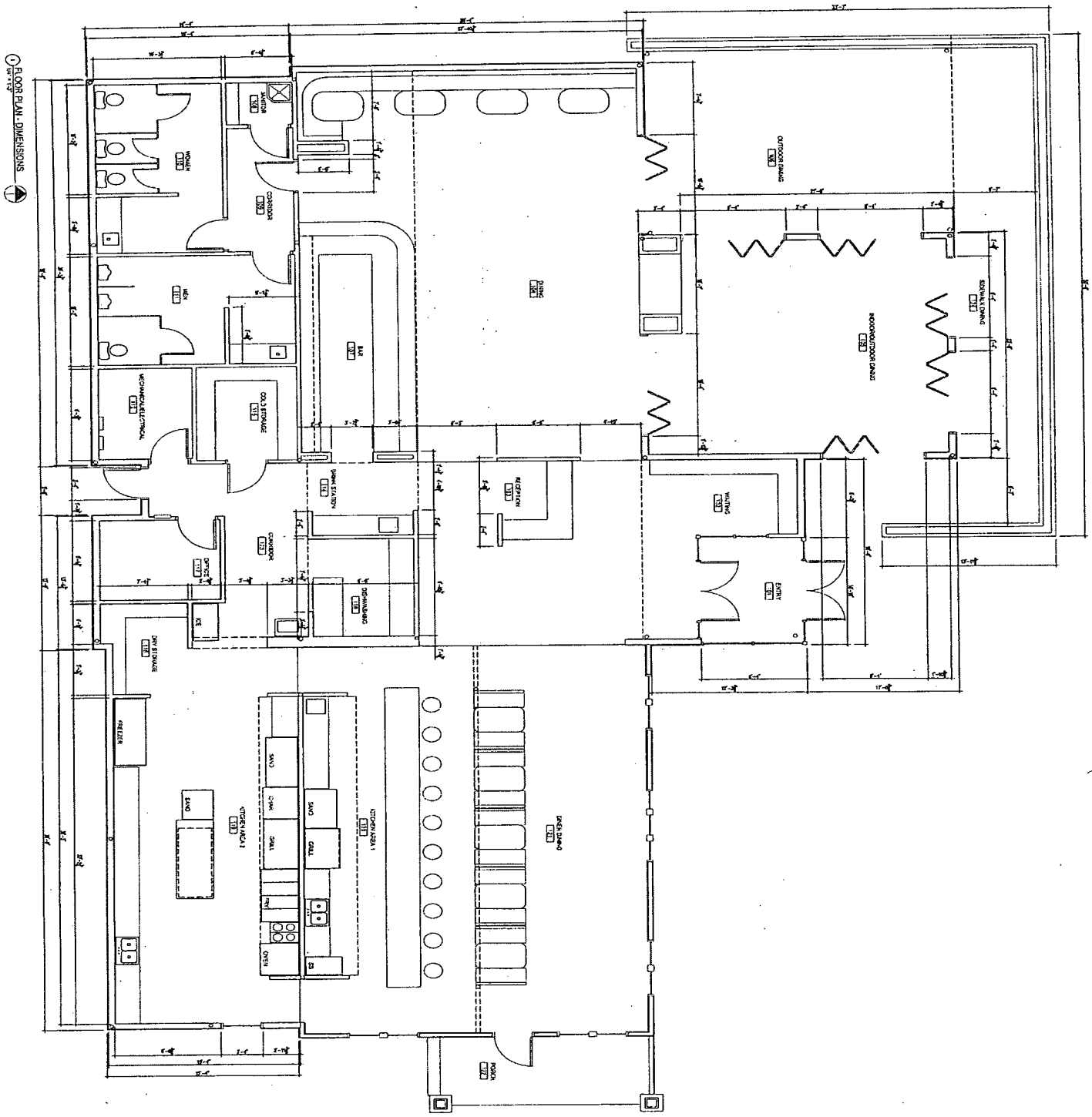


EXHIBIT A

SHEET TITLE:

A-2

PROJECT: 1201
DATE: 6-1-12
DRAWN BY: ---
REVISION: ---

NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION.

TRAVIS DURHAM ARCHITECT
1306 G West Wall Street
Midland, Texas 79701
P 432.685.3997
F 432.685.0525

BASIN BURGER HOUSE

607 COLORADO AVE.
MIDLAND, TEXAS 79701

RECEIVED
NOV 4 2016
CITY OF MIDLAND
PLANNING DIVISION OFFICE

9628

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: 1/24/2017

TO: City Council / City Manager

FROM: Cristina Odenborg, Downtown Development Coordinator

SUBJECT: **Consider an ordinance on second reading on a request by Basin Burger House for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located southwest of the intersection of N. Colorado Street and W. Louisiana Avenue. – Council District 2)**

Purpose:

Consider an ordinance on second reading on a request by Basin Burger House for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant is requesting to amend the Specific Use Permit with Term (SUP) for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant for Basin Burger House.

This property is located at 607 N. Colorado Street in the C-1, Central Area District. To the north, east, south, and west is also zoned C-1, Central Area District. The property to the north is an office building. The property to the east is the City of Midland Police Department. The property to the south is a parking lot. The property to the west is a retail center that has a Subway and Living 360 Organics.

The property is located in the C-1, Central Area District, which allows for the sale of alcoholic beverages for on-premises consumption through a Specific Use Permit with Term.

The floor area of the restaurant is 5,000-square feet, and the serviceable area for alcohol is approximately 4,386-square feet. The applicant is requesting a maximum seating capacity of 250.

Basin Burger House's **hours of operation** are as follows:

Tuesday through Friday from 7:00 a.m. to 10:00 a.m. (Breakfast)

Monday through Thursday from 11:00 a.m. to 9:00 p.m. (Lunch and Dinner)

Friday and Saturday from 11:00 a.m. to 10:00 p.m. (Lunch and Dinner)

Sunday from 9:00 a.m. to 2:00 p.m. (Brunch)

Basin Burger House currently has an active SUP (Ordinance No. 9107), which allows for a maximum occupancy of 250 and alcoholic serviceable hours of 11:00 a.m. to 12:00 a.m. (midnight) for every day of the week; however, the restaurant offers brunch beginning at 9:00 a.m. on Sunday.

In order to conform to the SUP, the applicant is requesting to amend the **serviceable hours for alcohol sales** as follows:

Sunday - Saturday: 9:00 a.m. to 12:00 a.m. (midnight)

However, staff recommends that only the serviceable hours for alcohol sales for Sunday change.

There are no schools or churches located within 300-feet (walking distance) of this site.

This establishment, Basin Burger House, is in compliance with Chapter 7, Goal #3 of the Tall City Tomorrow Comprehensive Plan for Midland's Central Business District. Successful multi-use city centers are an urban lifestyle, and Downtown Midland is working on establishing a greater variety of employment, retail, and entertainment options to offer this type of lifestyle. Since Basin Burger House adds to the variety of restaurant establishments located downtown, this Specific Use Permit with Term is in compliance with the goals and objectives of the Tall City Tomorrow Comprehensive Plan. Furthermore, with the addition of the new convention center, more early morning and late night establishments will be beneficial to the downtown area.

Staff recommends approval of this Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to conditions A through F.

The Planning and Zoning Commission recommended approval of this request unanimously at their December 5, 2016 meeting with the condition that only the serviceable hours for alcohol sales on Sunday change to 9:00 a.m. to 12:00 a.m. (midnight). The serviceable hours for alcohol sales from Monday through Saturday will remain the same from 11:00 a.m. to 12:00 a.m. (midnight).

City Council voted to approve this ordinance on first reading with the amendment that the hours of alcohol sales shall be Sunday through Saturday from 10:00 a.m. to 12:00 a.m. (midnight) with a 5-2 vote on January 10, 2017. This ordinance is now ready for consideration on second and final reading.

Letters of Objection:

Staff has not received any letters of objection.

Planning and Zoning Commission

Approved for Agenda:
Jessica Carpenter

MEETING DATE: 12/5/2016

TO: PLANNING AND ZONING COMMISSION

FROM: Cristina Odenborg, Downtown Development Coordinator

SUBJECT: **Hold a public hearing and consider a request by Basin Burger House for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located southwest of the intersection of N. Colorado Street and W. Louisiana Avenue. – Council District 2)**

Recommended Planning and Zoning Commission Action:

☒ **Approve** ☐ **Deny** ☐ **Direction/Informational**

Details of Request:

The applicant is requesting to amend the Specific Use Permit with Term (SUP) for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant for *Basin Burger House*.

Current Zoning:

C-1, Central Area District.

Surrounding Zoning and Land Use:

This property is located at 607 N. Colorado Street in the C-1, Central Area District. To the north, east, south, and west is also zoned C-1, Central Area District. The property to the north is an office building. The property to the east is the *City of Midland Police Department.* The property to the south is a parking lot.

The property to the west is a retail center that has a *Subway* and *Living 360 Organics.*

Analysis:

The property is located in the C-1, Central Area District, which allows for the sale of alcoholic beverages for on-premises consumption through a Specific Use Permit with Term.

The floor area of the restaurant is 5,000-square feet, and the serviceable area for alcohol is approximately 4,386-square feet. The applicant is requesting a maximum seating capacity of 250.

Basin Burger House's **hours of operation** are as follows:

Tuesday - Friday	7:00 a.m. to 10:00 a.m. (Breakfast)
Monday –Thursday	11:00 a.m. to 9:00 p.m. (Lunch and Dinner)
Friday and Saturday	11:00 a.m. to 10:00 p.m. (Lunch and Dinner)
Sunday	9:00 a.m. to 2:00 p.m. (Brunch)

Basin Burger House currently has an active SUP (Ordinance No. 9107), which allows for a maximum occupancy of 250 and alcoholic serviceable hours of 11:00 a.m. to 12:00 a.m. (midnight) for every day of the week; however, the restaurant offers brunch beginning at 9:00 a.m. on Sunday.

In order to conform to the SUP, the applicant is requesting to amend the **serviceable hours for alcohol sales** as follows:

Sunday - Saturday: 9:00 a.m. to 12:00 a.m. (midnight)

There are no schools or churches located within 300-feet (walking distance) of this site.

This establishment, *Basin Burger House*, is in compliance with Chapter 7, Goal #3 of the Tall City Tomorrow Comprehensive Plan for Midland's Central Business District. Successful multi-use city centers are an urban lifestyle, and Downtown Midland is working on establishing a greater variety of employment, retail, and entertainment options to offer this type of lifestyle. Since *Basin Burger House* adds to the variety of restaurant establishments located downtown, this Specific Use Permit with Term is in compliance with the goals and objectives of the Tall City Tomorrow Comprehensive Plan. Furthermore, with the addition of the new convention center, more early morning and late night establishments will be beneficial to the downtown area.

Staff recommends approval of this Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to the conditions listed below.

Engineering & Transportation:

Engineering stated they had no comments regarding the request, and Transportation stated they had no objections to the request.

Public Safety:

Fire stated that they had no concerns or issues with the request.

Code Administration:

Code had no comments regarding the request.

Planning:

Planning reviewed this request according to the City Code.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 4,386-square feet, as shown in Exhibit A, which is attached hereto and incorporated herein

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the establishment shall meet all requirements of the Fire Department and the Code Administration Division.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

E. That the days and hours of alcoholic beverage sales and consumption shall be limited to:

Sunday - Saturday: 9:00 a.m. to 12:00 a.m. (midnight)

F. That Ordinance No. 9107 shall be repealed.

Letters of Objection:

As of November 30, 2016, staff has not received any letters of objection.

Attachments:

Application
Maps
Floor Plan (Exhibit A)
Ordinance No. 9107

Case Number: SUP-LU-00054

MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

I. APPLICATION

Applicant: BASIN Burgun House (Name) | 432-682-2672 (Phone)
607 N Colorado (Address) | DUKEOFOIL-TEX@MSN.com (Email)

Property Owner: A&D Management (Name) | 432-688-2650 (Phone)
706 N Colorado St (Address) | DUKEOFOIL-TEX@MSN.com (Email)

Operator (if different than the Applicant or Property Owner):
(Name) | (Phone)
(Address) | (Email)

Street Address: 607 N Colorado St.

Legal Description:

If Platted: Lot: 1-A; Block: 29; Subdivision: Homestead Addition

If Unplatted: *Attach Metes & Bounds Description with Surveyor's Seal

Current Zoning: C-1

Reason for Request: change Hours for serving Alcohol to 9:00 AM on Sundays for our brunch Service

Type of Business: Restaurant
(Restaurant, Bar, Lounge, Nightclub, etc.)

Proposed Days and Hours of Alcoholic Beverage Sales: 9:00 12:00 Am

Total Square Footage of Business: 5,000 Square Footage of Area: 5,000

Restroom Fixtures: *Men* Toilets/Urinals 1/3 Bathroom Sinks 1
Women Toilets 3 Bathroom Sinks 1

FOR OFFICE USE ONLY: Maximum Seating Capacity Per City Code: _____

RECEIVED
NOV 4 2016
CITY OF MIDLAND
PLANNING DIVISION

II. FEE & SUBMITTALS

Application Fee ($300.00): $ 300

2 FOLDED Copies of Dimensioned Floor Plan: _____
2 FOLDED Copies of Dimensioned Site Plan: _____
Digital Copies of Floor Plan & Site Plan (PDF & JPEG): _____

III. SIGNATURES

Applicant: _____ Date: 10/31/16
Property Owner: _____ Date: 10/31/16

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 DUKE EDWARDS 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.

Subscribed and sworn to before me, this 31 day of OCTOBER, 2016, to certify which witness my hand and seal of office.

