

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
January 23, 2024 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall



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

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

OPENING ITEMS

1. Invocation – Pastor John Grabanski, Temple Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, periods of time, or reports, including, but not limited to:
 - 3a. Presentation of Proclamation for “Midland RSVP 30th Anniversary Day”
 - 3b. Presentation from Director of Engineering Gabe McClelland regarding L.O.V.E. Midland.
 - 3c. Presentation acknowledging United Way’s Project Blueprint.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR SESSION OF JANUARY 9, 2024
5. 012-2024 – MOTION ACCEPTING A DONATION IN THE AMOUNT OF \$25,000.00 FROM OCCIDENTAL PETROLEUM CORPORATION; SAID FUNDS TO BE USED FOR FIRE DEPARTMENT EQUIPMENT **(DISTRICT: NONE) (FINANCE)**
6. 2024-015 – RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH OW INVESTORS, LLC, D/B/A MARS COMPANY FOR UTILITY METER TESTING SOFTWARE FOR THE UTILITIES DEPARTMENT AT A TOTAL COST OF \$532,276.00 **(DISTRICT: NONE) (GENERAL SERVICES)**

7. 2024-016 – RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF \$189,800.00 FOR AGRONOMIC COMPLIANCE CONSULTING SERVICES TO AGRI-WASTE TECHNOLOGY, INC. **(DISTRICT: NONE) (GENERAL SERVICES)**
8. 2024-017 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO RECEIVE AN ARTIFACT LOAN FROM THE NATIONAL AIR AND SPACE MUSEUM; SAID ARTIFACT BEING THE WINDECKER EAGLE I, WHICH IS THE FIRST ALL-COMPOSITE AIRCRAFT TO RECEIVE FEDERAL AVIATION ADMINISTRATION CERTIFICATION; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID ARTIFACT LOAN **(DISTRICT 4) (AIRPORTS)**
9. 2024-018 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH DELTA SPECIALTY CONTRACTORS, LLC, IN THE AMOUNT OF \$1,233,900.00 FOR THE AIRPARK NORTH FENCE REPLACEMENT PROJECT AT MIDLAND AIRPARK; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 4) (AIRPORTS)**
10. 013-2024 – MOTION AUTHORIZING THE INTENT OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ESTABLISH THE SCHEDULE FOR PROGRAM YEAR 2024 CDBG GRANT APPLICATION CYCLE **(DISTRICT: ALL) (DEVELOPMENT SERVICES)**
11. 014-2024 – MOTION APPROPRIATING THE SUM OF \$188,500.00 FROM THE GENERAL FUND TO THE CIP OPERATING BUDGET FOR THE DESIGN OF AVALON DRIVE **(DISTRICT 4) (ENGINEERING SERVICES)**
12. 2024-019 – RESOLUTION AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT AND LEASE AGREEMENT WITH MIDLAND ATHLETIC SYNDICATE, INC., FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, AND OPERATION OF AN INDOOR MULTI-PURPOSE ATHLETIC FACILITY AT THE SCHARBAUER SPORTS COMPLEX **(LEGAL)**
13. 2024-020 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE FOR THE FISCAL YEAR 2025 RIFLE-RESISTANT BODY ARMOR GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF “GRANT WRITER” AND “COMPLIANCE MANAGER” TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING **(DISTRICT: ALL) (POLICE)**
14. 2024-021 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2025 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF “GRANT WRITER” AND “COMPLIANCE MANAGER” TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID

GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING **(DISTRICT: ALL) (POLICE)**

15. 2024-022 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE FOR THE FISCAL YEAR 2025 BODY-WORN CAMERA GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF “GRANT WRITER” AND “COMPLIANCE MANAGER” TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING; AND AUTHORIZING THE APPROPRIATION OF MATCHING FUNDS IN THE AMOUNT OF \$6,536.25 AS REQUIRED BY THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE **(DISTRICT: ALL) (POLICE)**

SECOND READINGS

16. 10477 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.86-ACRE TRACT OF LAND, OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 230 FEET NORTH OF CASTLEWOOD DRIVE, AND APPROXIMATELY 620 FEET WEST OF HOMELAND 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 (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
17. 10482 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
18. 10483 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE) (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**

19. 10484 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, CRESTLAWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT. (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COWDEN AVENUE, APPROXIMATELY 215 FEET WEST OF NORTH PECOS 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 (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES)**
20. 10485 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 1, LEGION ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS. (GENERALLY LOCATED ON THE SOUTH SIDE OF VETERANS AIRPARK LANE, APPROXIMATELY 1,110 FEET WEST OF NORTH BIG SPRING STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SUCH PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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 (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES)**
21. 10486 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 2, BLOCK 1, WESTERN MESA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF NEELY AVENUE, APPROXIMATELY 165 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; 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) (QUALITY OF LIFE AND PLACE) (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES)**
22. 10487 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,360-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, LONE STAR BUSINESS PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND MAVERICK LANE), WHICH IS PRESENTLY ZONED LR, LOCAL 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 (FIRST READING HELD JANUARY 09, 2024) **(DISTRICT 1) (DEVELOPMENT SERVICES)**

PUBLIC HEARINGS

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

23. 10488 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 8, LESS THE NORTH 30 FEET, AND LOT 9, BLOCK 4, STOCKARD ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOODE STREET, APPROXIMATELY 315 FEET NORTH OF CARTER 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) (QUALITY OF LIFE AND PLACE) **(DISTRICT 2) (DEVELOPMENT SERVICES)**
24. 10489 – AN ORDINANCE VACATING AND ABANDONING A 0.25-ACRE PORTION OF SINCLAIR AVENUE RIGHT-OF-WAY AND A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BOTH LOCATED ADJACENT TO THE NORTH 380 FEET OF THE EAST HALF OF THE SOUTH HALF OF TRACT 2, SUNSET ACRES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$7,623.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE) **(DISTRICT 3) (DEVELOPMENT SERVICES)**

MISCELLANEOUS

25. 2024-023 – RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, THE MIDLAND DEVELOPMENT CORPORATION, AND MIDLAND DOWNTOWN RENAISSANCE, LP, REGARDING THE DEVELOPMENT OF CERTAIN REAL PROPERTY INCLUDING LOTS 1A, 5, 6, 7, AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS **(DISTRICT 2) (CITY MANAGER)**

PUBLIC COMMENT

26. Receive public comments where individuals may address the City Council on City related
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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

27. 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,

Tommy Gonzalez
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
January 9, 2024**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., January 09, 2024.

Council Members present: Amy Stretcher Burkes, Dan Corrales, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd, John Norman

Council Members absent: None

Staff members present: City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Tina Jauz, Assistant City Manager Jose Ortiz

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

OPENING ITEMS

1. Invocation – Pastor Robert Pase, Grace Lutheran Church
2. Pledge of Allegiance

PRESENTATIONS

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

- 3a. Presentation of The BTE Leadership Awards.

Mayor Blong recognized City of Midland employees with Be The Energy (BTE) Leadership awards.

- 3b. Presentation of the 2023 Christmas Parade Awards.

Mayor Blong presented winners of the 2023 Christmas Parade floats with awards.

- 3c. Presentation of Proclamation for “Crime Stoppers Month”

Mayor Blong presented a proclamation in recognition of Crime Stoppers Month.

- 3d. Presentation of Proclamation for “11U All-Stars AYF Black Gold Conference Football Team Day”

Mayor Blong presented a proclamation in recognition of 11U All-Stars AYF Black Gold Conference Football Team Day.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

4a. REGULAR SESSION OF DECEMBER 12, 2023

5. 001-2024 – MOTION ACCEPTING A DONATION IN THE AMOUNT OF \$40,000.00 FROM MEC PETROLEUM CORP. AND A DONATION IN THE AMOUNT OF \$132,755.84 FROM CHEVRON; SAID FUNDS TO BE USED FOR FIRE DEPARTMENT EQUIPMENT **(DISTRICT: NONE) (FINANCE)**

Council Member Dufford recognized Chevron for their donation to the City of Midland.

Fire Chief and Managing Director Chuck Blumenauer gave a brief overview of the item noting the purchase is for seven Lucas Chest Compression Systems which are automated chest compression devices. These devices will greatly assist the Firefighters/EMS in their job functions.

Scott Dufford moved to approve Motion No. 001-2024; seconded by John Norman.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: Corrales

6. 2024-001 – RESOLUTION APPROVING A CONTRACT WITH RAINDROP PRODUCTS, LLC, THROUGH SOURCEWELL, FOR THE RESTORATION OF THE DOUG RUSSELL POOL AND WASHINGTON POOL WATER SLIDES FOR A TOTAL COST OF \$118,791.75; AND APPROVING \$11,883.25 FOR PROJECT RELATED EXPENSES **(DISTRICT: ALL) (GENERAL SERVICES)**
7. 002-2024 – MOTION AUTHORIZING THE EXECUTION OF A INTERLOCAL AGREEMENT WITH KEYSTONE PURCHASING NETWORK, CENTRAL SUSQUEHANNA INTERMEDIATE UNIT; SAID AGREEMENT PROVIDING FOR CERTAIN COOPERATIVE PURCHASING SERVICES THROUGH THE PROGRAMS ADMINISTERED BY KEYSTONE PURCHASING NETWORK **(DISTRICT: NONE) (GENERAL SERVICES)**
8. 2024-002 – RESOLUTION AWARDING A CONTRACT FOR PROJECT MANAGEMENT SOFTWARE AND IMPLEMENTATION SERVICES TO PROCORE TECHNOLOGIES, INC., FOR A TOTAL COST NOT TO EXCEED \$1,091,685.49 **(DISTRICT: NONE) (GENERAL SERVICES)**

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Chief Information Officer and Managing Director Jennifer Frescaz gave a brief overview of the item noting this is mostly construction management software which will primarily be used for Engineering. General Services and Information Technology will also be able to utilize the software.

Jack Ladd moved to approve Resolution No. 2024-002; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: Corrales

9. 2024-003 – RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF \$4,190,089.15 FOR THE CONSTRUCTION OF A NEW LIFT STATION AT THE I-20 WILDLIFE PRESERVE FOR THE WALL STREET SEWER DIVERSION PROJECT TO EDGARDO MADRID & ASSOCIATES, LLC; APPROVING \$628,512.77 FOR CONTINGENCIES; AND APPROPRIATING AND TRANSFERRING FUNDS **(DISTRICT: ALL) (GENERAL SERVICES)**

Utilities and Managing Director Carl Craigo gave a brief overview of the item noting this will remedy the problem at the I-20 Wildlife Preserve because it will relieve the sewer system that goes west of Wall Street and send excess water to a new sewer location.

Jack Ladd moved to approve Resolution No. 2024-003; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: Corrales

10. 2024-004 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC., FOR A CONDITION ASSESSMENT OF THE WATER PURIFICATION PLANT FOR A TOTAL COST OF \$322,825.00 **(DISTRICT: ALL) (GENERAL SERVICES)**
11. 2024-005 – RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF \$1,907,219.00 FOR THE POLICE DEPARTMENT RENOVATIONS AND CENTRAL FIRE STATION ADDITION PROJECT TO MID-TEX OF MIDLAND, INC.; AND APPROVING \$381,444.00 FOR PROJECT RELATED EXPENSES **(DISTRICT: ALL) (GENERAL SERVICES)**
12. 2024-006 – RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF \$6,791,500.00 FOR THE OPERATION AND MAINTENANCE OF THE WATER PRODUCTION AND TRANSMISSION FACILITIES AT THE T-BAR WELL FIELD AND THE CLEARWATER WELL FIELD TO PARKHILL, SMITH & COOPER OPERATIONS, LLC

D/B/A PSC WATER OPERATING COMPANY **(DISTRICT: NONE) (GENERAL SERVICES)**

Robin Poole moved to defer Resolution No. 2024-006; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: Corrales

Staff pulled this item as it is not ready to be discussed. It will be brought back at a later time.

13. 2024-007 – RESOLUTION AUTHORIZING THE SOLE-SOURCE PURCHASE OF SEVEN (7) LUCAS CHEST COMPRESSION SYSTEMS FROM STRYKER SALES CORPORATION FOR A TOTAL COST OF \$132,755.84 **(DISTRICT: NONE) (GENERAL SERVICES)**
14. 2024-008 – RESOLUTION AWARDED A CONTRACT FOR THE FISCAL YEAR 2024 MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST OF \$8,628,119.36; APPROVING \$431,405.97 FOR CONTINGENCIES; AND AUTHORIZING PAYMENT **(DISTRICT: ALL) (GENERAL SERVICES)**
15. 2024-009 – RESOLUTION AMENDING THE CITY OF MIDLAND PERSONNEL POLICIES SO AS TO (1) CHANGE “MENTAL HEALTH LEAVE” TO “BE HEALTHY DAYS” AND ESTABLISH A POLICY THEREFOR AND (2) REQUIRE AN EMPLOYEE WHO SEEKS ADMINISTRATIVE REVIEW OF AN ADVERSE ACTION TO PROVIDE AN EMAIL ADDRESS AND TELEPHONE NUMBER IN THE EMPLOYEE’S NOTICE OF APPEAL **(DISTRICT: NONE) (ADMINISTRATIVE SERVICES)**
16. 2024-010 – RESOLUTION GRANTING VARIANCES FOR TWO OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 2,280 FEET AND 2,310 FEET WEST OF RANKIN HIGHWAY AND BETWEEN 483 AND 520 FEET SOUTH OF WEST INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES) **(DISTRICT 2) (DEVELOPMENT SERVICES)**
17. 2024-011 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 1,625 FEET EAST OF RANKIN

HIGHWAY AND BETWEEN 625 AND 675 FEET SOUTH OF WEST INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES) **(DISTRICT 2) (DEVELOPMENT SERVICES)**

18. 003-2024 – MOTION APPROVING, WITH STAFF’S RECOMMENDED CONDITIONS, A PROPOSED PRELIMINARY PLAT OF GREENWOOD INDUSTRIAL PARK, SECTION 6, BEING A REPLAT OF LOTS 2A, 2B, AND 2C, RE-SUBDIVISION OF LOT 2, 26.450 ACRES, GREENWOOD INDUSTRIAL PARK, SECTION 5, AND LOT 1, BLOCK 2, GREENWOOD INDUSTRIAL PARK, SECTION 5, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF EAST COUNTY ROAD 1110, APPROXIMATELY 765 FEET WEST OF NORTH COUNTY ROAD 79) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**
19. 004-2024 – MOTION APPROVING, WITH STAFF’S RECOMMENDED CONDITIONS, A PROPOSED PRELIMINARY PLAT OF CARROLLWOOD ADDITION, SECTION 3, BEING A 34.50-ACRE TRACT OF LAND LOCATED IN SECTION 24, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH COUNTY ROAD 1232, APPROXIMATELY 385 FEET NORTH OF WEST COUNTY ROAD 134.) (EXTRA TERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**
20. 2024-012 – RESOLUTION DELEGATING TO THE CITY MANAGER, DEPUTY CITY MANAGER, ASSISTANT CITY MANAGERS, DIRECTOR OF ENGINEERING SERVICES, DIRECTOR OF UTILITIES, AND DIRECTOR OF CAPITAL IMPROVEMENT PROJECTS THE CITY COUNCIL’S AUTHORITY TO DETERMINE THE METHOD OF PURCHASE THAT PROVIDES THE BEST VALUE FOR THE CITY FOR PROCUREMENTS RELATED TO CAPITAL IMPROVEMENT PROJECTS; ESTABLISHING LIMITS OF THE DELEGATION; AND REQUIRING NOTICE OF THE DELEGATION TO BE GIVEN **(DISTRICT: ALL) (ENGINEERING SERVICES)**

Engineering Services Director Gabriel McClelland gave a brief overview of the item noting this delegates Council authority to City staff to determine the best purchase method to include selection criteria like experience and history on complex projects.

Mayor Blong reported this will assist with project timelines but would like to know if the full delegation from Council is necessary.

Council Member Poole reported it is important for Council to continue to see all of the bid information.

Engineering Services Director Gabriel McClelland reported the goal is to have specific goal criteria included in the agenda item for each project.

Council Member Dufford confirmed this will allow Council to choose the best but, not necessarily the lowest bid.

Council Member Corrales inquired if this affects other departments.

City Attorney John Ohnemiller reported this strictly applies to Capital Improvement Projects (CIP).

Engineering Services Director Gabriel McClelland reported this will delegate authority to the Capital Improvements Project team for all CIP projects.

Council Member Corrales would like to see bidding issues resolved with all bids, not just CIP bids.

General Services Director Regina Stephenson gave a brief overview of the item noting there are other ways/avenues for the bidding process.

Council Member Corrales would like this to be comprehensive across the board for all departments.

City Manager Tommy Gonzalez reported they will look into it and bring back some additional recommendations for all bids.

Amy Stretcher Burkes moved to approve Resolution No. 2024-012; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

21. 005-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF ADDITIONAL GRANT FUNDS FROM THE DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$66,930.00 TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION (THE “CITY”) WITH THE FUNDING AND SUSTAINABILITY OF THE PUBLIC HEALTH WORKFORCE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND **(DISTRICT: ALL) (FIRE)**
22. 006-2024 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (24-329-001) WITH PINNACLE DOS PICOS LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS **(DISTRICT: NONE) (UTILITIES)**

Scott Dufford moved to approve consent agenda items 4-22 excluding items 5, 8, 9, 12 and 20; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

NAY: None
ABSTAIN: None
ABSENT: Corrales

SECOND READINGS

23. 10465 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE AN 80.91-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 500 FEET WEST OF HIGHLAND BOULEVARD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10465.

John Norman moved to approve the second and final reading of Ordinance No. 10465; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

24. 10466 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 51.097-ACRE TRACT OF LAND LOCATED ON LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 2,500 FEET SOUTH OF W. WADLEY AVENUE AND 1,600 FEET WEST OF GRASSLAND BOULEVARD), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A WILDLIFE REHABILITATION CENTER; 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 (FIRST READING HELD DECEMBER 12, 2023) **(DISTRICT 4) (DEVELOPMENT SERVICES)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10466.

John Norman moved to approve the second and final reading of Ordinance No. 10466;

seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

25. 10467 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 22,000-SQUARE FOOT PORTION OF LOT 12, BLOCK 3, GATEWAY PLAZA ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF LIBERTY DRIVE AND STARBOARD DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10467.

Scott Dufford moved to approve the second and final reading of Ordinance No. 10467; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

26. 10468 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 1, BLOCK 1, BUSH TENNIS CENTER ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE APPROXIMATELY 431 FEET WEST OF SANTA ROSA DRIVE), WHICH IS PRESENTLY ZONED LR, LOCAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RECREATION FACILITY FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)** (FIRST READING HELD DECEMBER

12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10468.

Council Member Dufford abstained from discussion and vote on this item.

Amy Stretcher Burkes moved to approve the second and final reading of Ordinance No. 10468; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Ladd, Norman

NAY: None

ABSTAIN: Dufford

ABSENT: None

27. 10469 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,363-SQUARE FOOT PORTION OF LOT 1A, BLOCK 1, PAVILION PARK, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST MOCKINGBIRD LANE AND NORTH BIG SPRING STREET), 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) (STRONG ECONOMY WITH MORE QUALITY JOBS)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10469.

Robin Poole moved to approve the second and final reading of Ordinance No. 10469; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: Dufford

28. 10470 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,337-SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MYATT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH GARFIELD STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID
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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 3) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10470.

John Norman moved to approve the second and final reading of Ordinance No. 10470; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

29. 10471 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.245-ACRE TRACT OF LAND OUT OF LOTS 5 AND 6, BLOCK 12, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER TO O-1, OFFICE DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH D 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 3) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10471.

John Norman moved to approve the second and final reading of Ordinance No. 10471; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

30. 10472 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 11, 12, AND 13, BLOCK 55, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-2, SINGLE-FAMILY DWELLING DISTRICT TO O-1, OFFICE DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST
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CORNER OF THE INTERSECTION OF WEST ILLINOIS AVENUE AND NORTH MCDONALD 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 4) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10472.

John Norman moved to approve the second and final reading of Ordinance No. 10472; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

31. 10473 – AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 13, “MUNICIPAL DRAINAGE UTILITY” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO (1) EXEMPT OPEN-ENROLLMENT CHARTER SCHOOLS FROM DRAINAGE CHARGES AND (2) REMOVE THE EXPIRATION DATE OF DRAINAGE CHARGES; PROVIDING FOR CRIMINAL ENFORCEMENT AND A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10473.

Scott Dufford moved to approve the second and final reading of Ordinance No. 10476; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

32. 10474 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4, BLOCK 12, COWDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BRYANT STREET APPROXIMATELY 125 FEET NORTH OF HART AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT PACKET**

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SERVICES) (QUALITY OF LIFE AND PLACE) (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10474.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10474; seconded by John Norman.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

33. 10475 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,115-SQUARE FOOT PORTION OF LOT 4A, BLOCK 1, NORTH PARK ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A 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) (STRONG ECONOMY WITH MORE QUALITY JOBS)** (FIRST READING HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10475.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10475; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

34. 10476 – AN ORDINANCE VACATING AND ABANDONING A 0.138-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED IN BLOCK 97, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED BETWEEN EAST KENTUCKY AVENUE AND EAST INDIANA AVENUE, APPROXIMATELY 188 FEET EAST OF SOUTH MAIN STREET); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$7,514.00; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT: 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)** (FIRST READING PACKET 4a.12 January 23, 2024

HELD DECEMBER 12, 2023)

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10476.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10476; seconded by John Norman.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

35. 10478 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 10, BLOCK 140, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF EAST NEW YORK AVENUE, APPROXIMATELY 210 FEET EAST OF SOUTH MINEOLA STREET), BY PERMITTING A REDUCED MINIMUM FRONT 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 (FIRST READING HELD DECEMBER 12, 2023) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10478.

John Norman moved to approve the second and final reading of Ordinance No. 10478; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

36. 10479 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 7.84-ACRE TRACT OF LAND OUT OF SECTION 6, BLOCK 38, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 390 FEET EAST OF SOUTH FAIRGROUNDS ROAD), 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 **(QUALITY OF LIFE AND PLACE)** (FIRST READING HELD DECEMBER 12, 2023) **(DISTRICT 2) (DEVELOPMENT SERVICES)**

PACKET

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Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10479.

John Norman moved to approve the second and final reading of Ordinance No. 10479; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

37. 10480 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 11 AND 12, BLOCK 8, WESTRIDGE PARK ADDITION, SECTION 27, CORRECTION PLAT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF WINDHAVEN DRIVE, APPROXIMATELY 400 FEET SOUTH OF DEAUVILLE BOULEVARD), BY PERMITTING A REDUCED MINIMUM FRONT 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)** (FIRST READING HELD DECEMBER 12, 2023) **(QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10480.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10480; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

38. 10481 – AN ORDINANCE INCREASING THE CITY OF MIDLAND’S EMPLOYER CONTRIBUTION RATE TO THE MIDLAND FIREMEN’S RELIEF AND RETIREMENT FUND FROM 22.2 PERCENT TO 24.2 PERCENT OF THE PARTICIPATING EMPLOYEES’ GROSS PAY; PROVIDING AN EFFECTIVE DATE OF JANUARY 1, 2024; AND ORDERING PUBLICATION (FIRST READING HELD DECEMBER 12, 2023) **(DISTRICT: NONE) (FINANCE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10481.

City Manager Tommy Gonzalez reported that the vote taken by the Firefighters this summer
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goes into affect this January at the same time the Council's vote goes into affect.

John Norman moved to approve the second and final reading of Ordinance No. 10481; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARINGS

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

39. 10477 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.86-ACRE TRACT OF LAND, OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 230 FEET NORTH OF CASTLEWOOD DRIVE, AND APPROXIMATELY 620 FEET WEST OF HOMELAND 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) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10477.

Landon Ochoa, Senior Planner, gave a brief overview of the item noting this request is from Robert Grahmn who is requesting to rezone the property for a housing development. Staff recommends approval.

Mayor Blong opened the public hearing at 10:57 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10477; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

40. 10482 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD);

ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10482.

Landon Ochoa, Senior Planner, gave a brief overview of the item noting this is a request from Midland Community Healthcare Services for an annexation for future development of a medical clinic. Staff recommends approval.

Mayor Blong opened the public hearing at 10:58 a.m.

Conrad Coleman, 500 S. Carver, Board President of Midland Community Health Services, including the Coleman Clinic. Mr. Coleman reported they have outgrown their location on S. Florida. Their current plans are to build a new clinic on S. Jackson which is why they would like to be annexed into the City. Mr. Coleman also reported the bariatric dental chair allows for support for large individuals and may be the only one in West Texas.

Kelly Stout, 2300 Boyd, member of the Board of Directors at MCHS would like to be considered to have lenience on filing fees for this project.

Mayor Blong directed staff to work with MCHS regarding lenience on filing fees.

There being no one else wishing to speak, the public hearing was closed at 11:04 a.m.

John Norman moved to approve the first of two readings of Ordinance No. 10482; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

41. 10483 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10483.

Assistant City Manager Jose Ortiz gave a brief overview of the item noting there is no action on this item regarding fees but they will visit with the developer and the applicant to see what fees may be adjusted.

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

John Norman moved to approve the first of two readings of Ordinance No. 10483; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

42. 007-2024 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MUSTANG 150 MIPA UNIT #H150SX AND MUSTANG 160 MIPA UNIT #H160MX; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,101 FEET AND 1,131 FEET WEST OF RANKIN HIGHWAY AND 560 FEET SOUTH OF WEST I-20 **(PUBLIC HEARING ONLY) (DISTRICT 2) (DEVELOPMENT SERVICES)**

Mayor Blong opened the public hearing at 11:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

PUBLIC HEARING ONLY, NO ACTION TAKEN.

43. 008-2024 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELL: CHARGER #H130SS; SAID WELL BEING GENERALLY LOCATED 2,538 FEET EAST OF SOUTH GARFIELD STREET AND 319 FEET NORTH OF WEST COUNTY ROAD 111 **(PUBLIC HEARING ONLY) (DISTRICT 2) (DEVELOPMENT SERVICES)**

Council Member Poole abstained from discussion on this item.

Mayor Blong opened the public hearing at 11:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

PUBLIC HEARING ONLY, NO ACTION TAKEN.

44. 10484 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, OF THE CRESTLAWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT. (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COWDEN AVENUE, APPROXIMATELY 215 FEET

WEST OF NORTH PECOS 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 3) (DEVELOPMENT SERVICES)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10484.

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

John Norman moved to approve the first of two readings of Ordinance No. 10484; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

45. 10485 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM ON LOT 2, BLOCK 1, LEGION ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS. (GENERALLY LOCATED ON THE SOUTH SIDE OF VETERANS AIRPARK LANE, APPROXIMATELY 1,110 FEET WEST OF NORTH BIG SPRING STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SUCH PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10485.

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

Scott Dufford moved to approve the first of two readings of Ordinance No. 10485; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

46. 10486 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 2, BLOCK 1,
PACKET

4a.18

January 23, 2024

WESTERN MESA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF NEELY AVENUE, APPROXIMATELY 165 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; 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) (QUALITY OF LIFE AND PLACE) **(DISTRICT 3) (DEVELOPMENT SERVICES)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10486.

Mayor Blong opened the public hearing at 11:12 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10486; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

47. 10487 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,360-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, LONE STAR BUSINESS PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND MAVERICK LANE), WHICH IS PRESENTLY ZONED LR, LOCAL 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)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10487.

Mayor Blong opened the public hearing at 11:13 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10487; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

48. 2024-013 – RESOLUTION ADOPTING A BEAL PARK IMPROVEMENT FUNDING PLAN; AND AUTHORIZING THE ALLOCATION OF FUNDS AS SPECIFIED THEREIN **(DISTRICT 4) (FINANCE)**

Interim Community Services Director Laurie Williams gave a presentation on this item. Ms. Williams reported on the Strategic Goal Connections with regards to Goal 3 and Goal 5, the community impact and the conceptual master plan for the entire park. Ms. Williams also reported on all of the phases of this project.

Finance Director Christy Weakland provided information on the funding of this project by reviewing the four-year Beal Park Plan for fiscal years 2024, 2025, 2026 & 2027.

Matthew Voss, 2208 Whitney Drive, reported on tournaments that are brought into Midland and how this project will allow for more and larger tournaments.

Scott Dufford moved to approve Resolution No. 2024-013; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

49. 2024-014 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$1,118,000.00 WITH DUNAWAY ASSOCIATES LP FOR ARCHITECTURAL, DESIGN, AND ENGINEERING SERVICES FOR THE BEAL PARK PHASE 1A & 1B RENOVATION AND CONSTRUCTION PROJECT; APPROVING THE AMOUNT OF \$76,375.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 4) (GENERAL SERVICES)**

Assistant City Manager Jose Ortiz gave a brief overview of the item noting there is enough funding to move forward with phase II planning.

Robin Poole moved to approve Resolution No. 2024-014; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

PACKET

4a.20

January 23, 2024

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January 9, 2024

ABSENT: None

50. 009-2024 – MOTION APPEALING THE BUILDING OFFICIAL’S DENIAL OF A SIGN PERMIT APPLICATION BY PRINCE SIGNS LLC ON LOT 10A, BLOCK 7, WESTRIDGE PARK, SECTION 46, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF ANDREWS HIGHWAY, APPROXIMATELY 380 FEET EAST OF AVALON DRIVE) **(DISTRICT 4) (DEVELOPMENT SERVICES)**

Daniel Humbert, Planner, gave a brief overview of the item noting the applicant completed a permit for a new wall sign on the side of the building for the West Texas Urgent Care Center on Andrews Highway. This sign will be larger than the maximum allowed and they are requesting permission for it.

Kevin Fryer, 5500 New Castle, representing Urgent Care, reported on the location of the sign.

Jack Ladd moved to approve Motion No. 009-2024; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

51. 010-2024 – MOTION APPEALING THE BUILDING OFFICIAL’S DENIAL OF A SIGN PERMIT APPLICATION BY PRINCE SIGNS LLC ON LOT 4, BLOCK 2, BRIARWOOD ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 85 FEET WEST OF NORTHCREST DRIVE) **(DISTRICT 1) (DEVELOPMENT SERVICES)**

Daniel Humbert, Planner, reported the applicant is requesting an additional wall sign that is larger than the maximum allowed.

Kevin Fryer, 5500 New Castle Dr., reported on the requested sign.

Mayor Blong inquired if the sign can not be illuminated so not to disrupt people in their homes.

Mr. Fryer reported that the sign can be put up without being illuminated.

Jack Ladd moved to approve Motion No. 010-2024 as long as the sign is not illuminated; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

52. 011-2024 – MOTION APPOINTING A MAYOR PRO TEMPORE (**DISTRICT: ALL**) (**CITY SECRETARY'S OFFICE**)

Dan Corrales moved to appoint Jack Ladd as Mayor Pro Tempore; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC COMMENT

53. 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.)

Shirley Howard, 405 Magnolia, reported that on January 15th the MLK luncheon will be presented by the Negro Business Professional Women Club of Midland and all Council are invited. Ms. Howard also reported that the State Convention for the Negro Business Professional Women Club will be held in Midland on March 15th.

EXECUTIVE SESSION

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

Mayor Blong recessed the City Council Meeting to Executive Session at 11:59 a.m.

a. Section 551.072, Deliberation Regarding Real Property

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

b. Section 551.087, Deliberate Economic Development Negotiations

b.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.

All the business at hand having been completed, the meeting adjourned at 1:34 p.m.

PASSED AND APPROVED January 23, 2024.

Lori Blong, Mayor

ATTEST:

PACKET

4a.22

January 23, 2024

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January 9, 2024

Marcia Bentley-German
City Governance Officer/City Secretary

DRAFT



City Council Meeting

Item Number: 5
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Christy Weakland, Director
Subject: MOTION ACCEPTING A DONATION IN THE AMOUNT OF \$25,000.00 FROM OCCIDENTAL PETROLEUM CORPORATION; SAID FUNDS TO BE USED FOR FIRE DEPARTMENT EQUIPMENT (DISTRICT: NONE) (FINANCE)

Purpose:

To accept donation from Occidental Petroleum Corporation in the amount of \$25,000 to be used for Fire Department equipment.

Recommended City Council Action:

Approve

Fiscal Impact:

Upon receipt of donated funds, \$25,000 will be appropriated in the Fire Technology and Equipment Fund.

Strategic Priority:

Set the Standard for a Safe and Secure City

Discussion:

Occidental Petroleum Corporation donated \$25,000 to the fire department to be used to purchase SCBA Respirator Required Testing Equipment and Software.

Morris Williams Jr.