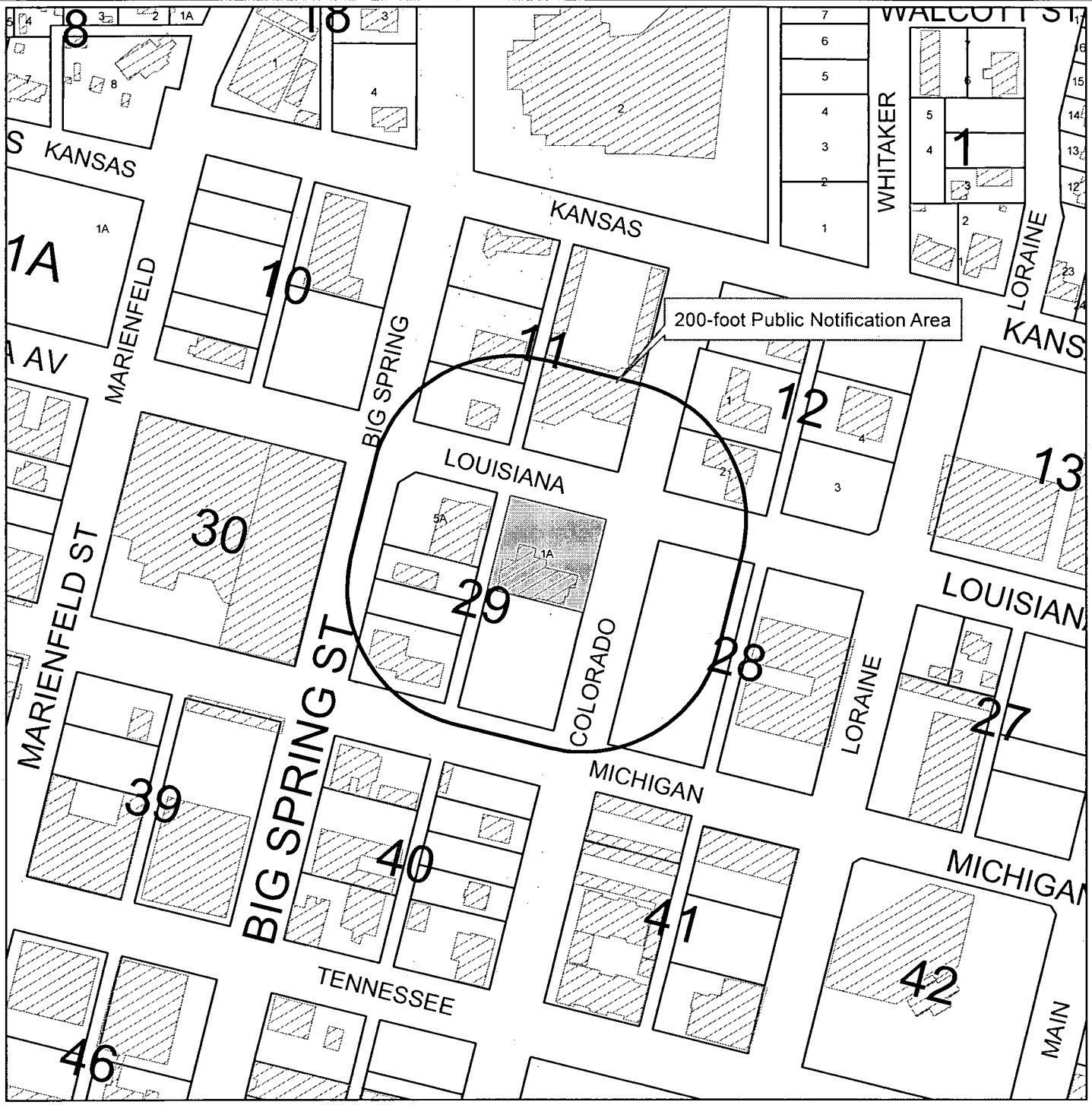
MIRA MARQUEZ
Notary Public, State of Texas
My Commission Expires
August 21, 2018

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY:
Rec'd By: CO Date: 11/4/16
Assigned: _____
For: _____ On: _____

RECEIVED
NOV 4 2016
CITY OF MIDLAND
PLANNING DIVISION OFFICE

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

SUP- 16 - 0056 **Scale: 1" = 200'**

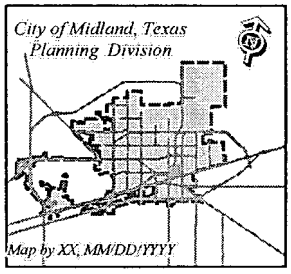
Consider a request by Basin Burger House for a Specific Use Permit with Term for the sale of all alcoholic beverages for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

Generally located southwest of the intersection of N. Colorado Street and W. Louisiana Avenue.

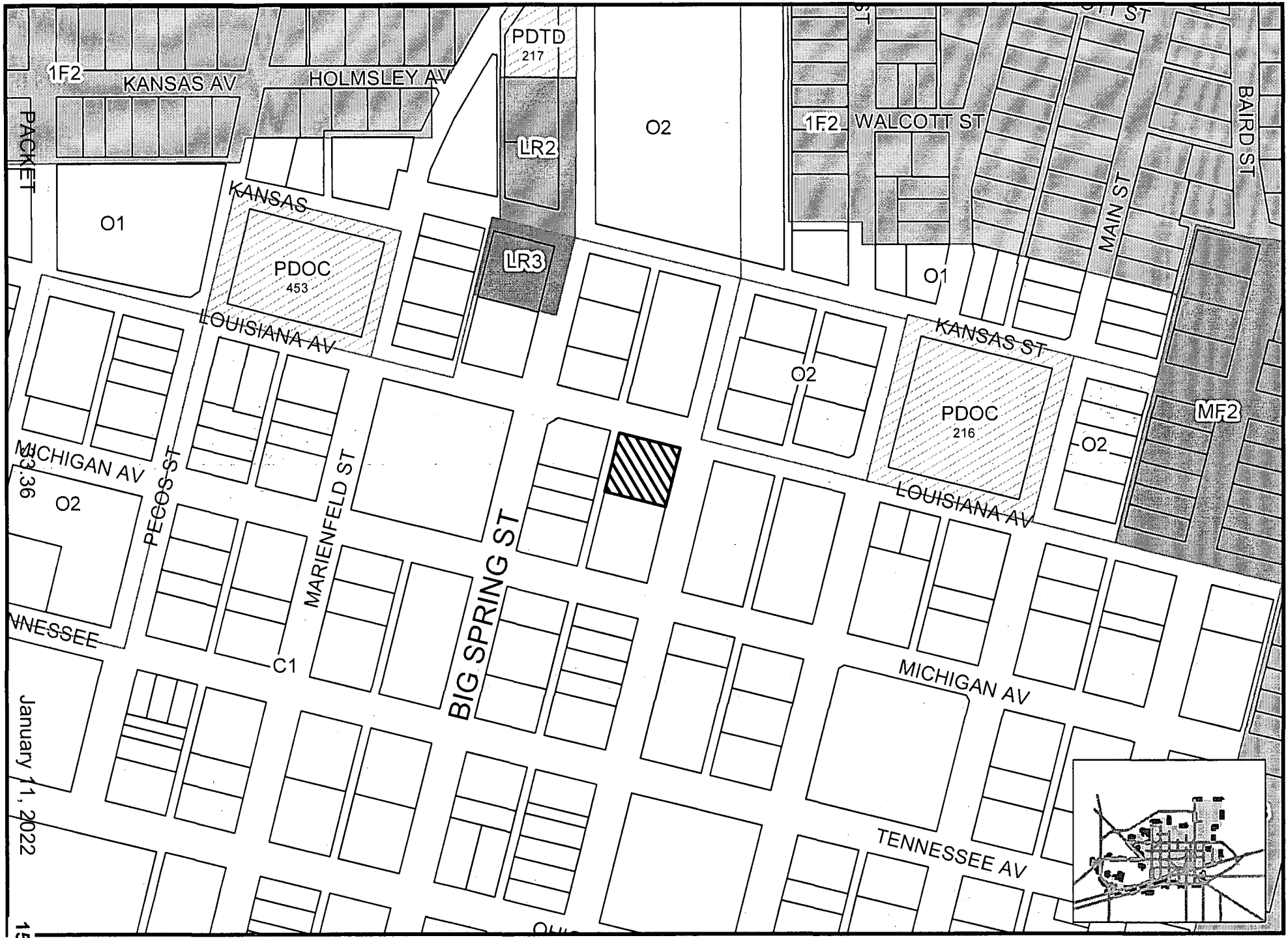
(Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE F... ANY DECISIONS MADE BY THE USE OF THIS DATA



up By CO. 11/15/2016

SUP - 16 - 0056

Scale: 1" = 200'

ZONING MAP

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ORDINANCE NO. 9107

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT 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 and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the alcohol serving area shall be a maximum of 4,100 square feet, and the maximum occupancy shall be 250 persons.

B. That all applicable provisions of the Building Code and Fire Code shall be complied with.

C. That the days and hours of alcoholic beverage sales and consumption shall be allowed on every day of the week, not to exceed the hours of 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.

D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

E. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale and consumption of alcoholic beverages at the restaurant to ensure that the terms of this permit are satisfied.

F. That the development of a restaurant on this property shall conform to Exhibit "A", which is attached hereto and incorporated herein.

G. That City of Midland Ordinance No. 9043 is hereby repealed.

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 22nd day of January, A.D., 2013; and passed to second reading on motion of Council member Trost, seconded by Council member Sparks, by the following vote:

Council members voting "AYE": Love, Morales, Trost, Perry, Dufford, James, Sparks

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Trost, seconded by Council member James, on the 12th day of February, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE": Love, Morales, Trost, Perry, James, Sparks

Council members voting "NAY": None

PASSED AND APPROVED THIS 12th day of February, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRAVIS
DURHAM ARCHITECT
1306 G West Wall Street
Midland, Texas 79701
P 432.685.3997
F 432.685.0525
BASIN BURGER HOUSE
607 COLORADO AVE.
MIDLAND, TEXAS 79701
A-2
SHEET TITLE:
PROJECT: 1701
DATE: 5-23-17
DRAWN BY: ---
REVISION: ---
RECEIVED
DEC 1 1 '17
CITY OF MIDLAND
PLANNING DIVISION OFFICE
CASE NO. S12-017
1 FLOOR PLAN

EXHIBIT A

Ord # 9107

City Council Agenda

MIDLAND
Feel the Energy!

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.)

Purpose:

Consider an ordinance on second reading on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. No changes have been made to this item since its first reading on January 22, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Duke Edwards requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since then, the new construction has been completed with internal design and seating changes that can accommodate 250 patrons throughout a 4,100 square foot area. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing). Being a C-1, Central Area District, there are no established off-street parking requirements. With the original site plan remaining consistent, this change is essentially one of recognizing greater seating capacity post-construction with a slightly modified floor layout. Staff concurs with the Planning and Zoning Commission approval based on the assessment that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT 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 and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the alcohol serving area shall be a maximum of 4,100 square feet, and the maximum occupancy shall be 250 persons.

B. That all applicable provisions of the Building Code and Fire Code shall be complied with.

C. That the days and hours of alcoholic beverage sales and consumption shall be allowed on every day of the week, not to exceed the hours of 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.

D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

E. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale and consumption of alcoholic beverages at the restaurant to ensure that the terms of this permit are satisfied.

F. That the development of a restaurant on this property shall conform to Exhibit "A", which is attached hereto and incorporated herein.

G. That City of Midland Ordinance No. 9043 is hereby repealed.

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., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: S-12-017.

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a restaurant.

APPLICANT: Basin Burger House, LLC.

OWNER: Duke Edwards.

LEGAL DESCRIPTION: Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since that date, the construction of the restaurant has been completed with internal design and seating changes that can accommodate 250 patrons in 4,100 square feet of space. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing).

SURROUNDING ZONING AND LAND USE:

2. The restaurant and most of the surrounding area is zoned C-1, Central Area District. Just west of this is the Subway restaurant located on Big Spring Street. To the south is large parking lot, to the east is the police station, and to the north is an office building. To the immediate northeast is a vacant lot in an O-2, Office District.

ANALYSIS:

3. This request to amend the Specific Use Permit for on-premise consumption is primarily one of recognizing greater seating capacity post-construction with a slightly modified floor layout. The overall building size has not been discernibly changed and the parking remains the same; however, there are no minimum parking spaces required in the C-1, Central Area District. Staff concurs that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

STAFF RECOMMENDATION:

Staff recommends approval of this request for an Amended Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant, subject to the following conditions:

A. That the maximum area of the alcohol serving area shall be 4,100 square feet and the occupancy shall be 250 persons;

B. All applicable Building and Fire Codes must be maintained;

C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: All days of the week 11:00 a.m. to midnight;

D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas;

E. Ordinance 9043 is repealed by this action.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibit A – Floor Plan
Maps

Case Number: S-12-017

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

Basin Burger House — 432-688-2650
Applicant Name — Phone/e-mail

607 N Colorado — 79701
Address — Zip Code

ADD ~~Holdings~~ Alliance — 432-688-2650
Property Owner Name — Phone/e-mail

Box 5110 — 79710
Address — Zip Code

Operator (if different from Applicant or Property Owner) — Phone/e-mail

Address — Zip Code

Type of Business: Restaurant, Bar
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
607 N Colorado Lot 1A Block 29 Homestead Addition

Current Zoning: C-1

Max. Floor Area: ~~5,200~~ 4,100 VC Seating Capacity: ~~215~~ 250

Proposed hours and days of alcoholic beverage sales: 11Am to 12 Midnight Mon - Sunday - 7 DAYS

Reason for request:

REQUIRED SUBMITTALS

1. Application fee: $300 ✓.

2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: _____ Date: 12-11-12

Property Owner: _____ Date: 12-11-12

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 Duke Edwards who, being by me duly sworn, upon oath says: That (s)he is authorized by A&D Alliance, 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.

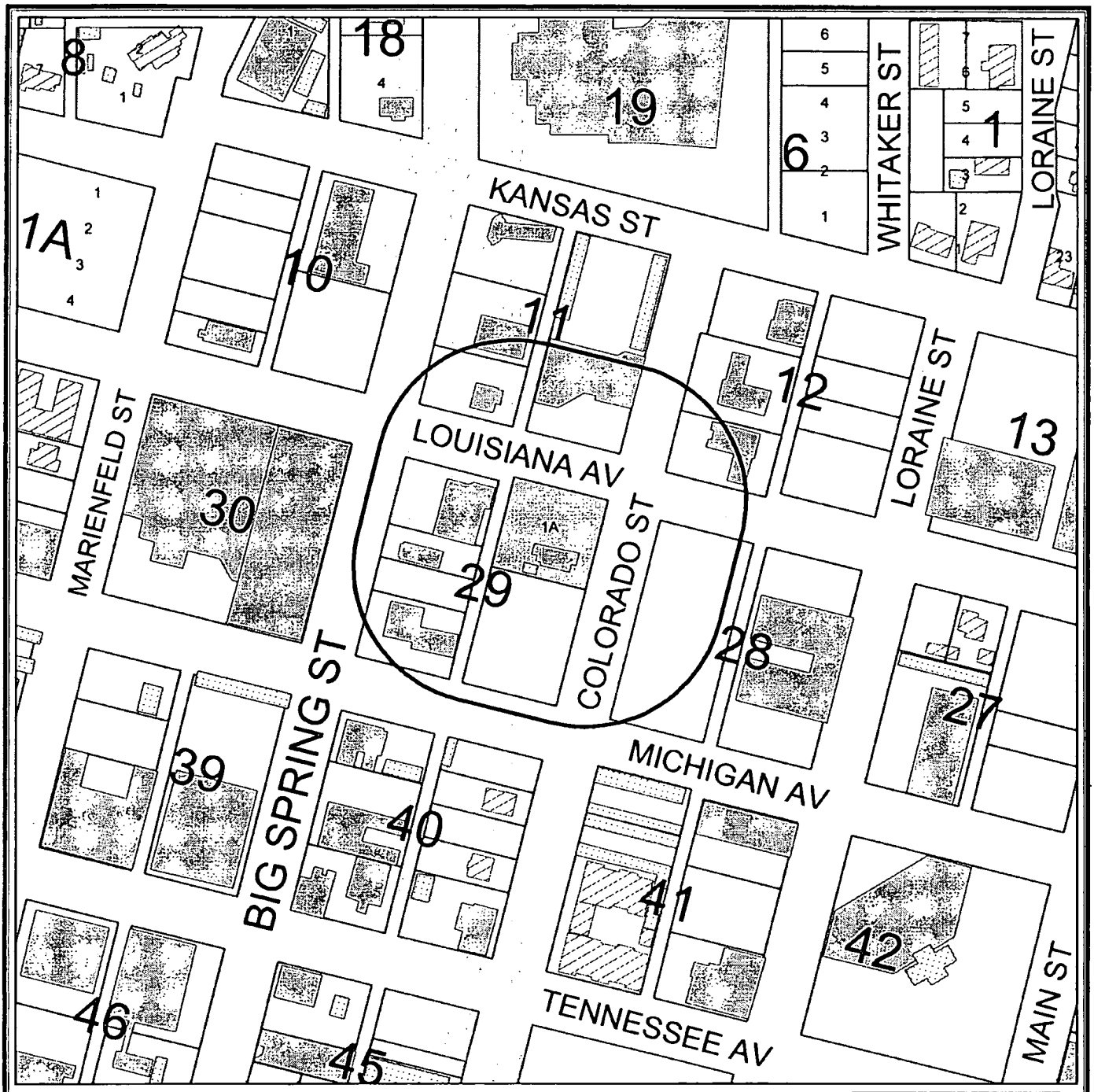
Subscribed and sworn to before me, this 11 day of Dec, 2012, to certify which witness my hand and seal of office.