City Manager's Office

PAYMENT DOCUMENT

2000047999



Occidental Petroleum Corporation
P.O. Box 2647
Houston, TX 77252-2647

CITY OF MIDLAND
MIDLAND FIRE DEPT
1500 W WALL ST
MIDLAND TX 79701

DATE
12/21/2023

CHECK NO.
0100004840

40014668

DATE	INVOICE/CREDIT MEMO	COMPANY CODE	PO NUMBER	DISCOUNT	NET
12/21/2023 CHARITABLE CONTRIBUTION	400146681223	0100	4076115-47200		25,000.00
TOTAL >					\$25,000.00

THE ATTACHED CHECK IS IN PAYMENT FOR ITEMS DESCRIBED ABOVE



Occidental Petroleum Corporation
P.O. Box 2647
Houston, TX 77252-2647

4076115-47200

JPMorgan Chase Bank, N.A.
Syracuse, NY

50-937
213

CHECK NO.
100004840

EXACTLY Twenty five thousand and 00/100 Dollars

PAY TO THE ORDER OF:

CITY OF MIDLAND
MIDLAND FIRE DEPT
1500 W WALL ST
MIDLAND TX 79701

DATE
21-Dec-23

US DOLLARS

CHECK AMOUNT
*****\$25,000.00

John E. Althoff

AUTHORIZED SIGNATURE

Void after 90 days



⑈0100004840⑈ ⑆021309379⑆ 6301506410509⑈



SHELLY WILLIAMS
MANAGER, COMMUNITY RELATIONS & EMPLOYEE ENGAGEMENT
SHELLY_WILLIAMS@OXY.COM
713.552.8577 OFFICE

December 15, 2023

Midland Fire Department
Robin Pruett
1500 West Wall Street
Midland, TX 79701

We are pleased to enclose Oxy's donation in the amount of **\$25,000.00** to the **Midland Fire Department**. It is our intent that these unrestricted funds be used for the purchase of **SCBA Respirator Required Testing Equipment and Software**.

Should you have any questions, please do not hesitate to contact me at 713.552.8577.

Sincerely,

Shelly Williams

Shelly Williams
Manager, Community Relations & Employee Engagement

syw/ngr
Permian

Community Relations & Employee Engagement | oxycommunityrelations@oxy.com
5 GREENWAY PLAZA, SUITE 110 HOUSTON, TX 77046
oxy.com



City Council Meeting

Item Number: 6
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH OW INVESTORS, LLC, D/B/A MARS COMPANY FOR UTILITY METER TESTING SOFTWARE FOR THE UTILITIES DEPARTMENT AT A TOTAL COST OF \$532,276.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract for the utility meter testing software for the Customer Service Division to OW Investors, LLC dba Mars Company of Ocala, Florida for a cost of \$532,276.00 for the Utilities Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Water and Sewer operating budget.

Strategic Priority:

Strengthen and Sustain our Infrastructure

Discussion:

Staff recommends awarding a sole source purchase of the utility meter testing software for the Customer Service Division. According to Texas Local Government Code 252.022 (a)(7)(A), competitive bidding requirements do not apply to items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies. Please see the attached memo from Jennifer Shipp, Customer Service and Water Utility Manager, for additional

information.

Therefore, please consider a resolution awarding a sole source contract for the utility meter testing software for the Customer Service Division to OW Investors, LLC dba Mars Company of Ocala, Florida for a cost of \$532,276.00.



City Manager's Office

Subject: Request for Approval to Purchase New Meter Testing Bench from MARS Company

Date: November 13, 2023

To: City Council Members

From: Jennifer Shipp, Customer Service and Water Utility Manager City of Midland

Dear City Council Members,

I hope this memo finds you well. I am writing to bring to your attention a crucial matter regarding the need for a new meter testing bench for our water utility department.

As the Customer Service and Water Utility Manager for the City of Midland, I oversee the efficient functioning of our water utility services. Currently, we are faced with a significant challenge concerning our existing meter testing bench, which is over 70 years old. This outdated equipment is unable to accurately test the sonic meters that we are deploying in our system.

After careful consideration and thorough research, it has been determined that acquiring a new meter testing bench from MARS Company is the most viable and cost-effective solution to address this issue. MARS Company is a reputable provider known for their state-of-the-art meter testing equipment, and their products are widely used in the industry.

Here are the key reasons why we urgently need to invest in a new meter testing bench:

1. **Outdated Equipment:** Our current meter testing bench is more than 70 years old and has become obsolete. It lacks the necessary technology to accurately test the modern sonic meters we are deploying.
2. **Accuracy and Efficiency:** The new meter testing bench from MARS Company is equipped with advanced features that ensure accurate and efficient testing of sonic meters. This will contribute to the overall reliability of our water utility services.
3. **Compliance with Industry Standards:** To meet the latest industry standards and regulations, it is imperative that we upgrade our testing equipment. This not only enhances our operational capabilities but also ensures compliance with evolving industry requirements.
4. **Long-Term Cost Savings:** While there is an initial investment involved in acquiring the new meter testing bench, it is important to consider the long-term cost savings. The efficiency and accuracy of the new equipment will result in reduced maintenance costs and fewer inaccuracies in meter readings.

The funding for the equipment will be paid for out of FY24 operating budget. This investment is crucial for maintaining the integrity and reliability of our water utility services, ultimately benefiting the residents of the City of Midland.

If you have any questions or need additional information, please feel free to contact me at 432-686-1601.

Thank you for your time and consideration.

Sincerely,

Jennifer Shipp

Jennifer Shipp

Customer Service and Water Utility Manager III

City of Midland

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SOLE-SOURCE CONTRACT WITH OW INVESTORS,
LLC, D/B/A MARS COMPANY FOR UTILITY METER
TESTING SOFTWARE FOR THE UTILITIES
DEPARTMENT AT A TOTAL COST OF \$532,276.00**

WHEREAS, the Utilities Department is need of updated utility meter testing software; and

WHEREAS, OW Investors, LLC, d/b/a MARS Company (“MARS Company”) is the sole source provider for the M3 Meter Management System Software and the MARS-designed Water Meter Test Bench Systems; and

WHEREAS, MARS Company, has agreed to provide the City of Midland with utility meter testing software for a total cost of \$532,276.00; and

WHEREAS, the City Council finds the price proposed for said utility meter testing software to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a sole-source contract for said utility meter testing software;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a sole-source contract with MARS Company for utility testing software for the Utilities Department at a total cost of \$532,276.00. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That funding shall be available in the Water and Sewer operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay MARS Company in accordance with the terms of the above-referenced contract, from funding available funds upon receipt of proper invoices or statements approved by the City

Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

**CITY OF MIDLAND
SERVICE CONTRACT
24001414**

THIS CONTRACT, effective this 24th day of January, 2024, by and between the City of Midland, hereinafter referred to as the "CITY" and OW Investors, LLC dba Mars Company, hereinafter referred to as the "COMPANY".

Projected Annual Cost: \$532,276.00

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, 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 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 thirty (30) 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,**

S:\PURCH PDF\0PROCFLDR\FY2024\24001414 METER TESTING SOFT WARE\CONTRACT\24001414 SERVICE CONTRACT MARS

INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGE 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 THIS INDEMNIFICATION SHALL NOT APPLY TO ANY CLAIMS RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES. 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, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF CITY, CITY'S OFFICERS, AGENTS, AND EMPLOYEES, AND NOT FOR ANY CLAIMS WHERE THE NEGLIGENCE OF CITY, CITY'S OFFICERS, AGENTS, AND EMPLOYEES WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE. 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, AGAIN, ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF COMPANY. 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 subject to COMPANY's right to cure any alleged default within fifteen (15) days after receiving written notice from CITY.

The term of this agreement shall be for a period of one (1) year commencing on January 24, 2024,

and terminating on January 23, 2025 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one (1) additional year. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a five (5) percentage increase from the initial year pricing.

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.

OW Investors, LLC dba Mars Company

3925 SW 13th Street

Ocala, Florida 34474

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, EXCEPT FOR BREACHES OF CONTRACT DUE TO WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY CITY, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS EXCEPT AS PERTAINING TO COMPANY'S VESTED PROPERTY RIGHTS, TORT CLAIMS, OR EXCEPT FOR CLAIMS ARISING OUT OF CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FURTHERMORE, THIS RELEASE DOES NOT EXTEND TO ANY ACTIONS OR CLAIMS WHICH ARE THE RESULT OF CITY'S BREACH OF ANY EXPRESS TERMS OF THIS CONTRACT OR ANY ACTIONS THAT ARE FOUND TO BE IN BAD FAITH OR INTENTIONAL MISCONDUCT. 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, EXCEPT IN CASES WHERE SUCH FEES ARE INCURRED AS A RESULT OF CITY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR IN CASES WHERE COMPANY IS THE PREVAILING PARTY IN A LEGAL ACTION DUE TO CITY'S BREACH OF 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, SUBJECT TO THE EXCEPTIONS STATED HEREIN. 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: 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 shall apply to the giving of this notice to accommodate the reasonable discovery of alleged damages by COMPANY. 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.

21. **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.

22. **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.

23. **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.

24. **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, provided that COMPANY is given a written explanation of the failure to conform and such condemnation. Whether

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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, after being given the opportunity to inspect the alleged non-conformity. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement only if the damage was directly caused by COMPANY's negligence or willful misconduct. If COMPANY does not remove and replace any such condemned materials within a reasonable time, which shall not be less than ten (10) business days, after a written notice by CITY, CITY may remove and replace such at COMPANY's expense but must provide COMPANY with a detailed accounting of the costs incurred.

25. **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.

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. **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
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$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.

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: _____

Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024 personally appeared, _____, an officer of OW Investors, LLC dba Mars Company, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2024.

Notary Public, State of _____

Exhibit A

			
Prepared By:	Prepared For:	Proposal:	
MARS Company	City of Midland ("Customer")	Quote:	102423MID
Attn: Mike Morgan	Attn: Jennifer Shipp	Contract Price:	\$1,059,103
3925 SW 13th Street	Vendor #6088	Proposal Date:	10/24/2023
Ocala Florida 34474	300 N Loraine	Proposal Expires:	11/25/2023
(940) 349-7100	Midland TX, 79701	Term:	Five (5) year
	(432) 685-7323		

Equipment, Software Renewal, and Services Renewal Contract

WHEREAS

The Equipment, Software and Services Contract ("Contract") and its Schedules are made pursuant to the terms of the MARS Warranty, General Terms and Conditions between Customer and OW Investors, LLC. Dba MARS Company of 3925 SW 13th St., Ocala, Florida (the "MARS").

The Customer accepts the offer on the terms and conditions specified in this Contract.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

I. Price Summary:

Please refer to Schedule 1 for details.

II. Equipment, Software and Services List:

Equipment list: Please refer to Schedule 2 for details.

Software and Services List: Please refer to Schedule 3 for details.

III. Non-Standard Terms and Conditions

Please refer to Schedule 5 for details.

IV. Validity of Agreement

This Contract shall commence on the date of final execution "Effective Date" and shall be in force for the Term.

V. List of Schedules

Schedule 1 - Price Summary

Schedule 2 - Equipment List & Asset Warranty & Ownership

Schedule 3 - Software and Services List

Schedule 4 - Statement of Work

Schedule 5 - Non-Standard Terms and Conditions

Schedule 6 - MARS Warranty, General Terms and Conditions

THE MODIFICATION(S) IN SCHEDULE 5 SUPERSEDE AND HAVE CONTROL OVER THE MARS Warranty, General Terms and Conditions.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed.

For and on Behalf of MARS Company:

For and on Behalf of City of Midland

Name: David B. Corey

Title: CEO

Date:

Name:

Title:

Date:

Schedule 1 - Price Summary

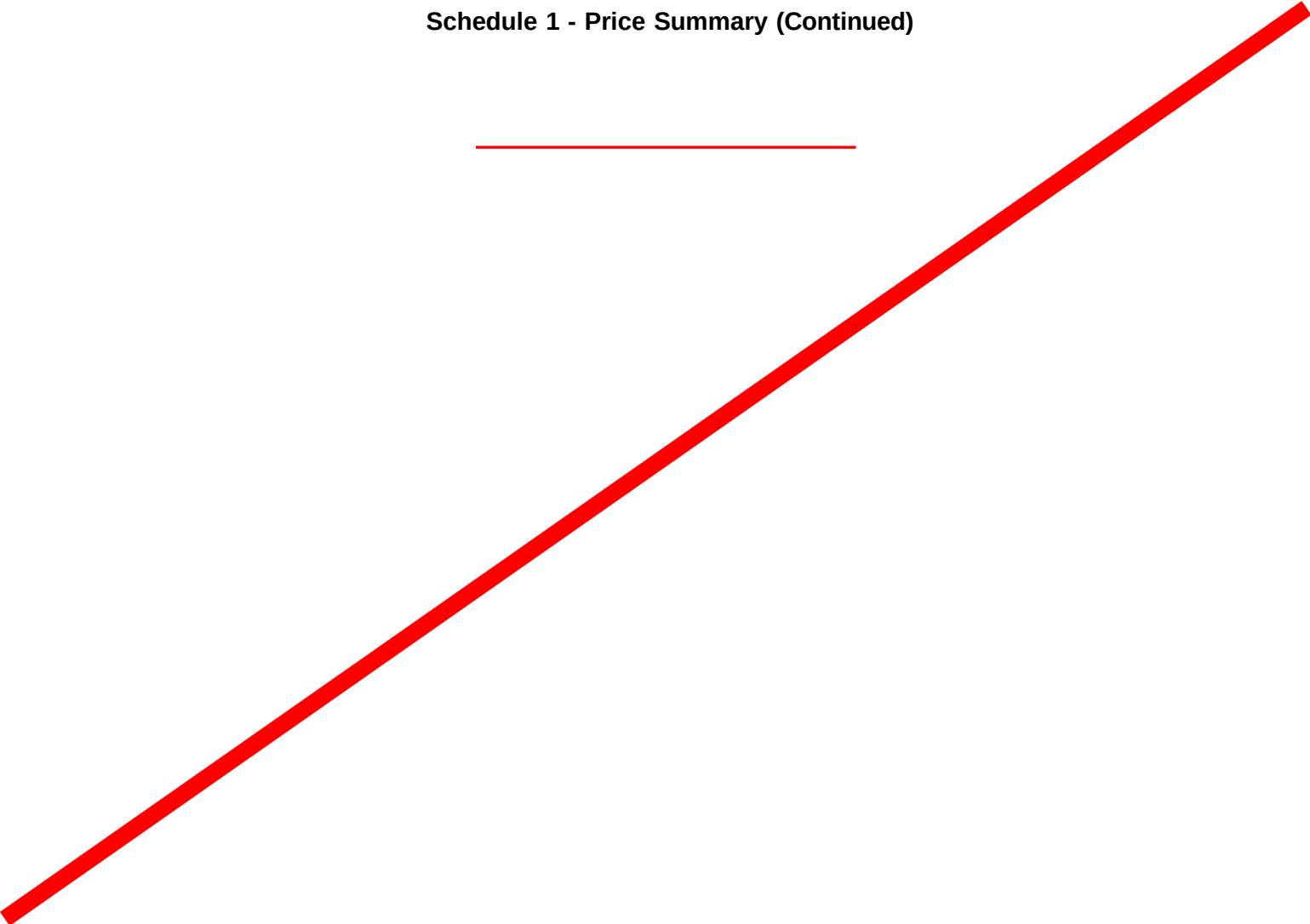
City of Midland Proposal

		Qty	Model Number	Annual Fee	One-Time Fee ⁹
Equipment	MARS Series S-1010 Test Bench System, includes: ➤ Advanced Gravimetric Scale & Control System with Electronics Console ➤ 10 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ 100 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ 500 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ Advanced Upgrade - Additional 1.5" & 2" Carrier Bars with Additional Plumbing	1	12-S1011-23		\$203,225
	Sub-Total	\$203,225			
Equipment	MARS VEROflo-10 (VF-10) Mobile Large Meter Test System, includes: ➤ 3 High Resolution Calibrated Flowmeters ➤ Tests 1.5" to 10" Meters in the Field	1	13-00000-13		\$88,939
	Sub-Total	\$88,939			
Equipment	MARS Recirculation System, includes: ➤ 800 Gal. Polyethylene Supply Tank ➤ Supply Side Pumps, Return Pumps, VFDs & VFD Panels, All Required Piping & Valves ➤ Chlorination / Filtration System	1	31-08002-03		\$43,159
	Sub-Total	\$43,159			
Installation & Training	Installation Assistance & Training with Certified MARS Personnel - Hardware	1	50-00001-03		\$36,858
	Sub-Total	\$36,858			
Project Mgmt.	Project Management Fees	1	96-00000-03		\$25,347
	Sub-Total	\$25,347			
Freight	Freight, Handling and Crating Fees	1	997080WH		\$15,708
	Sub-Total	\$15,708			
Software	MARS M3 Enterprise Software Suite ➤ Series S-1010 Test Bench System Annual M3 Software License Fee ^{10,11} ➤ VEROflo-10 (VF-10) Test System Annual M3 Software License Fee ^{10,11} ➤ MARS M3 Enterprise Meter Management Advanced Software Modules -listed below (includes 1st Year Annual Software License Fee) as defined in the Proposal ➤ Core Module ➤ Connectivity Module ➤ Advanced Reporting Module ➤ Advanced Scale & Control Module (Series S-1010) ➤ Advanced Control Module (VF-10) ➤ Rugged Mobile Computer (VF-10)	1	72-12201-23	\$49,997	
		1	73-12201-23	\$49,997	
	Sub-Total	\$99,994			
	Sub-Total	\$99,994			
Installation & Training	Installation Assistance & Training with Certified MARS Personnel - Software	1	60-62201-23		\$19,046
	Sub-Total	\$19,046			
Sub Grand Total				\$99,994	\$432,282
Grand Total				\$532,276	
New Equipment & Services					\$413,236
M3 Enterprise Annual Software Maintenance & Support				\$99,994	\$19,046
Grand Total (Including Any Applicable Discounts)				\$532,276	

Notes:

- 2- MARS will confirm availability of VF-10 after 30 days of receipt of order.
 9- One-Time Fee includes T&E, installation labor, and training.
 10- Includes ONLY First Year of the Annual Software License Fee; all current M3 Software Licenses need to be 1) active and 2) all outstanding balances need to be current, if applicable.
 11- The pricing does NOT include any compliance to seismic requirements, bonding fees, taxes, duties, or tariffs, if applicable.
 12- Pricing does not include permits or other applicable fees. MARS Company is not responsible for permits.
 13- The firm pricing above is valid for 30 days from the date of quotation. Budgetary pricing (subject to change) is valid for the calendar year beginning Jan. 1 and ending Dec 31 of the respective year.
 15- Annual M3 Software License Type: On premise Subscription Term License.
 16- M3 Software and/or MCC Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with a 5-year contract; 4% discount when prepaid. A separate discount is available for MCC only, if a 5-year MCC contract is signed within 90 days of respective equipment acceptance; equal to an additional 2% MCC discount (5-year multi-year annual pay agreement) or 1% MCC discount (5-year multi-year prepaid agreement)
 M3 Software and MCC Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with 5 year contract; 4% when prepaid.
 MCC New w/Equipment Multi-Year Subscription Renewal Discount: 4% discount on std annual subscription renewal with 5 year contract; 5% when prepaid.

Schedule 1 - Price Summary (Continued)



Schedule 2 - Equipment List & Asset Warranty & Ownership

Equipment List:

Equipment Provided:

- Provide one (1) MARS Series 5-1010 Test Bench System, includes:
 - Advanced Gravimetric Scale and Control System with Electronics Console
 - 10 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - 100 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - 500 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - Advanced Upgrade - Additional 1.5" & 2" Carrier Bars With Additional Plumbing
- MARS VEROflow-10 (VF-10) Mobile Large Meter Test System, includes:
 - 3 High Resolution Calibrated Flowmeters
 - Tests 1.5" to 10" Meters in the Field
 - One (1) Rugged Mobile Computer (VF-10 ONLY)
- Provide one (1) Recirculation System for the Series 5-1010 Test Bench System, includes:
 - 800 Gal. Polyethylene Supply Tank
 - Supply Side Pump, Return Pumps, VFD and VFD Panel
 - All Required Piping and Valves
 - Chlorination / Filtration System

Asset Warranty and Ownership:

Asset Warranty and Ownership

Asset Description	Warranty Term	Annual Subscription	Ownership
Test Bench Equipment ⁵	12 Months	NA	Customer ¹
Printer ²			
Ipad ³			
Cables & Misc Adapters			
M3 Server (HW & SW & OS)	NA	Covered	MARS
Test Bench Local PC			
Mobile Test System Laptop ⁴			
Router ³			

Notes:

1 - Ownership is conveyed per T&Cs

2 - Consumables including Ink, Paper, etc is Customer responsibility at all times

3 - Included only with optional Connectivity Module

4 - Included only with Mobile Test System

5 - Includes Test Bench hardware, Advanced Scale and Control System (Console and Unitronics Scale hardware)

Schedule 3 - Software and Services List

 		M3 Enterprise Software & Test Bench Hardware Subscription 2023 Product Configuration		License ¹ & Maintenance Fees	Install & Configuration Services ²
GRAND TOTAL ALL SYSTEMS		# of Systems =	2	Annual	One-Time ²
		Grand Total After All Discounts	\$ 99,994	\$	19,046
Small or Medium Test Bench or VEROflow-10 (VF-10) System					
M3 Enterprise Software ³ Model Number(s): 72-12201-23; 73-12201-23					
➤ Core Software Application and Platform Architecture			\$	11,904	
➤ Advanced Connectivity Module			\$	11,904	
➤ Custom Test, Reporting, and Export Module			\$	11,904	
➤ Advanced Scale and Control Module (Series 5-1010); Advanced Control Module (VF-10)			\$	11,904	
Sub-Total			\$	47,616	
M3 Enterprise Hardware					
➤ Server and Database Software (Series 5-1010); Rugged Mobile Computer (VF-10)			\$	2,381	
Install SW/HW; Onsite Training; System Configuration/Data Migration (Total 15 Hours) ²			Included	\$	9,523.00
Sub-Total			\$	49,997	\$ 9,523
Total License + Advanced Maintenance per System			\$	49,997	\$ 9,523
Total Number of Systems =			2	Annual	One-Time
Grand Total Price (\$/M/T)			\$	99,994	\$ 19,046

Notes

¹Software License Subscription billed annually in advance and (requires minimum 12 month term(s)) unless specified and agreed upon in writing.

²Install pricing for TYPICAL configuration; Additional config & data migration services / hours billed separately.

³Annual M3 Software License Type: On-premise Subscription Term License with unlimited usage in accordance with MARS Warranty, Standard Terms and Conditions ("Terms").

Legend
 - Bold Text - Req'd for min. configuration
 - Italics - optional configuration

In accordance with this contract agreement, MARS Company will provide City of Midland with the following:

- Provide annual subscription renewal for M3 Enterprise Advanced Software Suite* (Unlimited Tier) with the Following Modules for the Series 5-1010 Test Bench System & VEROflow-10 System:
 - Core Module
 - Connectivity Module
 - Advanced Reporting Module
 - Advanced Scale Module (Series 5-1010 ONLY)
 - One (1) Year Warranty on New Equipment
 - Software License and Maintenance Fees for One (1) Year
 - Turnkey Installation for Series 5-1010 Test Bench System
 - Train the Operators and Provide Certification Documents
- *Includes 1st Year of M3 Annual Subscription License only.

Schedule 4 - Statement of Work

SOW Description	MARS Responsibility	Customer Responsibility
STATEMENT OF WORK FOR PROJECT:		
MARS Project Lead Name: Mike Morgan		
Project Manager Name: Connor Hogberg		
Customer Name: City of Midland		
PRE-INSTALLATION		
IT Requirements		
Review server and software connectivity and security issues and requirements	☒	☒
Mechanical, Electrical and Plumbing Specifications		
General Concept CAD Drawing		
Create	☒	
Review and Approve		☒
Electrical CAD Drawings		
Create	☒	
Review and Approve		☒
Plumbing and Misc. Drawings		
Create	☒	
Review and Approve		☒
Install Electrical and Plumbing Requirements (Per Drawings)		
Main 480V/3PH Supply Power for Pumps		☒
Main 120V/1PH Supply Power for Consoles, Auto-Drain Pumps, and Chlorinator		☒
Control Wiring		☒
FACILITY PREPARATION		
Equipment Delivery and Placement		
Move Equipment from Delivery truck to project site	☒	☒
Clear Path from Entry Door to Work Zone		☒
MARS to direct the opening of the crates to determine the components required for the project and the location.	☒	
Uncrate All Equipment & Rough Placement	☒	☒
Utilizing Customer Resources (Fork truck/Lifts/Jacks) to place the equipment into position.	☒	☒
INSTALLATION AT PROJECT SITE		
Equipment Installation		
Install Series 5-1010 Test Bench System	☒	
Install Recirc Tank, Pump Skid, Piping	☒	
Install Load Cells, Tanks & Deck Scales	☒	
Install VFD(s)	☒	
Install Console(s)	☒	
Install VF-10	☒	
Place and Secure (if needed) into customer vehicle		☒
Confirm customer vehicle that the VF-10 is placed in has a 7-way RV plug	☒	☒
MARS to test the VF-10 system in the field with customer assistance	☒	☒
Submit Punch List Document - Issue Management	☒	☒
Final Electrical and Plumbing Equipment Connection	☒	☒
Verification of Equipment Connection and Final Equipment Installation	☒	
Software Installation		
Install Server, Software, printer, iPad(s), router, etc	☒	
Configure M3 Enterprise Software	☒	
CUSTOMER STARTUP & TRAINING		
System Startup / Troubleshooting/Leak Tests	☒	
Operator Training		
Perform Equipment and Software Training	☒	
Administer Operator Certification Test	☒	
Submit Operator Names for Certifications	☒	
EQUIPMENT AND SOFTWARE ACCEPTANCE		
Final Customer Acceptance-Docusign		☒
MARS to Send Final Invoice to Customer (24 hours or Less after Completed DocuSign)	☒	
PROJECT CLOSEOUT AND WARRANTY SUPPORT		
Send Hard Copy/Digital O&M Manuals	☒	
Send Warranty Start / Stop Document	☒	
Licence Terms/Start Stop Renewal/Warranty	☒	
MARS Final Project Closeout Document Package Completion	☒	
Completion Of Customer Training And Startup	☒	

Schedule 5 - Non-Standard Terms and Conditions

Non-Standard Terms & Conditions:

NONE

Schedule 6 - MARS Warranty, General Terms and Conditions



MARS COMPANY

WARRANTY, GENERAL TERMS AND CONDITIONS

1) General. These terms and conditions (these "Terms"), the Equipment, Software and Services Contract (the "Contract") and its Schedules, the M3 Enterprise Software End User License Agreement (the "EULA"), MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"), any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto, (collectively, this "Agreement"). "MARS On-Premise Equipment" means computer, software and related equipment including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) routers, and (iv) mobile test bench laptop computers and operating system software that are owned by MARS and provided to the Licensee (defined hereafter) to use during the M3 Software subscription or usage term. "Equipment" means the hardware, parts, iPads, cables, printers, and accessories, excluding MARS On-Premise Equipment, sold under the purchase order accompanying these Terms. "Software" means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or any new features (collectively, the "Software" and together with the Equipment and the MARS On-Premise Equipment, the "MARS Test Bench Solution"). "Purchaser" means the entity buying the Equipment or Software pursuant to the Contract or purchase order accompanying these Terms. "Licensee" means the entity identified on the Contract by and between these parties. "Services" means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by MARS Company related to the Equipment. PURCHASER WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS UNLESS MARS COMPANY RECEIVES WRITTEN NOTICE OF ANY OBJECTION WITHIN THREE (3) BUSINESS DAYS AFTER PURCHASER'S RECEIPT..

2) Delivery of Equipment and Performance of Services.

- a) All Equipment to fulfill MARS' obligations under this Agreement is delivered F.O.B. to the destination designated in writing by the Purchaser. The date on which the Equipment (which may include pre-loaded Software) is delivered to Purchaser is the "Delivery Date."
- b) If the scheduled Delivery Date is delayed by Purchaser or by a force majeure event, MARS Company may move the Equipment to a temporary storage location approved by the Purchaser for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered, the date of such deemed delivery shall be the Delivery Date, and payment for the delivered Equipment and Software shall be due in accordance with Section 5(b). All expenses for the temporary storage transportation, storage fees, redelivery fees, etc. shall be the sole responsibility of Purchaser and payable to MARS Company together with payment for Equipment and Software in accordance with Section 5(b).
- c) Shipping and delivery times are contingent upon the Purchaser's timely approvals and delivery by Purchaser of any documentation required for MARS Company's performance hereunder.
- d) Delivery Acceptance
 - (i) Purchaser shall make the timely inspection of all delivered Equipment to verify the receipt, inspection, and acceptance ("Delivery Acceptance") or rejection ("Delivery Rejection"). If through no fault of MARS, If Purchaser does not provide to MARS, written confirmation of either Delivery Acceptance or Delivery Rejection within three (3) days from Delivery Date, Delivery Acceptance shall be deemed as acceptance of Equipment received.
- e) Non-Delivery Rejections, Shortages and Shipping Damages
 - (i) The Purchaser may reject any Equipment which is found, upon examination within three (3) business days, not to conform to the terms of this Agreement. Purchaser agrees to provide written, notice of Delivery Rejection and shall specify the reasons for rejection, providing MARS with reasonable time to address or rectify the rejection.
 - (ii) Claims for shortages or other errors in delivery must be made in writing to MARS Company within three (3) days of the Delivery Date.
 - (iii) Claims for damage caused by shipping or delivery shall be made in writing within three (3) business days by Purchaser to MARS.
- f) Except as expressly set forth herein, Purchaser may not return any goods without MARS's written consent. All returns are subject to a restocking fee/handling charge of 25%. If the goods are specially ordered by the Purchaser, they cannot be returned to MARS, MARS shall have no obligation to accept the return of the goods, and Purchaser shall remain liable for the entire purchase price of the goods.
- g) MARS Company shall provide, and Purchaser shall pay for MARS Company's performance of, the Services described in one or more statements of work executed by MARS Company and any person listed as Purchaser's authorized representative in writing by Purchaser. With respect to the Services, Purchaser shall (i) cooperate with MARS Company in all matters relating to the Services and provide such reasonable access to Purchaser's premises, and such office accommodation and other facilities as may reasonably be requested by MARS Company, for the purposes of performing the Services; (ii) respond promptly to any MARS Company request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for MARS Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as MARS Company may reasonably request to perform the Services in a timely manner; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3) Purchase Order and Acceptance.

- a) Purchaser shall be deemed to irrevocably accept these Terms, and MARS Company's furnishing of Equipment, Software and Services in accordance with these Terms, upon the earlier to occur of the following: (i) Purchaser's issuance of a purchase order; (ii) Purchaser's non-rejection of Equipment, Software or Services on the earliest Delivery Date; or (iii) Purchaser's payment for Equipment, Software or Services, in whole or in part.

4) Purchase Price and Service and Software Fees.

- a) The purchase price of the Equipment and the hourly rates for Services are set forth in the Contract. Unless otherwise agreed by the parties in writing, all Proposals expire thirty (30) days from the date thereof. In the event the Calendar year (CY) pricing is contingent upon receiving a purchase order satisfactory to MARS, as well as a notice to proceed before the end of the respective calendar year (for the sake of clarity, an example would be if CY 2024 pricing was quoted, MARS must receive a purchase order satisfactory to MARS honor before December 31, 2024, to qualify for 2024 pricing)
- b)
- c) Unless otherwise stated in a statement of work, the hourly rates set forth in the Contract is based on Services performed during normal business hours (8 a.m. to 5 p.m. Monday through Friday). Any Services performed on: (i) a business day outside of normal business hours or on a Saturday will be billed at one and one-half (1 1/2) times the hourly rate; (ii) Sunday will be billed at two (2) times the hourly rate; and (iii) a federal holiday, including any falling on a Saturday or Sunday, will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet.
- d) The purchase price of the Equipment does not include any federal, state or local property, license, permits, privilege, sales, use, excise, gross receipts, manufacturer's tax, occupation tax, transfer tax, privilege tax, excise tax, duty, custom, tariff, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever, whether

international, national, state, or local, however designated, which is levied or imposed by any governmental authority, on or measured by the transaction between MARS Company and Purchaser, shall be paid by Purchaser in addition to the prices quoted or invoiced, or in lieu thereof the Purchaser shall supply MARS Company with an appropriate tax exemption certificate. In the event MARS Company is required to pay any such tax, fee, interest or charge, Purchaser shall reimburse MARS Company therefore. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon submitting a purchase order, provide MARS Company a copy, acceptable to the relevant governmental authorities of any such certificate or permit. Purchaser agrees that, in the event of a Significant Cost Increase, MARS may increase the price of the MARS Test Bench Solution in an equitable amount for so long as such Significant Cost Increase is occurring. A "Significant Cost Increase" for purposes of this Agreement and any purchase order or similar issued hereunder shall be an increase of five percent (5%) or more of the then-prevailing aggregate cost to MARS of raw materials, energy and transportation costs incurred in connection with the manufacture, delivery and/or servicing of any component of the MARS Test Bench Solution. In the event a Significant Cost Increase is no longer occurring, the price of the MARS Test Bench Solution shall revert back to that of the applicable purchase order.

- e) Services fees, including but not limited to MARS calibration certification equipment maintenance and services (MCC) fees, shall be (i) designated in the manner set forth on the Proposal or the MCC, and (ii) payable ANNUALLY IN ADVANCE of performance of Services.
- f) Software fees shall be (i) designated in the manner set forth on the Proposal or the Contract, and (ii) payable ANNUALLY IN ADVANCE of Software activation, renewal, re-activation, etc.; as appropriate.
- g) In the event Purchaser prepaies Software fees to be applied against future MARS Services projects, Purchaser shall have twelve (12) months from the effective date of the Schedule of Software and Services to utilize the prepaid Fees towards a Services project. Any Fee credits shall expire after twelve (12) months and Purchaser shall not be entitled to any refund.
- h) If Licensee purchased an On-Premise Subscription Usage License, then:
 - (i) Software fees shall be calculated based upon the monthly pro-rated amount of M3 Annual Meter Testing Usage and respective M3 Usage Tier and Usage Tier Discount as follows: the multiplication of each of the amounts: (i) One (1) subtracted by the Usage Tier Discount, and (ii) prevailing annual On-Premise Subscription Term License.
 - (ii) By way of example, if Licensee M3 Annual Meter Testing Usage exceeds Usage Tier I during five months into a 12-month renewal term and does not exceed Usage Tier 2 during the following seven months, then the Software Fee calculation would be: $[(1 - \text{Usage Tier I Discount}) \times (5/12)] + [(1 - \text{Usage Tier Discount II}) \times (7/12)]$. Licensee agrees that Usage Tiers may be increased but not decreased.
- i) MARS may increase its license and other fees, not included in this Agreement, at any time so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.
- j) If Licensee purchased an On-Premise Subscription License, MARS may not increase the associated license fees more than once in any 12-month period following Licensee's initial purchase by more than ten percent (10%). MARS will notify Licensee of a price increase at least 90 days before the increase takes effect.
- k)
- l) Upon activation of a Temporary Software License (as defined in the EULA), Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.
- m) You are responsible for providing MARS with the most current contact and billing information. Purchaser may provide updates to Purchaser's contact information to MARS at Sales@MARSwater.com and updates to Purchaser's billing information to MARS. You agree that, so long as the On-Premise Subscription Term License is active, MARS may, on a monthly basis, automatically bill the same credit card or bank account Purchaser provides to MARS.

5) Payment.

- a) Unless specified to the contrary in writing by MARS Company, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice by ACH or wire transfer to the account designated by MARS Company in the Proposal.
- b) Notwithstanding Section 5(b) above, payment terms for Equipment and Software are net cash, payable without offset, in United States Dollars and due on the Delivery Date by ACH or wire transfer to the account designated by MARS Company to Purchaser in writing (which may be delivered by email).
- c) If Purchaser fails to pay any reasonably undisputed invoice by the due date, MARS Company may require payment in advance, payment security satisfactory to MARS Company, or may terminate the purchase order, whereupon MARS Company shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date MARS Company is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- d) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus MARS Company's attorneys' fees and court costs incurred in connection with collection. If Purchaser's account is overdue (except with respect to amounts subject to a bona fide dispute), in addition to any of its other rights or remedies, MARS reserves the right to (i) suspend any MARS Services to Purchaser, and (ii) terminate Your use of the software and Purchaser shall pay a non-refundable, software reactivation fee ("Software Reactivation Fee") calculated as follows: (i) twenty-five hundred dollars (\$2,500) for each test bench system if reactivation is within 30 days of license expiration, plus (ii) five thousand dollars (\$5,000) for each test bench system every subsequent 30 days, payable in advance of software reactivation, without liability, until such amounts are paid in full. By way of example, if Licensee reactivates the M3 annual subscription within 60 days after license expiration, on two 2400 Series test benches and a single large test bench, then Software Reactivation Fee calculation would be: $[(\$2,500 \times 3 \text{ systems}) + (\$5,000 \times 3 \text{ systems})] = \$22,500$.

6) Changes.

- a) Any changes to a statement of work requested by Purchaser must be accepted by MARS Company and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change (the "Change Order"), and comply with the provisions of Section 27(e)(i).
- b) MARS Company may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications agreed upon by the parties. If Purchaser objects to any such

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changes, MARS Company shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

- c) MARS Company may, at any time while the Equipment is under warranty, make such changes in design and construction of Equipment that it deems, in its sole discretion, to be an improvement. MARS Company may furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

7) Title & Risk of Loss.

- a) Title to the Equipment shall transfer to the Purchaser upon Delivery Acceptance.
b) Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon Delivery Acceptance.

- 8) **Bonding.** Any cost related to Payment Bonds, Performance Bonds, Labor and Material Bonds, hereinafter referred to as "BONDS" or any such financially bonding documents and/or mechanism required by Contract are not included unless specified to the contrary in writing by MARS Company. BONDS, if applicable, will be provided for either, (i) 12 months from the issuance / requirement date from Purchaser, or (ii) Contract Completion, whichever occurs first. Any costs to extend the requirement or to maintain or extend BONDS coverage beyond 12 months will be paid by Purchaser.

9) Inspection, Testing, Installation and Acceptance.

- a) **Factory Testing**
(i) Any inspection by Purchaser of Equipment on MARS Company's premises shall be scheduled a minimum of five (5) days in advance and to be performed during normal working hours.
(ii) If the purchase order provides for factory acceptance testing of the Equipment, MARS Company shall notify Purchaser when MARS Company will conduct such testing, which will be prior to shipment. UNLESS PURCHASER PROVIDES MARS COMPANY WITH WRITTEN NOTICE OF SPECIFIC OBJECTIONS WITHIN FIVE (5) DAYS AFTER COMPLETION OF FACTORY ACCEPTANCE TESTING, COMPLETION OF THE FACTORY ACCEPTANCE TEST CONSTITUTES PURCHASER'S FULL ACCEPTANCE OF THE EQUIPMENT AND ITS AUTHORIZATION FOR SHIPMENT.
- b) MARS Company agrees to supply and install the MARS Test Bench Solution at a mutually agreeable location on the Purchaser's facility. For such installation, the Purchaser, at its sole cost and expense, shall: (i) provide a mutually agreeable electrical source and a water source to the MARS Test Bench Solution and (ii) engage a licensed plumber and licensed electrician to connect the MARS Test Bench Solution with such electrical and water sources (collectively, the "Purchaser Installation Responsibilities").
- c) After the Purchaser completes the Purchaser Installation Responsibilities to MARS Company's reasonable satisfaction and MARS Company installs the MARS Test Bench Solution, MARS Company and the Purchaser will perform testing in accordance with the detailed process and specification with the acceptance test procedure ("ATP") addendum at marswater.com/ATP. A summary of the ATP is outlined as follows: (i) phase one - calibrate the MARS Test Bench Solution for accuracy (collectively, "Accuracy Calibration"). MARS shall be responsible for hiring a licensed, independent scale calibration and accuracy company ("Licensed Accuracy Calibration Company") to provide test bench scale system calibration to confirm that the Test Bench Solution meets NIST traceability and accuracy and adheres to local licensing requirements and industry standards. MARS and the Licensed Accuracy Calibration Company shall document the accuracy testing in accordance with scale system calibration & accuracy that is set forth on ATP Schedule A. If the test results conform to ATP Schedule A, the parties mutually agree the Test Bench Solution will be deemed to have successfully passed this Accuracy Calibration phase; (ii) Following the completion of the Accuracy Calibration, MARS shall then perform phase two - Test Bench Solution testing for repeatability based on the Accuracy Calibration data. The repeatability testing ("Repeatability Testing") shall document the performance of the Test Bench Solution using statistical process control model detailed in the ATP. If the test results conform to ATP Schedule B, the parties mutually agree that the Test Bench Solution will be deemed to have successfully passed this Test Bench Solution Repeatability phase; (iii) MARS Company and Purchaser will jointly perform phase three - operator training and variable meter size acceptance testing of the MARS Test Bench Solution to ensure that the MARS Test Bench Solution conforms to the specifications set forth in the Agreement and per AWWA M6 Manual, Fifth Edition pages 63 & 64, Table 5-3. The data from phase three will be made available to the Purchaser and upon receipt will be deemed accepted in so far as operator training and variable meter testing. Upon successful completion of the ATP of this Section, the parties mutually agree that the MARS Test Bench Solution will be deemed acceptable by the Purchaser (collectively, the "Acceptance Testing").
- d) The Purchaser shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting Purchaser's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

- 10) **Operational Control.** OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 9).

11) Limited Warranties and Remedies (unless otherwise stated).

- a) **Equipment and Services Warranty.** MARS Company warrants that Equipment shall be delivered free of defects in material and workmanship. The Warranty Period for Equipment (excluding, spare parts and refurbished or repaired parts) shall end twelve (12) months after the Acceptance Date. The Warranty Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Period for Services shall end ninety (90) days after the date of completion of Services or one-hundred and twenty (120) days after Services are initiated, whichever comes first.
- b) **MARS On-Premise Equipment Warranty.** MARS Company warrants that MARS On-Premise Equipment shall be delivered free of defects in material and workmanship.
- c) **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to MARS Company promptly after such discovery and within the applicable Warranty Period, MARS Company shall, at its option, either (i) repair or replace

the nonconforming portion of the Equipment or re-perform the nonconforming Services, (ii) refund the portion of the purchase price applicable to the nonconforming portion of Equipment or Services, or (iii) refund the full purchase price of the Equipment if any nonconformance with the above warranty causes the Equipment to be inoperable. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such Equipment or Services or thirty (30) days from completion of such repair, replacement or re-performance, whichever is later, MARS Company will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Period shall not otherwise be extended.

- d) **Exceptions.** MARS Company shall have no obligation hereunder with respect to any Equipment which (i) has been installed by non-MARS authorized entities; (ii) has been improperly repaired or altered by Purchaser or a third party; (iii) has been subjected to misuse, negligence or accident; (iv) has been used in a manner contrary to MARS Company's instructions; (v) is comprised of materials provided by or a design specified by Purchaser; or (vi) has failed as a result of ordinary wear and tear. Equipment supplied by MARS Company but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

The Warranty Period is void if the Purchaser does not adhere to storage instructions specifying both storage time and temperature or if MARS Company determines, at its sole discretion, that the AMR Radio equipment is improperly maintained, modified, subjected to excessive operating conditions, incidental damage, intentional or unintentional destruction, act of God, abuse or physically damaged. If any portion of the AMR Radio so repaired or replaced fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such ARM Radio or thirty (30) days from the shipment date of such repair or replacement, whichever is later, MARS Company will repair or replace such nonconforming AMR Radio. The original Warranty Period shall not otherwise be extended.

- e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND MARS COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

- 12) **End User License Agreement.** BY CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 SOFTWARE LICENSE DIALOG BOX, BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, LICENSEE IS CONSIDERED TO HAVE READ, AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THE END USER LICENSE AGREEMENT ("EULA"). IF LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THE EULA, LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. THE SOFTWARE, INCLUDING ANY UPDATES, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, ARE SUBJECT TO THESE TERMS AND CONDITIONS OF THE EULA.

- 13) **Care and Use of MARS On-Premise Equipment.** MARS Company shall maintain and service the MARS On-Premise Equipment from the Delivery Date until either: a) the expiration of the applicable EULA license Term, or b) the date of earlier termination in accordance with the EULA.

In all other respects, except for damage or repairs due to the acts or omissions of MARS Company or its employees, agents, or contractors, Purchaser shall maintain in good operating condition, repair, and appearance, the MARS On-Premise Equipment at Purchaser's own cost and expense, and Purchaser shall protect the MARS On-Premise Equipment from damage and deterioration, other than that caused by normal wear and tear.

Purchaser shall use the MARS On-Premise Equipment in the regular course of business only, within its normal capacity, without abuse, and in the manner contemplated by the parties as of the date of this Agreement. Purchaser shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use and operation of the MARS On-Premise Equipment, and shall not make any modification, alteration or addition to the MARS On-Premise Equipment without prior written approval by MARS Company. Neither Purchaser nor its employees, agents or representatives shall tamper with, disassemble, revise, engineer or otherwise examine the manual workings of the MARS On-Premise Equipment. If through the negligence of Purchaser or the breach of this Agreement by Purchaser repairs are required of MARS Company, then Purchaser shall reimburse MARS Company for all reasonable costs incurred by MARS Company to repair, replace, or perform such maintenance to correct any faults. If Purchaser has not corrected such repairs or performed such maintenance to MARS Company's satisfaction within ten (10) calendar days following MARS Company's written notice to Purchaser, MARS Company shall have the right during normal business hours, with reasonable prior notice to Purchaser and subject to applicable laws and regulations, to enter the Facility in order to inspect, observe, or upon termination or expiration of Licensee's EULA, remove the MARS On-Premise Equipment or otherwise protect MARS Company's interests, and Purchaser shall cooperate fully in affording MARS Company the opportunity to do the same. Purchaser shall permit MARS Company to review all documentary and electronic information relating to the MARS On-Premise Equipment and the operation of it. In the event of theft or loss of the MARS On-Premise Equipment while in use and control of the Purchaser, Purchaser agrees to reimburse MARS Company for all reasonable costs incurred by MARS Company to replace MARS On-Premise Equipment.

In the event the Licensee (i) terminates the license subscription, except if terminated for breach or cause by MARS, or (ii) does not renew the M3 license pursuant to Section 4. Licensee shall pay an equipment decommissioning fee ("Equipment Decommissioning Fee" or "EDF") for the expenses related to the return and recovery of MARS owned, MAR On-Premise Equipment. The EDF includes but is not limited to labor, travel, and expenses associated with the decommissioning, de-installation, shipping and return of the MARS On-Premise Equipment from the Licensee location to MARS located at 3925 SW 13th St., Ocala, Florida 34474. Further, Licensee agrees to pay MARS a non-refundable EDF fee in the amount of \$5,000 (five-thousand dollars) for each decommissioned test bench system within 30 days of the date of equipment decommissioning. By way of example, if Licensee does not renew the M3 annual subscription on two 2400 Series test benches and a single large test bench, the EDF for the three separate system would be: (3 x \$5,000) = \$15,000.

- 14) **Inventions and Information.** Unless otherwise agreed in writing by MARS Company and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with MARS Company. Any design, manufacturing drawings or other information created by or for Purchaser remains the exclusive

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property of MARS Company. Purchaser shall not, without MARS Company's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

a) .

15) Limitation of Liability.

- a) EXCEPT EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, IN NO EVENT SHALL MARS COMPANY, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MARS COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, MARS COMPANY'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE (EXCEPT AS PROVIDED IN THE SECTION ENTITLED "PATENT INDEMNITY") EXCEED ONE-HALF (1/2) OF THE PURCHASE PRICE ALLOCABLE TO THE EQUIPMENT OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE CLAIM.
- b) ALL CAUSES OF ACTION AGAINST MARS COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF THE TIME OF ACCRUAL THEREOF.
- c) PURCHASER SHALL INDEMNIFY AND HOLD MARS, ITS OFFICERS, EMPLOYEES, DIRECTORS, MEMBERS, INDEPENDENT CONTRACTORS, SUBCONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, LIENS, CLAIMS, ACTIONS OR DAMAGES ARISING FROM THE RESALE OF ANY EQUIPMENT TO A THIRD-PARTY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF MARS.

- 16) Laws and Regulations.** MARS Company and Purchaser shall comply with all applicable laws in performance of its obligations under this Agreement. MARS Company does not assume any responsibility for compliance with any laws and regulations relating to the operation or use of the Equipment, which is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Acceptance Date. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Section 6). Nothing contained herein shall be construed as imposing responsibility or liability upon MARS Company for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

- 17) OSHA.** MARS Company warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the Proposal Date. Upon prompt written notice from the Purchaser of a breach of this warranty, MARS Company will replace the affected part or modify it so that it conforms to such standard or regulation. MARS Company's obligation shall be limited to such replacement or modification. IN NO EVENT SHALL MARS COMPANY BE RESPONSIBLE FOR LIABILITY ARISING OUT OF THE VIOLATION OF ANY OSHA STANDARDS RELATING TO OR CAUSED BY PURCHASER'S DESIGN, LOCATION, OPERATION, OR MAINTENANCE OF THE EQUIPMENT, ITS USE IN ASSOCIATION WITH OTHER EQUIPMENT OF PURCHASER, OR THE ALTERATION OF THE EQUIPMENT BY ANY PARTY OTHER THAN MARS COMPANY.

- 18) Force Majeure.** MARS Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, pandemic, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the purchase price will be adjusted to compensate MARS Company for such delay.

- 19) Cancellation.** Any purchase order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified in the purchase order incurred prior to the effective date of notice of termination and all expenses incurred by MARS Company attributable to the termination, plus a fixed sum of ten (10) percent of the final total purchase price to compensate for disruption in scheduling, planned production and other indirect costs.

- 20) Termination.** In addition to any remedies that may be provided under these Terms, MARS company may terminate this Agreement with immediate effect upon written notice to Purchaser if Purchaser: (a) fails to pay any reasonably undisputed amount when due under this Agreement; (b) has not otherwise materially performed or complied with any of these Terms, in whole or in part; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Purchaser may terminate this Agreement for MARS Company's material breach if MARS Company fails to cure or begin taking reasonable steps to cure any such material breach within fifteen (15) days after receiving written notice from Purchaser specifying such breach

21) Export Control.

- a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by MARS Company or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.
- b) If applicable, MARS Company shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after acceptance of the purchase order. Any delay in obtaining such license shall suspend performance of this Agreement by MARS Company. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by MARS Company without liability for damages of any kind resulting from such cancellation. At MARS Company's request, Purchaser shall provide to MARS Company a Letter of Assurance and End-User Statement in a form reasonably satisfactory to MARS Company.

22) .

- 23) Warranty of Capacity to Execute Agreement.** Each of the parties warrants and represents on behalf of itself that it has full power and authority to enter into this Agreement and to bind the parties,

that any and all necessary consents and approvals have been obtained, and that no other consent, approval or action is required.

- 24) Severability.** If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

25) Miscellaneous.

- a) Equipment consumables including printer ink, paper, etc. are Purchaser responsibility at all times.
- b) This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- c) Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- d) If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- e) Beta Test Program
- (i) Beta Test Discount Eligibility: MARS Company may, at its sole discretion, offer certain customers favorable terms in exchange for participating in the MARS Beta Test Program ("BTP"). To be eligible for the BTP, customers must be invited by MARS and agree to perform testing and fulfill obligations in accordance with the detailed specification as set out in the Beta Test Matrix ("BTM") addendum at marswater.com/BTM, provided by MARS alongside the contractual agreement.
- (ii) Acknowledgment of Concession: By accepting and agreeing to the BTP, the Customer acknowledges and agrees that they are receiving a material concession from MARS in the form of favorable terms for the respective products or services.
- (iii) Renewals and Contract Changes: For any contract renewals or changes, MARS will provide a new or updated BTM along with the updated contract. Continued eligibility for the BTP and favorable terms will be contingent on agreement and compliance with the updated BTM.
- (iv) Failure to Fulfill Obligations: In the event a Customer fails to fulfill their obligations as outlined in the BTM, MARS reserves the right to revoke the BTP and revert the pricing of products or services to the standard rate, retroactively to the start of the contract period.
- (v) BTP Audit Rights: MARS reserves the right to audit a customer's compliance with the BTM at any time. Customers are required to cooperate fully with such audits and to provide any necessary documentation upon request.
- f) During the term of this Agreement and for one (1) year thereafter, neither party shall solicit the other parties' current employees or full-time consultants for employment, directly or indirectly, without such other parties' written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party
- g) This Agreement may only be modified by written agreement of the parties.
- h) Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original

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January 23, 2024

IMPORTANT--READ CAREFULLY

THANK YOU FOR SELECTING THE MARS METER MANAGEMENT ("M3") ENTERPRISE SOFTWARE. BY CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 LICENSE DIALOG BOX, BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE, BY SIGNING THE EQUIPMENT, SOFTWARE AND SERVICES CONTRACT, THE LICENSEE IS CONSIDERED TO HAVE READ AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF THE LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, THE LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. IF YOU REPRESENT A COMPANY, ORGANIZATION, OR OTHER LEGAL AFFILIATE (LATER DEFINED), IN THAT CASE, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH AFFILIATE AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERMS "YOU," "YOUR," OR RELATED TERMS HEREIN SHALL REFER TO SUCH AFFILIATE AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OBJECT TO ANY OF THESE TERMS OR ANY SUBSEQUENT MODIFICATIONS, YOUR ONLY RECOURSE IS TO DISCONTINUE YOUR USE OF THE SOFTWARE IMMEDIATELY. THE SOFTWARE, INCLUDING ANY UPDATES, UPGRADES, VERSIONS, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE SOFTWARE MAY INCLUDE PRODUCT AUTHORIZATION OR REGISTRATION TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE YOUR COMPUTER TO CONNECT TO THE INTERNET AUTOMATICALLY OR PROMPT YOU TO CONTACT MARS AND PREVENT THE USE OF THE SOFTWARE THAT IS NOT PERMITTED.

THE LICENSEE AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAVE NO EFFECT NOR ANY INFLUENCE OR CONNECTION WITH - IF ANY - ANY OTHER MARS SOFTWARE LICENSE AGREEMENT WHICH ARE APPLICABLE TO MARS SOFTWARE PRODUCTS LICENSED BY THE LICENSEE.

1. Definitions. As used herein, the following terms have the following meanings:

- 1.1 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, whereas "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- 1.2 **"Agreement"** means, collectively, this M3 Enterprise Software End User License Agreement (the "EULA") and its Schedules, and; the MARS Company Warranty, General Terms and Conditions (the "Terms"); the Equipment, Software and Services Contract (the "Contract") and its Schedules; the MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"); any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto.
- 1.3 **"Allowed Number"** means one (1) unless otherwise indicated on the Contract.
- 1.4 **"M3 Total Annual Meter Testing Usage"** means the aggregate total number of individual meter tests and individual meter subtests that the Software has reported initiating (but not necessarily completing an entire test cycle) during any twelve (12) month renewal term for all On-Premise Subscription Usage Licenses as specified in the Equipment, Software and Services Contract.
- 1.5 **"Confidential Information"** shall mean any and all commercial, technical, financial, proprietary, and other information of a party hereto and its Affiliates that is identified as "confidential" or that a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to, samples, data, technical information, know-how, formulas, ideas, inventions, discoveries, patents, patent applications, intellectual property (whether or not patentable), product development plans, demonstrations, business and financial information, applications and designs, names of customers and potential customers, information related to research and development, and all manifestations or embodiments relating to any of the foregoing and all improvements made thereto, in whatever form provided, whether oral, written, visual, machine-readable, electronic, or otherwise. "Confidential Information" of MARS also includes the Software and Documentation and the existence of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the disclosing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) subject to disclosure pursuant to an open records act or similar applicable law.
- 1.6 **"Customer Support"** means Software assistance You receive by phone, email, chat, access to online information, or by similar means because You purchased a Service Plan or an On-Premise License.
- 1.7 **"Documentation"** means the user manuals, technical manuals, and any other materials provided by MARS, in printed, electronic, or other forms, that describe the installation, operation, use, or technical specifications of the Software.
- 1.8 **"Maintenance Software"** means Software that MARS delivers because You have purchased a Service Plan or an On-Premise Subscription License.
- 1.9 **"Major Software Release"** means Software that provides major new feature enhancements and is denoted by incrementing the first numeric digit of the respective software release name. For example, software release 3.xx would be a major release from software release 2.xx.
- 1.10 **"Minor Software Release"** means Software that provides minor new feature enhancements and is denoted by incrementing the last two numeric digits within the respective Software release name. For example, (i) Software release 3.20 would be a minor release from Software release 3.10. For clarity, this Software does NOT include Minor or Major Software Releases to the next incremental major or minor release. For example, If software release 3.0 were initially installed, you would receive all 3.xx minor software releases but would NOT receive 4.xx and later software releases.
- 1.11 **"MARS"** means OW Investors LLC, dba MARS Company.
- 1.12 **"MARS On-Premise Equipment"** means a computer, software, and related equipment, including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) and routers that are owned by MARS and provided to the Licensee (defined hereafter) to use during the Software subscription or usage term.
- 1.13 **"M3 Legacy Software"** means all M3 Software licensed to the Licensee prior to the release of M3 Enterprise Software. This M3 Legacy Software was deactivated on 12/31/2016 and is no longer supported by MARS.
- 1.14 **"On-Premise License"** means an On-Premise Perpetual License or On-Premise Subscription License according to this Agreement.
- 1.15 **"On-Premise Perpetual License"** means a license to use the Software indefinitely in accordance with this Agreement.
- 1.16 **"On-Premise Subscription Term License"** means a license to use the Software and a Service Plan according to this Agreement for the subscription term specified in the Equipment, Software and Services Contract.

- 1.17 **"On-Premise Subscription Usage License"** means a license to use the Software and a Service Plan according to this Agreement for the M3 Annual Meter Testing Usage and term specified in the Equipment, Software and Services Contract.
 - 1.18 **"On-Premise Subscription License"** means either an On-Premise Subscription Usage License or an On-Premise Subscription Term License according to this Agreement.
 - 1.19 **"Perpetual License Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Upgrades for a specified period.
 - 1.20 **"Perpetual License Major Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Major Updates for a specified period.
 - 1.21 **"Reseller"** means the independent third-party reseller from whom You may have acquired the Software.
 - 1.22 **"Equipment, Software and Services Contract"** means a signed mutually agreed ordering document for the purchase of (i) the Equipment, (ii) the Software license granted hereunder, and (iii) the Services.
 - 1.23 **"Services"** means the information technology-related consulting services provided by MARS.
 - 1.24 **"Service Plan"** means a plan You purchase separately or acquire as part of the purchase of an On-Premise License providing You with Customer Support and/or Maintenance Software for a specified period.
 - 1.25 **"Software"** means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or new features.
 - 1.26 **"Temporary Software License"** means a temporary Software License that authorizes interim use of currently licensed Software, including functionality necessary for the continued operations of the existing Software and to support existing Software services and equipment.
 - 1.27 **"Usage Information"** means meter testing usage information including, but not be limited to, meter testing frequency, meter size, meter test results, meter start reading, meter end reading, meter manufacturer, etc. for each respective meter test performed.
 - 1.28 **"You" or "Your" or "Licensee"** means the entity identified on the Equipment, Software and Services Contract.
2. **Grant of License**
 - 2.1 Subject to Your compliance with the terms and conditions of this Agreement, including payment of all applicable license and maintenance fees, MARS hereby grants to You a limited, non-sub-licensable, non-exclusive, non-transferable right, during the term set forth in the Contract ("Term"), to use the Software and Documentation solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants You the right to:
 - (a) Install one (1) copy of the Software on the Allowed Number of computers owned or leased and controlled by, You ("Client Devices").
 - (b) Use and run the Software on the Allowed Number of Client Devices in accordance with the Documentation and solely for Your internal business purposes.
 - (c) Make one (1) copy of the Software solely for your archival purposes.
 - (d) Make a reasonable number of backup copies of the Software solely to reinstall the Software if reinstallation becomes necessary.
 - (e) Make one (1) copy of the Software for use in a testing environment solely for testing purposes.
 - (f) Make and install one copy of the Software at a disaster recovery site for Your use only for so long as a disaster or other emergency prevents You from Using the Software at Your original installation site.
 - (g) Download or otherwise make one (1) copy of the Documentation and use such Documentation solely in support of Your licensed use of the Software.
 - (h) The term of the license will not be affected whatsoever based on the licensee's ability to use the license due to the operability of customer-owned equipment.
 - 2.2 MARS reserves the right to periodically conduct audits of Your use of the Software upon a thirty-day advance written notice to verify compliance with the terms of this Agreement. Audits will be conducted during business hours, at a mutually agreeable time and date and will occur no more than once in any 12-month period. Audits will be conducted at no expense to You. MARS and the licensee agree that MARS can regularly confirm licensee software and equipment Usage Information, and this usage-based diagnostic information does not constitute an audit. Meter testing Usage Information is explicitly not considered Confidential Information.
3. **License Restrictions.** Except as otherwise explicitly permitted in this Agreement, the Licensee shall not:
 - 3.1 Use the Software individually or jointly in full or in part on more than the Allowed Number of client devices. Use of software, hardware, or services that bypass any Software license restrictions and/or reduce the number of client devices, individual users and/or seats, as may be applicable, accessing or utilizing the Software (e.g., "multiplexing," "pooling," "virtualization" or third party add on software or hardware) expressly does not reduce the number of licenses required (i.e., the required number of licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end").
 - 3.2 Modify or create any derivative works of the Software, including - without limitation - translation or localization; (code written to published APIs (Application programming interfaces) for the Software shall not be deemed derivative works);
 - 3.3 Copy the Software except as provided in this Agreement or elsewhere by MARS;
 - 3.4 Separate Software, which is licensed as a single product, into its component parts;
 - 3.5 Reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code for any Product of the Software (except to the extent applicable laws expressly prohibit such restriction);
 - 3.6 Redistribute, encumber, sell, rent, loan, lease, sublicense, use the Software in a timesharing or service bureau arrangement, or otherwise transfer rights to any Software.
 - 3.7 Remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Software; or
 - 3.8 Publish or make public any results of benchmark tests run on any Software to a third party without MARS' prior written consent.
 4. **Software Acceptance.**
 - 4.1 The Licensee shall have accepted the Software ("Accepted") the earlier of (i) Completion of the site acceptance testing constituting Purchaser's / Licensee's full acceptance of the Equipment and Software; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED AFTER TEN (10) DAYS AFTER THE SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TEST SHALL BE DEEMED COMPLETED AND THE SOFTWARE SHALL BE DEEMED ACCEPTED BY THE PURCHASER. "Acceptance Date" means the date the Software was Accepted.
 - 4.2 ON THE DELIVERY DATE (AS DEFINED IN THE TERMS), THE LICENSEE SHALL PAY MARS COMPANY THE FULL PURCHASE PRICE OF THE SOFTWARE, AND THE LICENSEE SHALL NOT WITHHOLD PAYMENT FOR ANY REASON.
5. **Operational Control.** OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED

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MARS Proprietary and Confidential

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PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING, AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL THE PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 4.

6. Term and Termination.

- 6.1 If You acquire an On-Premise Perpetual License, You may terminate this Agreement at any time, at which point Your license hereunder will also terminate.
- 6.2 The On-Premise Subscription License will run for the term length set forth in the Contract. Notwithstanding the foregoing, this Agreement and the license granted to You will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement, including but not limited to the payment of all reasonably undisputed license fees when due. THE SOFTWARE MAY CONTAIN TECHNOLOGY THAT ALLOWS MARS TO TERMINATE YOUR USE OF THE SOFTWARE OR CONVERT YOUR ACCESS TO THE SOFTWARE TO READ-ONLY IN THE EVENT YOU MATERIALLY BREACH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO YOUR FAILURE TO PAY REASONABLY UNDISPUTED LICENSE FEES WHEN DUE. IF MARS CONVERTS YOUR ACCESS TO READ-ONLY, YOU WILL CONTINUE TO HAVE ACCESS TO DATA YOU ENTERED BEFORE THE CONVERSION BUT WILL NOT BE ABLE TO ENTER NEW DATA. IF THE PURCHASER'S ACCOUNT IS THIRTY (30) DAYS OR MORE OVERDUE (EXCEPT WITH RESPECT TO AMOUNTS SUBJECT TO A BONA FIDE DISPUTE), IN ADDITION TO ANY OF ITS OTHER RIGHTS OR REMEDIES, IN THAT CASE, MARS RESERVES THE RIGHT TO TERMINATE YOUR USE OF THE SOFTWARE AND PURCHASER SHALL PAY A NON-REFUNDABLE, SOFTWARE REACTIVATION FEE ("SOFTWARE REACTIVATION FEE") CALCULATED AS FOLLOWS: (I) TWENTY-FIVE HUNDRED DOLLARS (\$2,500) FOR EACH TEST BENCH SYSTEM IF REACTIVATION IS WITHIN 30 DAYS OF LICENSE EXPIRATION, PLUS (II) FIVE THOUSAND DOLLARS (\$5,000) FOR EACH TEST BENCH SYSTEM EVERY SUBSEQUENT 30 DAYS, PAYABLE IN ADVANCE OF SOFTWARE REACTIVATION, WITHOUT LIABILITY, UNTIL SUCH AMOUNTS ARE PAID IN FULL. BY WAY OF EXAMPLE, IF LICENSEE REACTIVATES THE M3 ANNUAL SUBSCRIPTION WITHIN 60 DAYS AFTER LICENSE EXPIRATION, ON TWO 2400 SERIES TEST BENCHES AND A SINGLE LARGE TEST BENCH, THEN SOFTWARE REACTIVATION FEE CALCULATION WOULD BE: [(2,500 X 3 SYSTEMS) + (\$5,000 X 3 SYSTEMS)] = \$22,500.
- 6.3 Upon activation of a Temporary Software License, Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.
- 6.4 Upon termination or expiration of Your On-Premise License, You shall immediately discontinue using the Software and Documentation.
- 6.5 Within thirty-five (35) days after the termination or expiration of Your On-Premise License, or this Agreement, You shall return the Software and MARS On-Premise Equipment to MARS and destroy all other Software copies in Your possession or control subject to applicable law.
- 6.6 Unless otherwise terminated in accordance with this Agreement, upon the expiration of the applicable license Term, this Agreement.