Alice Lauraine Keller
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

ALICE LAURAINE KELLER
Notary Public, State of Texas
My Commission Expires
May 18, 2016

FOR OFFICE USE ONLY
Rec'd By: KS Date: 12/11/12
Assigned: _____
For: _____ On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



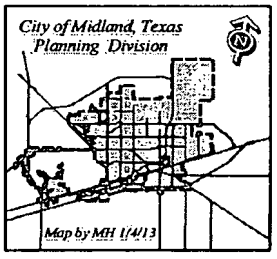
PROPERTY OWNER NOTIFICATION MAP

S - 12 - 017 **Scale: 1" = 200'**

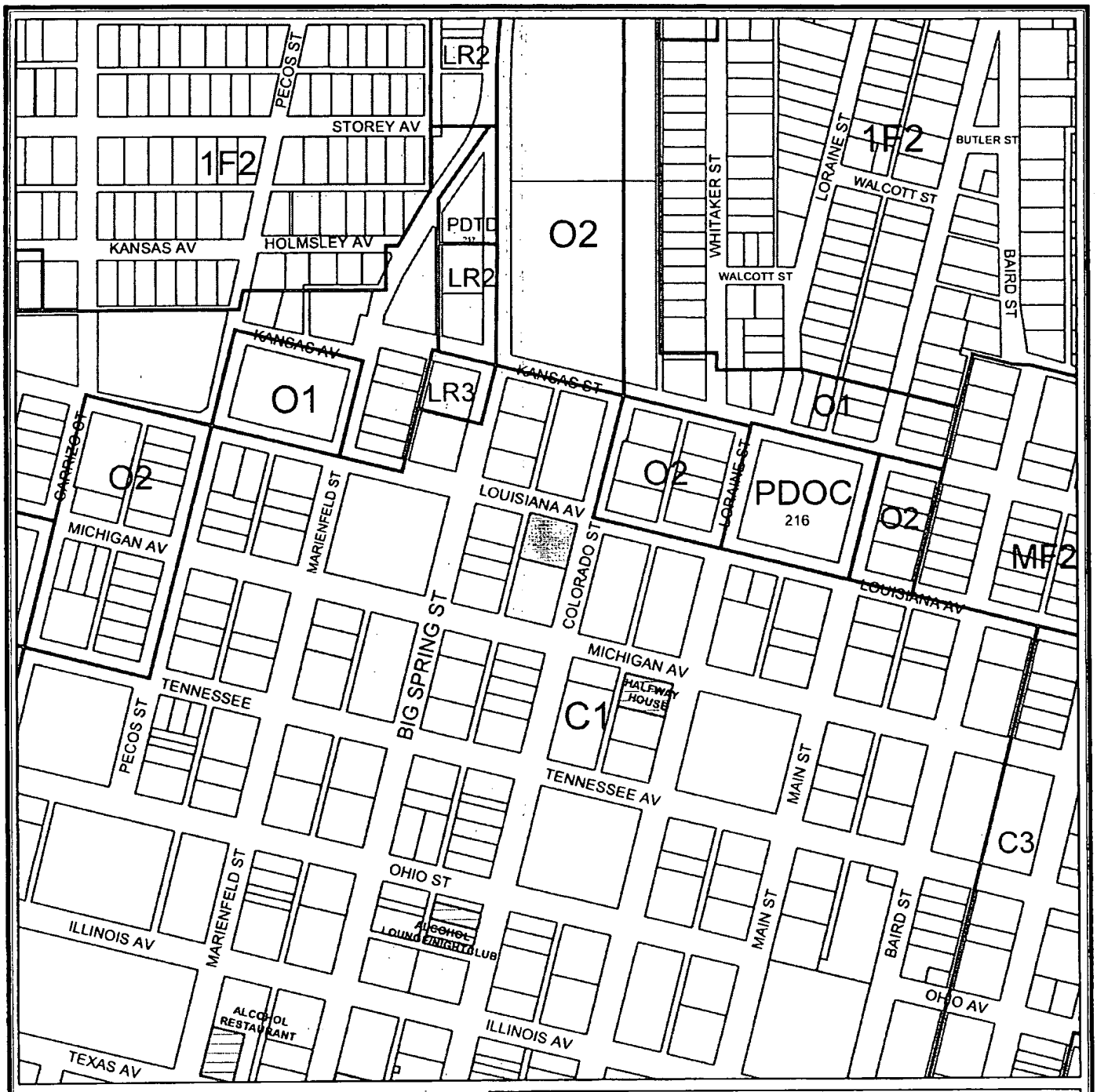
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 017 **Scale: 1" = 400'**

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Meeting

Item Number: 34

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Gabe McClelland,

Subject: AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 3, "FLOOD DAMAGE PREVENTION CODE", SO AS TO REVISE CERTAIN STANDARDS FOR CONSTRUCTION IN FLOOD HAZARD AREAS WITHIN THE CITY OF MIDLAND; SETTING FORTH VARIANCE AND APPEAL PROCEDURES; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

Purpose:

Consider an ordinance amending Title XI, "Planning and Development", Chapter 3, "Flood Damage Prevention Code", so as to revise certain standards for construction in flood hazard areas within the City of Midland; setting forth variance and appeal procedures; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); containing a cumulative clause; containing a savings and severability clause; and ordering publication.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

In 1990, the Federal Emergency Management Agency (FEMA) launched the Community Rating System (CRS). CRS is a part of the National Flood Insurance Program (NFIP) and awards discounts on flood insurance premiums based on communities' efforts to mitigate flood

damage. The CRS program is administered by the Insurance Services Office (ISO).

While meeting with the ISO's regional CRS Specialist, the City of Midland's Engineering staff learned that the City's Flood Damage Prevention Code should be amended to better address the construction of mechanical items (heating, ventilation, plumbing, air conditioning equipment, etc.). The NFIP's State Coordinator and the ISO's regional CRS Specialist provided a model ordinance for our possible use.

The proposed amendment has been approved by the Texas Water Development Board and the City of Midland's Development Services Department. In addition, this proposed amendment will help the City of Midland achieve a better CRS score and improve our chances of maximizing the possibility of flood insurance discounts. Therefore, for the reasons listed above, City of Midland Engineering Department recommends approval of the proposed amendment to Title XI, "Planning and Development", Chapter 3, Flood Damage Prevention Code".

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 3, "FLOOD DAMAGE PREVENTION CODE", SO AS TO REVISE CERTAIN STANDARDS FOR CONSTRUCTION IN FLOOD HAZARD AREAS WITHIN THE CITY OF MIDLAND; SETTING FORTH VARIANCE AND APPEAL PROCEDURES; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the Midland City Code regarding the regulation of flood hazard areas; and

WHEREAS, in Section 16.315 of the Texas Water Code, the Legislature of the State of Texas has authorized all political subdivisions to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program in order to minimize flood losses; and

WHEREAS, the City Council finds that flood hazard areas within the City of Midland are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City Council finds that flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage; and

WHEREAS, the City Council finds that the public health, safety, and general welfare will be best served by such amendments;

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

SECTION ONE. That the recitals stated above are hereby adopted, approved, and incorporated herein for all purposes.

SECTION TWO. That the Midland City Code Title XI, "Planning and Development", Chapter 3, "Flood Damage Prevention Code", shall hereby be amended to read in its entirety as follows:

11-3-1. DEFINITIONS.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Alluvial fan flooding: Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex: A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure: A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future conditions flood hazard: The land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of shallow flooding: A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate-making has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AE, AH, AO, A1-30, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year; also called the "*base flood*."

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall: A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature: An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development: Any manmade change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Elevated building: For insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction: For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the Flood Insurance Rate Map (FIRM). "Existing construction" may also be referred to as "*existing structures*."

Existing manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision: The preparation of additional sites by the construction of facilities for serving the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

(A) the overflow of inland or tidal waters; or

(B) the unusual and rapid accumulation or runoff of surface water from any source.

Flood elevation study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM): An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): See *flood elevation study*.

Flood protection system: Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodplain or floodprone area: Any land area susceptible to being inundated by water from any source; see *flooding*.

Floodplain management: The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations: Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: See *regulatory floodway*.

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include longterm storage or related manufacturing facilities.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior; or

(2) Directly by the Secretary of the Interior in states without approved programs.

Levee: A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system: A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home: A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level: For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction: For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle: A vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizonal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine: Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area: See *area of special flood hazard*.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)): Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a "historic structure", provided that the alterations will not preclude the structure's continued designation as a "historic structure."

Variance: A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

Violation: The failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation: The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

11-3-2. PURPOSE.

It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(F) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(G) Insure that potential buyers are notified that property is in a flood area.

11-3-3. ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

11-3-4. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this Chapter.

11-3-5. ADMINISTRATION.

(A) *Designation of the Floodplain Administrator*. The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (the National Flood Insurance Program Regulations) pertaining to floodplain management. The term "Floodplain Administrator" also includes the City Engineer's designee or designees to whom any of the herein-described duties and responsibilities are delegated.

(B) *Duties and responsibilities of the Floodplain Administrator*. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter.

2. Review permit applications to ensure that the proposed building site or project, including the placement of manufactured homes, will be reasonably safe from flooding.

3. Review, approve or deny all applications for Floodplain Development Permits required by adoption of this Chapter.

4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334) from which prior approval is required.

5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual

field conditions) the Floodplain Administrator shall make the necessary interpretation.

6. Notify, in riverine situations, adjacent communities and the State coordinating agencies, which are the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

8. When Base Flood Elevation data has not been provided in accordance with Section 11-3-10 of this Code, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and floodway data available from a Federal, State, or other source, for administration of the provisions of Sections 11-2-5(A), 11-2-5(D), and 11-3-12 of this Code. The Floodplain Administrator shall determine or require determination of a Base Flood Elevation acceptable for rating flood insurance for every proposed structure in Zone A on the community's FIRM, and maintain a record of such determinations for use on nearby properties, as applicable.

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 0.1 foot at any point within the community. All proposed development must be in compliance with other City-adopted standards, which may impose stricter conditions.

10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by more than one foot provided that the community first completes all of the provisions required by Section 65.12.

(C) *Permit procedures*.

1. Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new or substantially improved structures.

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 11-3-12(B)2 of this Code.

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

(e) Maintain a record of all such information in accordance with Section 11-3-5(B)1 of this Code.

2. Approval or denial of a Floodplain Development Permit by the Flooplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage.

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(c) The danger that materials may be swept onto other lands to the injury of others.

(d) The compatibility of the proposed use with existing and anticipated development.

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems.

(g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(h) The necessity to the facility of a waterfront location, where applicable.

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(j) The relationship of the proposed use to the Comprehensive Plan for that area.

11-3-6. METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purpose, this Chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities.

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

(D) Control filling, grading, dredging and other development which may increase flood damage.

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

11-3-7. INTERPRETATION GENERALLY.

In the interpretation and application of this Chapter, all provisions shall be:

(A) considered as minimum requirements;

(B) liberally construed in favor of the governing body; and

(C) deemed neither to limit nor repeal any other powers granted under State statutes.

11-3-8. COMPLIANCE.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

11-3-9. LANDS TO WHICH THIS CHAPTER APPLIES.

This Chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Midland, Texas.

11-3-10. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled "Flood Insurance Study for Midland County, Texas, and Incorporated Areas," dated September 16,

2005, with accompanying Flood Insurance Rate Maps (FIRM) dated September 16, 2005, and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter.

11-3-11. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Midland, Texas, or any official or employee thereof, for any flood damages that result from reliance on this Code or any administrative decision lawfully made thereunder.

11-3-12. PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) *General standards*. In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. All new construction or substantial improvements shall be constructed with material resistant to flood damage.

4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities at least one foot above the base flood elevation.

5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into flood waters.

7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(B) *Specific standards*. In all areas of special flood hazards where Base Flood Elevation data has been provided as set forth in Section 11-2-5(D), 11-3-5(B)8, 11-3-10, or 11-3-12(C)3, the following provisions are required. Where no Base Flood Elevation data has been provided, the Floodplain Administrator shall establish or require the builder to establish a Base Flood

Elevation for the site, using methods that will be acceptable for rating of flood insurance, and the following provisions are required:

1. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above Base Flood Elevation. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation, as specified in Section 11-3-12(B)7. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection, as specified in Section 11-3-5(C)1(a), is satisfied, prior to the foundation inspection approval by the building official.

2. Nonresidential Construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below an elevation of one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation and floodproofing elevation, as specified in Section 11-3-12(B)7. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection prior to final approval of the utilities inspection of the utilities department. A record of such certification, which shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.

3. Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, such as crawlspaces and garages with floors below the BFE, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

   (a) A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

   (b) The bottom of all openings shall be no higher than one foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Manufactured Homes.

(a) Require that all manufactured homes to be placed within Zone A of a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated with the bottom of the steel frame one foot above an estimated BFE determined as described in 11-3-5(B)8 and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. For existing mobile home parks, where no structure has been substantially damaged due to flooding, the 36-inch foundation specified in 11-3-12(B)4(c) will be acceptable.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the bottom of the steel frame of the manufactured home is elevated to at least one foot above the Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The Floodplain Administrator can approve a reduction of up to one foot in the lowest steel frame elevation, as specified in Section 11-3-12(B)7.

(c) Require that manufactured homes being placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4)(b) of this section be elevated so that either:

(i) the bottom of the steel frame of the manufactured home is at least one foot above the Base Flood Elevation; or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

5. Recreational Vehicles. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 11-3-5(C)1, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

6. Electrical and Mechanical Service Facilities. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities must be designed and located at least one foot above the base flood elevation to prevent water from entering or accumulating in the components during flooding.

7. The Floodplain Administrator is authorized to approve a reduction of up to one foot in the lowest floor elevation, steel frame elevation for manufactured homes or floodproofing elevation required by the sections above. This approval shall not be granted for reasons of cost savings alone, but must be justified by other factors which, in the opinion of the Floodplain Administrator, offset the reduction in flood protection for the structure. Any request for a lowest floor elevation, steel frame elevation or floodproofing elevation below the Base Flood Elevation shall be considered as a variance as described in Section 11-3-13.

(C) *Standards for subdivision proposals*.

1. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with Sections 11-3-2 and 11-3-6 of this code.

2. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet Floodplain Development Permit requirements of Sections 11-3-5(C) and 11-3-12 of this code.

3. Base Flood Elevation data shall be generated by hydrologic and hydraulic analyses performed by a registered professional engineer for subdivision proposals and other proposed developments, including the placement of manufactured home parks and subdivisions, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)8 of this code.

   For all new subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, that are equal to or greater than 6 lots or 2 acres, whichever is the lesser, the registered professional engineer shall determine the regulatory floodway based on a one foot rise in BFE using standard engineering

methods and practices, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)9 of this Code.

4. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

5. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(D) *Standards for areas of shallow flooding (AO / AH Zones)*. Located within areas of special flood hazard established in Section 11-3-10 are areas designated as areas of shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated to at least one foot above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

2. All new construction and substantial improvements of non-residential structures shall:

   (a) have the lowest floor (including basement) elevated to at least one foot above the Base Food Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified); or

   (b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below at least one foot above the Base Flood Elevation in an AH Zone, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 11-3-5(C) are satisfied.

4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(E) *Floodways*. Located within areas of special flood hazard established in Section 11-3-10 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If Section 11-3-12(E)1 above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 11-3-12.

3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

11-3-13. VARIANCE AND APPEAL PROCEDURES.

(A) The City Council shall hear and render judgment on requests for variances from the requirements of this Chapter.

(B) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.

(C) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(D) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.

(E) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 11-3-5(C)2 of this Code have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(F) Upon consideration of the factors noted above and the intent of this Chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter.

(G) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(H) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(I) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in this Section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

11-3-14. PREREQUISITES FOR GRANTING VARIANCES.

(A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(B) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(C) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11-3-15. PENALTY.

A violation of a provision of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor punishable by a fine in an amount not to exceed two thousand dollars ($2,000.00). Each day on which the violation shall exist shall constitute a separate and distinct offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION THREE. The provisions of any ordinance which are 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) pursuant to State law.

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., 2022; 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:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 35

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: **Motion granting Auden Carrillo's appeal and reversing the Building Official's denial of a sign permit for Lot 3, Block 33, Crestgate Addition, Section 20, City and County of Midland, Texas (Generally located on the North side of Bluebird Lane, approximately 2,213 feet east of North Midland Drive (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Auden Carillo, is requesting a variance to the required setbacks for a monument sign for Good Shephard Lutheran Church located at 3800 Bluebird Lane.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:
Per the proposed sign plans, the applicant is requesting to place an 8-foot-tall freestanding sign with 50-square feet of signage, however it is encroaching onto the setbacks by 5-feet.

The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.

(E)Setback Requirements

3. *Monument Signs. All monument signs must be installed or constructed with a minimum ten-foot setback from the property line.*

Per the City of Midland Zoning Ordinance Section 11-7a-7. Sign Standards, this property is allowed to have 120 square feet of signage. Therefore, the monument sign must have a minimum 10-foot setback from the property line. Nonetheless, the proposed monument sign is 50 square feet with a 5-foot setback from the property line.

Planning:

As this request represents a deviation from the existing Sign Ordinance and no hardships have been shown to exist, staff would recommend denial of this application for a motion appealing the Building Official's denial regarding the variance to the allowed area for a monument sign with a 5-foot setback from the property line.

Attachments:

Appeal Request
Building Official's Denial Letter
Application
Proposed Monument Sign
Maps

Morris Williams Jr.

City Manager's Office

MIDLAND
Code Administration

PERMANENT SIGN
PERMIT APPLICATION

1. PROJECT INFORMATION

Project Address: 3800 Bluebird lane	Project Description: Installing 5'x10' pole sign
Name of Business: Good Sheapherd Lutheran Church	
Valuation of Job: $ $9000.00	Zoning:
Property Line Setbacks: Front 5' Side 50' Rear X	Property Easements: Yes ____ No X
Lot/Tract: N/A | Block: N/A | Subdivision/Survey: N/A	Lot Size: (sq. ft.) N/A
Type of Work: New Construction X Additional ____ Repair Existing ____	Engineering Required: NO
Sign Type: Pole/Pylon ____ Monument ____ Directional ____ Wall X LED ____ Other ____	
Illumination: Internal: X External ____ None ____	Proposed Sign Area: 50 Sq. Ft. Facade: Height: X Width: X
Number of Signs: 1 | Height Above Grade: ____ | Overhang Permitted: ____	Other: ____

2. BUILDING OWNER INFORMATION

Name: Good Sheapherd Lutheran Church	Address: 3800 Bluebird lane	
Phone:	Fax:	Email:

3. SIGNAGE / CONTRACTOR INFORMATION

Name: Auden Carrillo	Address: 3701 N. County Rd. 1130	
Phone: 432-661-0726	Fax:	Email: abasignservice@yahoo.com

4. PLEASE READ CAREFULLY

- Attach three (3) copies of the Signage Site Plan and Signage Elevations showing building dimensions and square footages of the signage areas.
- All signs with lighting must have an Underwriters Laboratory label affixed to cabinet and electrical.
- Be advised incomplete applications may be rejected, denied or cause permit processing delays.
- This permit becomes null and void if work authorized is not commenced within 180 days of issuance or if work is suspended or abandoned for a period of 180 days at any time after work is commenced.
- I hereby certify that I am the property owner or their authorized agent, and have the owner's consent to apply for the permit requested and receive all subsequent communications and business related to this application. I further certify that the information provided is true and correct to the best of my knowledge. This work shall comply with all provisions of laws and ordinances, whether specified or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any federal, state or local law regulating construction or the performance of construction.

Signature of Applicant:	Date: 10-26-2021
Printed Name of Applicant: Auden Carrillo	Phone: 432-661-0726
Email: abasignservice@yahoo.com	Fax:

Code Administration Division
Development Services Department
300 N. Loraine Street - P.O. Box 1152 - Midland, Texas 79702
Office: 432-685-7390 - Fax 432-686-1609

Ver: 9/6/18

SIGN PERMIT PLAN REVIEW LETTER
Sent via Electronic Mail

November 5, 2021

ABA Sign Service
3701 E CR 1130
Midland, TX 79705

RE: Good Shepard Lutheran Church 3800 Bluebird Ln.

Mr. Carillo:

The plan review for the building permit for this project has been completed. The following comments or conditions that must be addressed prior to completion of the review and issuance of the building permit. Should you or the design consultants need further clarification regarding these comments or conditions, please contact the appropriate department or staff member.

Planning Division- Kelly Martinez - 432-685-7915 kmartinez@midlandtexas.gov

11/05/2021-Denied

Sign Code 11-7a-7. Sign Standards
E) Setback requirements
Monument signs. All monument signs must be installed or constructed with a minimum ten-foot setback from the property line.

Building Code- James Rawls- 432-685-7396 jrawls@midlandtexas.gov

11/01/2021
No issues as currently submitted

Sincerely,

James Rawls
Residential Plan Examiner
City of Midland, TX Code Administration
432-685-7396
jrawls@midlandtexas.gov

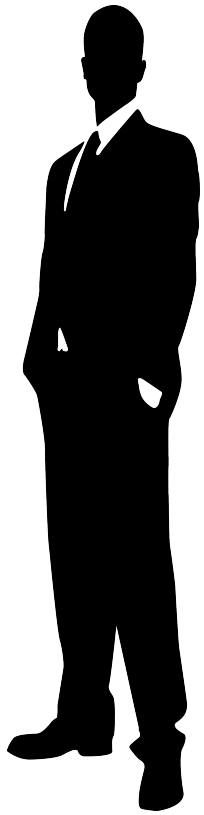
Kelly Martinez

From: Auden Carrillo <abasignservice@yahoo.com>
Sent: Wednesday, December 8, 2021 12:55 PM
To: James Rawls
Cc: Kelly Martinez
Subject: Good Shepherd Church
Attachments: Landscaping.jpg

I had Judy Russert wanting me to request a meeting with the city council over the placement of her monument sign. She had her landscaper (Debbie Frost) build a special brick base for their sign to sit on. The base is at 5' back from their property line and will not interfere with visibility of traffic exiting the property. Let me know what I would need to get the meeting set up.
Thanks

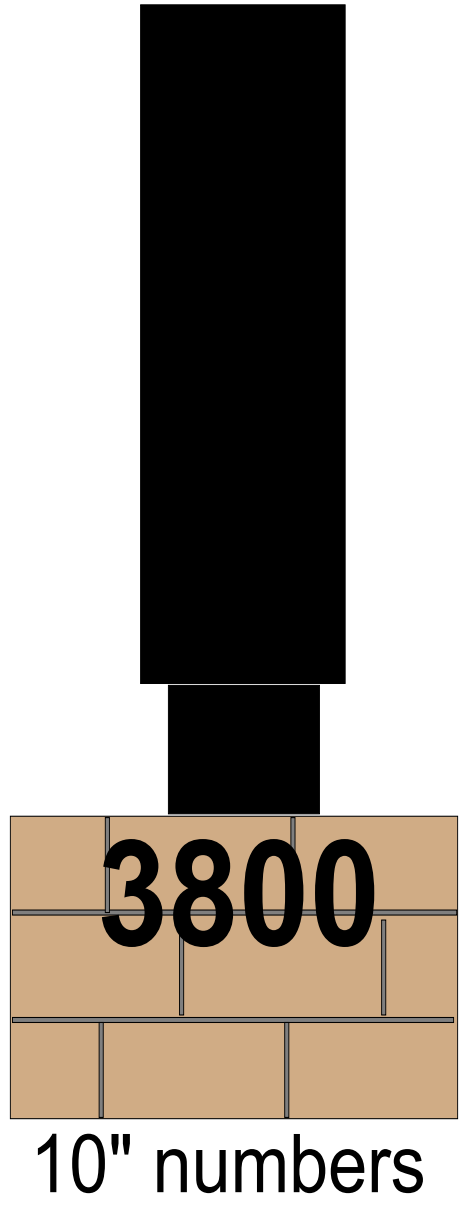
CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

5'x10'sign

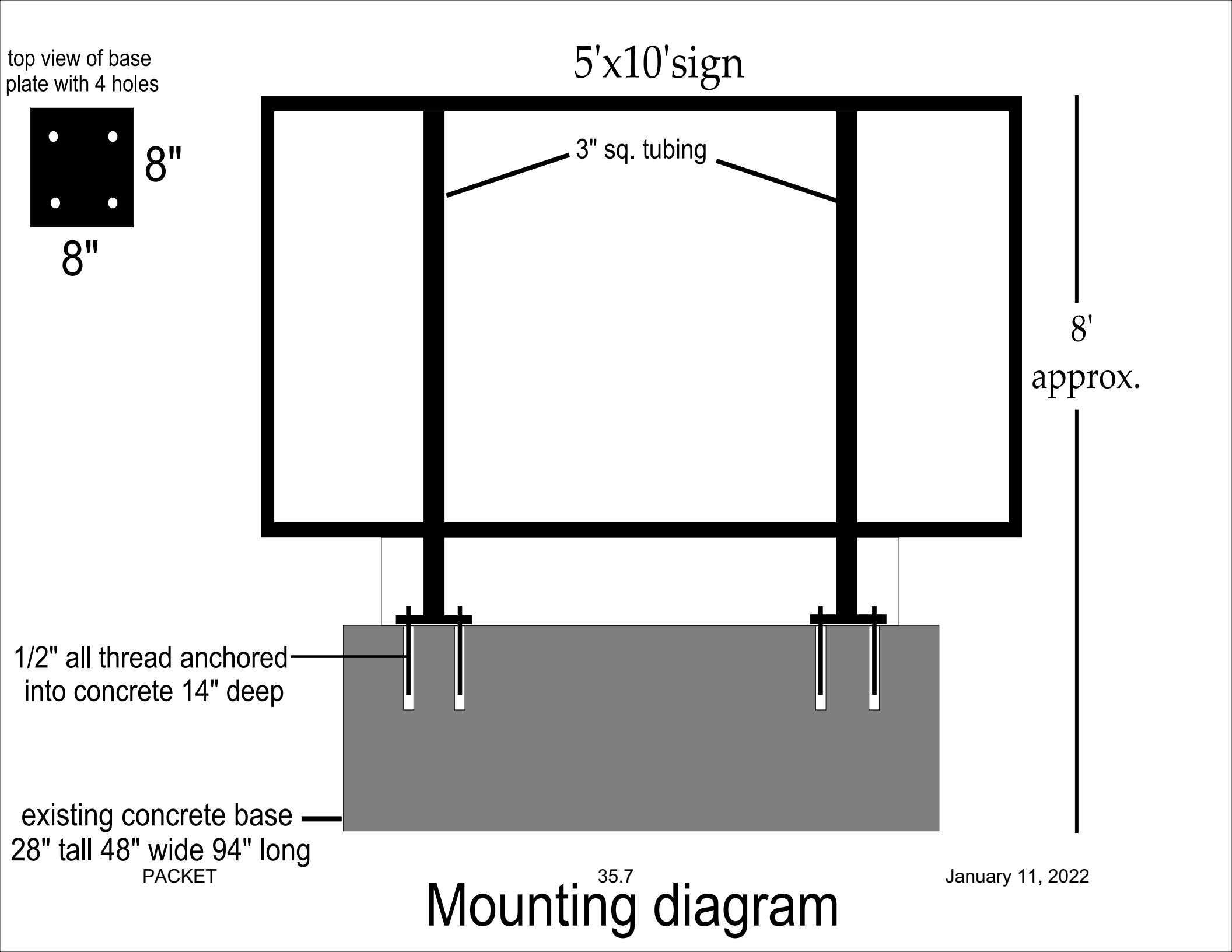




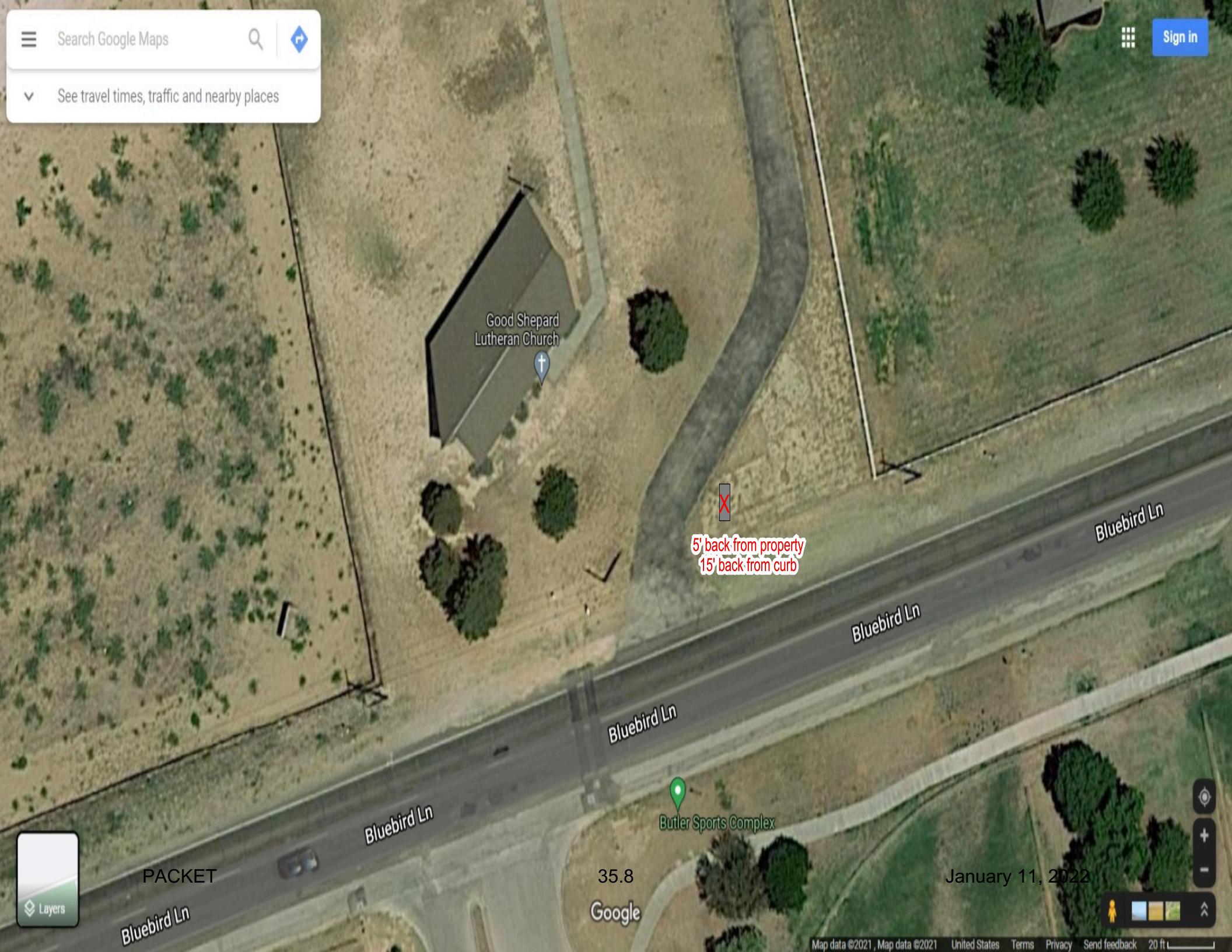
8'
approx.