7. Intellectual Property Rights

- 7.1 Ownership. You acknowledge and agree that the Software and Documentation are provided under license and not sold to You. MARS and its licensors are and will remain the sole and exclusive owners of all rights, title, and interest in and to the Software and Documentation, including all intellectual property rights arising out of or relating thereto, subject only to the limited license granted to You under this Agreement. The Licensee will not remove copyright notices from the Software. The Licensee shall prevent any unauthorized use or copying of the Software and Documentation. MARS reserves all rights not expressly granted to You under this Agreement.
- 7.2 Proprietary Notices. You agree that all backup and archival copies of the Software will contain the same proprietary notices that appear on and in the Software. MARS's suppliers, if any, of the Software or any portions thereof are intended third-party beneficiaries of this Agreement and are entitled to enforce the terms of this Agreement in their own names directly against Licensee.
- 7.3 Submissions. Should Licensee decide to submit any materials ("Submissions") to MARS via electronic mail, through or to MARS website(s), or otherwise (whether as feedback, data, questions, comments, ideas, concepts, techniques, suggestions, or the like) that are specifically related to the functionality of the Software or Services, Licensee agree that such Submissions are unrestricted and shall be deemed Your Confidential Information. You grant to MARS and its assigns a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, use, copy, transmit, distribute, create derivative works of, commercialize, display and perform such Submissions. Submissions do not include any content that You may create while utilizing the Software.

8. Confidentiality & Confidential Content

- 8.1 Except as otherwise permitted herein, neither party will use the other party's Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used to protect its own confidential information. Neither party may disclose the other party's Confidential Information to anyone other than its employees or contractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. The confidentiality obligations set forth in this Section will survive for five (5) years after the termination of this Agreement; provided, however, that the confidentiality obligations herein shall survive in perpetuity with respect to any Confidential Information that is a trade secret under applicable law.
- 8.2 The Licensee shall permit only authorized users who possess rightfully obtained license keys to use the Software or to view if any, the Documentation. The Licensee shall implement reasonable security measures to protect and maintain the security of the Software. Licensee will cooperate with and assist MARS in identifying and preventing any unauthorized use, copying, or disclosure of the Software, if any, Documentation or any portion thereof.
- 8.3 Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party's possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees, or agents.
- 8.4 Notwithstanding the foregoing, either party may disclose Confidential Information pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the disclosing party of any such requirement and reasonably cooperate with

any attempt to procure a protective order or similar treatment at the cost and expense of the party that owns the information that is being requested.

9. Limited Warranty

- 9.1 MARS warrants that for (1) year from the date of installation of the Software ("Software Warranty Period"): (a) the Software will perform substantially in accordance with the Documentation, and (b) the media on which the Software is contained will be free from defects in materials and workmanship under normal use. If You report to MARS in writing within the Software Warranty Period any nonconformity between the Documentation and the Software (a "Warranty Claim") along with proof of purchase to MARS Customer Service at (support@MARSwater.com), and if MARS can replicate and verify that such nonconformity exists, MARS shall make commercially reasonable efforts to correct such nonconformity at no additional cost to You. If such efforts are unsuccessful and the nonconformity is material, Your sole remedy for a breach of the warranty described in this Section shall be as follows:
(a) If You acquire an On-Premise Subscription License, You may terminate this Agreement, and MARS will ensure that You receive a refund of the On-Premise Subscription License fees You paid in the three (3) months preceding the Warranty Claim.
(b) With respect to any media by which You may have received Your installation copy of the Software, Your sole remedy shall be the replacement of defective media.

10. Disclaimer

- 10.1 To the maximum extent permitted by applicable law, and except for the limited warranties set forth herein, THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, QUALITY OR WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR A LACK OF VIRUSES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 10.2 WITHOUT LIMITATION OF THE FOREGOING, MARS EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ASSUMES ALL RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE ITS INTENDED RESULTS AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE SOFTWARE. THE LICENSEE SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SOFTWARE.
- 10.3 ANY USE OF THIS SOFTWARE IS DONE AT THE LICENSEE'S OWN RISK, AND THE LICENSEE WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO - WITHOUT LIMITATION - ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD THE SOFTWARE PROVE DEFECTIVE, THE LICENSEE ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION TO NON-MARS INSTALLED EQUIPMENT. IT IS, THEREFORE, UP TO THE LICENSEE TO TAKE ADEQUATE PRECAUTIONS AGAINST POSSIBLE DAMAGES RESULTING FROM THIS SOFTWARE.

11. Exclusions of and Limitations of Liability

- 11.1 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL MARS OR ITS SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) RESULTING FROM ANY DEFECT IN THE SOFTWARE OR MEDIA, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, IN NO EVENT SHALL MARS'S TOTAL AGGREGATE LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY YOU TO MARS FOR THE SOFTWARE DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE CLAIM YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT ALLOCATES RISK BETWEEN YOU AND MARS AS AUTHORIZED BY APPLICABLE LAW AND THAT THE PRICING OF THE SOFTWARE REFLECTS THIS ALLOCATION OF RISK AND THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 11.3 You acknowledge that MARS will: (i) be providing installation of the Software per this Agreement; and (ii) not provide You with custom software implementation services under this Agreement unless You and MARS otherwise agree in writing. You agree that MARS shall have no liability whatsoever for any failure associated with any custom implementation services performed by any party other than MARS.

11.4 .

12. Maintenance and Support.

- 12.1 Service Plan. MARS posts standard Service Plan information for MARS products from links at <https://MARSwater.com/support/ServicePlan> (or a successor website for the Service Plan information) and related web pages describing the Service Plan features for the Software. A non-standard Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract.
- 12.2 Customer Support. If You are entitled to receive Customer Support as part of a Service Plan, MARS warrants that while Your Service Plan is in effect and if You have paid all required Service Plan fees, MARS will use qualified personnel to provide You Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 12.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.
- 12.3 Updates. At its sole discretion, MARS may make software bug fixes, patches, updates and/or other error corrections ("Updates") available to You. Such Updates, if applicable and offered, are available at no additional cost to You unless otherwise specified in writing. All Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement.
- 12.4 Subscription License Upgrades. At its sole discretion, MARS may make Major Software Releases, Minor Software Releases, major or minor feature enhancements and/or other error modifications ("Upgrades") available to You. Such Upgrades, if applicable and offered, are

available: (i) free of charge if you have a valid and current On-Premise Subscription License or (ii) at an additional cost to You if You possess a valid license for a prior version to purchase the now current version. All Upgrades will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Any obligation MARS may have to support the previous version(s) may end with the availability of the Upgrade or Update. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies in accordance with Section 2.

- 12.5 Perpetual License Upgrades. At its sole discretion, MARS may make Minor Software Releases or minor feature enhancements and/or other error modifications ("Perpetual License Upgrades") available to You. Such Perpetual License Upgrades, if applicable and offered, are available: (i) free of charge if you have a valid and current Perpetual License Upgrade Plan, or (ii) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies in accordance with Section 2.
- 12.6 Perpetual License Major Upgrades. At its sole discretion, MARS may make Major Software Releases or major feature enhancements and/or other error modifications ("Perpetual License Major Upgrades") available to You. Such Perpetual License Major Upgrades, if applicable and offered, are available: (i) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version, or (ii) free of charge if you have a valid and current Perpetual License Major Upgrade Plan. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies per Section 2.

13. Collection and Use of Information.

- 13.1 Mars Product Enhancement Program. If You have not previously opted out of participating in our Product Enhancement Program ("PEP"), You may automatically be enrolled in PEP when the Software is installed. Through PEP, MARS collects information on the hardware, how You use it, when the Software is installed, and its in-product Help and services. This helps MARS identify trends and MARS patterns to improve the quality of the products and services MARS offers. MARS PEP information is explicitly not considered Confidential Information.

14. United States Government. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, as such terms are defined in 48 C.F.R. §2.101. Accordingly, if You are the US Government or any contractor, therefore, You shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

15. Export Controls.

- 15.1 During the term of this Agreement, neither the Software nor the Documentation may be downloaded, exported, or re-exported (i) into (or to a national or resident of) Cuba, Iran, North Korea (Democratic People's Republic of Korea), Sudan, Syria, or any other country to which the United States has embargoed goods or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders. By accessing, downloading, or using the Software, You agree to the foregoing, and You are certifying that You are not located in, under the control of, or a national or resident of any such country or on any such list.
- 15.2 EXPORT OF THE SOFTWARE MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICTS THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE SOFTWARE IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE SOFTWARE SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. YOU SHALL COMPLY WITH ANY AND ALL APPLICABLE GOVERNMENT IMPORT, EXPORT, AND OTHER LAWS.

16. Relationship. MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as expressly agreed by the parties, MARS has the sole obligation to supervise, manage, contract, direct, procure and perform our obligations under this Agreement. MARS reserves the right to determine which of our representatives shall be assigned to perform its obligations and to replace or reassign such representatives as we deem appropriate.

17. Severability. If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

18. .

19. Miscellaneous.

- 19.1 You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to MARS that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that MARS shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under this Agreement and any other rights and remedies it may have. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.
- 19.2 If either party is or becomes the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization, or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law, you consent to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including, any stay imposed by the United States Federal Bankruptcy Code.
- 19.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- 19.4 Any provision in this Agreement which, when reasonably read as intended to survive the termination of this Agreement, shall survive, including without limitation, the disclaimer of

warranties and limitations of liability.

- 19.5 Neither party shall be deemed to have waived any of its rights under this Agreement without explicitly agreeing to do so in writing duly executed by such party's authorized representative. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- 19.6 If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- 19.7 Advertising. MARS has the right to include Your name in a general listing of users of our products and services. However, neither party shall use any logo or trademark owned by the other party unless pre-approved in writing by one of its officers.
- 19.8 You agree to maintain internet connectivity to MARS On-Premise Equipment as specified by MARS.
- 19.9 MARS will install the On-Premise Subscription Licensed Software on MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 19.10 MARS will install the On-Premise Perpetual Licensed Software MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 19.11 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of acts of God, strikes, pandemics, lockouts, labor troubles, inability to procure materials, restrictive government laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), that party shall be granted an extension to perform its obligations hereunder equal to the time the underlying cause prevented performance. Should any obligations of the other party be dependent upon this party's performance, such obligations shall be similarly extended. Notwithstanding the foregoing, should the underlying cause prevent performance for ninety (90) days or more, the party awaiting performance shall have the right to terminate this Agreement immediately.
- 19.12 Third-Party Beneficiaries. Except as provided in Section 7.2, this Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing herein is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 19.13 Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder without the other party's prior written consent which shall not be unreasonably withheld, except that either party may assign this Agreement in its entirety in the event of a merger, corporate reorganization or a sale of all or substantially all of the assets or business of the assigning party without obtaining the other party's consent.
- 19.14 Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy, shall have the same force and effect as the execution of an original.



IMPORTANT--READ CAREFULLY

THANK YOU FOR SELECTING MARS CERTIFIED FOR YOUR SERVICE AND MAINTENANCE REQUIREMENTS. MARS COMPANY ("MARS") PROVIDES SERVICE AND MAINTENANCE TO CUSTOMER SUBJECT TO THE TERMS CONTAINED IN THIS GENERAL CONDITIONS OF SERVICE AND MAINTENANCE AGREEMENT (each individually a "Party" and collectively the "Parties"). CUSTOMER AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAS NO EFFECT NOR ANY INFLUENCE OR ANY CONNECTION WITH - IF ANY - ANY OTHER MARS COMPANY AGREEMENT(S) WHICH ARE APPLICABLE ON MARS COMPANY PROGRAM PRODUCTS PURCHASED BY CUSTOMER.

1 **DEFINITIONS** - As used herein, the following terms have the following meanings:

- 1.1 **"Additional Charge"** means a charge payable by the Customer for additional services outside the scope of the Services in accordance with MARS' prevailing rates for such services including without limitation, the supply of spare parts and goods.
- 1.2 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, where "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- 1.3 **"Agreement"** means, collectively, this MARS Calibration Certification - General Conditions of Service and Maintenance Agreement ("MCC"), and its Schedules; the M3 Enterprise Software End User License Agreement (the "EULA"); the MARS Company Warranty, General Terms and Conditions (the "Terms"); the Equipment, Software and Services Contract (the "Contract") and its Schedules; any proposal from MARS Company received by Purchaser (the "Proposal"), the purchase order and any change orders attached and incorporated hereto
- 1.4 **"Conditions"** means these General Conditions of Service & Maintenance which are incorporated into and form part of the Agreement.
- 1.5 **"Consumable Parts"** are components or materials of the Equipment that are expected to wear out, degrade, or be depleted over time as a result of normal usage.
- 1.6 **"Customer"** means the person or persons, firm or company named on the cover page of the Agreement.
- 1.7 **"Customer Support"** means assistance You receive by phone, email, chat, access to on-line information or by similar means because You purchased a Service Plan.
- 1.8 **"Documentation"** means the specifications that are set forth in the Equipment help files and any release-related notes, guides or manuals MARS publishes specific to the current version of the Equipment.
- 1.9 **"Equipment"** means the equipment and software listed in Schedule 1.
- 1.10 **"Fee"** means the fee payable for the Services as specified in Section II of the Agreement.
- 1.11 **"MARS"** means OW Investors LLC, dba MARS Company that offers the Products.
- 1.12 **"Services"** means the maintenance and other services provided in respect of the Equipment detailed in Schedule 4 and as defined in these Conditions.
- 1.13 **"Service Time"** means the period set out in Clause 2 herein.
- 1.14 **"Site"** means the premises where the Services are provided.
- 1.15 **"Term"**
- 1.16 **"You" or "Your" or "Customer"** means or refers to the company or person that is named on the cover page of the Agreement.

1 **Maintenance, Calibration and Support**

- 1.1 MCC Service Plan. MARS posts standard MCC Service Plan information for MARS products from links at <https://MARSwater.com/support/MCCServicePlan> (or a successor website for the Service Plan information) and related web pages describing the MCC Service Plan features for the Equipment. A non-standard MCC Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract. In the event a MCC Service Plan is not specifically documented an Agreement, the default will be the priority tier plan.
- 1.2 Customer Support. If You are entitled to receive Customer Support as part of an MCC Service Plan, MARS warrants that while Your MCC Service Plan is in effect and if You have paid all required MCC Service Plan fees, MARS will use qualified personnel to provide You with Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 1.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.

2 **Service Time**

- 2.1 The Services shall be performed within the Service Time, which shall be between 8.00 a.m. and 5.00 p.m., Mondays to Fridays, Public Holidays excluded unless otherwise agreed in Schedule 2. Response times for corrective maintenance services shall be as set out in Schedule 2 or as otherwise agreed between the Parties

3 **Modification, Changes and Enhancements**

- 3.1 During the Term, MARS shall at their discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by MARS to be necessary and/or to prevent or minimize damage to the Equipment.
- 3.2 MARS will before undertaking any such modification, change or enhancement etc. as mentioned in 3.1 above, explain to the Customer, if MARS deems necessary, the need and cost (where applicable) of such modification, change or enhancement. The Customer shall pay any Additional Charge for such modification, change or enhancement according to Clause 7.2.
- 3.3 The Term of the Agreement shall automatically renew for subsequent periods of the same length as the initial term unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current term.

4 **Exclusions & Additional Services**

- 4.1 The Services do not include:
 - 4.1.1 Repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Customer or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Customer.
 - 4.1.2 Repair of damage arising from changes, alterations, additions or modifications of the Equipment by a person other than MARS.
 - 4.1.3 Repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor.
 - 4.1.4 Repair of damage caused by the operation of the Equipment other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of MARS or its personnel.
 - 4.1.5 Repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than MARS.
 - 4.1.6 Repair of damage caused by any circumstances beyond MARS' reasonable control.
 - 4.1.7 Furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumable parts and components associated with the Equipment unless otherwise provided

in Schedule 2.

- 4.1.8 Transportation charges, whether for air, sea or land transport for Services carried on within or outside the United States.
- 4.1.9 Work performed outside MARS' Service Time.
- 4.1.10 The cost of any Equipment or part whether a spare part, consumable or otherwise supplied, unless otherwise provided in Schedule 2.
- 4.1.11 The upgrading of or retrofitting of improvements or major modification to the Equipment.
- 4.2 MARS may at the Customer's option provide any of the services referred to in clause 4.1 or any other services requested by the Customer, at the relevant Additional Charge. MARS shall inform the Customer of the associated Additional Charge, and the Customer shall accept the Additional Charge in writing before the services are performed. The Additional Charge shall be payable by the Customer according to clause 7.2.

5 **Customer's Responsibilities**

- 5.1 The Customer shall undertake to release all Equipment which is being maintained by MARS from all operational demands when so requested to do so by MARS in order for MARS to perform the Services. Alternatively, the Customer shall ensure that MARS' personnel have full and safe access to the Equipment at all reasonable times for the purpose of providing the Services. The Customer shall also ensure that such access conforms to any specifications issued by MARS from time to time.
- 5.2 The Customer will ensure that MARS' personnel or representatives are provided a safe and secure work environment at all times while they are on the Site to enable work to be carried out.
- 5.3 The Customer shall provide on request a suitably qualified or informed representative, agent or employee to accompany MARS' personnel when providing the Services or to render such assistance or to give such advice as will enable MARS' personnel to exercise unrestricted access to the Site and the Equipment and otherwise to perform the Services effectively.
- 5.4 The Customer shall supply auxiliary facilities and services when requested by MARS as necessary for the provision of the Services. Where the Customer does not provide the auxiliary facilities and services, MARS shall be entitled to procure such auxiliary facilities and services and seek full reimbursement from the Customer provided MARS has given the Customer written notice of the non-compliance and the Customer has failed to remedy the non-compliance within the time specified in the notice. The auxiliary facilities and services shall include without limitation:
 - 5.4.1 Adequate telephone/communications facilities;
 - 5.4.2 Lighting for all work areas;
 - 5.4.3 Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the reasonable satisfaction of MARS;
 - 5.4.4 240-volt, 60-phase (single cycle) at three pin-general purpose outlets at suitable locations;
 - 5.4.5 Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools;
 - 5.4.6 Suitable rooms on or adjacent to the Site with adequate air-conditioning, lighting, washing, toilet and drinking water facilities for the use of MARS' personnel or representatives; and/or
 - 5.4.7 Lifting machinery or devices, timber, planking, strutting, cement, fuels, water, gas etc.
- 5.5 The Customer shall upon MARS' request furnish to MARS sufficient information which, in MARS' reasonable opinion, will enable the Services to be carried out forthwith and without interruption. The Customer shall be responsible for and bear the cost of any modification to the scope of the Services arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by the Customer.
- 5.6 All such assistance to be provided by the Customer under this Clause 5 or in general shall be at the Customer's sole cost and expense.
- 5.7 Nothing in this Agreement shall relieve the Customer from its obligations to perform normal day to day maintenance on the Equipment as per the Operator's Manuals supplied by the manufacturer and/or MARS including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 5.8 In the event that MARS is unable to provide Services hereunder due to Purchaser's unwillingness or inability to schedule a site visit, the Fee and any related Additional Charges shall nonetheless be due and payable as invoiced by MARS.
- 5.9 During the continuance of this Agreement, the Customer shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the Equipment other than day to day maintenance and the Customer shall not permit any other person except MARS' personnel or representatives to carry out such work unless prior written approval has first been obtained from MARS.

6 **Consumable, Replacement and Spare Parts**

- 6.1 MARS agrees to provide a Consumable Parts allowance for each Test Bench System during each MCC 12-month term in the maximum aggregate amount of up to five hundred dollars (\$500.00) for each Test Bench System provided that (i) no single Consumable Part exceeds \$100.00, and (ii) limited to Consumable Parts associated with Equipment under this MCC. Examples of Consumable Parts include the following: gaskets, ball valves, and solenoid valves. Installation of Consumable Parts is the Customer's responsibility; however, MARS will install Consumable Parts during an MCC visit on a best-effort and time-available basis.
- 6.2 In the case of Services for which an Additional Charge is payable by the customer for replacement of spare parts, title in such replacement or spare parts shall pass to the Customer only upon full payment of the Additional Charge. Unless otherwise agreed in writing between the Parties, the risk of damage to or loss of replacement spare parts shall pass to the Customer as soon as they are delivered to the Customer's designated premises.
- 6.3 Where parts of the Equipment have been replaced by or upon the instruction, recommendation or direction of MARS or otherwise, title in the replaced parts will pass to MARS upon removal from the Equipment.
- 6.4 MARS may from time to time require the Customer to purchase and store at the Site such spare parts as MARS considers necessary for the provision of effective Services.
- 6.5 MARS will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Customer to comply with clause 6.3.
- 6.6 Save as aforesaid, the property of and risk in the Equipment is not affected by the provisions contained in this Agreement.

7 **Payment, Charges and Fees, etc.**

- 7.1 The Customer shall pay all Fees at the rate and in the manner specified in Section II of the Agreement.
- 7.2 The Customer shall pay the Fee, all Additional Charges and any cost wherever and howsoever incurred within thirty (30) days from the date of MARS' invoice.
- 7.3 If the Customer fails to make full payment of the invoice, MARS shall be entitled to any other right or remedy available to MARS under applicable law.

PACKET

6.34



RESULTING FROM THIS SOFTWARE.

13 Exclusions of and Limitation of Liability

- 13.1 You acknowledge Your understanding that Equipment is inherently complex and may not be free from errors and that You have been advised to verify the work produced by the software or Equipment. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, NEITHER MARS NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER RESULTING FROM ANY DEFECT IN THE EQUIPMENT, SOFTWARE OR MEDIA, EVEN IF MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2 IN NO EVENT SHALL MARS'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT OR SOFTWARE, YOUR SERVICE PLAN, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED (i) THE FEE ACTUALLY PAID BY YOU TO PURCHASE A SERVICE PLAN (ii) THE FEES ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM, OR (iii) THE FEES ACTUALLY PAID BY YOU TO PURCHASE OR RENEW THE ANNUAL SERVICE PLAN IN EFFECT WHEN THE CLAIM AROSE. You acknowledge and agree that this Agreement allocates risk between You and MARS as authorized by applicable law and that the pricing of MARS products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

14 Termination and/or Suspension of Services

- 14.1 In addition to MARS' right to terminate the Agreement under Clause 7.3, MARS shall be entitled to (i) terminate the Agreement or suspend any further Services under the Agreement without any liability to the Customer, and (ii) demand that the Fee, Additional Charges or balance thereof shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Customer and apply the said security or monies against the assessed loss and damages, if any, suffered by MARS, in the event that:
- 14.1.1 the Customer is in breach of the Agreement; or
- 14.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or has an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
- 14.1.3 an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or
- 14.1.4 the Customer ceases, or threatens to cease, to carry on business; or
- 14.1.5 there is a change in control of the Customer which in the reasonable opinion of MARS adversely affects the position, rights or interests of the Customer. (For the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of Agreement, ownership of shares, or otherwise howsoever); or
- 14.1.6 in the reasonable opinion of MARS, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Agreement; or
- 14.1.7 MARS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 14.2 Termination of the Agreement by MARS shall not discharge the Customer from any existing obligation accrued due on or prior to the date of termination.
- 14.3 The rights and remedies granted to MARS pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

15 United States Government

- 15.1 The Equipment and accompanying Documentation may be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Equipment and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. The manufacturer is MARS. The MARS address is 3925 SW 13th St, Ocala Florida 34474.

16 Export Controls

- 16.1 During the term of this Agreement, neither the Software nor the Documentation and underlying information or technology may be downloaded, exported, or re-exported (i) into (or to a national or resident of) Cuba, Iran, North Korea, (Democratic People's Republic of Korea), Sudan, Syria, or any other country to which the United States has embargoed goods or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nations or the United States Commerce Department's Table of Denial Orders. By accessing, downloading or using the Software You are agreeing to the foregoing and You are certifying that You are not located in, under the control of, or a national or resident of any such country or on any such list.
- 16.2 YOU SHOULD ALSO BE AWARE OF THE FOLLOWING. EXPORT OF THE EQUIPMENT MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICT THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE EQUIPMENT IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE EQUIPMENT SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. SOME COUNTRIES HAVE RESTRICTIONS ON THE USE OF ENCRYPTION WITHIN THEIR BORDERS, OR THE IMPORT OR EXPORT OF ENCRYPTION EVEN IF FOR ONLY TEMPORARY PERSONAL OR BUSINESS USE. YOU ACKNOWLEDGE IT IS YOUR RESPONSIBILITY TO COMPLY WITH ANY AND ALL GOVERNMENT IMPORT, EXPORT AND OTHER APPLICABLE LAWS.

- 7.3.1 Terminate the Agreement or suspend any further Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
- 7.3.2 At its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and MARS, including but not limited to deposits or security payments, towards the payment of the relevant invoice; and/or
- 7.3.3 Charge the Customer interest on the amount unpaid on a daily basis at the maximum rate allowable by law from the due date until payment in full is received by MARS.
- 7.4 The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to MARS unless agreed in writing by MARS.
- 7.5 MARS shall be entitled to an adjustment of the Fees and Additional Charges in the event of changes in law or engineering standards applicable to or affecting the Equipment and/or Services after the execution of the Agreement.
- 7.6 MARS may increase, at any time, Fees and Additional Charges due for service and maintenance and any new purchases may be more than a previous purchase.
- 7.6.1 MARS may not increase the associated Fees more than once in any 12-month period following Customer's initial purchase by more than seven and one-half percent (7.5%).
- 7.6.2 MARS will notify Licensee of a price increase at least 60 days before the increase takes effect.
- 7.7 You are responsible for providing MARS with the most current contact and billing information. Customer may provide updates to Customer's contact information to MARS at Sales@MARSwater.com and updates to Customer's billing information to MARS.

8 Maintenance Equipment

- 8.1 MARS shall provide all the necessary tools, equipment, testing and diagnostic apparatus which MARS requires in order to carry out the Service unless otherwise agreed.

9 Customer Records & Service Reports

- 9.1 The Customer shall keep such records relating to the use and performance of the Equipment as may be directed by MARS from time to time.
- 9.2 The Customer shall permit MARS to have access to such records at all reasonable times, including all periods during which the Services are being performed or preparations are being made for the Services to be performed.

10 Confidentiality & Confidential Content

- 10.1 Customer agrees that, unless otherwise specifically provided herein or agreed by MARS Company in writing, the Equipment and, if any, the Documentation, provided to Customer by MARS Company constitute confidential, proprietary information of MARS Company. Customer shall permit only authorized users to use the Equipment if any, the Documentation. Customer agrees not to transfer, copy, disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of MARS Company. Customer agrees to implement reasonable security measures to protect such confidential information, but without limitation to the preceding, shall use best efforts to maintain the security of the Equipment provided to Customer by MARS Company. Customer will use its best efforts to cooperate with and assist MARS Company in identifying and preventing any unauthorized use, copying, or disclosure of the Equipment, if any, Documentation, or any portion thereof.
- 10.2 All information available concerning the Equipment is confidential information of MARS Company. For a period of five years from the time Customer accessed this confidential information, Customer may not disclose this confidential information to any third party. This restriction will not apply to any information that is or becomes publicly available without a breach of this restriction; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source that can disclose it is lawfully and without an obligation to keep it confidential; or is independently developed. Customer may disclose this confidential information if required to comply with a court order or other government demand that has the force of law. Before doing so, you must seek the highest level of protection available and, when possible, give MARS Company enough prior notice to provide a reasonable chance to seek a protective order.

11 Limited Warranty

- 11.1 MARS warrants that:
- 11.1.1 it will provide the Services in a proper, skillful and professional manner at all times;
- 11.1.2 it will exercise the reasonable standards of skill, care, and diligence in the performance of the Services;
- 11.1.3 it will retain a sufficient number of personnel with the expertise required to provide the Services; and
- 11.1.4 its personnel possesses the required skills and experience required to provide the Services.
- 11.2 The above warranties shall not replace or supersede the warranty applicable to the Equipment as specified in any sale and purchase agreement.

12 Disclaimer

- 12.1 To the maximum extent permitted by applicable law, and except for the Limited Warranty set forth herein, THE EQUIPMENT (AND ACCOMPANYING DOCUMENTATION) IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, UMARS, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, CONDITIONS OF MERCHANTABILITY, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, QUALITY OR WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR A LACK OF VIRUSES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 12.2 WITHOUT LIMITATION OF THE FOREGOING, MARS COMPANY EXPRESSLY DOES NOT WARRANT THAT THE EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE EQUIPMENT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR SELECTING THE EQUIPMENT TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE EQUIPMENT. CUSTOMER SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE EQUIPMENT.
- 12.3 ANY DOWNLOAD AND USE OF LICENSED SOFTWARE PROGRAM PRODUCT IS DONE AT THE CUSTOMER'S OWN RISK AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO - WITHOUT LIMITATION - ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD IT PROVE DEFECTIVE, CUSTOMER ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION. IT IS THEREFORE UP TO THE CUSTOMER TO TAKE ADEQUATE PRECAUTION AGAINST POSSIBLE DAMAGES

PACKET

6.35

January 23, 2024



17 Relationship.

17.1 MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as specifically agreed by the parties, MARS has the sole obligation to supervise, manage, contract, direct, procure and perform our obligations under this Agreement. MARS reserves the right to determine which of our representatives shall be assigned to perform its obligations and to replace or reassign such representatives as we deem appropriate.

18 Severability

18.1 If any provision of this license is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

18.2 .

19 Misc. Provisions

19.1 No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by MARS or a duly authorized representative of MARS. You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to MARS that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that MARS shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under this Agreement in addition to any other rights and remedies it may have. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If You have received a translation into a language other than English, it has been provided for Your convenience only.

19.2 If you are or become the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law, you consent to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including, any stay imposed by the United States Federal Bankruptcy Code, as amended.

19.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.

19.4 Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.

19.5 If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.

19.6 Advertising. MARS has the right to include Your name in a general listing of users of our products and services. However, neither party shall use any logo or trademark owned by the other party unless pre-approved in writing by one of its officers.

19.7 You agree to maintain internet connectivity from your equipment to MARS as specified by MARS. MARS will install the Software on your Equipment, configure the Software for your use, and test the Software to confirm that it operates in conformity with the MARS specifications. Installation Date is the date the MARS software is installed.

19.8) , or, in the alternative, in the case of notices to Customer, the same address as invoices.

19.9 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of acts of God, strikes, pandemic, lockouts, labor troubles, inability to procure materials, restrictive government laws, or regulations or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), that Party shall be granted an extension to perform its obligations hereunder equal to the time the underlying cause prevented performance. Should any obligations of the other Party be dependent upon this Party's performance, such obligations shall be similarly extended. Notwithstanding the foregoing, should the underlying cause prevent performance for ninety (90) days or more, the Party awaiting performance shall have the right to immediately terminate this Agreement.

19.10 Third Party Beneficiaries. The Parties acknowledge and agree that there are no third-party beneficiaries to this Agreement.

19.11 Non-solicitation of Employees. During the term of this Agreement and for one (1) year thereafter, neither Party shall solicit the other Parties' current employees or full-time consultants for employment, directly or indirectly, without such other Parties written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party.

19.12 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other Party's prior written consent which shall not be unreasonably withheld, except that either Party may assign this Agreement in its entirety in the event of a merger, corporate reorganization or a sale of all or substantially all of the assets of the assigning Party without obtaining the other Party's consent.

19.13 Equitable Relief. The Parties acknowledge that any threatened or actual breach of all confidentiality and intellectual property related obligations under this Agreement shall constitute immediate, irreparable harm for which an award of monetary damages is an inadequate remedy and for which equitable remedies may be awarded by a court of competent jurisdiction without requiring the post of any bond. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

19.14 Unless otherwise noted in the applicable Schedule, you are solely responsible for any taxes or similar charges arising out of this Agreement, including all applicable customs, duties, sales taxes, use taxes, value-added taxes, excise charges or brokerage fees. You shall also be solely responsible for assessing and remitting payment for any such items to the appropriate authorities.

19.15 This Agreement may only be modified by written agreement of the parties. Termination of this Agreement shall not affect the rights or obligations of the parties that arose prior to, or that are expressly intended by their terms to continue beyond, any such termination, and such rights or obligations, and the dispute resolution set forth in these terms and conditions, including Sections 4, 10, 12, 13, 14 as well as subsections 23.4, 23.6, 23.11, shall survive any such termination.

19.16 Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original.



October 23,, 2023

Ms. Jennifer Shipp
Customer Services Division Manager
City of Midland

Dear Ms. Shipp:

MARS Company is the only manufacturer that produces computer-driven high-speed water meter test systems and turnkey installation packages in the United States. We are also the only provider of computer software designed to meet the meter testing needs in compliance with the American Water Works Association (AWWA) testing recommendations for the modern Utility, complete with an operational database. This software can be used in a meter shop or truck-mounted test system.

MARS Company distributes the meter testing systems and the MARS M3 Software used in a meter shop or with a truck-mounted test system direct to the Utility, and, due to the complexity of this offering, **we are the only authorized representative to provide service and support.**

As the single or sole source, MARS Company provides the ongoing service and technical support for the M3 Meter Management System Software and the MARS-designed Water Meter Test Bench Systems. MARS Company is the **only manufacturer to provide on-site installation, training, and ongoing hardware and software maintenance of water meter test bench systems.**

Please call me at (352) 843-9014 if you have further questions or comments.

Very truly yours,
MARS Company

A handwritten signature in blue ink, appearing to read "Maurice Gutierrez", is positioned below the typed name.

Maurice Gutierrez
Vice President of Sales

**CITY OF MIDLAND
SERVICE CONTRACT
24001414**

THIS CONTRACT, effective this 24th day of January, 2024, by and between the City of Midland, hereinafter referred to as the "CITY" and OW Investors, LLC dba Mars Company, hereinafter referred to as the "COMPANY".

Projected Annual Cost: \$532,276.00

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, 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 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 thirty (30) 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,**

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INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGE 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. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY CLAIMS RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES. 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, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF CITY, CITY'S OFFICERS, AGENTS, AND EMPLOYEES, AND NOT FOR ANY CLAIMS WHERE THE NEGLIGENCE OF CITY, CITY'S OFFICERS, AGENTS, AND EMPLOYEES WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE, 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, AGAIN, ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF COMPANY, 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; within a reasonable time after written notice;
- 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 subject to COMPANY's right to

cure any alleged default within fifteen (15) days after receiving written notice from CITY.

The term of this agreement shall be for a period of one (1) year commencing on January 24, 2024,

and terminating on January 23, 2025 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one (1) additional year. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a five (5) percentage increase from the initial year pricing.

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:

OW Investors, LLC dba Mars Company
3925 SW 13th Street
Ocala, Florida 34474

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, EXCEPT FOR BREACHES OF CONTRACT DUE TO WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY CITY, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS EXCEPT AS PERTAINING TO COMPANY'S VESTED PROPERTY RIGHTS, TORT CLAIMS, OR EXCEPT FOR CLAIMS ARISING OUT OF CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FURTHERMORE, THIS RELEASE DOES NOT EXTEND TO ANY ACTIONS OR CLAIMS WHICH ARE THE RESULT OF CITY'S BREACH OF ANY EXPRESS TERMS OF THIS CONTRACT OR ANY ACTIONS THAT ARE FOUND TO BE IN BAD FAITH OR INTENTIONAL MISCONDUCT. 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, EXCEPT IN CASES WHERE SUCH FEES ARE INCURRED AS A RESULT OF CITY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR IN CASES WHERE COMPANY IS THE PREVAILING PARTY IN A LEGAL ACTION DUE TO CITY'S BREACH OF 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, SUBJECT TO THE EXCEPTIONS STATED HEREIN. 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: 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 shall apply to the giving of this notice to accommodate the reasonable discovery of alleged damages by COMPANY. 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.

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. 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.

22. 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.

23. 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.

24. **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, provided that COMPANY is given a written explanation of the failure to conform and such condemnation. 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, after being given the opportunity to inspect the alleged non-conformity. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement only if the damage was directly caused by COMPANY's negligence or willful misconduct. If COMPANY does not remove and replace any such condemned materials within a reasonable time, which shall not be less than ten (10) business days, after a written notice by CITY, CITY may remove and replace such at COMPANY's expense but must provide COMPANY with a detailed accounting of the costs incurred.

25. **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.

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. **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.

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.

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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: _____

Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024 personally appeared, _____, an officer of OW Investors, LLC dba Mars Company, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2024.

Notary Public, State of _____

Exhibit A

			
Prepared By:	Prepared For:	Proposal:	
MARS Company	City of Midland ("Customer")	Quote:	102423MID
Attn: Mike Morgan	Attn: Jennifer Shipp	Contract Price:	\$1,059,103
3925 SW 13th Street	Vendor #6088	Proposal Date:	10/24/2023
Ocala Florida 34474	300 N Loraine	Proposal Expires:	11/25/2023
(940) 349-7100	Midland TX, 79701	Term:	Five (5) year
	(432) 685-7323		

Equipment, Software Renewal, and Services Renewal Contract

WHEREAS

The Equipment, Software and Services Contract ("Contract") and its Schedules are made pursuant to the terms of the MARS Warranty, General Terms and Conditions between Customer and OW Investors, LLC. Dba MARS Company of 3925 SW 13th St., Ocala, Florida (the "MARS").

The Customer accepts the offer on the terms and conditions specified in this Contract.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

I. Price Summary:

Please refer to Schedule 1 for details.

II. Equipment, Software and Services List:

Equipment list: Please refer to Schedule 2 for details.

Software and Services List: Please refer to Schedule 3 for details.

III. Non-Standard Terms and Conditions

Please refer to Schedule 5 for details.

IV. Validity of Agreement

This Contract shall commence on the date of final execution "Effective Date" and shall be in force for the Term.

V. List of Schedules

Schedule 1 - Price Summary

Schedule 2 - Equipment List & Asset Warranty & Ownership

Schedule 3 - Software and Services List

Schedule 4 - Statement of Work

Schedule 5 - Non-Standard Terms and Conditions

Schedule 6 - MARS Warranty, General Terms and Conditions

THE MODIFICATION(S) IN SCHEDULE 5 SUPERSEDE AND HAVE CONTROL OVER THE MARS Warranty, General Terms and Conditions.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed.

For and on Behalf of MARS Company:

For and on Behalf of City of Midland

Name: David B. Corey

Title: CEO

Date:

Name:

Title:

Date:

Schedule 1 - Price Summary

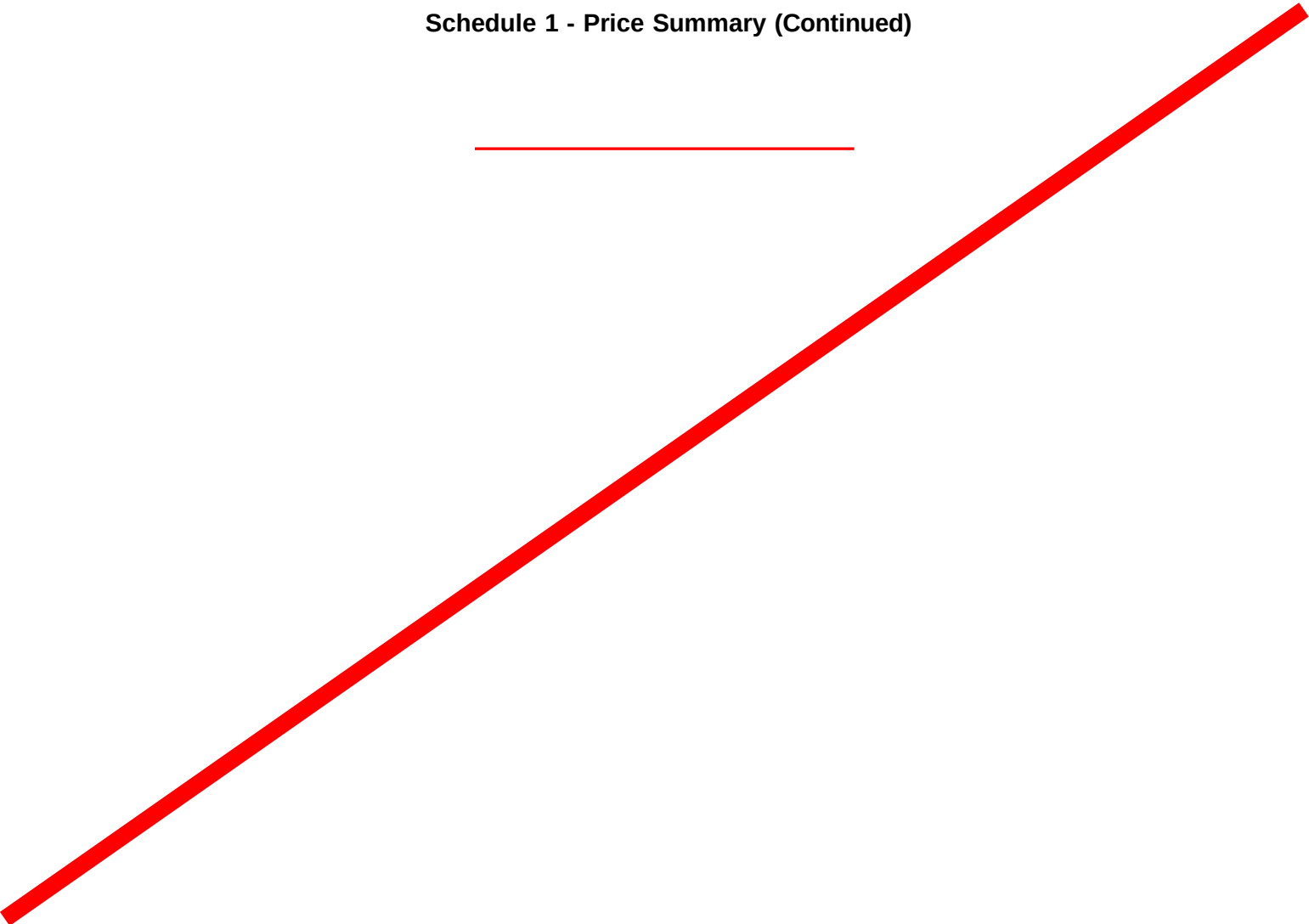
City of Midland Proposal

		Qty	Model Number	Annual Fee	One-Time Fee ⁹
Equipment	MARS Series S-1010 Test Bench System, includes: ➤ Advanced Gravimetric Scale & Control System with Electronics Console ➤ 10 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ 100 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ 500 Gal. Stainless Steel Calibrated Test Tank with Deck Scale ➤ Advanced Upgrade - Additional 1.5" & 2" Carrier Bars with Additional Plumbing	1	12-S1011-23		\$203,225
	Sub-Total	\$203,225			
Equipment	MARS VEROflow-10 (VF-10) Mobile Large Meter Test System, includes: ➤ 3 High Resolution Calibrated Flowmeters ➤ Tests 1.5" to 10" Meters in the Field	1	13-00000-13		\$88,939
	Sub-Total	\$88,939			
Equipment	MARS Recirculation System, includes: ➤ 800 Gal. Polyethylene Supply Tank ➤ Supply Side Pumps, Return Pumps, VFDs & VFD Panels, All Required Piping & Valves ➤ Chlorination / Filtration System	1	31-08002-03		\$43,159
	Sub-Total	\$43,159			
Installation & Training	Installation Assistance & Training with Certified MARS Personnel - Hardware	1	50-00001-03		\$36,858
	Sub-Total	\$36,858			
Project Mgmt.	Project Management Fees	1	96-00000-03		\$25,347
	Sub-Total	\$25,347			
Freight	Freight, Handling and Crating Fees	1	997080WH		\$15,708
	Sub-Total	\$15,708			
Software	MARS M3 Enterprise Software Suite ➤ Series S-1010 Test Bench System Annual M3 Software License Fee ^{10,11} ➤ VEROflow-10 (VF-10) Test System Annual M3 Software License Fee ^{10,11} ➤ MARS M3 Enterprise Meter Management Advanced Software Modules -listed below (includes 1st Year Annual Software License Fee) as defined in the Proposal ➤ Core Module ➤ Connectivity Module ➤ Advanced Reporting Module ➤ Advanced Scale & Control Module (Series S-1010) ➤ Advanced Control Module (VF-10) ➤ Rugged Mobile Computer (VF-10)	1	72-12201-23	\$49,997	
		1	73-12201-23	\$49,997	
	Sub-Total	\$99,994			
	Sub-Total	\$99,994			
Installation & Training	Installation Assistance & Training with Certified MARS Personnel - Software	1	60-62201-23		\$19,046
	Sub-Total	\$19,046			
Sub Grand Total				\$99,994	\$432,282
Grand Total				\$532,276	
New Equipment & Services					\$413,236
M3 Enterprise Annual Software Maintenance & Support				\$99,994	\$19,046
Grand Total (Including Any Applicable Discounts)				\$532,276	

Notes:

- 2- MARS will confirm availability of VF-10 after 30 days of receipt of order.
 9- One-Time Fee includes T&E, installation labor, and training.
 10- Includes ONLY First Year of the Annual Software License Fee; all current M3 Software Licenses need to be 1) active and 2) all outstanding balances need to be current, if applicable.
 11- The pricing does NOT include any compliance to seismic requirements, bonding fees, taxes, duties, or tariffs, if applicable.
 12- Pricing does not include permits or other applicable fees. MARS Company is not responsible for permits.
 13- The firm pricing above is valid for 30 days from the date of quotation. Budgetary pricing (subject to change) is valid for the calendar year beginning Jan. 1 and ending Dec 31 of the respective year.
 15- Annual M3 Software License Type: On premise Subscription Term License.
 16- M3 Software and/or MCC Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with a 5-year contract; 4% discount when prepaid. A separate discount is available for MCC only, if a 5-year MCC contract is signed within 90 days of respective equipment acceptance; equal to an additional 2% MCC discount (5-year multi-year annual pay agreement) or 1% MCC discount (5-year multi-year prepaid agreement)
 M3 Software and MCC Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with 5 year contract; 4% when prepaid.
 MCC New w/Equipment Multi-Year Subscription Renewal Discount: 4% discount on std annual subscription renewal with 5 year contract; 5% when prepaid.

Schedule 1 - Price Summary (Continued)



Schedule 2 - Equipment List & Asset Warranty & Ownership

Equipment List:

Equipment Provided:

- Provide one (1) MARS Series 5-1010 Test Bench System, includes:
 - Advanced Gravimetric Scale and Control System with Electronics Console
 - 10 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - 100 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - 500 Gal. Stainless Steel Calibrated Tank and Deck Scale
 - Advanced Upgrade - Additional 1.5" & 2" Carrier Bars With Additional Plumbing
- MARS VEROflow-10 (VF-10) Mobile Large Meter Test System, includes:
 - 3 High Resolution Calibrated Flowmeters
 - Tests 1.5" to 10" Meters in the Field
 - One (1) Rugged Mobile Computer (VF-10 ONLY)
- Provide one (1) Recirculation System for the Series 5-1010 Test Bench System, includes:
 - 800 Gal. Polyethylene Supply Tank
 - Supply Side Pump, Return Pumps, VFD and VFD Panel
 - All Required Piping and Valves
 - Chlorination / Filtration System

Asset Warranty and Ownership:

Asset Warranty and Ownership

Asset Description	Warranty Term	Annual Subscription	Ownership
Test Bench Equipment ⁵	12 Months	NA	Customer ¹
Printer ²			
Ipad ³			
Cables & Misc Adapters			
M3 Server (HW & SW & OS)	NA	Covered	MARS
Test Bench Local PC			
Mobile Test System Laptop ⁴			
Router ³			

Notes:

1 - Ownership is conveyed per T&Cs

2 - Consumables including Ink, Paper, etc is Customer responsibility at all times

3 - Included only with optional Connectivity Module

4 - Included only with Mobile Test System

5 - Includes Test Bench hardware, Advanced Scale and Control System (Console and Unitronics Scale hardware)

Schedule 3 - Software and Services List

 		M3 Enterprise Software & Test Bench Hardware Subscription 2023 Product Configuration		License ¹ & Maintenance Fees	Install & Configuration Services ²
GRAND TOTAL ALL SYSTEMS		# of Systems =	2	Annual	One-Time ²
		Grand Total After All Discounts	\$ 99,994	\$	19,046
Small or Medium Test Bench or VEROflow-10 (VF-10) System					
M3 Enterprise Software ³ Model Number(s): 72-12201-23; 73-12201-23					
➤ Core Software Application and Platform Architecture			\$	11,904	
➤ Advanced Connectivity Module			\$	11,904	
➤ Custom Test, Reporting, and Export Module			\$	11,904	
➤ Advanced Scale and Control Module (Series 5-1010); Advanced Control Module (VF-10)			\$	11,904	
Sub-Total			\$	47,616	
M3 Enterprise Hardware					
➤ Server and Database Software (Series 5-1010); Rugged Mobile Computer (VF-10)			\$	2,381	
Install SW/HW; Onsite Training; System Configuration/Data Migration (Total 15 Hours) ²			Included	\$	9,523.00
Sub-Total			\$	49,997	\$ 9,523
Total License + Advanced Maintenance per System			\$	49,997	\$ 9,523
Total Number of Systems =			2		
Grand Total Price (\$/M/T)			Annual	\$ 99,994	One-Time 19,046

Notes

¹Software License Subscription billed annually in advance and (requires minimum 12 month term(s)) unless specified and agreed upon in writing.

²Install pricing for TYPICAL configuration; Additional config & data migration services / hours billed separately.

³Annual M3 Software License Type: On-premise Subscription Term License with unlimited usage in accordance with MARS Warranty, Standard Terms and Conditions ("Terms").

Legend

- Bold Text - Req'd for min. configuration
- Italics - optional configuration

In accordance with this contract agreement, MARS Company will provide City of Midland with the following:

- Provide annual subscription renewal for M3 Enterprise Advanced Software Suite* (Unlimited Tier) with the Following Modules for the Series 5-1010 Test Bench System & VEROflow-10 System:
 - Core Module
 - Connectivity Module
 - Advanced Reporting Module
 - Advanced Scale Module (Series 5-1010 ONLY)
 - One (1) Year Warranty on New Equipment
 - Software License and Maintenance Fees for One (1) Year
 - Turnkey Installation for Series 5-1010 Test Bench System
 - Train the Operators and Provide Certification Documents
- *Includes 1st Year of M3 Annual Subscription License only.

Schedule 4 - Statement of Work

SOW Description	MARS Responsibility	Customer Responsibility
STATEMENT OF WORK FOR PROJECT:		
MARS Project Lead Name: Mike Morgan		
Project Manager Name: Connor Hogberg		
Customer Name: City of Midland		
PRE-INSTALLATION		
IT Requirements		
Review server and software connectivity and security issues and requirements	☒	☒
Mechanical, Electrical and Plumbing Specifications		
General Concept CAD Drawing		
Create	☒	
Review and Approve		☒
Electrical CAD Drawings		
Create	☒	
Review and Approve		☒
Plumbing and Misc. Drawings		
Create	☒	
Review and Approve		☒
Install Electrical and Plumbing Requirements (Per Drawings)		
Main 480V/3PH Supply Power for Pumps		☒
Main 120V/1PH Supply Power for Consoles, Auto-Drain Pumps, and Chlorinator		☒
Control Wiring		☒
FACILITY PREPARATION		
Equipment Delivery and Placement		
Move Equipment from Delivery truck to project site	☒	☒
Clear Path from Entry Door to Work Zone		☒
MARS to direct the opening of the crates to determine the components required for the project and the location.	☒	
Uncrate All Equipment & Rough Placement	☒	☒
Utilizing Customer Resources (Fork truck/Lifts/Jacks) to place the equipment into position.	☒	☒
INSTALLATION AT PROJECT SITE		
Equipment Installation		
Install Series 5-1010 Test Bench System	☒	
Install Recirc Tank, Pump Skid, Piping	☒	
Install Load Cells, Tanks & Deck Scales	☒	
Install VFD(s)	☒	
Install Console(s)	☒	
Install VF-10	☒	
Place and Secure (if needed) into customer vehicle		☒
Confirm customer vehicle that the VF-10 is placed in has a 7-way RV plug	☒	☒
MARS to test the VF-10 system in the field with customer assistance	☒	☒
Submit Punch List Document - Issue Management	☒	☒
Final Electrical and Plumbing Equipment Connection	☒	☒
Verification of Equipment Connection and Final Equipment Installation	☒	
Software Installation		
Install Server, Software, printer, iPad(s), router, etc	☒	
Configure M3 Enterprise Software	☒	
CUSTOMER STARTUP & TRAINING		
System Startup / Troubleshooting/Leak Tests	☒	
Operator Training		
Perform Equipment and Software Training	☒	
Administer Operator Certification Test	☒	
Submit Operator Names for Certifications	☒	
EQUIPMENT AND SOFTWARE ACCEPTANCE		
Final Customer Acceptance-Docusign		☒
MARS to Send Final Invoice to Customer (24 hours or Less after Completed DocuSign)	☒	
PROJECT CLOSEOUT AND WARRANTY SUPPORT		
Send Hard Copy/Digital O&M Manuals	☒	
Send Warranty Start / Stop Document	☒	
Licence Terms/Start Stop Renewal/Warranty	☒	
MARS Final Project Closeout Document Package Completion	☒	
Completion Of Customer Training And Startup	☒	

Schedule 5 - Non-Standard Terms and Conditions

Non-Standard Terms & Conditions:

NONE

Schedule 6 - MARS Warranty, General Terms and Conditions



MARS COMPANY

WARRANTY, GENERAL TERMS AND CONDITIONS

1) General. These terms and conditions (these "Terms"), the Equipment, Software and Services Contract (the "Contract") and its Schedules, the M3 Enterprise Software End User License Agreement (the "EULA"), MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"), any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto, (collectively, this "Agreement"). "MARS On-Premise Equipment" means computer, software and related equipment including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) routers, and (iv) mobile test bench laptop computers and operating system software that are owned by MARS and provided to the Licensee (defined hereafter) to use during the M3 Software subscription or usage term. "Equipment" means the hardware, parts, iPads, cables, printers, and accessories, excluding MARS On-Premise Equipment, sold under the purchase order accompanying these Terms. "Software" means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or any new features (collectively, the "Software" and together with the Equipment and the MARS On-Premise Equipment, the "MARS Test Bench Solution"). "Purchaser" means the entity buying the Equipment or Software pursuant to the Contract or purchase order accompanying these Terms. "Licensee" means the entity identified on the Contract by and between these parties. "Services" means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by MARS Company related to the Equipment. PURCHASER WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS UNLESS MARS COMPANY RECEIVES WRITTEN NOTICE OF ANY OBJECTION WITHIN THREE (3) BUSINESS DAYS AFTER PURCHASER'S RECEIPT..

2) Delivery of Equipment and Performance of Services.

- a) All Equipment to fulfill MARS' obligations under this Agreement is delivered F.O.B. to the destination designated in writing by the Purchaser. The date on which the Equipment (which may include pre-loaded Software) is delivered to Purchaser is the "Delivery Date."
- b) If the scheduled Delivery Date is delayed by Purchaser or by a force majeure event, MARS Company may move the Equipment to a temporary storage location approved by the Purchaser for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered, the date of such deemed delivery shall be the Delivery Date, and payment for the delivered Equipment and Software shall be due in accordance with Section 5(b). All expenses for the temporary storage transportation, storage fees, redelivery fees, etc. shall be the sole responsibility of Purchaser and payable to MARS Company together with payment for Equipment and Software in accordance with Section 5(b).
- c) Shipping and delivery times are contingent upon the Purchaser's timely approvals and delivery by Purchaser of any documentation required for MARS Company's performance hereunder.
- d) Delivery Acceptance
 - (i) Purchaser shall make the timely inspection of all delivered Equipment to verify the receipt, inspection, and acceptance ("Delivery Acceptance") or rejection ("Delivery Rejection"). If through no fault of MARS, If Purchaser does not provide to MARS, written confirmation of either Delivery Acceptance or Delivery Rejection within three (3) days from Delivery Date, Delivery Acceptance shall be deemed as acceptance of Equipment received.
- e) Non-Delivery Rejections, Shortages and Shipping Damages
 - (i) The Purchaser may reject any Equipment which is found, upon examination within three (3) business days, not to conform to the terms of this Agreement. Purchaser agrees to provide written, notice of Delivery Rejection and shall specify the reasons for rejection, providing MARS with reasonable time to address or rectify the rejection.
 - (ii) Claims for shortages or other errors in delivery must be made in writing to MARS Company within three (3) days of the Delivery Date.
 - (iii) Claims for damage caused by shipping or delivery shall be made in writing within three (3) business days by Purchaser to MARS.
- f) Except as expressly set forth herein, Purchaser may not return any goods without MARS's written consent. All returns are subject to a restocking fee/handling charge of 25%. If the goods are specially ordered by the Purchaser, they cannot be returned to MARS, MARS shall have no obligation to accept the return of the goods, and Purchaser shall remain liable for the entire purchase price of the goods.
- g) MARS Company shall provide, and Purchaser shall pay for MARS Company's performance of, the Services described in one or more statements of work executed by MARS Company and any person listed as Purchaser's authorized representative in writing by Purchaser. With respect to the Services, Purchaser shall (i) cooperate with MARS Company in all matters relating to the Services and provide such reasonable access to Purchaser's premises, and such office accommodation and other facilities as may reasonably be requested by MARS Company, for the purposes of performing the Services; (ii) respond promptly to any MARS Company request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for MARS Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as MARS Company may reasonably request to perform the Services in a timely manner; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3) Purchase Order and Acceptance.

- a) Purchaser shall be deemed to irrevocably accept these Terms, and MARS Company's furnishing of Equipment, Software and Services in accordance with these Terms, upon the earlier to occur of the following: (i) Purchaser's issuance of a purchase order; (ii) Purchaser's non-rejection of Equipment, Software or Services on the earliest Delivery Date; or (iii) Purchaser's payment for Equipment, Software or Services, in whole or in part.

4) Purchase Price and Service and Software Fees.

- a) The purchase price of the Equipment and the hourly rates for Services are set forth in the Contract. Unless otherwise agreed by the parties in writing, all Proposals expire thirty (30) days from the date thereof. In the event the Calendar year (CY) pricing is contingent upon receiving a purchase order satisfactory to MARS, as well as a notice to proceed before the end of the respective calendar year (for the sake of clarity, an example would be if CY 2024 pricing was quoted, MARS must receive a purchase order satisfactory to MARS honor before December 31, 2024, to qualify for 2024 pricing)
- b)
- c) Unless otherwise stated in a statement of work, the hourly rates set forth in the Contract is based on Services performed during normal business hours (8 a.m. to 5 p.m. Monday through Friday). Any Services performed on: (i) a business day outside of normal business hours or on a Saturday will be billed at one and one-half (1 1/2) times the hourly rate; (ii) Sunday will be billed at two (2) times the hourly rate; and (iii) a federal holiday, including any falling on a Saturday or Sunday, will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet.
- d) The purchase price of the Equipment does not include any federal, state or local property, license, permits, privilege, sales, use, excise, gross receipts, manufacturer's tax, occupation tax, transfer tax, privilege tax, excise tax, duty, custom, tariff, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever, whether

international, national, state, or local, however designated, which is levied or imposed by any governmental authority, on or measured by the transaction between MARS Company and Purchaser, shall be paid by Purchaser in addition to the prices quoted or invoiced, or in lieu thereof the Purchaser shall supply MARS Company with an appropriate tax exemption certificate. In the event MARS Company is required to pay any such tax, fee, interest or charge, Purchaser shall reimburse MARS Company therefore. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon submitting a purchase order, provide MARS Company a copy, acceptable to the relevant governmental authorities of any such certificate or permit. Purchaser agrees that, in the event of a Significant Cost Increase, MARS may increase the price of the MARS Test Bench Solution in an equitable amount for so long as such Significant Cost Increase is occurring. A "Significant Cost Increase" for purposes of this Agreement and any purchase order or similar issued hereunder shall be an increase of five percent (5%) or more of the then-prevailing aggregate cost to MARS of raw materials, energy and transportation costs incurred in connection with the manufacture, delivery and/or servicing of any component of the MARS Test Bench Solution. In the event a Significant Cost Increase is no longer occurring, the price of the MARS Test Bench Solution shall revert back to that of the applicable purchase order.

- e) Services fees, including but not limited to MARS calibration certification equipment maintenance and services (MCC) fees, shall be (i) designated in the manner set forth on the Proposal or the MCC, and (ii) payable ANNUALLY IN ADVANCE of performance of Services.
- f) Software fees shall be (i) designated in the manner set forth on the Proposal or the Contract, and (ii) payable ANNUALLY IN ADVANCE of Software activation, renewal, re-activation, etc.; as appropriate.
- g) In the event Purchaser prepaies Software fees to be applied against future MARS Services projects, Purchaser shall have twelve (12) months from the effective date of the Schedule of Software and Services to utilize the prepaid Fees towards a Services project. Any Fee credits shall expire after twelve (12) months and Purchaser shall not be entitled to any refund.
- h) If Licensee purchased an On-Premise Subscription Usage License, then:
 - (i) Software fees shall be calculated based upon the monthly pro-rated amount of M3 Annual Meter Testing Usage and respective M3 Usage Tier and Usage Tier Discount as follows: the multiplication of each of the amounts: (i) One (1) subtracted by the Usage Tier Discount, and (ii) prevailing annual On-Premise Subscription Term License.
 - (ii) By way of example, if Licensee M3 Annual Meter Testing Usage exceeds Usage Tier I during five months into a 12-month renewal term and does not exceed Usage Tier 2 during the following seven months, then the Software Fee calculation would be: $[(1 - \text{Usage Tier I Discount}) \times (5/12)] + [(1 - \text{Usage Tier Discount II}) \times (7/12)]$. Licensee agrees that Usage Tiers may be increased but not decreased.
- i) MARS may increase its license and other fees, not included in this Agreement, at any time so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.
- j) If Licensee purchased an On-Premise Subscription License, MARS may not increase the associated license fees more than once in any 12-month period following Licensee's initial purchase by more than ten percent (10%). MARS will notify Licensee of a price increase at least 90 days before the increase takes effect.
- k)
- l) Upon activation of a Temporary Software License (as defined in the EULA), Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.
- m) You are responsible for providing MARS with the most current contact and billing information. Purchaser may provide updates to Purchaser's contact information to MARS at Sales@MARSwater.com and updates to Purchaser's billing information to MARS. You agree that, so long as the On-Premise Subscription Term License is active, MARS may, on a monthly basis, automatically bill the same credit card or bank account Purchaser provides to MARS.

5) Payment.

- a) Unless specified to the contrary in writing by MARS Company, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice by ACH or wire transfer to the account designated by MARS Company in the Proposal.
- b) Notwithstanding Section 5(b) above, payment terms for Equipment and Software are net cash, payable without offset, in United States Dollars and due on the Delivery Date by ACH or wire transfer to the account designated by MARS Company to Purchaser in writing (which may be delivered by email).
- c) If Purchaser fails to pay any reasonably undisputed invoice by the due date, MARS Company may require payment in advance, payment security satisfactory to MARS Company, or may terminate the purchase order, whereupon MARS Company shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date MARS Company is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- d) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus MARS Company's attorneys' fees and court costs incurred in connection with collection. If Purchaser's account is overdue (except with respect to amounts subject to a bona fide dispute), in addition to any of its other rights or remedies, MARS reserves the right to (i) suspend any MARS Services to Purchaser, and (ii) terminate Your use of the software and Purchaser shall pay a non-refundable, software reactivation fee ("Software Reactivation Fee") calculated as follows: (i) twenty-five hundred dollars (\$2,500) for each test bench system if reactivation is within 30 days of license expiration, plus (ii) five thousand dollars (\$5,000) for each test bench system every subsequent 30 days, payable in advance of software reactivation, without liability, until such amounts are paid in full. By way of example, if Licensee reactivates the M3 annual subscription within 60 days after license expiration, on two 2400 Series test benches and a single large test bench, then Software Reactivation Fee calculation would be: $[(\$2,500 \times 3 \text{ systems}) + (\$5,000 \times 3 \text{ systems})] = \$22,500$.

6) Changes.

- a) Any changes to a statement of work requested by Purchaser must be accepted by MARS Company and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change (the "Change Order"), and comply with the provisions of Section 27(e)(i).
- b) MARS Company may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications agreed upon by the parties. If Purchaser objects to any such

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changes, MARS Company shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

- c) MARS Company may, at any time while the Equipment is under warranty, make such changes in design and construction of Equipment that it deems, in its sole discretion, to be an improvement. MARS Company may furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

7) Title & Risk of Loss.

- a) Title to the Equipment shall transfer to the Purchaser upon Delivery Acceptance.
b) Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon Delivery Acceptance.