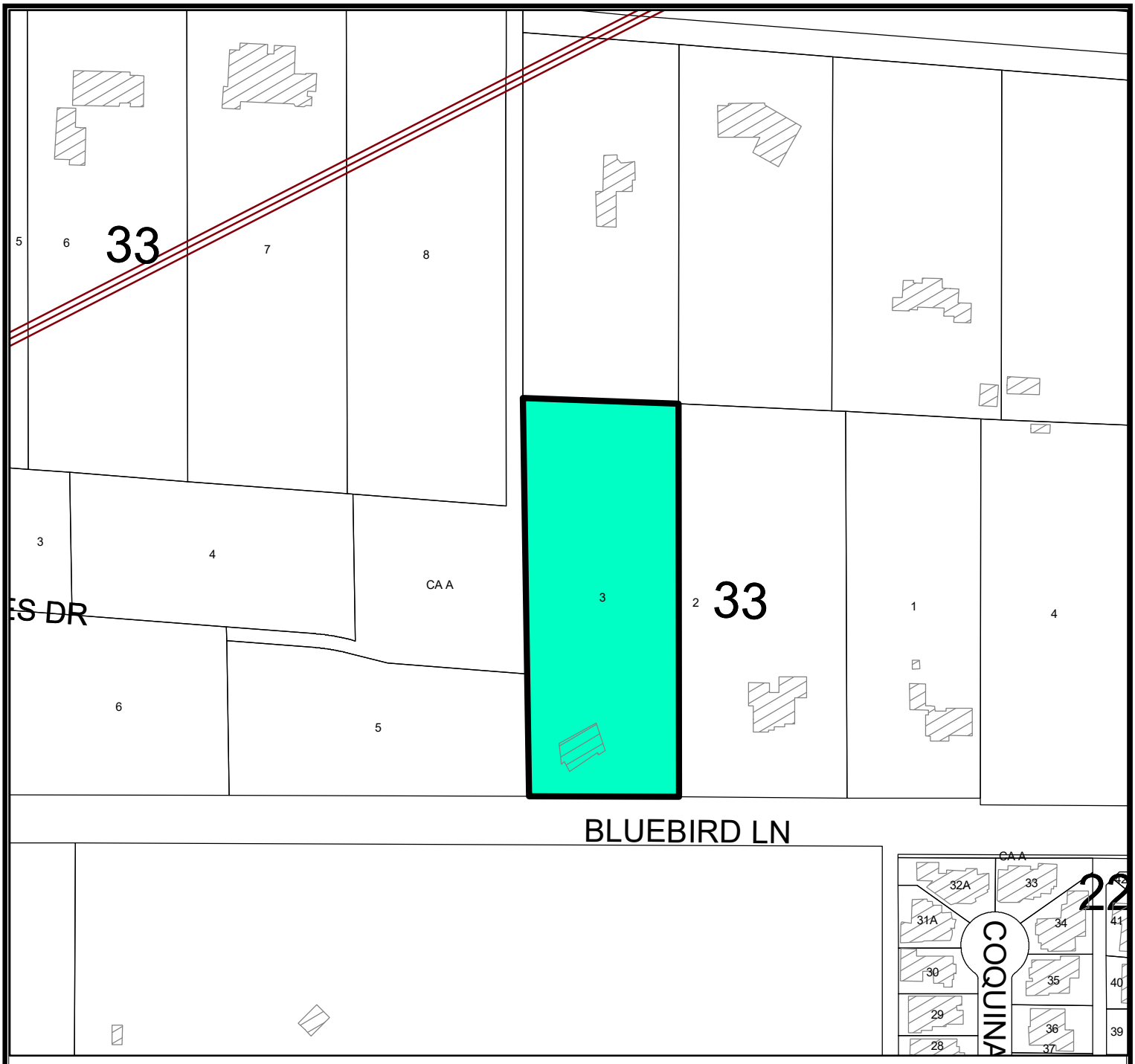


10" numbers



Mounting diagram


Search Google Maps
See travel times, traffic and nearby places
Sign in
Good Shepard Lutheran Church
5' back from property
15' back from curb
Bluebird Ln
Bluebird Ln
Bluebird Ln
Bluebird Ln
Bluebird Ln
Butler Sports Complex
Layers
Google
Map data ©2021 , Map data ©2021
United States
Terms
Privacy
Send feedback
20 ft



LOCATION MAP

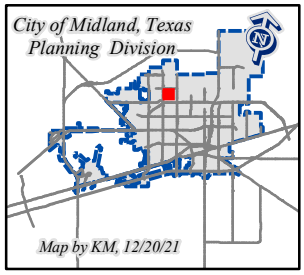
SGN-039020-2021 **Scale: 1" = 200'**

XXXX

PACKET 35.9

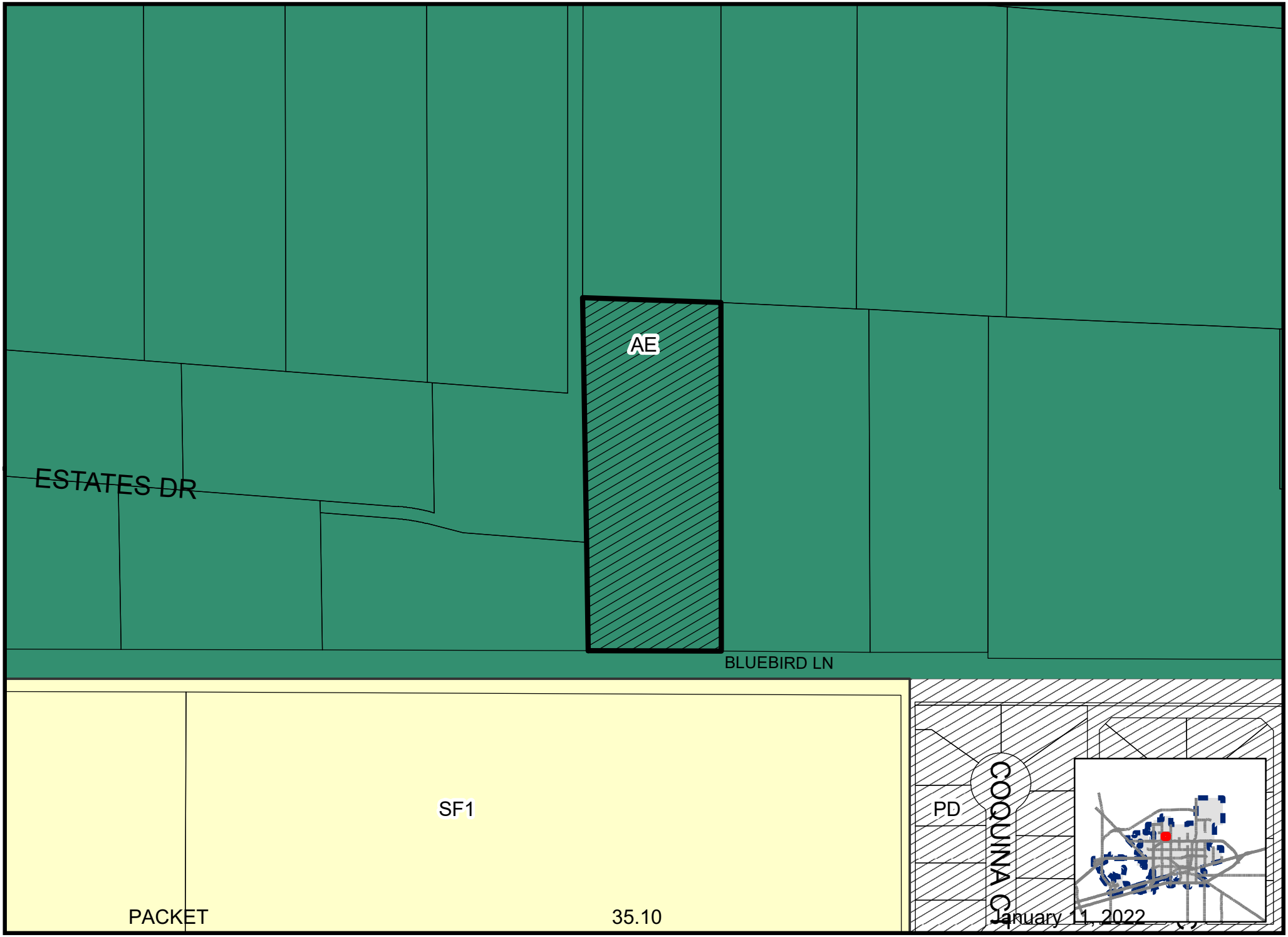
L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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January 11, 2022



Map By KM, 12/20/21

SGN-039020-2021 **Scale: 1" = 200'**

ZONING MAP

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City Council Meeting

Item Number: 36

Meeting Date: January 11, 2022

To: City Council / City Manager

From: Michael Pacelli, City Traffic Engineer

Subject: AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10223; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT 4) (ENGINEERING SERVICES)

Purpose:

To establish speed limit regulations at select locations, specifically being a 25 MPH speed limit on all streets in the Legends Park subdivision.

Recommended City Council Action:

Approve

Fiscal Impact:

Negligible.

Discussion:

The Legal Department has prepared an ordinance establishing speed limits on various roadways throughout the City and repealing any previous and/or conflicting ordinances.

In late November, the Board of Directors of the Legends Park Homeowners' Association voted to make a request to the City to reduce the speed limit on the residential streets within their subdivision.

As per state law, the prima facie speed limit on most local streets in the City is 30 MPH.

However, the City “may declare a lower speed limit of not less than 25 miles per hour, if the governing body determines that the prima facie speed limit on the highway is unreasonable or unsafe” [Texas Transportation Code, Sect. 545.356(b-1)].

Staff has reviewed the request and determined that a reduction to 25 MPH is reasonable and in the interest of safety in this case because the streets in Legends Park have much more curvilinear alignments than most other residential streets in Midland, and also because the density of the neighborhood and smaller lot sizes lead to a heavier presence of on-street parking on those curved streets.

The included streets are shown on the attached map. No other speed limits are being changed with this ordinance update.

Staff recommends approval.

Morris Williams Jr.

City Manager’s Office

ORDINANCE NO. _____

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

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

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

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Briarwood Avenue (both directions)

60 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

45 mph - from the centerline of Avalon Drive to the centerline of Holiday Hill Road

40 mph - from the centerline of Holiday Hill Road to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Candlestick Drive (both directions)

25 mph - in its entirety

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Champions Drive (both directions)

25 mph - from the centerline of Tradewinds Boulevard to the centerline of Koufax Court

Clemente Court (both directions)

25 mph - in its entirety

Coliseum Court (both directions)

25 mph - in its entirety

Colt Court (both directions)

25 mph - in its entirety

Comiskey Court (both directions)

25 mph - in its entirety

Coyote Trail (both directions)

40 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Crosley Drive (both directions)

25 mph - in its entirety

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

DiMaggio Court (both directions)

25 mph - in its entirety

DiMaggio Drive (both directions)

25 mph - in its entirety

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Gehrig Avenue (both directions)

25 mph - in its entirety

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Griffith Court (both directions)

25 mph - in its entirety

Griffith Drive (both directions)

25 mph - from the centerline of Deauville Boulevard to the centerline of Candlestick Drive

Hall of Fame Boulevard (both directions)

25 mph - from the centerline of Avalon Drive to the centerline of Riverfront Drive

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

King Kelly Court (both directions)

25 mph - in its entirety

Koufax Court (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Legends Boulevard (both directions)

25 mph - in its entirety

Mac Drive (both directions)

25 mph - in its entirety

Mantle Court (both directions)

25 mph - in its entirety

Mays Drive (both directions)

25 mph - in its entirety

Mel Ott Lane (both directions)

25 mph - in its entirety

Memorial Court (both directions)

25 mph - in its entirety

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Mockingbird Drive

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mile High Lane (both directions)

25 mph - in its entirety

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of

Mockingbird Lane

Musial Way (both directions)

25 mph - in its entirety

Neely Avenue (both directions)

30 mph - in its entirety

Nolan Ryan Drive (both directions)

25 mph - in its entirety

Olympic Court (both directions)

25 mph - in its entirety

O'Rourke Street (both directions)

25 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Rangers Court (both directions)

25 mph - in its entirety

Riverfront Drive (both directions)

25 mph - in its entirety

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Shea Lane (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Spahn Street (both directions)

25 mph - in its entirety

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Three Rivers Lane (both directions)

25 mph - in its entirety

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wagner Drive (both directions)

25 mph - in its entirety

Wagner Street (both directions)

25 mph - in its entirety

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar ($1.00) nor more than Two Hundred Dollars ($200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 10223 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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:

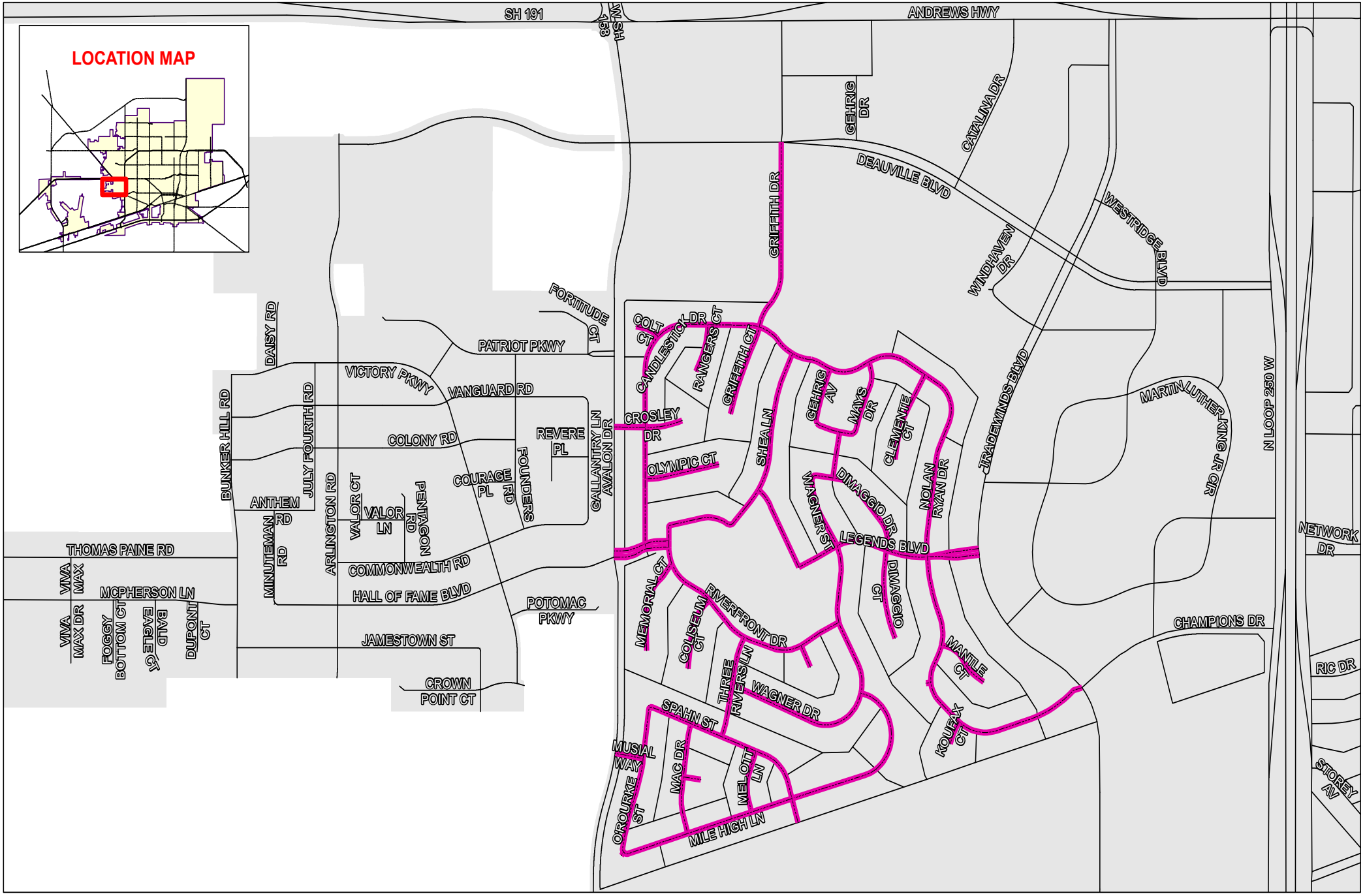
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Michael Pacelli, City Traffic Engineer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