- 8) Bonding.** Any cost related to Payment Bonds, Performance Bonds, Labor and Material Bonds, hereinafter referred to as "BONDS" or any such financially bonding documents and/or mechanism required by Contract are not included unless specified to the contrary in writing by MARS Company. BONDS, if applicable, will be provided for either, (i) 12 months from the issuance / requirement date from Purchaser, or (ii) Contract Completion, whichever occurs first. Any costs to extend the requirement or to maintain or extend BONDS coverage beyond 12 months will be paid by Purchaser.

9) Inspection, Testing, Installation and Acceptance.

- a) **Factory Testing**
(i) Any inspection by Purchaser of Equipment on MARS Company's premises shall be scheduled a minimum of five (5) days in advance and to be performed during normal working hours.
(ii) If the purchase order provides for factory acceptance testing of the Equipment, MARS Company shall notify Purchaser when MARS Company will conduct such testing, which will be prior to shipment. UNLESS PURCHASER PROVIDES MARS COMPANY WITH WRITTEN NOTICE OF SPECIFIC OBJECTIONS WITHIN FIVE (5) DAYS AFTER COMPLETION OF FACTORY ACCEPTANCE TESTING, COMPLETION OF THE FACTORY ACCEPTANCE TEST CONSTITUTES PURCHASER'S FULL ACCEPTANCE OF THE EQUIPMENT AND ITS AUTHORIZATION FOR SHIPMENT.
b) MARS Company agrees to supply and install the MARS Test Bench Solution at a mutually agreeable location on the Purchaser's facility. For such installation, the Purchaser, at its sole cost and expense, shall: (i) provide a mutually agreeable electrical source and a water source to the MARS Test Bench Solution and (ii) engage a licensed plumber and licensed electrician to connect the MARS Test Bench Solution with such electrical and water sources (collectively, the "Purchaser Installation Responsibilities").
c) After the Purchaser completes the Purchaser Installation Responsibilities to MARS Company's reasonable satisfaction and MARS Company installs the MARS Test Bench Solution, MARS Company and the Purchaser will perform testing in accordance with the detailed process and specification with the acceptance test procedure ("ATP") addendum at marswater.com/ATP. A summary of the ATP is outlined as follows: (i) phase one - calibrate the MARS Test Bench Solution for accuracy (collectively, "Accuracy Calibration"). MARS shall be responsible for hiring a licensed, independent scale calibration and accuracy company ("Licensed Accuracy Calibration Company") to provide test bench scale system calibration to confirm that the Test Bench Solution meets NIST traceability and accuracy and adheres to local licensing requirements and industry standards. MARS and the Licensed Accuracy Calibration Company shall document the accuracy testing in accordance with scale system calibration & accuracy that is set forth on ATP Schedule A. If the test results conform to ATP Schedule A, the parties mutually agree the Test Bench Solution will be deemed to have successfully passed this Accuracy Calibration phase; (ii) Following the completion of the Accuracy Calibration, MARS shall then perform phase two - Test Bench Solution testing for repeatability based on the Accuracy Calibration data. The repeatability testing ("Repeatability Testing") shall document the performance of the Test Bench Solution using statistical process control model detailed in the ATP. If the test results conform to ATP Schedule B, the parties mutually agree that the Test Bench Solution will be deemed to have successfully passed this Test Bench Solution Repeatability phase; (iii) MARS Company and Purchaser will jointly perform phase three - operator training and variable meter size acceptance testing of the MARS Test Bench Solution to ensure that the MARS Test Bench Solution conforms to the specifications set forth in the Agreement and per AWWA M6 Manual, Fifth Edition pages 63 & 64, Table 5-3. The data from phase three will be made available to the Purchaser and upon receipt will be deemed accepted in so far as operator training and variable meter testing. Upon successful completion of the ATP of this Section, the parties mutually agree that the MARS Test Bench Solution will be deemed acceptable by the Purchaser (collectively, the "Acceptance Testing").
d) The Purchaser shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting Purchaser's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

- 10) Operational Control.** OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 9).

11) Limited Warranties and Remedies (unless otherwise stated).

- a) **Equipment and Services Warranty.** MARS Company warrants that Equipment shall be delivered free of defects in material and workmanship. The Warranty Period for Equipment (excluding, spare parts and refurbished or repaired parts) shall end twelve (12) months after the Acceptance Date. The Warranty Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Period for Services shall end ninety (90) days after the date of completion of Services or one-hundred and twenty (120) days after Services are initiated, whichever comes first.
b) **MARS On-Premise Equipment Warranty.** MARS Company warrants that MARS On-Premise Equipment shall be delivered free of defects in material and workmanship.
c) **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to MARS Company promptly after such discovery and within the applicable Warranty Period, MARS Company shall, at its option, either (i) repair or replace

the nonconforming portion of the Equipment or re-perform the nonconforming Services, (ii) refund the portion of the purchase price applicable to the nonconforming portion of Equipment or Services, or (iii) refund the full purchase price of the Equipment if any nonconformance with the above warranty causes the Equipment to be inoperable. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such Equipment or Services or thirty (30) days from completion of such repair, replacement or re-performance, whichever is later, MARS Company will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Period shall not otherwise be extended.

- d) **Exceptions.** MARS Company shall have no obligation hereunder with respect to any Equipment which (i) has been installed by non-MARS authorized entities; (ii) has been improperly repaired or altered by Purchaser or a third party; (iii) has been subjected to misuse, negligence or accident; (iv) has been used in a manner contrary to MARS Company's instructions; (v) is comprised of materials provided by or a design specified by Purchaser; or (vi) has failed as a result of ordinary wear and tear. Equipment supplied by MARS Company but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

The Warranty Period is void if the Purchaser does not adhere to storage instructions specifying both storage time and temperature or if MARS Company determines, at its sole discretion, that the AMR Radio equipment is improperly maintained, modified, subjected to excessive operating conditions, incidental damage, intentional or unintentional destruction, act of God, abuse or physically damaged. If any portion of the AMR Radio so repaired or replaced fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such ARM Radio or thirty (30) days from the shipment date of such repair or replacement, whichever is later, MARS Company will repair or replace such nonconforming AMR Radio. The original Warranty Period shall not otherwise be extended.

- e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND MARS COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

- 12) End User License Agreement.** BY CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 SOFTWARE LICENSE DIALOG BOX, BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, LICENSEE IS CONSIDERED TO HAVE READ, AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THE END USER LICENSE AGREEMENT ("EULA"). IF LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THE EULA, LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. THE SOFTWARE, INCLUDING ANY UPDATES, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, ARE SUBJECT TO THESE TERMS AND CONDITIONS OF THE EULA.

- 13) Care and Use of MARS On-Premise Equipment.** MARS Company shall maintain and service the MARS On-Premise Equipment from the Delivery Date until either: a) the expiration of the applicable EULA license Term, or b) the date of earlier termination in accordance with the EULA.

In all other respects, except for damage or repairs due to the acts or omissions of MARS Company or its employees, agents, or contractors, Purchaser shall maintain in good operating condition, repair, and appearance, the MARS On-Premise Equipment at Purchaser's own cost and expense, and Purchaser shall protect the MARS On-Premise Equipment from damage and deterioration, other than that caused by normal wear and tear.

Purchaser shall use the MARS On-Premise Equipment in the regular course of business only, within its normal capacity, without abuse, and in the manner contemplated by the parties as of the date of this Agreement. Purchaser shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use and operation of the MARS On-Premise Equipment, and shall not make any modification, alteration or addition to the MARS On-Premise Equipment without prior written approval by MARS Company. Neither Purchaser nor its employees, agents or representatives shall tamper with, disassemble, revise, engineer or otherwise examine the manual workings of the MARS On-Premise Equipment. If through the negligence of Purchaser or the breach of this Agreement by Purchaser repairs are required of MARS Company, then Purchaser shall reimburse MARS Company for all reasonable costs incurred by MARS Company to repair, replace, or perform such maintenance to correct any faults. If Purchaser has not corrected such repairs or performed such maintenance to MARS Company's satisfaction within ten (10) calendar days following MARS Company's written notice to Purchaser, MARS Company shall have the right during normal business hours, with reasonable prior notice to Purchaser and subject to applicable laws and regulations, to enter the Facility in order to inspect, observe, or upon termination or expiration of Licensee's EULA, remove the MARS On-Premise Equipment or otherwise protect MARS Company's interests, and Purchaser shall cooperate fully in affording MARS Company the opportunity to do the same. Purchaser shall permit MARS Company to review all documentary and electronic information relating to the MARS On-Premise Equipment and the operation of it. In the event of theft or loss of the MARS On-Premise Equipment while in use and control of the Purchaser, Purchaser agrees to reimburse MARS Company for all reasonable costs incurred by MARS Company to replace MARS On-Premise Equipment.

In the event the Licensee (i) terminates the license subscription, except if terminated for breach or cause by MARS, or (ii) does not renew the M3 license pursuant to Section 4. Licensee shall pay an equipment decommissioning fee ("Equipment Decommissioning Fee" or "EDF") for the expenses related to the return and recovery of MARS owned, MAR On-Premise Equipment. The EDF includes but is not limited to labor, travel, and expenses associated with the decommissioning, de-installation, shipping and return of the MARS On-Premise Equipment from the Licensee location to MARS located at 3925 SW 13th St., Ocala, Florida 34474. Further, Licensee agrees to pay MARS a non-refundable EDF fee in the amount of \$5,000 (five-thousand dollars) for each decommissioned test bench system within 30 days of the date of equipment decommissioning. By way of example, if Licensee does not renew the M3 annual subscription on two 2400 Series test benches and a single large test bench, the EDF for the three separate system would be: (3 x \$5,000) = \$15,000.

- 14) Inventions and Information.** Unless otherwise agreed in writing by MARS Company and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with MARS Company. Any design, manufacturing drawings or other information created by or for Purchaser remains the exclusive

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property of MARS Company. Purchaser shall not, without MARS Company's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

a) .

15) Limitation of Liability.

- a) EXCEPT EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, IN NO EVENT SHALL MARS COMPANY, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MARS COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, MARS COMPANY'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE (EXCEPT AS PROVIDED IN THE SECTION ENTITLED "PATENT INDEMNITY") EXCEED ONE-HALF (1/2) OF THE PURCHASE PRICE ALLOCABLE TO THE EQUIPMENT OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE CLAIM.
- b) ALL CAUSES OF ACTION AGAINST MARS COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF THE TIME OF ACCRUAL THEREOF.
- c) PURCHASER SHALL INDEMNIFY AND HOLD MARS, ITS OFFICERS, EMPLOYEES, DIRECTORS, MEMBERS, INDEPENDENT CONTRACTORS, SUBCONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, LIENS, CLAIMS, ACTIONS OR DAMAGES ARISING FROM THE RESALE OF ANY EQUIPMENT TO A THIRD-PARTY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF MARS.

- 16) **Laws and Regulations.** MARS Company and Purchaser shall comply with all applicable laws in performance of its obligations under this Agreement. MARS Company does not assume any responsibility for compliance with any laws and regulations relating to the operation or use of the Equipment, which is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Acceptance Date. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Section 6). Nothing contained herein shall be construed as imposing responsibility or liability upon MARS Company for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

- 17) **OSHA.** MARS Company warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the Proposal Date. Upon prompt written notice from the Purchaser of a breach of this warranty, MARS Company will replace the affected part or modify it so that it conforms to such standard or regulation. MARS Company's obligation shall be limited to such replacement or modification. IN NO EVENT SHALL MARS COMPANY BE RESPONSIBLE FOR LIABILITY ARISING OUT OF THE VIOLATION OF ANY OSHA STANDARDS RELATING TO OR CAUSED BY PURCHASER'S DESIGN, LOCATION, OPERATION, OR MAINTENANCE OF THE EQUIPMENT, ITS USE IN ASSOCIATION WITH OTHER EQUIPMENT OF PURCHASER, OR THE ALTERATION OF THE EQUIPMENT BY ANY PARTY OTHER THAN MARS COMPANY.

- 18) **Force Majeure.** MARS Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, pandemic, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the purchase price will be adjusted to compensate MARS Company for such delay.

- 19) **Cancellation.** Any purchase order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified in the purchase order incurred prior to the effective date of notice of termination and all expenses incurred by MARS Company attributable to the termination, plus a fixed sum of ten (10) percent of the final total purchase price to compensate for disruption in scheduling, planned production and other indirect costs.

- 20) **Termination.** In addition to any remedies that may be provided under these Terms, MARS company may terminate this Agreement with immediate effect upon written notice to Purchaser if Purchaser: (a) fails to pay any reasonably undisputed amount when due under this Agreement; (b) has not otherwise materially performed or complied with any of these Terms, in whole or in part; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Purchaser may terminate this Agreement for MARS Company's material breach if MARS Company fails to cure or begin taking reasonable steps to cure any such material breach within fifteen (15) days after receiving written notice from Purchaser specifying such breach

21) Export Control.

- a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by MARS Company or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.
- b) If applicable, MARS Company shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after acceptance of the purchase order. Any delay in obtaining such license shall suspend performance of this Agreement by MARS Company. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by MARS Company without liability for damages of any kind resulting from such cancellation. At MARS Company's request, Purchaser shall provide to MARS Company a Letter of Assurance and End-User Statement in a form reasonably satisfactory to MARS Company.

22) .

- 23) **Warranty of Capacity to Execute Agreement.** Each of the parties warrants and represents on behalf of itself that it has full power and authority to enter into this Agreement and to bind the parties,

that any and all necessary consents and approvals have been obtained, and that no other consent, approval or action is required.

- 24) **Severability.** If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

25) Miscellaneous.

- a) Equipment consumables including printer ink, paper, etc. are Purchaser responsibility at all times.
- b) This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- c) Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- d) If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- e) Beta Test Program
- (i) Beta Test Discount Eligibility: MARS Company may, at its sole discretion, offer certain customers favorable terms in exchange for participating in the MARS Beta Test Program ("BTP"). To be eligible for the BTP, customers must be invited by MARS and agree to perform testing and fulfill obligations in accordance with the detailed specification as set out in the Beta Test Matrix ("BTM") addendum at marswater.com/BTM, provided by MARS alongside the contractual agreement.
- (ii) Acknowledgment of Concession: By accepting and agreeing to the BTP, the Customer acknowledges and agrees that they are receiving a material concession from MARS in the form of favorable terms for the respective products or services.
- (iii) Renewals and Contract Changes: For any contract renewals or changes, MARS will provide a new or updated BTM along with the updated contract. Continued eligibility for the BTP and favorable terms will be contingent on agreement and compliance with the updated BTM.
- (iv) Failure to Fulfill Obligations: In the event a Customer fails to fulfill their obligations as outlined in the BTM, MARS reserves the right to revoke the BTP and revert the pricing of products or services to the standard rate, retroactively to the start of the contract period.
- (v) BTP Audit Rights: MARS reserves the right to audit a customer's compliance with the BTM at any time. Customers are required to cooperate fully with such audits and to provide any necessary documentation upon request.
- f) During the term of this Agreement and for one (1) year thereafter, neither party shall solicit the other parties' current employees or full-time consultants for employment, directly or indirectly, without such other parties' written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party
- g) This Agreement may only be modified by written agreement of the parties.
- h) Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original

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January 23, 2024

IMPORTANT--READ CAREFULLY

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THE LICENSEE AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAVE NO EFFECT NOR ANY INFLUENCE OR CONNECTION WITH – IF ANY – ANY OTHER MARS SOFTWARE LICENSE AGREEMENT WHICH ARE APPLICABLE TO MARS SOFTWARE PRODUCTS LICENSED BY THE LICENSEE.

1. Definitions. As used herein, the following terms have the following meanings:

- 1.1 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, whereas "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- 1.2 **"Agreement"** means, collectively, this M3 Enterprise Software End User License Agreement (the "EULA") and its Schedules, and; the MARS Company Warranty, General Terms and Conditions (the "Terms"); the Equipment, Software and Services Contract (the "Contract") and its Schedules; the MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"); any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto.
- 1.3 **"Allowed Number"** means one (1) unless otherwise indicated on the Contract.
- 1.4 **"M3 Total Annual Meter Testing Usage"** means the aggregate total number of individual meter tests and individual meter subtests that the Software has reported initiating (but not necessarily completing an entire test cycle) during any twelve (12) month renewal term for all On-Premise Subscription Usage Licenses as specified in the Equipment, Software and Services Contract.
- 1.5 **"Confidential Information"** shall mean any and all commercial, technical, financial, proprietary, and other information of a party hereto and its Affiliates that is identified as "confidential" or that a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to, samples, data, technical information, know-how, formulas, ideas, inventions, discoveries, patents, patent applications, intellectual property (whether or not patentable), product development plans, demonstrations, business and financial information, applications and designs, names of customers and potential customers, information related to research and development, and all manifestations or embodiments relating to any of the foregoing and all improvements made thereto, in whatever form provided, whether oral, written, visual, machine-readable, electronic, or otherwise. "Confidential Information" of MARS also includes the Software and Documentation and the existence of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the disclosing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) subject to disclosure pursuant to an open records act or similar applicable law.
- 1.6 **"Customer Support"** means Software assistance You receive by phone, email, chat, access to online information, or by similar means because You purchased a Service Plan or an On-Premise License.
- 1.7 **"Documentation"** means the user manuals, technical manuals, and any other materials provided by MARS, in printed, electronic, or other forms, that describe the installation, operation, use, or technical specifications of the Software.
- 1.8 **"Maintenance Software"** means Software that MARS delivers because You have purchased a Service Plan or an On-Premise Subscription License.
- 1.9 **"Major Software Release"** means Software that provides major new feature enhancements and is denoted by incrementing the first numeric digit of the respective software release name. For example, software release 3.xx would be a major release from software release 2.xx.
- 1.10 **"Minor Software Release"** means Software that provides minor new feature enhancements and is denoted by incrementing the last two numeric digits within the respective Software release name. For example, (i) Software release 3.20 would be a minor release from Software release 3.10. For clarity, this Software does NOT include Minor or Major Software Releases to the next incremental major or minor release. For example, If software release 3.0 were initially installed, you would receive all 3.xx minor software releases but would NOT receive 4.xx and later software releases.
- 1.11 **"MARS"** means OW Investors LLC, dba MARS Company.
- 1.12 **"MARS On-Premise Equipment"** means a computer, software, and related equipment, including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) and routers that are owned by MARS and provided to the Licensee (defined hereafter) to use during the Software subscription or usage term.
- 1.13 **"M3 Legacy Software"** means all M3 Software licensed to the Licensee prior to the release of M3 Enterprise Software. This M3 Legacy Software was deactivated on 12/31/2016 and is no longer supported by MARS.
- 1.14 **"On-Premise License"** means an On-Premise Perpetual License or On-Premise Subscription License according to this Agreement.
- 1.15 **"On-Premise Perpetual License"** means a license to use the Software indefinitely in accordance with this Agreement.
- 1.16 **"On-Premise Subscription Term License"** means a license to use the Software and a Service Plan according to this Agreement for the subscription term specified in the Equipment, Software and Services Contract.

- 1.17 **"On-Premise Subscription Usage License"** means a license to use the Software and a Service Plan according to this Agreement for the M3 Annual Meter Testing Usage and term specified in the Equipment, Software and Services Contract.
 - 1.18 **"On-Premise Subscription License"** means either an On-Premise Subscription Usage License or an On-Premise Subscription Term License according to this Agreement.
 - 1.19 **"Perpetual License Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Upgrades for a specified period.
 - 1.20 **"Perpetual License Major Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Major Updates for a specified period.
 - 1.21 **"Reseller"** means the independent third-party reseller from whom You may have acquired the Software.
 - 1.22 **"Equipment, Software and Services Contract"** means a signed mutually agreed ordering document for the purchase of (i) the Equipment, (ii) the Software license granted hereunder, and (iii) the Services.
 - 1.23 **"Services"** means the information technology-related consulting services provided by MARS.
 - 1.24 **"Service Plan"** means a plan You purchase separately or acquire as part of the purchase of an On-Premise License providing You with Customer Support and/or Maintenance Software for a specified period.
 - 1.25 **"Software"** means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or new features.
 - 1.26 **"Temporary Software License"** means a temporary Software License that authorizes interim use of currently licensed Software, including functionality necessary for the continued operations of the existing Software and to support existing Software services and equipment.
 - 1.27 **"Usage Information"** means meter testing usage information including, but not be limited to, meter testing frequency, meter size, meter test results, meter start reading, meter end reading, meter manufacturer, etc. for each respective meter test performed.
 - 1.28 **"You" or "Your" or "Licensee"** means the entity identified on the Equipment, Software and Services Contract.
- 2. Grant of License**
- 2.1 Subject to Your compliance with the terms and conditions of this Agreement, including payment of all applicable license and maintenance fees, MARS hereby grants to You a limited, non-sub-licensable, non-exclusive, non-transferable right, during the term set forth in the Contract ("Term"), to use the Software and Documentation solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants You the right to:
 - (a) Install one (1) copy of the Software on the Allowed Number of computers owned or leased and controlled by, You ("Client Devices").
 - (b) Use and run the Software on the Allowed Number of Client Devices in accordance with the Documentation and solely for Your internal business purposes.
 - (c) Make one (1) copy of the Software solely for your archival purposes.
 - (d) Make a reasonable number of backup copies of the Software solely to reinstall the Software if reinstallation becomes necessary.
 - (e) Make one (1) copy of the Software for use in a testing environment solely for testing purposes.
 - (f) Make and install one copy of the Software at a disaster recovery site for Your use only for so long as a disaster or other emergency prevents You from Using the Software at Your original installation site.
 - (g) Download or otherwise make one (1) copy of the Documentation and use such Documentation solely in support of Your licensed use of the Software.
 - (h) The term of the license will not be affected whatsoever based on the licensee's ability to use the license due to the operability of customer-owned equipment.
 - 2.2 MARS reserves the right to periodically conduct audits of Your use of the Software upon a thirty-day advance written notice to verify compliance with the terms of this Agreement. Audits will be conducted during business hours, at a mutually agreeable time and date and will occur no more than once in any 12-month period. Audits will be conducted at no expense to You. MARS and the licensee agree that MARS can regularly confirm licensee software and equipment Usage Information, and this usage-based diagnostic information does not constitute an audit. Meter testing Usage Information is explicitly not considered Confidential Information.
- 3. License Restrictions.** Except as otherwise explicitly permitted in this Agreement, the Licensee shall not:
- 3.1 Use the Software individually or jointly in full or in part on more than the Allowed Number of client devices. Use of software, hardware, or services that bypass any Software license restrictions and/or reduce the number of client devices, individual users and/or seats, as may be applicable, accessing or utilizing the Software (e.g., "multiplexing," "pooling," "virtualization" or third party add on software or hardware) expressly does not reduce the number of licenses required (i.e., the required number of licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end").
 - 3.2 Modify or create any derivative works of the Software, including – without limitation – translation or localization; (code written to published APIs (Application programming interfaces) for the Software shall not be deemed derivative works);
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 - 3.4 Separate Software, which is licensed as a single product, into its component parts;
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 - 3.6 Redistribute, encumber, sell, rent, loan, lease, sublicense, use the Software in a timesharing or service bureau arrangement, or otherwise transfer rights to any Software;
 - 3.7 Remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Software; or
 - 3.8 Publish or make public any results of benchmark tests run on any Software to a third party without MARS' prior written consent.
- 4. Software Acceptance.**
- 4.1 The Licensee shall have accepted the Software ("Accepted") the earlier of (i) Completion of the site acceptance testing constituting Purchaser's / Licensee's full acceptance of the Equipment and Software; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED AFTER TEN (10) DAYS AFTER THE SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TEST SHALL BE DEEMED COMPLETED AND THE SOFTWARE SHALL BE DEEMED ACCEPTED BY THE PURCHASER. "Acceptance Date" means the date the Software was Accepted.
 - 4.2 ON THE DELIVERY DATE (AS DEFINED IN THE TERMS), THE LICENSEE SHALL PAY MARS COMPANY THE FULL PURCHASE PRICE OF THE SOFTWARE, AND THE LICENSEE SHALL NOT WITHHOLD PAYMENT FOR ANY REASON.
- 5. Operational Control.** OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED

PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING, AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL THE PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 4.

6. Term and Termination.

- 6.1 If You acquire an On-Premise Perpetual License, You may terminate this Agreement at any time, at which point Your license hereunder will also terminate.
- 6.2 The On-Premise Subscription License will run for the term length set forth in the Contract. Notwithstanding the foregoing, this Agreement and the license granted to You will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement, including but not limited to the payment of all reasonably undisputed license fees when due. THE SOFTWARE MAY CONTAIN TECHNOLOGY THAT ALLOWS MARS TO TERMINATE YOUR USE OF THE SOFTWARE OR CONVERT YOUR ACCESS TO THE SOFTWARE TO READ-ONLY IN THE EVENT YOU MATERIALLY BREACH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO YOUR FAILURE TO PAY REASONABLY UNDISPUTED LICENSE FEES WHEN DUE. IF MARS CONVERTS YOUR ACCESS TO READ-ONLY, YOU WILL CONTINUE TO HAVE ACCESS TO DATA YOU ENTERED BEFORE THE CONVERSION BUT WILL NOT BE ABLE TO ENTER NEW DATA. IF THE PURCHASER'S ACCOUNT IS THIRTY (30) DAYS OR MORE OVERDUE (EXCEPT WITH RESPECT TO AMOUNTS SUBJECT TO A BONA FIDE DISPUTE), IN ADDITION TO ANY OF ITS OTHER RIGHTS OR REMEDIES, IN THAT CASE, MARS RESERVES THE RIGHT TO TERMINATE YOUR USE OF THE SOFTWARE AND PURCHASER SHALL PAY A NON-REFUNDABLE, SOFTWARE REACTIVATION FEE ("SOFTWARE REACTIVATION FEE") CALCULATED AS FOLLOWS: (I) TWENTY-FIVE HUNDRED DOLLARS (\$2,500) FOR EACH TEST BENCH SYSTEM IF REACTIVATION IS WITHIN 30 DAYS OF LICENSE EXPIRATION, PLUS (II) FIVE THOUSAND DOLLARS (\$5,000) FOR EACH TEST BENCH SYSTEM EVERY SUBSEQUENT 30 DAYS, PAYABLE IN ADVANCE OF SOFTWARE REACTIVATION, WITHOUT LIABILITY, UNTIL SUCH AMOUNTS ARE PAID IN FULL. BY WAY OF EXAMPLE, IF LICENSEE REACTIVATES THE M3 ANNUAL SUBSCRIPTION WITHIN 60 DAYS AFTER LICENSE EXPIRATION, ON TWO 2400 SERIES TEST BENCHES AND A SINGLE LARGE TEST BENCH, THEN SOFTWARE REACTIVATION FEE CALCULATION WOULD BE: [(2,500 X 3 SYSTEMS) + (\$5,000 X 3 SYSTEMS)] = \$22,500.
- 6.3 Upon activation of a Temporary Software License, Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.
- 6.4 Upon termination or expiration of Your On-Premise License, You shall immediately discontinue using the Software and Documentation.
- 6.5 Within thirty-five (35) days after the termination or expiration of Your On-Premise License, or this Agreement, You shall return the Software and MARS On-Premise Equipment to MARS and destroy all other Software copies in Your possession or control subject to applicable law.
- 6.6 Unless otherwise terminated in accordance with this Agreement, upon the expiration of the applicable license Term, this Agreement.

7. Intellectual Property Rights

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- 7.3 Submissions. Should Licensee decide to submit any materials ("Submissions") to MARS via electronic mail, through or to MARS website(s), or otherwise (whether as feedback, data, questions, comments, ideas, concepts, techniques, suggestions, or the like) that are specifically related to the functionality of the Software or Services, Licensee agree that such Submissions are unrestricted and shall be deemed Your Confidential Information. You grant to MARS and its assigns a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, use, copy, transmit, distribute, create derivative works of, commercialize, display and perform such Submissions. Submissions do not include any content that You may create while utilizing the Software.

8. Confidentiality & Confidential Content

- 8.1 Except as otherwise permitted herein, neither party will use the other party's Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used to protect its own confidential information. Neither party may disclose the other party's Confidential Information to anyone other than its employees or contractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. The confidentiality obligations set forth in this Section will survive for five (5) years after the termination of this Agreement; provided, however, that the confidentiality obligations herein shall survive in perpetuity with respect to any Confidential Information that is a trade secret under applicable law.
- 8.2 The Licensee shall permit only authorized users who possess rightfully obtained license keys to use the Software or to view if any, the Documentation. The Licensee shall implement reasonable security measures to protect and maintain the security of the Software. Licensee will cooperate with and assist MARS in identifying and preventing any unauthorized use, copying, or disclosure of the Software, if any, Documentation or any portion thereof.
- 8.3 Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party's possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees, or agents.
- 8.4 Notwithstanding the foregoing, either party may disclose Confidential Information pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the disclosing party of any such requirement and reasonably cooperate with it

any attempt to procure a protective order or similar treatment at the cost and expense of the party that owns the information that is being requested.

9. Limited Warranty

- 9.1 MARS warrants that for (1) year from the date of installation of the Software ("Software Warranty Period"): (a) the Software will perform substantially in accordance with the Documentation, and (b) the media on which the Software is contained will be free from defects in materials and workmanship under normal use. If You report to MARS in writing within the Software Warranty Period any nonconformity between the Documentation and the Software (a "Warranty Claim") along with proof of purchase to MARS Customer Service at (support@MARSwater.com), and if MARS can replicate and verify that such nonconformity exists, MARS shall make commercially reasonable efforts to correct such nonconformity at no additional cost to You. If such efforts are unsuccessful and the nonconformity is material, Your sole remedy for a breach of the warranty described in this Section shall be as follows:
(a) If You acquire an On-Premise Subscription License, You may terminate this Agreement, and MARS will ensure that You receive a refund of the On-Premise Subscription License fees You paid in the three (3) months preceding the Warranty Claim.
(b) With respect to any media by which You may have received Your installation copy of the Software, Your sole remedy shall be the replacement of defective media.

10. Disclaimer

- 10.1 To the maximum extent permitted by applicable law, and except for the limited warranties set forth herein, THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, QUALITY OR WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR A LACK OF VIRUSES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 10.2 WITHOUT LIMITATION OF THE FOREGOING, MARS EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ASSUMES ALL RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE ITS INTENDED RESULTS AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE SOFTWARE. THE LICENSEE SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SOFTWARE.
- 10.3 ANY USE OF THIS SOFTWARE IS DONE AT THE LICENSEE'S OWN RISK, AND THE LICENSEE WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO - WITHOUT LIMITATION - ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD THE SOFTWARE PROVE DEFECTIVE, THE LICENSEE ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION TO NON-MARS INSTALLED EQUIPMENT. IT IS, THEREFORE, UP TO THE LICENSEE TO TAKE ADEQUATE PRECAUTIONS AGAINST POSSIBLE DAMAGES RESULTING FROM THIS SOFTWARE.

11. Exclusions of and Limitations of Liability

- 11.1 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL MARS OR ITS SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) RESULTING FROM ANY DEFECT IN THE SOFTWARE OR MEDIA, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, IN NO EVENT SHALL MARS'S TOTAL AGGREGATE LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY YOU TO MARS FOR THE SOFTWARE DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE CLAIM YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT ALLOCATES RISK BETWEEN YOU AND MARS AS AUTHORIZED BY APPLICABLE LAW AND THAT THE PRICING OF THE SOFTWARE REFLECTS THIS ALLOCATION OF RISK AND THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 11.3 You acknowledge that MARS will: (i) be providing installation of the Software per this Agreement; and (ii) not provide You with custom software implementation services under this Agreement unless You and MARS otherwise agree in writing. You agree that MARS shall have no liability whatsoever for any failure associated with any custom implementation services performed by any party other than MARS.

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12. Maintenance and Support

- 12.1 Service Plan. MARS posts standard Service Plan information for MARS products from links at <https://MARSwater.com/support/ServicePlan> (or a successor website for the Service Plan information) and related web pages describing the Service Plan features for the Software. A non-standard Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract.
- 12.2 Customer Support. If You are entitled to receive Customer Support as part of a Service Plan, MARS warrants that while Your Service Plan is in effect and if You have paid all required Service Plan fees, MARS will use qualified personnel to provide You Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 12.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.
- 12.3 Updates. At its sole discretion, MARS may make software bug fixes, patches, updates and/or other error corrections ("Updates") available to You. Such Updates, if applicable and offered, are available at no additional cost to You unless otherwise specified in writing. All Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement.
- 12.4 Subscription License Upgrades. At its sole discretion, MARS may make Major Software Releases, Minor Software Releases, major or minor feature enhancements and/or other error modifications ("Upgrades") available to You. Such Upgrades, if applicable and offered, are

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- 12.5 Perpetual License Upgrades. At its sole discretion, MARS may make Minor Software Releases or minor feature enhancements and/or other error modifications ("Perpetual License Upgrades") available to You. Such Perpetual License Upgrades, if applicable and offered, are available: (i) free of charge if you have a valid and current Perpetual License Upgrade Plan, or (ii) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies in accordance with Section 2.
- 12.6 Perpetual License Major Upgrades. At its sole discretion, MARS may make Major Software Releases or major feature enhancements and/or other error modifications ("Perpetual License Major Upgrades") available to You. Such Perpetual License Major Upgrades, if applicable and offered, are available: (i) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version, or (ii) free of charge if you have a valid and current Perpetual License Major Upgrade Plan. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies per Section 2.

13. Collection and Use of Information.

- 13.1 Mars Product Enhancement Program. If You have not previously opted out of participating in our Product Enhancement Program ("PEP"), You may automatically be enrolled in PEP when the Software is installed. Through PEP, MARS collects information on the hardware, how You use it, when the Software is installed, and its in-product Help and services. This helps MARS identify trends and MARS patterns to improve the quality of the products and services MARS offers. MARS PEP Information is explicitly not considered Confidential Information.

14. United States Government. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, as such terms are defined in 48 C.F.R. §2.101. Accordingly, if You are the US Government or any contractor, therefore, You shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

15. Export Controls.

- 15.1 During the term of this Agreement, neither the Software nor the Documentation may be downloaded, exported, or re-exported (i) into (or to a national or resident of) Cuba, Iran, North Korea (Democratic People's Republic of Korea), Sudan, Syria, or any other country to which the United States has embargoed goods or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders. By accessing, downloading, or using the Software, You agree to the foregoing, and You are certifying that You are not located in, under the control of, or a national or resident of any such country or on any such list.
- 15.2 EXPORT OF THE SOFTWARE MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICTS THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE SOFTWARE IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE SOFTWARE SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. YOU SHALL COMPLY WITH ANY AND ALL APPLICABLE GOVERNMENT IMPORT, EXPORT, AND OTHER LAWS.

16. Relationship. MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as expressly agreed by the parties, MARS has the sole obligation to supervise, manage, contract, direct, procure and perform our obligations under this Agreement. MARS reserves the right to determine which of our representatives shall be assigned to perform its obligations and to replace or reassign such representatives as we deem appropriate.

17. Severability. If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

18. .

19. Miscellaneous.

- 19.1 You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to MARS that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that MARS shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under this Agreement and any other rights and remedies it may have. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.
- 19.2 If either party is or becomes the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization, or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law, you consent to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including, any stay imposed by the United States Federal Bankruptcy Code.
- 19.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- 19.4 Any provision in this Agreement which, when reasonably read as intended to survive the termination of this Agreement, shall survive, including without limitation, the disclaimer of

warranties and limitations of liability.

- 19.5 Neither party shall be deemed to have waived any of its rights under this Agreement without explicitly agreeing to do so in writing duly executed by such party's authorized representative. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- 19.6 If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- 19.7 Advertising. MARS has the right to include Your name in a general listing of users of our products and services. However, neither party shall use any logo or trademark owned by the other party unless pre-approved in writing by one of its officers.
- 19.8 You agree to maintain internet connectivity to MARS On-Premise Equipment as specified by MARS.
- 19.9 MARS will install the On-Premise Subscription Licensed Software on MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 19.10 MARS will install the On-Premise Perpetual Licensed Software MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 19.11 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of acts of God, strikes, pandemics, lockouts, labor troubles, inability to procure materials, restrictive government laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), that party shall be granted an extension to perform its obligations hereunder equal to the time the underlying cause prevented performance. Should any obligations of the other party be dependent upon this party's performance, such obligations shall be similarly extended. Notwithstanding the foregoing, should the underlying cause prevent performance for ninety (90) days or more, the party awaiting performance shall have the right to terminate this Agreement immediately.
- 19.12 Third-Party Beneficiaries. Except as provided in Section 7.2, this Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing herein is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 19.13 Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder without the other party's prior written consent which shall not be unreasonably withheld, except that either party may assign this Agreement in its entirety in the event of a merger, corporate reorganization or a sale of all or substantially all of the assets or business of the assigning party without obtaining the other party's consent.
- 19.14 Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy, shall have the same force and effect as the execution of an original.



IMPORTANT--READ CAREFULLY

THANK YOU FOR SELECTING MARS CERTIFIED FOR YOUR SERVICE AND MAINTENANCE REQUIREMENTS. MARS COMPANY ("MARS") PROVIDES SERVICE AND MAINTENANCE TO CUSTOMER SUBJECT TO THE TERMS CONTAINED IN THIS GENERAL CONDITIONS OF SERVICE AND MAINTENANCE AGREEMENT (each individually a "Party" and collectively the "Parties"). CUSTOMER AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAS NO EFFECT NOR ANY INFLUENCE OR ANY CONNECTION WITH - IF ANY - ANY OTHER MARS COMPANY AGREEMENT(S) WHICH ARE APPLICABLE ON MARS COMPANY PROGRAM PRODUCTS PURCHASED BY CUSTOMER.

1 **DEFINITIONS** - As used herein, the following terms have the following meanings:

- 1.1 **"Additional Charge"** means a charge payable by the Customer for additional services outside the scope of the Services in accordance with MARS' prevailing rates for such services including without limitation, the supply of spare parts and goods.
- 1.2 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, where "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- 1.3 **"Agreement"** means, collectively, this MARS Calibration Certification - General Conditions of Service and Maintenance Agreement ("MCC"), and its Schedules; the M3 Enterprise Software End User License Agreement (the "EULA"); the MARS Company Warranty, General Terms and Conditions (the "Terms"); the Equipment, Software and Services Contract (the "Contract") and its Schedules; any proposal from MARS Company received by Purchaser (the "Proposal"), the purchase order and any change orders attached and incorporated hereto
- 1.4 **"Conditions"** means these General Conditions of Service & Maintenance which are incorporated into and form part of the Agreement.
- 1.5 **"Consumable Parts"** are components or materials of the Equipment that are expected to wear out, degrade, or be depleted over time as a result of normal usage.
- 1.6 **"Customer"** means the person or persons, firm or company named on the cover page of the Agreement.
- 1.7 **"Customer Support"** means assistance You receive by phone, email, chat, access to on-line information or by similar means because You purchased a Service Plan.
- 1.8 **"Documentation"** means the specifications that are set forth in the Equipment help files and any release-related notes, guides or manuals MARS publishes specific to the current version of the Equipment.
- 1.9 **"Equipment"** means the equipment and software listed in Schedule 1.
- 1.10 **"Fee"** means the fee payable for the Services as specified in Section II of the Agreement.
- 1.11 **"MARS"** means OW Investors LLC, dba MARS Company that offers the Products.
- 1.12 **"Services"** means the maintenance and other services provided in respect of the Equipment detailed in Schedule 4 and as defined in these Conditions.
- 1.13 **"Service Time"** means the period set out in Clause 2 herein.
- 1.14 **"Site"** means the premises where the Services are provided.
- 1.15 **"Term"**
- 1.16 **"You" or "Your" or "Customer"** means or refers to the company or person that is named on the cover page of the Agreement.

1 **Maintenance, Calibration and Support**

- 1.1 MCC Service Plan. MARS posts standard MCC Service Plan information for MARS products from links at <https://MARSwater.com/support/MCCServicePlan> (or a successor website for the Service Plan information) and related web pages describing the MCC Service Plan features for the Equipment. A non-standard MCC Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract. In the event a MCC Service Plan is not specifically documented an Agreement, the default will be the priority tier plan.
- 1.2 Customer Support. If You are entitled to receive Customer Support as part of an MCC Service Plan, MARS warrants that while Your MCC Service Plan is in effect and if You have paid all required MCC Service Plan fees, MARS will use qualified personnel to provide You with Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 1.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.

2 **Service Time**

- 2.1 The Services shall be performed within the Service Time, which shall be between 8.00 a.m. and 5.00 p.m., Mondays to Fridays, Public Holidays excluded unless otherwise agreed in Schedule 2. Response times for corrective maintenance services shall be as set out in Schedule 2 or as otherwise agreed between the Parties

3 **Modification, Changes and Enhancements**

- 3.1 During the Term, MARS shall at their discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by MARS to be necessary and/or to prevent or minimize damage to the Equipment.
- 3.2 MARS will before undertaking any such modification, change or enhancement etc. as mentioned in 3.1 above, explain to the Customer, if MARS deems necessary, the need and cost (where applicable) of such modification, change or enhancement. The Customer shall pay any Additional Charge for such modification, change or enhancement according to Clause 7.2.
- 3.3 The Term of the Agreement shall automatically renew for subsequent periods of the same length as the initial term unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current term.

4 **Exclusions & Additional Services**

- 4.1 The Services do not include:
 - 4.1.1 Repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Customer or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Customer.
 - 4.1.2 Repair of damage arising from changes, alterations, additions or modifications of the Equipment by a person other than MARS.
 - 4.1.3 Repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor.
 - 4.1.4 Repair of damage caused by the operation of the Equipment other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of MARS or its personnel.
 - 4.1.5 Repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than MARS.
 - 4.1.6 Repair of damage caused by any circumstances beyond MARS' reasonable control.
 - 4.1.7 Furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumable parts and other items associated with the Equipment unless otherwise provided

in Schedule 2.

- 4.1.8 Transportation charges, whether for air, sea or land transport for Services carried on within or outside the United States.
- 4.1.9 Work performed outside MARS' Service Time.
- 4.1.10 The cost of any Equipment or part whether a spare part, consumable or otherwise supplied, unless otherwise provided in Schedule 2.
- 4.1.11 The upgrading of or retrofitting of improvements or major modification to the Equipment.
- 4.2 MARS may at the Customer's option provide any of the services referred to in clause 4.1 or any other services requested by the Customer, at the relevant Additional Charge. MARS shall inform the Customer of the associated Additional Charge, and the Customer shall accept the Additional Charge in writing before the services are performed. The Additional Charge shall be payable by the Customer according to clause 7.2.

5 **Customer's Responsibilities**

- 5.1 The Customer shall undertake to release all Equipment which is being maintained by MARS from all operational demands when so requested to do so by MARS in order for MARS to perform the Services. Alternatively, the Customer shall ensure that MARS' personnel have full and safe access to the Equipment at all reasonable times for the purpose of providing the Services. The Customer shall also ensure that such access conforms to any specifications issued by MARS from time to time.
- 5.2 The Customer will ensure that MARS' personnel or representatives are provided a safe and secure work environment at all times while they are on the Site to enable work to be carried out.
- 5.3 The Customer shall provide on request a suitably qualified or informed representative, agent or employee to accompany MARS' personnel when providing the Services or to render such assistance or to give such advice as will enable MARS' personnel to exercise unrestricted access to the Site and the Equipment and otherwise to perform the Services effectively.
- 5.4 The Customer shall supply auxiliary facilities and services when requested by MARS as necessary for the provision of the Services. Where the Customer does not provide the auxiliary facilities and services, MARS shall be entitled to procure such auxiliary facilities and services and seek full reimbursement from the Customer provided MARS has given the Customer written notice of the non-compliance and the Customer has failed to remedy the non-compliance within the time specified in the notice. The auxiliary facilities and services shall include without limitation:
 - 5.4.1 Adequate telephone/communications facilities;
 - 5.4.2 Lighting for all work areas;
 - 5.4.3 Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the reasonable satisfaction of MARS;
 - 5.4.4 240-volt, 60-phase (single cycle) at three pin-general purpose outlets at suitable locations;
 - 5.4.5 Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools;
 - 5.4.6 Suitable rooms on or adjacent to the Site with adequate air-conditioning, lighting, washing, toilet and drinking water facilities for the use of MARS' personnel or representatives; and/or
 - 5.4.7 Lifting machinery or devices, timber, planking, strutting, cement, fuels, water, gas etc.
- 5.5 The Customer shall upon MARS' request furnish to MARS sufficient information which, in MARS' reasonable opinion, will enable the Services to be carried out forthwith and without interruption. The Customer shall be responsible for and bear the cost of any modification to the scope of the Services arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by the Customer.
- 5.6 All such assistance to be provided by the Customer under this Clause 5 or in general shall be at the Customer's sole cost and expense.
- 5.7 Nothing in this Agreement shall relieve the Customer from its obligations to perform normal day to day maintenance on the Equipment as per the Operator's Manuals supplied by the manufacturer and/or MARS including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 5.8 In the event that MARS is unable to provide Services hereunder due to Purchaser's unwillingness or inability to schedule a site visit, the Fee and any related Additional Charges shall nonetheless be due and payable as invoiced by MARS.
- 5.9 During the continuance of this Agreement, the Customer shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the Equipment other than day to day maintenance and the Customer shall not permit any other person except MARS' personnel or representatives to carry out such work unless prior written approval has first been obtained from MARS.

6 **Consumable, Replacement and Spare Parts**

- 6.1 MARS agrees to provide a Consumable Parts allowance for each Test Bench System during each MCC 12-month term in the maximum aggregate amount of up to five hundred dollars (\$500.00) for each Test Bench System provided that (i) no single Consumable Part exceeds \$100.00, and (ii) limited to Consumable Parts associated with Equipment under this MCC. Examples of Consumable Parts include the following: gaskets, ball valves, and solenoid valves. Installation of Consumable Parts is the Customer's responsibility; however, MARS will install Consumable Parts during an MCC visit on a best-effort and time-available basis.
- 6.2 In the case of Services for which an Additional Charge is payable by the customer for replacement of spare parts, title in such replacement or spare parts shall pass to the Customer only upon full payment of the Additional Charge. Unless otherwise agreed in writing between the Parties, the risk of damage to or loss of replacement spare parts shall pass to the Customer as soon as they are delivered to the Customer's designated premises.
- 6.3 Where parts of the Equipment have been replaced by or upon the instruction, recommendation or direction of MARS or otherwise, title in the replaced parts will pass to MARS upon removal from the Equipment.
- 6.4 MARS may from time to time require the Customer to purchase and store at the Site such spare parts as MARS considers necessary for the provision of effective Services.
- 6.5 MARS will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Customer to comply with clause 6.3.
- 6.6 Save as aforesaid, the property of and risk in the Equipment is not affected by the provisions contained in this Agreement.

7 **Payment, Charges and Fees, etc.**

- 7.1 The Customer shall pay all Fees at the rate and in the manner specified in Section II of the Agreement.
- 7.2 The Customer shall pay the Fee, all Additional Charges and any cost wherever and howsoever incurred within thirty (30) days from the date of MARS' invoice.
- 7.3 If the Customer fails to make full payment of the invoice, MARS shall be entitled to any other right or remedy available to MARS under the applicable law.



RESULTING FROM THIS SOFTWARE.

13 Exclusions of and Limitation of Liability

- 13.1 You acknowledge Your understanding that Equipment is inherently complex and may not be free from errors and that You have been advised to verify the work produced by the software or Equipment. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, NEITHER MARS NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER RESULTING FROM ANY DEFECT IN THE EQUIPMENT, SOFTWARE OR MEDIA, EVEN IF MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2 IN NO EVENT SHALL MARS'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT OR SOFTWARE, YOUR SERVICE PLAN, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED (i) THE FEE ACTUALLY PAID BY YOU TO PURCHASE A SERVICE PLAN (ii) THE FEES ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM, OR (iii) THE FEES ACTUALLY PAID BY YOU TO PURCHASE OR RENEW THE ANNUAL SERVICE PLAN IN EFFECT WHEN THE CLAIM AROSE. You acknowledge and agree that this Agreement allocates risk between You and MARS as authorized by applicable law and that the pricing of MARS products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

14 Termination and/or Suspension of Services

- 14.1 In addition to MARS' right to terminate the Agreement under Clause 7.3, MARS shall be entitled to (i) terminate the Agreement or suspend any further Services under the Agreement without any liability to the Customer, and (ii) demand that the Fee, Additional Charges or balance thereof shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Customer and apply the said security or monies against the assessed loss and damages, if any, suffered by MARS, in the event that:
- 14.1.1 the Customer is in breach of the Agreement; or
- 14.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or has an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or
- 14.1.3 an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or
- 14.1.4 the Customer ceases, or threatens to cease, to carry on business; or
- 14.1.5 there is a change in control of the Customer which in the reasonable opinion of MARS adversely affects the position, rights or interests of the Customer. (For the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of Agreement, ownership of shares, or otherwise howsoever); or
- 14.1.6 in the reasonable opinion of MARS, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Agreement; or
- 14.1.7 MARS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 14.2 Termination of the Agreement by MARS shall not discharge the Customer from any existing obligation accrued due on or prior to the date of termination.
- 14.3 The rights and remedies granted to MARS pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

15 United States Government

- 15.1 The Equipment and accompanying Documentation may be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Equipment and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. The manufacturer is MARS. The MARS address is 3925 SW 13th St, Ocala Florida 34474.

16 Export Controls

- 16.1 During the term of this Agreement, neither the Software nor the Documentation and underlying information or technology may be downloaded, exported, or re-exported (i) into (or to a national or resident of) Cuba, Iran, North Korea, (Democratic People's Republic of Korea), Sudan, Syria, or any other country to which the United States has embargoed goods or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nations or the United States Commerce Department's Table of Denial Orders. By accessing, downloading or using the Software You are agreeing to the foregoing and You are certifying that You are not located in, under the control of, or a national or resident of any such country or on any such list.
- 16.2 YOU SHOULD ALSO BE AWARE OF THE FOLLOWING. EXPORT OF THE EQUIPMENT MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICT THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE EQUIPMENT IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE EQUIPMENT SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. SOME COUNTRIES HAVE RESTRICTIONS ON THE USE OF ENCRYPTION WITHIN THEIR BORDERS, OR THE IMPORT OR EXPORT OF ENCRYPTION EVEN IF FOR ONLY TEMPORARY PERSONAL OR BUSINESS USE. YOU ACKNOWLEDGE IT IS YOUR RESPONSIBILITY TO COMPLY WITH ANY AND ALL GOVERNMENT IMPORT, EXPORT AND OTHER APPLICABLE LAWS.

- 7.3.1 Terminate the Agreement or suspend any further Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
- 7.3.2 At its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and MARS, including but not limited to deposits or security payments, towards the payment of the relevant invoice; and/or
- 7.3.3 Charge the Customer interest on the amount unpaid on a daily basis at the maximum rate allowable by law from the due date until payment in full is received by MARS.
- 7.4 The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to MARS unless agreed in writing by MARS.
- 7.5 MARS shall be entitled to an adjustment of the Fees and Additional Charges in the event of changes in law or engineering standards applicable to or affecting the Equipment and/or Services after the execution of the Agreement.
- 7.6 MARS may increase, at any time, Fees and Additional Charges due for service and maintenance and any new purchases may be more than a previous purchase.
- 7.6.1 MARS may not increase the associated Fees more than once in any 12-month period following Customer's initial purchase by more than seven and one-half percent (7.5%).
- 7.6.2 MARS will notify Licensee of a price increase at least 60 days before the increase takes effect.
- 7.7 You are responsible for providing MARS with the most current contact and billing information. Customer may provide updates to Customer's contact information to MARS at Sales@MARSwater.com and updates to Customer's billing information to MARS.

8 Maintenance Equipment

- 8.1 MARS shall provide all the necessary tools, equipment, testing and diagnostic apparatus which MARS requires in order to carry out the Service unless otherwise agreed.

9 Customer Records & Service Reports

- 9.1 The Customer shall keep such records relating to the use and performance of the Equipment as may be directed by MARS from time to time.
- 9.2 The Customer shall permit MARS to have access to such records at all reasonable times, including all periods during which the Services are being performed or preparations are being made for the Services to be performed.

10 Confidentiality & Confidential Content

- 10.1 Customer agrees that, unless otherwise specifically provided herein or agreed by MARS Company in writing, the Equipment and, if any, the Documentation, provided to Customer by MARS Company constitute confidential, proprietary information of MARS Company. Customer shall permit only authorized users to use the Equipment if any, the Documentation. Customer agrees not to transfer, copy, disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of MARS Company. Customer agrees to implement reasonable security measures to protect such confidential information, but without limitation to the preceding, shall use best efforts to maintain the security of the Equipment provided to Customer by MARS Company. Customer will use its best efforts to cooperate with and assist MARS Company in identifying and preventing any unauthorized use, copying, or disclosure of the Equipment, if any, Documentation, or any portion thereof.
- 10.2 All information available concerning the Equipment is confidential information of MARS Company. For a period of five years from the time Customer accessed this confidential information, Customer may not disclose this confidential information to any third party. This restriction will not apply to any information that is or becomes publicly available without a breach of this restriction; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source that can disclose it is lawfully and without an obligation to keep it confidential; or is independently developed. Customer may disclose this confidential information if required to comply with a court order or other government demand that has the force of law. Before doing so, you must seek the highest level of protection available and, when possible, give MARS Company enough prior notice to provide a reasonable chance to seek a protective order.

11 Limited Warranty

- 11.1 MARS warrants that:
- 11.1.1 it will provide the Services in a proper, skillful and professional manner at all times;
- 11.1.2 it will exercise the reasonable standards of skill, care, and diligence in the performance of the Services;
- 11.1.3 it will retain a sufficient number of personnel with the expertise required to provide the Services; and
- 11.1.4 its personnel possesses the required skills and experience required to provide the Services.
- 11.2 The above warranties shall not replace or supersede the warranty applicable to the Equipment as specified in any sale and purchase agreement.

12 Disclaimer

- 12.1 To the maximum extent permitted by applicable law, and except for the Limited Warranty set forth herein, THE EQUIPMENT (AND ACCOMPANYING DOCUMENTATION) IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, UMARS, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, CONDITIONS OF MERCHANTABILITY, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, QUALITY OR WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR A LACK OF VIRUSES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 12.2 WITHOUT LIMITATION OF THE FOREGOING, MARS COMPANY EXPRESSLY DOES NOT WARRANT THAT THE EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE EQUIPMENT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR SELECTING THE EQUIPMENT TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE EQUIPMENT. CUSTOMER SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE EQUIPMENT.
- 12.3 ANY DOWNLOAD AND USE OF LICENSED SOFTWARE PROGRAM PRODUCT IS DONE AT THE CUSTOMER'S OWN RISK AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO - WITHOUT LIMITATION - ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD IT PROVE DEFECTIVE, CUSTOMER ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION. IT IS THEREFORE UP TO THE CUSTOMER TO TAKE ADEQUATE PRECAUTION AGAINST POSSIBLE DAMAGES

PACKET

6.66

January 23, 2024



17 Relationship.

17.1 MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as specifically agreed by the parties, MARS has the sole obligation to supervise, manage, contract, direct, procure and perform our obligations under this Agreement. MARS reserves the right to determine which of our representatives shall be assigned to perform its obligations and to replace or reassign such representatives as we deem appropriate.

18 Severability

18.1 If any provision of this license is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

18.2 .

19 Misc. Provisions

- 19.1 No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by MARS or a duly authorized representative of MARS. You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to MARS that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that MARS shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under this Agreement in addition to any other rights and remedies it may have. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If You have received a translation into a language other than English, it has been provided for Your convenience only.
- 19.2 If you are or become the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law, you consent to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including, any stay imposed by the United States Federal Bankruptcy Code, as amended.
- 19.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- 19.4 Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- 19.5 If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- 19.6 Advertising. MARS has the right to include Your name in a general listing of users of our products and services. However, neither party shall use any logo or trademark owned by the other party unless pre-approved in writing by one of its officers.
- 19.7 You agree to maintain internet connectivity from your equipment to MARS as specified by MARS. MARS will install the Software on your Equipment, configure the Software for your use, and test the Software to confirm that it operates in conformity with the MARS specifications. Installation Date is the date the MARS software is installed.
- 19.8) , or, in the alternative, in the case of notices to Customer, the same address as invoices.
- 19.9 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of acts of God, strikes, pandemic, lockouts, labor troubles, inability to procure materials, restrictive government laws, or regulations or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), that Party shall be granted an extension to perform its obligations hereunder equal to the time the underlying cause prevented performance. Should any obligations of the other Party be dependent upon this Party's performance, such obligations shall be similarly extended. Notwithstanding the foregoing, should the underlying cause prevent performance for ninety (90) days or more, the Party awaiting performance shall have the right to immediately terminate this Agreement.
- 19.10 Third Party Beneficiaries. The Parties acknowledge and agree that there are no third-party beneficiaries to this Agreement.
- 19.11 Non-solicitation of Employees. During the term of this Agreement and for one (1) year thereafter, neither Party shall solicit the other Parties' current employees or full-time consultants for employment, directly or indirectly, without such other Parties written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party.
- 19.12 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other Party's prior written consent which shall not be unreasonably withheld, except that either Party may assign this Agreement in its entirety in the event of a merger, corporate reorganization or a sale of all or substantially all of the assets of the assigning Party without obtaining the other Party's consent.
- 19.13 Equitable Relief. The Parties acknowledge that any threatened or actual breach of all confidentiality and intellectual property related obligations under this Agreement shall constitute immediate, irreparable harm for which an award of monetary damages is an inadequate remedy and for which equitable remedies may be awarded by a court of competent jurisdiction without requiring the post of any bond. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.
- 19.14 Unless otherwise noted in the applicable Schedule, you are solely responsible for any taxes or similar charges arising out of this Agreement, including all applicable customs, duties, sales taxes, use taxes, value-added taxes, excise charges or brokerage fees. You shall also be solely responsible for assessing and remitting payment for any such items to the appropriate authorities.
- 19.15 This Agreement may only be modified by written agreement of the parties. Termination of this Agreement shall not affect the rights or obligations of the parties that arose prior to, or that are expressly intended by their terms to continue beyond, any such termination, and such rights or obligations, and the dispute resolution set forth in these terms and conditions, including Sections 4, 10, 12, 13, 14 as well as subsections 23.4, 23.6, 23.11, shall survive any such termination.
- 19.16 Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original.



City Council Meeting

Item Number: 7
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF \$189,800.00 FOR AGRONOMIC COMPLIANCE CONSULTING SERVICES TO AGRI-WASTE TECHNOLOGY, INC. (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract for the agronomic compliance consulting for the Utilities Department to Agri-Waste Technology, Inc. of Apex, North Carolina for a cost of \$189,800.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Water and Sewer operating budget.

Strategic Priority:

Strengthen and Sustain our Infrastructure

Discussion:

The City Manager approved plans and specifications and authorized advertisement for proposals for the agronomic compliance consulting for the Utilities Department. The proposal request was sent to four (4) companies. We received a sole proposal from Agri-Waste Technology, Inc. Staff recommends awarding a contract to Agri-Waste Technology, Inc. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution awarding a contract for the agronomic compliance

consulting for the Utilities Department to Agri-Waste Technology, Inc. of Apex, North Carolina for a cost of \$189,800.00.



City Manager's Office



INTEROFFICE MEMORANDUM

To: Erika Martinez, Purchasing Manager

From: Carl Craigo, PE

Date: 1/23/2024

SUBJECT: Recommend Award for Agronomic Services for Utilities Department

Consider a resolution approving the award of agronomic consulting services in the not-to-exceed amount of \$189,800 per year for a 5-year contract to the sole proposer Agri-waste Technology Inc. Services will be provided for a period of one year with automatic renewals up to four additional terms of one year each.

The City of Midland land applies our treated wastewater at the Plant Farm and at Spraberry. Crops must be planted to uptake the nitrogen in the treated wastewater in conformance with our TCEQ permit. The consultant will assist the City of Midland's Water Reclamation Facility with the implementation of the Crop Management Plan, sludge application and tracking, Nitrate Study Plan, TCEQ permitting, compliance-based tasks, and soil data modeling to help minimize nitrates in the soil and groundwater.

Funding will be paid for from the Water and Sewer Operating Budget. The staff recommendation is to award the contract in the amount of \$189,800.

RESOLUTION NO. _____

**RESOLUTION AWARDED A CONTRACT IN THE
AMOUNT OF \$189,800.00 FOR AGRONOMIC
COMPLIANCE CONSULTING SERVICES TO AGRI-
WASTE TECHNOLOGY, INC.**

WHEREAS, the City Manager approved plans and specification and authorized advertisement for proposals for agronomic compliance consulting services; and

WHEREAS, the sole proposal was submitted by Agri-Waste Technology, Inc., for a cost of \$189,800.00; and

WHEREAS, the City Council finds the amount proposed by Agri-Waste Technology, Inc., for agronomic compliance consulting services to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Agri-Waste Technology, Inc., for agronomic compliance consulting services;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract in the amount of \$189,800.00 with Agri-Waste Technology, Inc., for agronomic compliance consulting services. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That funding shall be available in the Water and Sewer operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Agri-Waste Technology, Inc., pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by

the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

AGREEMENT
24001345

THIS AGREEMENT is made and effective the 24th day of January 2024, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Agri-Waste Technology, Inc. (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform agronomic compliance consulting services (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

COMPANY shall provide the Services in a manner consistent with the same level of skill and care as other consultants that perform similar services for similar projects in approximately the same region and at approximately the same point in time. COMPANY represents that any employee who performs the Services shall be fully qualified and competent to perform the Services.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$ 189,800.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

Within thirty (30) days of the date COMPANY’s invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY’s objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the Parties shall immediately make every

effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, CITY shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from January 24, 2024, until January 23, 2025, unless the Services are completed sooner or the Agreement is terminated as provided below. CONSULTANT shall perform all work described in the attached Exhibit A and in any manner described thereon, for a period of one (1) year from the date of execution of this agreement unless sooner terminated as provided in the agreement. Thereafter, this agreement shall renew automatically for up to four (4) additional terms of one (1) year each, upon the written agreement by CONSULTANT and the City Manager at least 30 days prior to the anniversary of the execution of this agreement. The renewals may be approved by the City Manager on behalf of City Council.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement, or any interest, right or privilege herein, without obtaining CITY's prior written consent. The issue of whether to grant such consent shall be in the sole and absolute discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*") given to, prepared or assembled by COMPANY under this Agreement, and any other related document or item shall become the sole and exclusive property of CITY. The Instruments of Service shall be promptly

delivered, without restriction, to CITY and such other persons or entities as CITY may designate; provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services 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 all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The Parties acknowledge and agree that 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 the Services 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 nor shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” that would give rise to vicarious liability. COMPANY is an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor. CITY does not have the power to direct the order in which the services are performed. CITY shall not have the right to control the means, methods or details of COMPANY’S work. COMPANY shall assume exclusive responsibility for performing the Services, and is entirely free to perform the Services in its own way.

ARTICLE IX. INSURANCE

During the term of this Agreement, COMPANY shall 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
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Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
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Workers' Compensation:	Statutory limits
Employers' Liability:	\$500,000.00 per accident or occurrence

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

The Business Automobile Liability policy shall cover any vehicle 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 Services. This policy shall name CITY as an additional insured and waive subrogation in favor of CITY.

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

All insurance policies required by this Agreement shall (i) provide for a waiver of subrogation in favor of CITY, and (ii) name CITY as an additional insured on a claims-occurred basis (except for the Workers' Compensation policy). Prior to any reduction or termination of the insurance policies referenced herein, COMPANY shall ensure that its insurance provider submits written notice to CITY no later than thirty (30) days prior to the reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services 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 that name the City of Midland as an additional insured on a claims-occurred basis (except Workers' Compensation).

Prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that requirements of this Article have been met, which shall be subject to the approval of CITY. CITY shall not be required to provide any insurance pursuant to this Agreement.

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article 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 and this Agreement is the sole and exclusive responsibility of COMPANY.

Notwithstanding any contrary provision contained herein, the City Manager, in his/her sole and absolute discretion, modify the insurance requirements contained in this Article.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY 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 FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS A 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 OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT AND HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY 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.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any

contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of the Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

If to CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to COMPANY: Agri-Waste Technology, Inc.
 501 N Salem St. Ste 203
 Apex, NC 27502

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

D. Severability. If one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision were never contained herein.

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

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

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

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said statutes and regulations are made terms and conditions of this Agreement, to which the Parties have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, 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. COMPANY's failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such 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 contrary provision contained herein, 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 of whether 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.

J. Prompt Pay Act. The Parties agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive the CITY's governmental immunity.

K. Compliance. COMPANY shall comply with Texas Government Code § 2252.908, *et seq.*, as amended, and Texas Local Government Code § 176.006, *et seq.*, as amended.

L. Anti-Boycott Statutes. To the extent that Tex. Gov't Code §§ 2271.002 and 2274.002 apply to this Agreement, COMPANY hereby verifies that:

- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;
- COMPANY does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- 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 any firearm entity or firearm trade association.

If Tex. Gov't Code § 2270.002 does not apply to this Agreement, such verification is not required, and COMPANY shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement is a contract described by Tex. Gov't Code § 552.371, COMPANY shall: (i) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to CITY for the duration of the contract; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Tex. Gov't Code § 552.371, COMPANY agrees as follows in accordance with Tex. Gov't Code § 552.372(b): The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

O. Conflict of Terms. If a conflict of terms or language exists between: (i) any of the

provisions of this Agreement; and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the Parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.