Date: 12/9/2021

Legend

Street

City Limit

PACKET

Legends Park Speed Limit Changes

January 11, 2022

0 250 500 Feet

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ORDINANCE NO. _____

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

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

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

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Briarwood Avenue (both directions)

60 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

45 mph - from the centerline of Avalon Drive to the centerline of Holiday Hill Road

40 mph - from the centerline of Holiday Hill Road to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Candlestick Drive (both directions)

25 mph - in its entirety

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Champions Drive (both directions)

25 mph - from the centerline of Tradewinds Boulevard to the centerline of Koufax Court

Clemente Court (both directions)

25 mph - in its entirety

Coliseum Court (both directions)

25 mph - in its entirety

Colt Court (both directions)

25 mph - in its entirety

Comiskey Court (both directions)

25 mph - in its entirety

Coyote Trail (both directions)

40 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Crosley Drive (both directions)

25 mph - in its entirety

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

DiMaggio Court (both directions)

25 mph - in its entirety

DiMaggio Drive (both directions)

25 mph - in its entirety

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Gehrig Avenue (both directions)

25 mph - in its entirety

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Griffith Court (both directions)

25 mph - in its entirety

Griffith Drive (both directions)

25 mph - from the centerline of Deauville Boulevard to the centerline of Candlestick Drive

Hall of Fame Boulevard (both directions)

25 mph - from the centerline of Avalon Drive to the centerline of Riverfront Drive

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

King Kelly Court (both directions)

25 mph - in its entirety

Koufax Court (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Legends Boulevard (both directions)

25 mph - in its entirety

Mac Drive (both directions)

25 mph - in its entirety

Mantle Court (both directions)

25 mph - in its entirety

Mays Drive (both directions)

25 mph - in its entirety

Mel Ott Lane (both directions)

25 mph - in its entirety

Memorial Court (both directions)

25 mph - in its entirety

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Mockingbird Drive

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mile High Lane (both directions)

25 mph - in its entirety

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of

Mockingbird Lane

Musial Way (both directions)

25 mph - in its entirety

Neely Avenue (both directions)

30 mph - in its entirety

Nolan Ryan Drive (both directions)

25 mph - in its entirety

Olympic Court (both directions)

25 mph - in its entirety

O'Rourke Street (both directions)

25 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Rangers Court (both directions)

25 mph - in its entirety

Riverfront Drive (both directions)

25 mph - in its entirety

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Shea Lane (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Spahn Street (both directions)

25 mph - in its entirety

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Three Rivers Lane (both directions)

25 mph - in its entirety

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wagner Drive (both directions)

25 mph - in its entirety

Wagner Street (both directions)

25 mph - in its entirety

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar ($1.00) nor more than Two Hundred Dollars ($200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 10223 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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:

_____
Michael Pacelli, City Traffic Engineer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND
January 11, 2022

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Scooter Brown	09/16	Sept 30 2022	Sept 30 2022
Wes Reeves	08/15*	Sept 30 2023	Sept 30 2023
Justin Kuethe	09/19	Sept 30 2022	Sept 30 2025
Nick McClure	09/19	Sept 30 2022	Sept 30 2025
Gena Linebarger	09/20	Sept 30 2023	Sept 30 2026
Butch Morgan	09/20	Sept 30 2023	Sept 30 2026
Benjamin Fietz	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	10/21	Sept 30 2024	Sept 30 2027
Dave Joyner	10/21	Sept 30 2024	Sept 30 2027
Robert Richards	10/21	Sept 30 2024	Sept 30 2027

Justine Ruff (Liaison)
Lori Blong (Council Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

Eligibility Requirements: Resident of Midland County

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)
(Membership - 7; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Leah Lewis (daily operations)	09/17	Sept 30 2025	Does not expire??
Robert “Robin” Donnelly (County)	11/13	Sept 30 2025	Sept 30 2025
Dr. (Erickson) Lee (Veterinarian)	05/14	Sept 30 2022	Sept 30 2022
Alyson Dial	09/18	Sept 30 2022	Sept 30 2026
Dr. J. Annette Jensen (Veterinarian)	04/20	Sept 30 2024	Sept 30 2028
Tasha Sport	04/20	Sept 30 2024	Sept 30 2028
Sharla Hotchkiss	04/20	Sept 30 2024	Sept 30 2028

Leah Lewis (Liasion)
Spencer Robnett (Council Liaison)

Eligibility Requirements: 1 License Veterinarian, 1 Animal Shelter Employee, 1 Animal Welfare Organization Representative, 1 County or Municipal Official, 2 Citizens

BUILDING AND FIRE CODE REVIEW COMMITTEE/CONSTRUCTION BOARD OF ADJUSTMENTS & APPEALS

(Membership – 9; Terms – 6 Years)

Shall consist of two architects, a fire protection contractor or specialist, a general contractor, an electrical contractor, a homebuilder, a plumbing and mechanical contractor, a structural engineer, a City Council Liaison

	Appt Date	Term Expires	Eligibility Expires
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
Ron Ainsworth (Plumbing & Mechanical Contractor)	12/18	Sept 30 2024	Sept 30 2030
T.J. McClure (Architect)	12/18	Sept 30 2024	Sept 30 2030
Laurence Oeth (Structural Engineer)	12/18	Sept 30 2024	Sept 30 2030
David Hickman (Fire Protection)	12/18	Sept 30 2024	Sept 30 2030
Gary Glasscock (General Contractor)	12/18	Sept 30 2024	Sept 30 2030
Robert Anderson (Homebuilder)	12/18	Sept 30 2024	Sept 30 2030
Jeff Pinkstaff (Liaison)	12/18	Sept 30 2024	Sept 30 2030
Spencer Robnett (Council Liaison)			

Eligibility Requirements: Members shall reside within the City.

CAPITAL IMPROVEMENT ADVISORY COMMITTEE

(Advisory)

(Membership – 7)

A minimum of 40% must be representative of real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity.)

	Appt Date
Carl Craigo	10/19
Walter Pate	06/18
Mark Payne	06/18
Courtney Black	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz (Liaison)	06/18
Lori Blong (Council Liaison)	

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Joey Hopkins	10/18	Sept 30 2022	Sept 30 2022
Alex Singh	10/18	Sept 30 2022	Sept 30 2022
Becky Wisdom	10/18	Sept 30 2022	Sept 30 2022
Brandon Ofield	09/20	Sept 30 2022	Sept 30 2024
Clint Williamson	04/21	Sept 30 2023	Sept 30 2025
Ellen K. Ramsey	10/18	Sept 30 2023	Sept 30 2023
Vicky Hailey	09/21	Sept 30 2023	Sept 30 2025
Amy Turner (Liaison)			
Lori Blong (Council Liaison)			

Eligibility Requirements: Members shall be thoroughly familiar with Chapter 351, "Municipal Hotel Occupancy Taxes", 1 Member Representative of Hotel/Motel Association.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Robert McNaughton	11/15	Dec 31 2024

MIDLAND DEVELOPMENT CORPORATION

(Membership - 7; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/19	Jan 14 2022	Jan 14 2025
Wesley Bownds	07/15*	Jan 14 2022	Jan 14 2022
Barry Simpson	01/19	Jan 14 2022	Jan 14 2025
Stephen Lowery	01/17	Jan 14 2023	Jan 14 2023
P Lourcey Sams	04/20	Jan 14 2023	Jan 14 2026
Jill Pennington	04/20	Jan 14 2023	Jan 14 2026
Brad Bullock	04/21	Jan 14 2024	Jan 14 2027

Amy Turner (Liaison)
Lori Blong (Council Liaison)

Eligibility Requirements: No director or employee shall be related to a current City Council member.

MIDLAND DOWNTOWN PARK CONSERVANCY BOARD

(Membership - 7; City Appoints 3 Seats; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Barry Beal Jr.	08/18	Sep 30 2024	Sep 30 2024
David Byrd	08/18	Sep 30 2023	Sep 30 2023
Sharla Hotchkiss	07/20*	Sep 30 2022	Sep 30 2025

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Curt Kamradt	**11/05***	**Jan 1 2014**	**Jan 1 2014**

Sharla Hotchkiss (Liaison)

MIDLAND HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 3 even & 2 odd.)

Appointments Made by Mayor (LGC 392.031)

	Appt Date	Term Expires
Wes Gotcher	09/20	Oct 2022
Robert Lehrer	09/20	Oct 2022
Latoya Mayberry	06/21	Oct 2023
Sylvestor Cantu	09/18*	Oct 2023
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2023

Isaac Garnett (Staff Liasion)

Eligibility Requirements: No member may be an officer or employee of the City of Midland.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)
(Membership – 12 with 6 appointed by Midland; Terms - 2 Years Staggered; Can serve 3 terms)

	Appt Date	Term Expires	Eligibility Expires
E. J. Baldridge	10/18	Sept 30 2022	Sept 30 2024
Iris Foster	06/18*	Sept 30 2022	Sept 30 2024
Joseph Sanchez	12/19	Sept 30 2023	Sept 30 2025
Jack Ladd	07/20	Sept 30 2022	Sept 30 2026
Daniel Norwood	04/21	Sept 30 2023	Sept 30 2027
Elizabeth Haigler	04/21	Sept 30 2023	Sept 30 2027

Charles Harrington (Liaison)

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)
2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	Appt Date	Term Expires	Eligibility Expires
Scott Bowden (Real Estate)	10/19	Sept 30 2022	Sept 30 2025
Ross Klabon (Petroleum Eng.)	10/19	Sept 30 2022	Sept 30 2025
Court Adkins (Petroleum Eng.)	09/17	Sept 30 2023	Sept 30 2023
Rhett Bullock (Petroleum Eng.)	09/21	Sept 30 2024	Sept 30 2026
Cameron Willmann (Real Estate)	10/21	Sept 30 2024	Sept 30 2026

Ron Jenkins (Liaison)

Eligibility Requirements: 3 Petroleum Engineers or Geologists and 2 with Property Development or Real Estate Experience.

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Connie Ferguson	09/16	Sept 30 2022	Sept 30 2022
Stephanie Martin	10/16	Sept 30 2022	Sept 30 2022
Laura Smith	10/19	Sept 30 2022	Sept 30 2025
Francis Schammel	10/19	Sept 30 2022	Sept 30 2025
Susannah Prucka	04/20	Sept 30 2023	Sept 30 2026
Lynn Rogers	04/20	Sept 30 2023	Sept 30 2026
Dal Watson	09/20	Sept 30 2023	Sept 30 2026
Ron Stroman	09/20	Sept 30 2023	Sept 30 2026
Shirley Howard	02/16*	Sept 30 2024	Sept 30 2024

Cristina Odenburg-Burns (Liaison)
John Norman (Council Liaison)

Eligibility Requirements: Resident Citizen, Taxpayer and Qualified Voter.

PERMIAN BASIN COMMUNITY CENTER FOR MH/MR (PermiaCare)

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires
Ryan Peckham (City)	08/20	June 2022
Derek Cook (City)	06/21	June 2023

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms. Mayor appoints.)

	Appt. Date
Scott Dufford	01/14
Hugh A. “Andy” Shaffer	09/05
Patrick Payton	01/20

Mark Widman (Liaison)

Eligibility Requirements: Board consists of two City Council members and one other member who is not a City employee.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 7; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/14*	Sept 30 2022	Sept 30 2022
Karmen Bryant	02/19*	Sept 30 2022	Sept 30 2025
Diane Williams	09/17	Sept 30 2023	Sept 30 2023
Lucy Sisniega	09/20	Sept 30 2023	Sept 30 2026
Stacey Jo Grosse	09/20	Sept 30 2023	Sept 30 2026
Zachary Deck	09/20	Sept 30 2023	Sept 30 2026
Adrian Carrasco	09/21	Sept 30 2024	Sept 30 2027
ALTERNATES:			
Emily Holeva	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	09/21	Sept 30 2024	Sept 30 2027

Elizabeth Shaughnessy (Liaison)

Eligibility Requirements: Resident citizen of City of Midland, owner of real property within the City Limits and qualified Voter.

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)
(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Reed Claybrook	03/19*	Sept 30 2022	Sept 30 2024
Derek Whiting	01/18*	Sept 30 2023	Sept 30 2023
E.J. Baldridge	02/18	Sept 30 2023	Sept 30 2023
Robert Gray	01/21	Sept 30 2024	Sept 30 2026
James Gerety	04/21	Sept 30 2024	Sept 30 2026
ALTERNATES: (not applicable to Airport Zoning)			
James Robert Franklin		Sept 30 2021	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	

Jeff Pinkstaff (Staff Liaison)

MIDLAND DEVELOPMENT CORPORATION
(Membership - 7: Terms - 3 Years - Staggered)
FEBRUARY 2021 - DECEMBER 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Chase Gardaphe	Jan 14 2022	91%	10	11	Yes	Still interested in serving
Wesley Bownds	Jan 14 2022	91%	10	11	No	
Barry Simpson	Jan 14 2022	100%	11	11	Yes	Still interested in serving
Stephen Lowery	Jan 14 2023	82%	9	11	Yes	
P Lourcey Sams	Jan 14 2023	100%	11	11	Yes	
Jill Pennington	Jan 14 2023	55%	6	11	Yes	
Brad Bullock	Jan 14 2024	55%	6	11	Yes	Appointed April 2021

Applicants Name	Additional Boards Applying to	COUNCIL NOTES
Michael Dietrich (D3)	P&R	
Nancy Ann Jones (D3)	PBA	
Amy Barnhill (D1)	MHAC, ASAC, P&Z	
Stephen Taylor (D3)		
Brandi Alexander (D1)		
Brennan Berry (D3)	CDHMADB	
Zachary Deck (D3)		
Garner Gonzalez (County)	BCRCCBAA	
Guy McKenzie (D1)		
Melissa Mosier (D2)	ZBA&AZBA	
Reggie Lawrence (D1)	APBD, PBA, CDHMAB	
Lucy Sisniega (D2)		
Ronnie Scott (D4)		
J. Ross Lacy (D1)		
Crystal McGinnis (D1)		
James Eisenwine (D1)		
Michael Trost (D4)		

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 6/30/2021

Name: Michael "Mike" Dietrich

Phone: 281-513-4149 **(Home)**

Address: 2500 Seaboard Ave

_____ **(Business)**

Midland TX 79705

Email: Mike.wd1986@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 1.5 **years.**

Occupation: Business Development

Professional and/or Community Activities:

I serve on the membership committee of Midland Country Club.

What is your personal vision for the City?

I want to continue to keep Midland running efficiently to serve the people. After moving here last year, I realized how much I liked it here. One day I realized our dumpster lid was broken and I emailed the city about. LESS THAN 2 HOURS LATER the dumpster had a new lid. I was amazed and realized then I wanted to volunteer and help serve on a committee to continue these great efforts.

Please specify any time constraints you may have.

I have a rather flexible schedule since I am in sales for my occupation.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I love this city and want to be involved in the continued improvement and development for generations to come.

What contribution would you most like to make?

Before sales I was in finance and have a very analytical, yet rational, business outlook.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

As a parent of 2 young children we fell in love with the parks around town. I could bring a parent/user's perspective to the committee.

Additional pertinent information or references:

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Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

Michael "Mike" Dietrich

2500 Seaboard Ave
Midland, TX 79705

© +1 (281) 513-4149
Mike.wd1986@gmail.com

Clariant (March 2021 – Present) **Midland, TX**

Business Development Manager *March 2021 – Present*

Hoover Ferguson (October 2019 – Present) **Midland, TX**

Regional Sales *October 2019 – March 2021*

This role required relocating full-time to Midland, TX to spearhead local sales and growth of assets, services, and transportation in the Permian Basin. Day to day duties include:

- Cold call prospects to gain new business
- Call on and support existing customers to retain and grow current business
- Prospect and analyze the feasibility of breaking into new industries or offerings
- Market and preemptively sell our new wash and service center prior to the grand opening

Nalco Champion (April 2015 – October 2019) **Houston, TX**

Account Manager, Chemicals – WellChem Technologies *November 2018 – October 2019*

This role has the added responsibility compared to district representative of managing the account across the United States and Canada. Additional duties include:

- Manage the profitability of a product portfolio spanning 2 different countries and currencies.
- Work with logistics and supply chain to ensure all possible efficiencies are utilized to keep costs down when moving and storing products in Canada from the United States.
- Collaborate with regional teams to support the customer and identify opportunities, needs, and/or deficiencies.

District Representative, Chemicals – WellChem Technologies *June 2017 – October 2018*

Responsible for managing one of the largest customers in our portfolio and supporting them throughout the United States. In 2017 the account was ~$12mm annually in revenue. For the year ending 2018, the account revenue was ~$51mm. Specific duties include:

- Create and grow relationships within all levels of the customer, from the field inventory controllers up to and including the executive team.
- Maintain visibility into the customer's plans to stay ahead of inventory needs in all the regions to ensure the ability to react to new business opportunities on short notice.
- Attend and participate in customer's weekly chemical S&OP to maximize the product portfolio, efficiency, and profitability.
- Coordinate with our internal supply chain network to manage the outlook and demand of products and have them at the necessary regions stored for the customer.
- Research market trends and customer initiatives to help grow new business within the account.
- Constantly work with RD&E to stay ahead of the newly developed technologies to bring to the customer.
- With production constraints to largest product line, it was imperative to drive adoption to new and different product lines at all levels of the company from field personnel to executives.

Manager, Financial Analysis Projects *April 2015 – June 2017*

Duties and specific projects include:

- Helped build and facilitate the acquisition of Keedak, Nalco Champion's distributor, in Nigeria. This project started with building the plan of how to acquire them, working through compliance and regulatory issues along the way, and continued all the way through the new employee's onboarding. This project involved multiple trips to Port Harcourt and Lagos, both in Nigeria.
- Lead an initiative to find and implement a preferred tank supplier for OFC North America that will yield upwards of $1mm in savings annualized.
- Coordinate Enterprise Excellence for all of OFC. Entails meeting to facilitate ideation sessions for projects and then check the status of projects against goals for the year.
- Responsible any specific financial roll up and tracking that is required by the EVP. An example of this being month over month trends and what is needed for the remainder of the year to hit a specific YOY growth target.
- An as needed resource for the business unit when there are additional resources needed for projects.

Hercules Offshore (January 2013 – April 2015) **Houston, TX / Nigeria**

Marketing and Financial Analyst *May 2014 – April 2015*

Responsible for the analysis of data from both a market and financial viewpoint, I compile and organize data from our sales force to vet for viable options, whether it is standard vessel charters, mergers & acquisitions, divestments, or mobilizations between markets. I also am responsible for developing regions that do not have a full-time sales presence.

- Develop an annual marketing plan for International Liftboats division
- Sponsor and run a monthly sales meeting with all regions and BD personnel
- Develop strategies for Business Development activities and programs
- Track and record all leads, provide an initial response to all inquiries
- Review and analyze P&Ls to look for emerging trends and opportunities
- Develop pricing models and train others in their use, keeping a catalog of models for different scenarios of purchasing, moving, and selling assets
- Maintain responsibility for all commercial tenders and bid documents that are outside of our standard operating regions, including the receipt of the notices and the development and delivery of the tenders and supporting those regions without BD personnel
- Develop the marketing presentation for liftboat marketing and sales
- Presentations and Slides: responsible for using data to produce marketing presentations for executives and Board Meetings such as the supply/demand analysis
- Reports: Weekly Summary Report and Monthly Operations and Sales Reports will be compiled with data from the regions
- Salesforce leader in maintaining the data and reporting from Salesforce
- Develops all marketing materials

HERO Management Trainee *January 2013 – May 2014*

Responsible for rotating through the entire business by spending 14 days offshore working as a roustabout and floor hand. Working in the offshore business enabled the maximum amount of hands on learning. Being on the front line of issues including well control and various emergency drills, allowed operational knowledge enabling me to work more efficiently when making decisions in the office.

When not on the offshore rotation, I would work in the corporate headquarters in each of the departments helping various business initiates. These duties can be as simple as making client

presentations or as complex and confidential as running scenarios to determine if a potential acquisition is profitable in the long run.

Apex Systems, Inc. (November 2010 – October 2012) **Columbia, MD**

Account Manager *March 2012 – October 2012*

- Identifying and cultivating new business by utilizing strategies including cold calling, leveraging referrals/contacts, sponsoring user groups, and monitoring local business trends.
- Responsible for managing a business portfolio of clients including government, private, and commercial clients.
- Supporting clients by interacting via frequent phone calls and on-site meetings.
- Entertaining clients with luncheons, meals, catered events, happy hours, and out of office activities.
- Communicating with the delivery team to ensure the understanding of requisitions so that the clients are supported efficiently and quickly.
- Tracking placements, dollar amounts, and responsible parties by keeping and updating an office facing whiteboard and a shared drive excel file, which is accessible by employees up to and including executive vice presidents.
- Held accountable for achieving goals set forth by my direct supervisor/manager on a weekly, quarterly, and yearly basis.

Technical Recruiter *November 2010 – March 2012*

- Sourcing and placing candidates by requirement specific recruiting and proactive geographical canvassing.
- Qualifying requisitions, submitting candidates, coordinating interviews, and receiving/making offers by interacting with clients through on-site appointments, email correspondence, and phone conversations.
- Tracking placements, dollar amounts, and responsible parties by keeping and updating an office facing whiteboard and a shared drive excel file, which is accessible by employees up to and including executive vice presidents.
- An integral part in helping grow the Baltimore Office to a 10+ year all-time high for weekly volume/profit.
- Training new hires on all essential recruiting functions from our proprietary candidate tracking system to organizational best practices to communication habits/skills.
- Held accountable for achieving goals set forth by my direct supervisor/manager on a weekly, quarterly, and yearly basis.

Award/Honor

Baltimore Rookie Recruiter of the Year – 2011

EDUCATION

Kutztown University of Pennsylvania – BSBA (Marketing)

- *3-year letter winner and 2-year football starter*
- *Started as a walk on and earned a scholarship*

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 8-11-21

Name: Amy Barnhill

Phone: 432-262-3473 **(Home)**

Address: 3801 Crestgate Avenue

(Business)

Midland Texas 79707

Email: ABarnhill712@gmail.com

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ____yes _____no

I have lived in Midland 24 **years.**

Occupation: Environmental Specialist

Professional and/or Community Activities:

Board Member Ellen Noel Museum

Board Member Cas de Amigos

Volunteer for Meals on Wheels

What is your personal vision for the City?

I want to see our city prosper but not to the detriment of its citizens. I want our community to embrace its strengths and reach out to its citizens who struggle. I envision a community who works together to make our city great.

Please specify any time constraints you may have.

I do work a full time job but have the flexibility to attend meetings and attend community events.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Animal Services Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have a heart for those who cannot advocate for themselves and often times that is the elderly and animals. I believe these boards are a good place to start in service of the city.

What contribution would you most like to make?

I want to add value in whatever manner I can whether it is a new perspective or a fresh opinion. I want to serve the city of Midland as a valued member of the community and I want to contribute to its continued success.

Additional pertinent information or references:

I believe I have a lot to offer in terms of serving my community. I have lived in Midland for 24 years, had children and grandchildren in various schools and attend a couple of different churches. I have sat back and watched and listened and tried to learn a few things about our community. I believe it is now time to contribute.

(2) Name of Board/Commission:

Planning and Zoning Commission

Midland Development Corporation

What contribution would you most like to make?

These are other boards/commissions that I have interest in. I find it interesting how communities decide what businesses are of value to the community and the processes involved with the development and zoning of such entities.

Additional pertinent information or references:

I am a passionate worker bee. When I get involved with something I try to put a lot of passion behind it. I enjoy volunteering and working along side others to make our community a great place to be.

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Signature of Applicant

_____

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/4/2021

Name: Brennan Berry

Phone: (646) 460-4778 **(Home)**

Address: 1503 Harvard Ave.

(432) 242-8850 **(Business)**

Midland TX 79701

Email: bberry@erpfunds.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 5 **years.**

Occupation: Real Estate Investment

Professional and/or Community Activities:

Currently work as the Chief Operating Officer of ERP Funds, a Midland-based real estate investment fund that focuses on commercial real estate investments in the Permian Basin. I graudated from the Leadership Midland Class of 2018 and currently serve on the Midland Community Theater Board of Governors.

What is your personal vision for the City?

Midland is a city of entrepreneurs that have created an incredibly successful city however I think for Midland to really succeed in the future, we need to focus much more on quality of life and a big part of that is focusing on aesthetic improvements and amenities that all Midlanders can take advantage of.

Please specify any time constraints you may have.

Available to meet most weekdays, either during business hours or afterwards. I am generally pretty flexible in regards to timing.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIDLAND DEVELOPMENT CORPORATION

Please tell us why you are interested in serving on this board or commission.

The MDC plays a key role in business development in the city along with infrastructure improvements, both of which I am particularly interested in. As someone who does not directly work in Oil & Gas, I see the need to help diversify the local economy and encourage

small businesses to grow in our region.

What contribution would you most like to make?

With a backgroud in real estate, hospitality and project management, I believe I can share unique insights with the board and provide a small business perspective. I'd also like to specifically work on attracting new businesses to Midland that can help achieve some of the quality of life goals for the city.

Additional pertinent information or references:

I am a licensed real estate broker in Texas which I believe could be a qualification of interest to the board.

(2) Name of Board/Commission:

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

What contribution would you most like to make?

I'd like to help prioritize projects that can be funded from the Hotel/Motel Tax that would most benefit the city and attract visitors to the area, particularly with business and leisure travel starting to return in 2021. With a new convention center in place, it will be critical to promote Midland as a destination to help ensure its success.

Additional pertinent information or references:

Prior to moving to Midland and joining ERP, I worked for Four Seasons Hotels and Resorts in both Dubai and London, focusing on business development, which I believe would serve me well on this board.

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 02/04/2021

Name: Brandi Alexander

Phone: 432-528-8920 **(Home)**

Address: 403 Pinewood Ct

432-617-9156 **(Business)**

Midland TX 79705

Email: balexander@firstbanktexas.com

(City) (State) (Zip)

I am [✓] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland 5 **years.**

Occupation: Marketing Director

Professional and/or Community Activities:

Current Board President for Midland Boys and Girls Club, Past Board President for Communities in Schools of the Permian Basin, Pa

Member of the Junior League of Odessa (7 years), Generations Graduate, Leadership Odessa Graduate

What is your personal vision for the City?

Personally, I would like to see more opportunities for families and education, such a Science Spectrum, or along those lines.

Midland has done a wonderful job at providing many restaurants, adequate housing, and shopping that are important

to our revenue streams and will be essential as we continue to grow.

Please specify any time constraints you may have.

I do work from 8:00 to 5:00 pm, but work allows for board meeting attendance.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have lived most of my life in the Permian Basin, and I am vested in making the area the best place to live. It is important to

have great opportunities for our families here and keep our area appealing.

What contribution would you most like to make?

I would like to contribute any expertise I can provide as an involved community member. In my years here, I have worked with several non-profits to grow our outreach through the communities and be effective. It has given me a clear view of many of our community needs and what we can do to make our city the best it can be.

Additional pertinent information or references:

Britney Mann: 432-556-4739, served with on past boards and have a strong business relationship with.

David Shipman: 432-212-8890, Currently work with at the bank and have served on boards with him.

Christi Callicoate: 432-553-6889, Strong business relationship and have worked together for non-profits

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Brandi Alexander

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/18/2021

Name: Garner Gonzales

Phone: 432-967-0699 **(Home)**

Address: PO Box 125

432-684-6410 **(Business)**

Midland Texas 79702

Email: garner@gonzalescontractors.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 25 **years.**

Occupation: Owner/General Contractor

Professional and/or Community Activities:

I serve as Vice President of Gonzales Contractors, LLC

Graduating this upcoming Summer 2021 with my Master of Business Administration from The University of Texas Permian Basin.

What is your personal vision for the City?

I am very passionate about my beautiful West Texas city of Midland.

I am eager to get involved in making Midland's growth and economic future prosperous.

My main goal is to make Midland a better place and leave Midland exponetially better for the next generation to come.

Please specify any time constraints you may have.

As I am the owner of my business, I am very flexible and can make time for any board meeting or gatherings.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

As I stated before, I am eager to get involved in making Midland's growth and economic future prosperous.

I want to get involved and truly see this as a great starting point.

What contribution would you most like to make?

I am a business owner and general contractor and would bring great aid and advice to making these development decisions.

Additional pertinent information or references:

Mayor Patrick Payton

Aron Marquez- CEO of Wildcat Oil Tools

Dale Redman - Former CEO of ProPetro Services Inc.

(2) Name of Board/Commission:

Building Codes Review Committee/Construction Board of Adjustments & Appeals

What contribution would you most like to make?

I am a business owner and general contractor and would bring great aid and advice to making these building code review decisions.

Additional pertinent information or references:

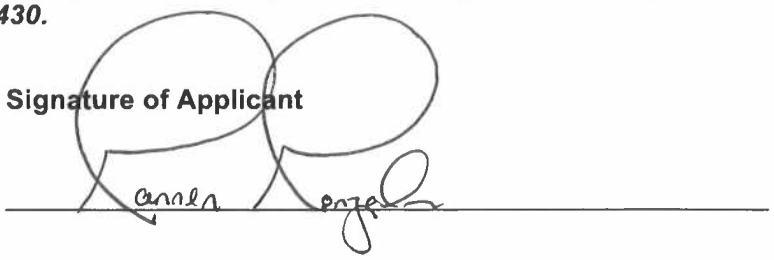
David Arrington - CEO of Arrington David H Oil & Gas

Justin Herricks-CEO of Precision Pipe Rentals

Zahir Noormohamed, CPA- Owner of Accounting Noormohamed Zahir

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/11/2021

Name: Zachary Deck

Phone: 703-659-5911 **(Home)**

Address: 1607 W Tennessee Ave

(Business)

Midland TX 79701

Email: zachary.e.deck@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 15 **years.**

Occupation: Senior Production Engineer at Diamondback Energy

Professional and/or Community Activities:

Midland Planning and Zoning Commission, Midland Spaceport Development committee, Rock the Desert board of directors, Midland real estate investors group, Stonegate student leader

What is your personal vision for the City?

I would like to see Midland become a hub of activity for economic and personal growth for the residents of the Permian Basin. I envision growing economic diversity growing Midland's ability to be the leader of the Permian. I have a vision of the city becoming a place where recent transplants increasingly want to put down roots and make Midland their home for years to come.

Please specify any time constraints you may have.

Planning and Zoning commission every other Monday in the afternoon. Student leader once a week for the remainder of the school semester. The remaining commitments are on a monthly or quarterly basis.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

While some may say the transition has already taken place, I believe Midland is on the threshold of transitioning from an oil town to an economically diverse and resilient economy. I am interested in bringing my experience and exposure from Washington DC home

to Midland to help us think outside the box and help Midland become the bellwether of the Permian of which we all know it capable.

What contribution would you most like to make?

I am extremely encouraged with the development that has been taking place recently at the Spaceport as well as the downtown revitalization. I am passionate about entrepreneurs and business development and would love the opportunity to be a part of MDC and help fledgling and growing business realize all the resources MDC makes available.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Date: 7/15/2021

Name: NANCY ANN JONES

Phone: 432-230-5725 **(Home)**

Address: 706 EAST BROADWAY

432-682-3729 **(Business)**

MIDLAND TX 79701

Email: naevans@att.net

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 30 **years.**

Occupation: accounting

Professional and/or Community Activities:

What is your personal vision for the City?

A place where people of all races, religions and financial backgrouns can live and enjoy life

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Personnel Board of Appeals

Please tell us why you are interested in serving on this board or commission.

I have a background in Human Resources and I feel that all grievances should be heard in a timely manner and each employee s

be able to do that in front of a non biased committee.

What contribution would you most like to make?

The ability to judge and make decisions on the information provided

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Development Corporation

What contribution would you most like to make?

As a tax payer in the city of Midland I feel that we shoulc be able to give our input on how our money is spent. I have seen how the board in the past has come under intense scrutiny for how they were spending our tax dollars.

Additional pertinent information or references:

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Signature of Applicant

Nancy Jones

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PLEASE TYPE OR PRINT CLEARLY:

Date: 4/13/2021

Name: Melissa Mosier

Phone: 4326409278 **(Home)**

Address: 708 Beckley Dr

4325619990 x 111 **(Business)**

Midland TX 79703

Email: mmosier@ez-rider.org

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 4 **years.**

Occupation:

Professional and/or Community Activities:

Member of Lifehouse Fellowship

What is your personal vision for the City?

I hope to see Midland continue to grow through the changes with economic downturn that we are facing. Providing affordabiilty in transportaton, housing, community out reach and growth. Being a transplant to this city, I want to learn and be apart of this city, I am looking for to this next chapter.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIDLAND DEVELOPMENT CORPORATION

Please tell us why you are interested in serving on this board or commission.

I have worked here in Midland for the last four years, and I know this is home now with my children and I. So I want to step up and be there for the community. Learn and grow for my interpersonal goals, and then assist with anything I can.

What contribution would you most like to make?

With my background in HR and working for the Transit District I can bring my knowledge and skills to the discussions. Help with strategic planning, and law regulations.

Additional pertinent information or references:

Doug Provance- dprovance@ez-rider.org

Jack Ladd jackladdjr@gmail.com

EJ Baldridge ejbaldridge@gmail.com

(2) Name of Board/Commission:

ZONING BOARD OF ADJUSTMENTS AND AIRPORT ZONING BOARD OF ADJUSTMENTS (

What contribution would you most like to make?

Stepping up for my community, learning my city and where different projects are happening and how to assist in those. Learning the infrastructure of the airport, all that comes with it. I am new, but I am ready to help.

Additional pertinent information or references:

Director of Support Services- EZ Rider

Khamilton@ez-rider.org

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

M Mosa

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

MIDLAND
Feel the Energy!

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 3/24/2021

Name: Guy McKenzie

Phone: 432-770-1990 **(Home)**

Address: 5213 Green Tree Blvd

Same **(Business)**

Midland TX 79707

Email: primesourceguy@suddenlink.net

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 38 **years.**

Occupation: Real Estate Investor / Manager

Professional and/or Community Activities:

Lifetime Ambassador for the Midland Chamber or Commerce, Lifetime Member of The Kiwanis Club, Past Lt Governor of TX/OK District of Kiwanis, past Vice Chair of the Midland/Odessa Urban Transit, past member of the Tax Increment Reinvestment Zone Board, leader at MidCities Community Church, member of Midland Market Place. Served on various boards over the years.

What is your personal vision for the City?

For Midland to continue to be a nice place to raise a family, visit, move to and work. For Midland to be a leading innovator in making the quality of life better for its citizens. To be an entrepreneur of ideas and their implementation that would help attract people to come here and live. To continue to help diversify our industy and attract new business.

Please specify any time constraints you may have.

I have no time constraints. I am self employed. I also have no conflicts of interest with any business or personal items that would prevent me from making prudent decisions.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov***)**

(1) Name of Board/Commission:

MDC- Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I want to use my experience serving the city and helping promote and develop new and expanded businesses. I am motivated, interested, and I want to serve.

What contribution would you most like to make?

I would like to help in making wise funding decisions and coming up with ideas to keep our ecconomy to thrive. It is a great city and I want to help keep it that way.

Additional pertinent information or references:

I have the time and no conflicts of interest to serve on this board. References : Mike Davis - President, Lone Star State Bank 432-312-8609 c Greg Simmons - President, American Momentum Bank, 432-349-6061 c, Michael Trost - City Council, Garth Wright - SVP, Lone Star Bank, 853-1417 c,

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/24/2021

Name: Stephen Taylor

Phone: 432-230-5969 **(Home)**

Address: 404 Veteerans Airpark Lane 432-262-2700 **(Business)**

Midland TX 79705

Email: steve.taylor@ngsgi.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 16 **years.**

Occupation: Engineer/Manager

Professional and/or Community Activities:

Board member-public company

President (past)-Homeowners Association

What is your personal vision for the City?

Midland should continue to promote its oil and gas heritage, but I think there is room to develop a reputation as a desirable place to retire. The weather here is good and the tax base advantages are excellent for the city.

Please specify any time constraints you may have.

I can pretty well adjust my schedule for meetings and other activities. I wouldn't anticipate any issues.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have an extensive background in business and I think I can contribute the perspective of what industries might be beneficial for Midland to pursue.

What contribution would you most like to make?

I'd like to see the MDC become more innovative, entreprenuerial and venture driven. Not to the point of frivolity because capital conservation and allocation is important, but to be seen as more dynamic. There needs to be a business aspect to it...does the money derived from MDC activities exceed the money spent?

Additional pertinent information or references:

Larry Lawrence-Midland College Trustee (cell 432-664-5511)

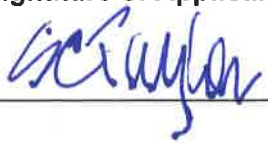
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/29/2021

Name: James Michael Eisenwine

Phone: 432-234-3303 **(Home)**

Address: 1006 Almont pl

(Business)

Midland TX 79705

Email: jmeisenwine@gmail.com

(City) (State) (Zip)

I am [✓] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland .5 **years.**

Occupation: Commercial Banker

Professional and/or Community Activities:

Previously: Shamrock TX - Salvation Army Unit Leader, Volunteer Fire Department Officer, Elected School Board Member, Church finance and personell committee member. Miami Tx / Roberts County - Economic developement corporation officer, Community Developement Corporation Officer, Volunteer Fire Department Officer, ISD District Improvement Committee Member

What is your personal vision for the City?

Growth, economic power/stability, and family wellness

Please specify any time constraints you may have.

Early mornings Wednesday and some Tuesday/Thursday evenings in the spring semester. I attend hybrid night classes at MC

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(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Developement Corportation

Others as qualified

Please tell us why you are interested in serving on this board or commission.

I always have a passion for the development and maintenece of my local community, both civically and economically.

What contribution would you most like to make?

Sound, level headed judgement and creative thinking. I feel that the purpose of a board is to be a place to share and openly discuss new ideas, while also vetting and acting on the best of those ideas. I alway let my boards know that I am open, honest, and opiniated. I expect the board to vote based on their own judgement and always respect the board vote.

Additional pertinent information or references:

Education: Texas Tech University Bachelors of Business Administration in Management Information Systems

Texas Tech University Masters of Business Administration Concentration in Entrepreneurship

Work History: FNB-Amherst 2007-2014 AimBank 2014-2021 First Bank and Trust 2021 - present

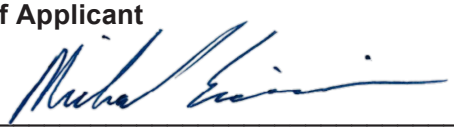
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/3/2021

Name: J.Ross Lacy

Phone: 432-254-1126 **(Home)**

Address: 5007 Apple Creek Rd. 432-683-5542 **(Business)**

Midland TX 79707

Email: j.rosslacy@gmail.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 35 **years.**

Occupation: President

Professional and/or Community Activities:

Midland City Council 2014-2019

UT System Chancellor's Council Executive Committee, UTPB President's Executive Committee

UTPB College of Business Advisory Council, JBS Leadership Insitutue Advisory Council, PBPA

What is your personal vision for the City?

To see Midland continue to grow and proper. Our core functions of infrastructure, public safety, quality of life and place should be paramount in our quest to be the shining example of what the Permian Basin has to offer.

Please specify any time constraints you may have.

Limited can make almost all meetings and events.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I served as the city council liasion to the MDC during my time on the city council. I can bring a level of institutional knowledge and hit the ground running with the projects and direction currently being pursued.

What contribution would you most like to make?

To continue to give back to my community. The MDC is uniquely positioned to help with the demands of our future growth.

We need solid leaders that can push the vision of Midland to become our reality.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/27/2021

Name: Reggie Lawrence

Phone: 432.770.0881 **(Home)**

Address: 4721 Timber Lane

(Business)

Midland TX 79707

Email: Reggie@LawrenceTX.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☑ **yes** ☐ **no**

I have lived in Midland 18 **years.**

Occupation: Self Employed

Professional and/or Community Activities:

Business owner 2000-Present. City Development Advisory Committee 2010-2014. City of Midland Planning & Zoning Commissioner 2013-Present; Chair 2020-2021. Midcities Community Church member 1987-2013; Stonegate 2013-Present. Permian Basin Petroleum Association 2010-Present.

What is your personal vision for the City?

Over the years, as time seems to move faster, I've realized how slowly things have changed for our city. There are many decisions that need to be methodically made in order for time to move into place and bring to fruition the outcome of decisions. Without explanation, this statement may seem negative, but it is not. I see now, how and why, it is so important to have good leadership.

Please specify any time constraints you may have.

I'm flexible.

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(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation; Airport Planning and Development Board; Personnel Board of Appeals

Citizens Development and Hotel/Motel Advisory Board

Please tell us why you are interested in serving on this board or commission.

Being in business for most of my life, I have learned to appreciate large budgets and understand how to navigatate through rough financial times while maintaining the financial viability of a business.

What contribution would you most like to make?

A healthy vibrant city.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/28/2021

Name: Crystal "Emerald" McGinnis

Phone: 432-349-5471 **(Home)**

Address: 4122 Fox Hollow Ct.

432-818-0300 **(Business)**

Midland TX 79707

Email: emcginnis@greenacresmidland.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 39 **years.**

Occupation: Project Manager/Landman

Professional and/or Community Activities:

The majority of my professional career has been spent working as an in-house landman (Nadel and Gussman Permian and Pioneer Natural Resources). Since December of 2021 I've been the Project Manager at Green Acres Minigolf. I was hired for my business and project management acumen. Helping complete and open Green Acres has been a gratifying experience, not the least of which because Midlander's seem to love their experiences at Green Acres.

What is your personal vision for the City?

My personal vision is for Midland to fulfill its potential to be the best city in Texas to raise a family within ten years.

Please specify any time constraints you may have.

As I mentioned I have recently transitioned into a new career. My current employment is relatively flexible. I now have the bandwidth to commit to an endeavor such as this.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have always been interested in serving the community I grew up in. I volunteered for Habitat for Humanity and loved the experience because I was able to see a demonstrable benefit to the recipient. I have just recently (through my work at Green Acres) become

more familiar with MDC's purpose and I believe I can lend my previous experience to help MDC achieve its goals, and by extension see my personal vision realized.

What contribution would you most like to make?

I love a good project. I've spent my entire professional career taking on tough projects and getting them to the finish line. Whether that be an oil and gas acquisition or opening a minigolf course. The contribution I would most like to make is helping MDC tackle projects and get them to the finish line.

Additional pertinent information or references:

John Norman

Jeff Beard

Emily Statton-Smith

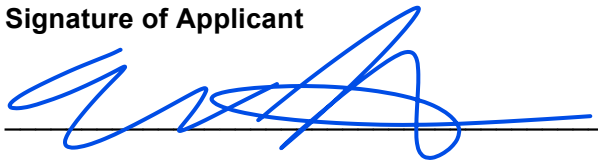
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/3/2021

Name: Ronnie Scott

Phone: 432-631-8266 **(Home)**

Address: 2412 Briaroaks Court

432-296-4693 **(Business)**

Midland Texas 79707

Email: r9scott@outlook.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 28 **years.**

Occupation: Engineer / Manager

Professional and/or Community Activities:

Professional - CEO of Development Capital Resources a PE backed company with ~$1.2B of investments. Previously President of Henry Resources / Henry Petroleum / Henry Energy. Have served on six energy company boards - 3 public / 3 private. Serve on Midland Chamber Board & VP of Henry Foundation. Previously a Founding Director of Educate Midland; MISD Facilities Comm.

What is your personal vision for the City?

MIdland remains a safe, secure place to live and work. It maintains a vibrant, moderately diverse economy with an economic emphasis on energy which includes but is not limited to oil and gas. It incorporates quality of life not as a cliche but as a practice for its citizens. It provides and encourages pathways to economic self-sufficiency.

Please specify any time constraints you may have.

I have a flexible work schedule.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIdland Development Corporation Board

Please tell us why you are interested in serving on this board or commission.

I feel MDC has been and will remain an important part of accomplishing the vision for Midland articulated above. I would enjoy being part of that.

What contribution would you most like to make?

I would like to help Midland continue to expand as an energy hub incuding oil and gas, solar, wind, nuclear, and potentially other forms of energy. Areas of interest include energy production, energy research, energy employment, and incubation of ideas. Energy "adjacent" ideas are also of interest.

Additional pertinent information or references:

I can compile a list of references for the position but have not done so to date. Feel free to contact people who may know me but who I have not solicited as references. You will likely get honest feedback - both good and bad - from these "non-references". Consider Patrick Payton, Bobby Burns, Grant Billingsley, Jim Henry, Rick Davis, Stewart Doreen, Jay Edwards.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Ronnie Lart

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PLEASE TYPE OR PRINT CLEARLY:

Date: 11/30/2021

Name: Lucy D Sisniega

Phone: _____ **(Home)**

Address: 5408 Crowley blvd

(956) 2274500 **(Business)**

Midland TX 79707

Email: lucy@sisniegarealestate.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 7 **years.**

Occupation: Commercial Real Estate Agent, business owner

Professional and/or Community Activities:

S&S Commercial Real Estate- Vice President, M&L Distributors CEO, MRNHA-Chair, Midland P&Z Board, Midland Chamber of Com

I love to serve our Community, I volunteer my time in several non-profits programs. I financially support some of them.

What is your personal vision for the City?

My personal vision for the City is to create more programs for families, to bring developments that are family oriented, to create more jobs, not only for the oil industry but also to be the home of manufacturing, provide better education in schools. Midland is a beautiful Community, we should continue working on it and work in better plans for families to stay.

Please specify any time constraints you may have.

I am my own boss, I do my own schedule, I do travel for business, however, I am available most of the times.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Developmet Corporation

Please tell us why you are interested in serving on this board or commission.

I have 20+ experience in development, I believe I can be a great asset for this board. I have knowledge on City development and Real Estate, I had work in deals with big franchises and I can say I understand their needs.

What contribution would you most like to make?

My experience, my knowledge, I am a go getter, if I don't know the answer, I will find try to find it.

Additional pertinent information or references:

Former Mayor Jerry Morales, Former Mayor Ernest Angelo

Midland Mayor Patrick Payton

Midland Chamber of Commerce President - Bobby Burns, Congressman August Pfluger

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 1/2/2022

Name: Michael B, Trost

Phone: 432-528-3611 **(Home)**

Address: 3619 W Louisiana

_____ **(Business)**

Midland TX 79703

Email: mbtrost38@icloud.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 40 **years.**

Occupation: Retired

Professional and/or Community Activities:

Midland Community Theater-Volunteer & Midland Odessa Symphony Chorale and others

What is your personal vision for the City?

Continue moving Midland in the direction of becoming a world class city.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Development Corporation (MDC)

Please tell us why you are interested in serving on this board or commission.

Public service experience IE: City Council 9 years, MDC 3 years, MOUTD 4 years, and Parks & Recreations 5 .5 years

What contribution would you most like to make?

Continue moving Midland in the direction of becoming a world class city.

Additional pertinent information or references:

Justice Judge Keith Stretcher, John James, Former Mayer Bobby Burns

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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