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

Q. Interpretation. By executing this Agreement, the Parties acknowledge and agree that this Agreement shall not be interpreted or construed against any Party solely because such Party or its legal counsel drafted this Agreement. The Parties have read, understood, and approve of the language and terms set forth herein.

ARTICLE XV. 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 AGREEMENT, 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.

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 AGREEMENT, 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.

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 AGREEMENT. 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 AGREEMENT, 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 XV SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/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 Agri-Waste Technology, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



PROPOSAL #24001345

To: Purchasing Manager
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, 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 materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Materials Portion Incorporated Into Project _____ DOLLARS

Labor Portion Incorporated Into Project _____ DOLLARS

Other Costs Not Incorporated Into Project _____ DOLLARS

Total Proposal \$189,800 _____ DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 365 calendar days.

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, 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,

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January 23, 2024

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

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).

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, Bidder 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 fifty (150) days after the same has been sustained. The discovery rule does not apply to the ~~PAYMENT~~ of this notice. The notice shall include when, where and how the alleged breach occurred, the

apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder 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 Bidder that Bidder's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

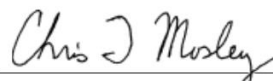
THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Agri-Waste Technologg, Inc.

Bidder

501 N. Salem St., Suite 203, Apex, NC 27502

Address, City and State



Authorized Signature

Chris Mosley

Please Print above Name

919-367-6311

Telephone

919-367-6311

Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

☒ **PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☐ **5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF \$50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

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Qualifications of Agri-Waste Technology, Inc.

**501 North Salem Street
Suite 203
Apex, NC 27502
(919-367-6311)**

Agronomic Compliance Consulting Project

1. Description of Interest in Participating in the Project

Agri-Waste Technology, Inc. (AWT) is pleased to have the opportunity to provide our qualifications to the City of Midland in order to continue the work we began with the City in 2011 and continued during 2013-2018 with our previous Agronomic Compliance Consulting Project contract and 2019-2023 with the current Agronomic Compliance Consulting Project contract. We are excited to continue our direct professional relationship with the City. We believe that our current role in the project places us in a unique position to provide effective agronomic consulting services to the City in a seamless manner on an on-going basis. In fact, AWT's audit of the land application program performed in 2012 along with the City's TCEQ permit provides the basis for the scope of work moving forward.

2. Description of Staff and Related Experience

Jeff Vaughan, Ph.D.,CPAg/SSc/CCA,L.S.S
President, Senior Soil Scientist/Agronomist

Jeff is a Texas Professional Geoscientist (Soil Science), a Certified Professional Agronomist, a Licensed Soil Scientist, and a Certified Crop Advisor. He serves as the lead agronomist on the project we are currently working on with the City of Midland. He performed an audit of the land application program that covered soils, soil nitrogen, wastewater applications, sludge applications, wastewater sampling, sludge sampling, commercial fertilizer applications, grazing, crop condition, crop yields, leaching, effluent quality and plant available nitrogen. As a part of the audit, an on-site evaluation was performed. Jeff assisted with the preparation of the materials required for the City's permit renewal application. He developed a crop management plan as part of the permit application and has responded to TCEQ personnel comments on the permit application.

Jeff continues to provide key leadership in our municipal land application project with the City of Lubbock, TX. He functions as the lead soil scientist and agronomist on this project. He handles all soils, grazing and crops issues as they arise. He also reviews weekly, quarterly and annual reports provided to the City of Lubbock and performs site visits twice annually. He

is one of the lead authors on all reports that are submitted to the TCEQ on behalf of the City of Lubbock. Jeff interfaces with the TCEQ as needed.

Chris Mosley, P.E.
CEO, Senior Project Engineer

Chris is a Texas Professional Engineer and a Texas Nutrient Management Specialist. He serves as the lead engineer on the project we are currently working on with the City of Midland. He audited the land application program with a focus on the water and nitrogen balance on each plot and infrastructure limitations such as pumping, storage pond capacities, sideroll irrigation systems and center pivot irrigation systems. As a part of the audit, an on-site evaluation was performed. Chris also assisted HDR, Inc. with the preparation of the materials required for the City's permit renewal application. He developed a biosolids nutrient management plan as part of the permit application and has responded to TCEQ personnel comments on the permit application.

Chris also provides key leadership in our municipal land application project with the City of Lubbock, TX. He functions as the lead engineer and Texas nutrient management specialist on this project. His role includes development and maintenance of the water/nitrogen balance model governing the land application program, development of annual groundwater recharge reports and oversight of weekly, quarterly and annual reporting to the City of Lubbock. He also performs site visits to the City of Lubbock. He is one of the lead authors on all reports that are submitted to the TCEQ on behalf of the City of Lubbock. Chris interfaces with the TCEQ as needed.

Julie Peele
GIS Specialist, Environmental Technician

Julie provides a supporting role in our municipal land application project with the City of Lubbock, TX. She functions as our GIS specialist and also prepares weekly and quarterly reports to the City of Lubbock that are reviewed by the project leaders. She communicates with City of Lubbock personnel on a weekly basis to maintain the records needed as inputs for the water/nitrogen balance model.

Julie provides a similar role in our project with the City of Midland, TX. She prepares any maps required as well as weekly and quarterly reports that are reviewed by the project leaders.

Resumes for these 3 key staff members are include in Attachment A.

3. Work history of AWT

AWT was founded in 1985 as an engineering company specializing in the design and permitting of waste management systems for the livestock industry. This work has taken us all across the United States and into Canada, Mexico, Brazil, Russia and China. Over time our expertise has broadened to include a wide breadth of waste management services including municipal, food processing, residential and commercial in addition to agricultural waste management. Currently our main services include municipal waste land application consulting, agricultural consulting, on-site wastewater system design and permitting, carbon offset project verification, and septic system inspections. In order to provide these services to our clients, each requires professional licenses and continuing education including oversight by accreditation bodies.

We have been working in the state of Texas since the 1990s in a variety of capacities including municipal wastewater and sludge application consulting, design of animal waste management systems, permitting of animal waste management systems and expert testimony in legal cases. We have been a consultant with the City of Lubbock, TX since 2000 and have provided a range of services to them including an audit of the land application system, permit modifications related to soil types and SAR, grazing reports, crop management plans, participation in TCEQ hearings and town council meetings, groundwater recharge reports and management of the land application system of two city-owned farms.

We have been a consultant with the City of Midland, TX since 2011. Services provided to Midland include an audit of the land application program, assistance with permit implementation, irrigation system testing, interfacing with analytical labs, crop management plans, water and nitrogen balance calculations and recommendations, data management, quarterly reporting and assistance with TCEQ reporting.

4. Proposed Work Program and Timeline

The project will involve weekly, quarterly, semi-annual and annual activities related to the implementation of the water and nitrogen balance model.

On-Going Weekly/Monthly Activities

We will continue to utilize the same process we have been since 2013 for delivering weekly information to the City. We have a spreadsheet that will be updated by the City to include pumping to the reservoirs, pumping to the fields and reservoir liquid levels. We will take that information along with effluent and sludge analytical data from the lab and evapotranspiration data from a local weather station and use it to provide weekly updates and recommendations to the City. The following outline includes the deliverables and timeline for deliverables.

1. Weekly water and nitrogen application report will be based on the output of the water and nitrogen balance model and include:
 - a. Significant non-routine issues requiring attention
 - b. Reservoir levels for that week
 - c. Pumping summaries from WWTP
 - d. Pumping summaries to plots
 - e. Available storage in reservoirs
 - f. Recommended effluent and sludge applications to plots during the upcoming week:
 - i. Effluent in gallons and inches
 - ii. Sludge in tons
 - iii. Including special notes required
2. Data table updates to model:
 - a. Soil analytical data
 - b. Effluent analytical data
 - c. Sludge analytical data
 - d. Evapotranspiration data
3. We will continue to use a spreadsheet where weekly land application information and reservoir levels will be reported by the City to AWT along with any pertinent notes for each field that may impact the land application program on a weekly basis.
4. Timeline:
 - a. This information will be provided to the City every week (52 times per year)
 - b. We will also provide a project status update to the city during the first part of each month (12 times per year)
5. Sample Forms, Reports, Etc. follow.

Work Product Samples for Weekly/Monthly Activities

Weekly Report



Engineers and Soil Scientists

Agri-Waste Technology, Inc.
501 N. Salem Street, Suite 203
Apex, North Carolina 27502
919-859-0669
www.agriwaste.com

October 9, 2018

TO: Cory Moose
Laura Wilson

FROM: Chris Mosley
Jeff Vaughan
Julie Davidson

SUBJECT: Final Weekly Report for Spraberry and Plant Farms for week of Oct. 2-8, 2018
and Preliminary Weekly Report for week of Oct. 9-15, 2018.

We have attached our application recommendations for the week of Oct. 2-8, 2018 for both the Spraberry and Plant farms. This final report replaces the preliminary report sent last week. The "X" in the "Priority" column indicates that a special effort should be made to meet the target application on the particular plot.

Comparison of this week's report to last week's report:

- 1) **The liquid level of Spraberry Pond 8 has decreased 2.8'.**
- 2) **Pumping to the Spraberry Farm plots has increased from 9.06 to 9.41 MGD.**
- 3) **Pumping to the Plant Farm plots has remained 0.00 MGD.**
- 4) **Wastewater application recommendations for the current week (Oct. 2-8) have changed for field I Pivot from 0.75" to 1" when compared to the week of Sep. 25-Oct. 1.**

It should be noted that a combination of high soil nitrogen levels, lack of growing crops and presence of cattle on many fields prevent the application of wastewater and sludge from being made according to the requirements of the permit. The recommendations follow the requirements of the permit. Any fields showing a "0" in the recommendation column do not meet the conditions of the permit in order to receive applications at this time.

Given the fact that sludge and wastewater must continue to be applied at the Plant Farm despite the permit conditions, it is recommended that the wastewater/sludge be spread out among all the Plant Farm fields as evenly as possible until crops can be established and cattle can be removed.

Table 1 summarizes the current liquid level in Spraberry Pond 8 as of Oct. 1, 2018. Table 2 summarizes the pumping data (from WPCP) for the most recent week and the year-to-date average pumping data. Table 3 summarizes the pumping data (to Spraberry Plots and Plant Farm Plots) for the most recent week and the year-to-date average pumping data.

Notice the Plant Farm has several added fields described as SWR or Pivot in the Final and Preliminary Reports for land application recommendations.

Table 1. Reservoir Level on Oct. 1, 2018

Reservoir	Total Depth (ft)	Maximum Liquid Level (ft)	Measured Liquid Level (ft)	Remaining Storage Depth (ft)
Spraberry Pond 8	19	17	11.6	5.4

Table 2. Pumping Summary (From WPCP)

Destination	Week of Sep. 25-Oct. 1, 2018 (MGD)	Current Cropping Year: (Sep 1, 2018-Aug 31, 2019) Average (MGD)	Past Cropping Year: (Sep 1, 2017-Aug 31, 2018) Average (MGD)
Spraberry Reservoirs	13.2	4.44	7.26
Plant Farm	0.00	0.13	1.43
Total	13.2	4.57	8.69

Table 3. Pumping Summary (To Plots)

Destination	Week of Sep. 25-Oct. 1, 2018 (MGD)	Current Cropping Year: (Sep 1, 2018-Aug 31, 2019) Average (MGD)	Past Cropping Year: (Sep 1, 2017-Aug 31, 2018) Average (MGD)
Spraberry Plots	9.41	10.18	10.09
Plant Farm Plots	0.00	0.13	1.43
Total	9.41	10.31	11.52

A preliminary effluent application report for the week of Oct. 9-15, 2018 has also been included. The preliminary report will always be a conservative estimation and superseded by the final report prepared on the following week after data has been collected and entered into the water balance model.

If you have any questions please don't hesitate to call us at 919-367-6311.

Recommended Applications for the week of:

Oct. 2-8 , 2018

Date Created:

10/9/2018

Plot	Recommended App. (gal)	Recommended App. (in)	Water Requirement (in)	Priority	Notes
Spraberry Wastewater Applications					
2-3	0	0.00	1.22		
2-4	0	0.00	1.37		
3-1	0	0.00	1.22		
3-2	0	0.00	1.22		
3-4	0	0.00	1.24		
10-1	0	0.00	1.04		
10-2	0	0.00	1.04		
10-3	0	0.00	1.02		
10-4	0	0.00	1.02		
11-1	0	0.00	1.37		
11-2	0	0.00	1.37		
11-3	0	0.00	1.04		
11-4	3,833,506	1.00	1.24	X	
12-1	0	0.00	1.36		
12-2	0	0.00	1.37		
13-1	0	0.00	1.02		
13-2	0	0.00	1.02		
14-1	0	0.00	1.02		
14-2	0	0.00	1.70		
14-3	0	0.00	0.00		
14-4	0	0.00	0.00		

X in Priority Column Indicates Special Effort Should be Made to Meet Target Application

Final ReportWeekly Land Application Report
(Prepared by AWT for the City of Midland)

Recommended Applications for the week of:

Oct. 2-8 , 2018

Date Created:

10/9/2018

Plot	Recommended App. (gal)	Recommended App. (in)	Water Requirement (in)	Priority	Notes
15-1	0	0.00	1.02		
15-2	0	0.00	1.02		
15-3	0	0.00	1.36		
12-1s	0	0.00	1.36		
13-1s	0	0.00	0.00		Not operational
13-2s	0	0.00	0.00		Not operational
14-1s	0	0.00	1.70		
14-2s	0	0.00	0.73		
14-3s	0	0.00	0.73		
15-1s	0	0.00	0.00		Not Available
15-2s	0	0.00	0.00		Not Available
Total (Spraberry)	3,833,506				

X in Priority Column Indicates Special Effort Should be Made to Meet Target Application

Recommended Applications for the week of:

Oct. 2-8 , 2018

Date Created:

10/9/2018

Plot	Recommended App. (gal)	Recommended App. (in)	Water Requirement (in)	Priority	Notes
Plant Farm Wastewater Applications					
F	0	0.00	1.36		
I-SWR	354,599	1.00	1.36	X	
I-Pivot	2,629,146	1.00	1.22	X	
J-SWR	932,820	1.00	1.36	X	
J-Pivot	0	0.00	1.22		
K1	3,753,641	1.00	1.36	X	
K2	1,453,538	1.00	1.36	X	
L	0	0.00	1.22		
M	0	0.00	1.22		
O	11,532,464	1.00	1.36	X	
P	437,659	1.00	1.36	X	
Cole Park	2,159,542	1.00	1.36	X	
Total Wastewater (Plant)	23,253,408				
Plant Farm Sludge Applications					
F	0	0.00			
I-SWR	0	0.00			
I-Pivot	0	0.00			
J-SWR	0	0.00			
J-Pivot	0	0.00			
K1	0	0.00			
K2	0	0.00			
L	0	0.00			
M	0	0.00			
O	0	0.00			
P	0	0.00			
Cole Park	0	0.00			
Total Sludge	0				

X in Priority Column Indicates Special Effort Should be Made to Meet Target Application

Preliminary Report

Weekly Land Application Report
(Prepared by AWT for the City of Midland)

Recommended Applications for the week of:				Oct. 9-15 , 2018
Date Revised:				10/9/2018
Plot	Volume (gal)	Volume (in)	Priority	Notes
Spraberry Wastewater Applications				
2-3	0	0.00		
2-4	0	0.00		
3-1	0	0.00		
3-2	2,236,212	0.50		
3-4	0	0.00		
10-1	0	0.00		
10-2	0	0.00		
10-3	0	0.00		
10-4	0	0.00		
11-1	0	0.00		
11-2	0	0.00		
11-3	0	0.00		
11-4	3,833,506	1.00	X	
12-1	0	0.00		
12-2	0	0.00		
13-1	0	0.00		
13-2	0	0.00		
14-1	0	0.00		
14-2	0	0.00		
14-3	0	0.00		
14-4	0	0.00		

Preliminary Report

Weekly Land Application Report
(Prepared by AWT for the City of Midland)

Recommended Applications for the week of:

Oct. 9-15 , 2018

Date Revised:

10/9/2018

Plot	Volume (gal)	Volume (in)	Priority	Notes
15-1	0	0.00		
15-2	0	0.00		
15-3	0	0.00		
12-1s	0	0.00		
13-1s	0	0.00		Not operational
13-2s	0	0.00		Not operational
14-1s	415,296	1.00	X	
14-2s	0	0.00		
14-3s	0	0.00		
15-1s	0	0.00		Not Available
15-2s	0	0.00		Not Available
Total (Spraberry)	6,485,014			

Preliminary Report

Weekly Land Application Report
(Prepared by AWT for the City of Midland)

Recommended Applications for the week of:

Oct. 9-15 , 2018

Date Revised:

10/9/2018

Plot	Volume (gal)	Volume (in)	Priority	Notes
Plant Farm Wastewater Applications				
F	0	0.00		
I-SWR	354,599	1.00	X	
I-Pivot	2,629,146	1.00	X	
J-SWR	932,820	1.00	X	
J-Pivot	0	0.00		
K1	3,753,641	1.00	X	
K2	1,453,538	1.00	X	
L	0	0.00		
M	0	0.00		
O	11,532,464	1.00	X	
P	437,659	1.00	X	
Cole Park	2,159,542	1.00	X	
Total Wastewater (Plant)	23,253,408			
Plant Farm Sludge Applications				
F	0	0.00		
I-SWR	0	0.00		
I-Pivot	0	0.00		
J-SWR	0	0.00		
J-Pivot	0	0.00		
K1	0	0.00		
K2	0	0.00		
L	0	0.00		
M	0	0.00		
O	0	0.00		
P	0	0.00		
Cole Park				
Total Sludge	0			

Work Product Samples for Weekly/Monthly Activities

Weekly Data Sheet Samples

CITY OF MIDLAND**Worksheet Name: Plant - Weekly Input Sheet****Application Year: Sep 1, 2018 to Aug 31,2019****Mo/Day/Yr: September 10, 2018**

Plot #	Flow Measurement	Current Reading	Memo/Comment
I-Pivot	Time (hrs)	120	
J-Pivot	Time (hrs)	120	
L-Pivot	Time (hrs)	120	
M-Pivot	Time (hrs)	120	

CITY OF MIDLAND**Worksheet Name: Plant - Weekly Input Sheet****Application Year: Sep 1, 2018 to Aug 31,2019****Mo/Day/Yr: September 17, 2018**

Plot #	Flow Measurement	Current Reading	Memo/Comment
I-Pivot	Time (hrs)	0	
J-Pivot	Time (hrs)	0	
L-Pivot	Time (hrs)	0	
M-Pivot	Time (hrs)	24	

CITY OF MIDLAND**Worksheet Name: Plant - Weekly Input Sheet****Application Year: Sep 1, 2018 to Aug 31,2019****Mo/Day/Yr: September 24, 2018**

Plot #	Flow Measurement	Current Reading	Memo/Comment
I-Pivot	Time (hrs)	0	
J-Pivot	Time (hrs)	0	
L-Pivot	Time (hrs)	0	
M-Pivot	Time (hrs)	168	

CITY OF MIDLAND**Worksheet Name: Spraberry - Weekly Input Sheet****Application Year: Sep 1, 2018 to Aug 31,2019****Mo/Day/Yr: September 10, 2018**

Plot #	Flow Measurement	Current Reading	Memo/Comment
2-3	Time (hrs)	192	
2-4	Time (hrs)	216	
3-1	Time (hrs)	240	
3-2	Time (hrs)	240	
3-4	Time (hrs)	240	
10-1	Time (hrs)	0	
10-2	Time (hrs)	0	
10-3	Time (hrs)	24	
10-4	Time (hrs)	0	
11-1	Time (hrs)	0	
11-2	Time (hrs)	240	
11-3	Time (hrs)	24	
11-4	Time (hrs)	0	
12-1	Time (hrs)	144	
12-2	Time (hrs)	0	
13-1	Time (hrs)	240	
13-2	Time (hrs)	0	
14-1	Time (hrs)	216	
14-2	Time (hrs)	0	
14-3	Time (hrs)	120	
14-4	Time (hrs)	0	
15-1	Time (hrs)	120	
15-2	Time (hrs)	24	
15-3	Time (hrs)	216	
12-1s	Time (hrs)	240	
13-1s	Not Used	0	
13-2s	Not Used	0	
14-1s	Time (hrs)	0	
14-2s	Time (hrs)	0	
14-3s	Time (hrs)	0	
15-1s	Not Used	0	
15-2s	Not Used	0	

PlantFlow

Date	Day	Plant Farm Plots (Sludge Applications in Gallons)										
		F	I-SWR	J-SWR	K1	K2	O	P	I-Pivot	J-Pivot	L-Pivot	M-Pivot
9/1/2018	1											
9/2/2018	2											
9/3/2018	3											
9/4/2018	4	50,400										
9/5/2018	5	36,000										
9/6/2018	6											
9/7/2018	7											
9/8/2018	8											
9/9/2018	9											
9/10/2018	10											
9/11/2018	11	21,600										
9/12/2018	12	25,200										
9/13/2018	13											
9/14/2018	14	25,200										
9/15/2018	15											
9/16/2018	16											
9/17/2018	17	72,000										
9/18/2018	18											
9/19/2018	19	43,200										
9/20/2018	20	25,200										
9/21/2018	21	75,600										
9/22/2018	22	82,800										
9/23/2018	23											
9/24/2018	24	43,200										
9/25/2018	25	39,600										
9/26/2018	26	28,800										
9/27/2018	27	82,800										
9/28/2018	28											
9/29/2018	29											
9/30/2018	30											

Date	Day	Plant Farm Plots (1=Systems On, 0=Systems Off)											
		F	I-SWR	J-SWR	K1	K2	O	P	Cole Park	I-Pivot	J-Pivot	L-Pivot	M-Pivot
9/1/2018	1	1	0	0	0	0	1	1	0	1	1	1	1
9/2/2018	2	1	0	0	0	0	1	1	0	1	1	1	1
9/3/2018	3	1	0	0	0	0	1	1	0	1	1	1	1
9/4/2018	4	1	0	0	0	0	1	1	0	1	1	1	1
9/5/2018	5	1	0	0	0	0	1	1	0	1	1	1	1
9/6/2018	6	0	0	0	0	0	0	0	0	0	0	0	0
9/7/2018	7	0	0	0	0	0	0	0	0	0	0	0	0
9/8/2018	8	0	0	0	0	0	0	0	0	0	0	0	0
9/9/2018	9	0	0	0	0	0	0	0	0	0	0	0	0
9/10/2018	10	0	0	0	0	0	0	0	0	0	0	0	0
9/11/2018	11	0	0	0	0	0	0	0	0	0	0	0	0
9/12/2018	12	0	0	0	0	0	0	0	0	0	0	0	0
9/13/2018	13	0	0	0	0	0	0	0	0	0	0	0	0
9/14/2018	14	0	0	0	0	0	0	0	0	0	0	0	0
9/15/2018	15	0	0	0	0	0	0	0	0	0	0	0	0
9/16/2018	16	0	0	0	0	0	0	0	0	0	0	0	0
9/17/2018	17	0	0	0	0	0	0	0	0	0	0	0	1
9/18/2018	18	0	0	0	0	0	0	0	0	0	0	0	1
9/19/2018	19	0	0	0	0	0	0	0	0	0	0	0	1
9/20/2018	20	0	0	0	0	0	0	0	0	0	0	0	1
9/21/2018	21	0	0	0	0	0	0	0	0	0	0	0	1
9/22/2018	22	0	0	0	0	0	0	0	0	0	0	0	1
9/23/2018	23	0	0	0	0	0	0	0	0	0	0	0	1
9/24/2018	24	0	0	0	0	0	0	0	0	0	0	0	1
9/25/2018	25	0	0	0	0	0	0	0	0	0	0	0	1
9/26/2018	26	0	0	0	0	0	0	0	0	0	0	0	1
9/27/2018	27	0	0	0	0	0	0	0	0	0	0	0	1
9/28/2018	28	0	0	0	0	0	0	0	0	0	0	0	1
9/29/2018	29	0	0	0	0	0	0	0	0	0	0	0	1
9/30/2018	30	0	0	0	0	0	0	0	0	0	0	0	1
10/1/2018	31	0	0	0	0	0	0	0	0	0	0	0	1
10/2/2018	32	0	0	0	0	0	0	0	0	0	0	0	1
10/3/2018	33	0	0	0	0	0	0	0	0	0	0	0	0
10/4/2018	34	0	0	0	0	0	0	0	0	0	0	0	0
10/5/2018	35	0	0	0	0	0	0	0	0	0	0	0	0
10/6/2018	36	0	0	0	0	0	0	0	0	0	0	0	0
10/7/2018	37	0	0	0	0	0	0	0	0	0	0	0	0
10/8/2018	38	0	0	0	0	0	0	0	0	0	0	0	0
10/9/2018	39	0	0	0	0	0	0	0	0	0	0	0	0
10/10/2018	40												
10/11/2018	41												
10/12/2018	42												
10/13/2018	43												
10/14/2018	44												
10/15/2018	45												
10/16/2018	46												
10/17/2018	47												
10/18/2018	48												
10/19/2018	49												
10/20/2018	50												
10/21/2018	51												
10/22/2018	52												

SpraberryIrrStatus

Date	Day	Spraberry Land Application Plots (1=System On, 0=System Off)							
		2-3	2-4	3-1	3-2	3-4	10-1	10-2	10-3
9/1/2018	1	1	1	1	1	1			
9/2/2018	2	1	1	1	1	1			
9/3/2018	3	1	1	1	1	1			
9/4/2018	4	1	1	1	1	1			
9/5/2018	5	1	1	1	1	1			
9/6/2018	6	1	1	1	1	1			
9/7/2018	7	1	1	1	1	1			
9/8/2018	8	0	1	1	1	1			
9/9/2018	9		1	1	1	1			
9/10/2018	10	1	0	1	1	1			1
9/11/2018	11	1		1	1	1			1
9/12/2018	12	0		1	0	0	1	1	1
9/13/2018	13			1			1	1	1
9/14/2018	14			0			1	1	1
9/15/2018	15						1	1	1
9/16/2018	16						1	1	1
9/17/2018	17		1				1	1	1
9/18/2018	18		1				1	1	1
9/19/2018	19		1				1	0	1
9/20/2018	20		1				1		1
9/21/2018	21		1				1		1
9/22/2018	22		1				1		1
9/23/2018	23		1				1		1
9/24/2018	24		1				1		1
9/25/2018	25		1				1		1
9/26/2018	26		1				1		1
9/27/2018	27		1				1		1
9/28/2018	28		1				1		1
9/29/2018	29		1				1	1	1
9/30/2018	30		1				1	1	1
10/1/2018	31		1				1	1	1
10/2/2018	32		0				0	0	0
10/3/2018	33		1				1	1	1
10/4/2018	34		1				1	1	1
10/5/2018	35		0				1	1	1
10/6/2018	36						1	1	1
10/7/2018	37						1	1	1
10/8/2018	38						0	0	0

Date	Day	Weather Data			Flow Data			Spraberry Reservoir #6 Liquid Levels and Volumes			
		Plant Farm Precipitation (in)	Spraberry Precipitation (in)	PET (in)	Total Outflow (Mgal)	Plant Farm (Mgal)	Spraberry Storage (Mgal)	Liquid Level (ft)	Volume in Reservoir (ac-ft)	Volume in Reservoir (gal)	Remaining Storage Volume (gal)
9/1/2018	1	1	0	0.3	0.000	0.561	-0.561	5	150	48,864,616	81,148,304
9/2/2018	2	0	0.5	0.2	0.000	0.934	-0.934	5	150	48,864,616	81,148,304
9/3/2018	3	0	0	0.21	0.000	0.573	-0.573	5	150	48,864,616	81,148,304
9/4/2018	4	0	0	0.24	0.000	0.807	-0.807	4.8	144	46,877,577	83,135,343
9/5/2018	5	0	0	0.25	0.000	1.094	-1.094	4.8	144	46,877,577	83,135,343
9/6/2018	6	0.5	0.5	0.17	0.000	0.000	0.000	4.8	144	46,877,577	83,135,343
9/7/2018	7	1.7	1	0.08	0.000	0.000	0.000	4.8	144	46,877,577	83,135,343
9/8/2018	8	2	2	0.11	0.000	0.000	0.000	4.8	144	46,877,577	83,135,343
9/9/2018	9	0	0	0.18	0.000	0.000	0.000	4.8	144	46,877,577	83,135,343
9/10/2018	10	0	0	0.22	0.000	0.000	0.000	4.8	144	46,877,577	83,135,343
9/11/2018	11	0	0	0.25	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/12/2018	12	0	0	0.25	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/13/2018	13	0	0	0.24	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/14/2018	14	0	5	0.24	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/15/2018	15	2	0.2	0.17	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/16/2018	16	0	0	0.17	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/17/2018	17	0	0	0.17	0.000	0.000	0.000	4.6	138	44,890,537	85,122,383
9/18/2018	18	0	0	0.2	0.000	0.000	0.000	5.5	165	53,832,214	76,180,706
9/19/2018	19	0	0	0.22	0.000	0.000	0.000	5.5	165	53,832,214	76,180,706
9/20/2018	20	0	0	0.16	0.000	0.000	0.000	5.5	165	53,832,214	76,180,706
9/21/2018	21	0.3	0.5	0.15	9.866	0.000	9.866	5.5	165	53,832,214	76,180,706
9/22/2018	22	0	0	0.21	12.160	0.000	12.160	5.5	165	53,832,214	76,180,706
9/23/2018	23	0	0	0.22	13.428	0.000	13.428	5.5	165	53,832,214	76,180,706
9/24/2018	24	0	0	0.22	13.700	0.000	13.700	5.5	165	53,832,214	76,180,706
9/25/2018	25	0	0	0.27	13.300	0.000	13.300	6.5	196	63,767,411	66,245,509
9/26/2018	26	0	0	0.09	13.500	0.000	13.500	6.5	196	63,767,411	66,245,509
9/27/2018	27	0	0	0.17	13.220	0.000	13.220	6.5	196	63,767,411	66,245,509
9/28/2018	28	0	0	0.025	12.890	0.000	12.890	6.5	196	63,767,411	66,245,509
9/29/2018	29	0	0	0.21	13.200	0.000	13.200	6.5	196	63,767,411	66,245,509
9/30/2018	30	0	0	0.23	13.640	0.000	13.640	6.5	196	63,767,411	66,245,509

Work Product Samples for Weekly/Monthly Activities

Weekly Crop Status

Status Report

Notes Made by COL Prior to Issuance of Weekly Land Application Report

Status Report for Week of:

Sep 4, 2018

Date Created:

Sludge to Apply at Plant Farm During Week of:

17500 gal

Plot	Yield	Crop Stand Comments ¹	Animal numbers	Animal Stage	Plot Restrictions ²
F					
G					
I					
J					
K					
L					
M					
O					
P					
Cole Park					
2-3		winter wheat			
2-4	cotton planted	cotton			
3-1		winter wheat			
3-2		Winter Wheat			got un stuck fix flat on 4th tower
3-4		winter wheat			
10-1		Weeds & Grass			
10-2		winter wheat			
10-3		Jose wheat			bad gear box replaced on 2nd tower
10-4		winter wheat			round bale sample
11-1		winter wheat			
11-2	cotton planted	cotton			
11-3		winter wheat			round bale sample
11-4		winter wheat			
12-1	cotton planted	cotton			
12-2	cotton planted	cotton			
13-1		Jose wheat			
13-2		Jose wheat			

Status Report

Notes Made by COL Prior to Issuance of Weekly Land Application Report

Plot	Yield	Crop Stand Comments ¹	Animal numbers	Animal Stage	Plot Restrictions ²
14-1		Jose wheat			changed tire on 7th tower and replaced u joint
14-2		Alfalfa			
14-3		winter wheat			replaced u joint 9 tons o of gypsum
14-4		winter wheat			replaced u joints on 1st tower and 5 tons of gypsum
15-1		Jose wheat			
15-2		Mesquite & Jose wheat			
15-3		winter wheat			
12-1s	cotton planted	Cotton			
13-1s		Weeds & Grass			Not Used
13-2s		Weeds & Grass			Not Used
14-1s		Alfalfa: Harvest date: 8-22-15			harvesting alfalfa
14-2s		Weeds & Grass			
14-3s		Weeds & Grass			
15-1s		Weeds & Grass			
15-2s		Weeds & Grass			

¹ Note anything that relates to crop (Ex. Planting Dates, Harvesting Dates, Crop Problems)

² Note anything that will likely prevent applications from being made (Ex. Wheel Track Maintenance, Harvesting, Planting,

Pivot/Pump Mechanical Problems, Ponding, etc.)

N#3 motor and pump mounted and aligned began to run the pump and the motor control coil in the panel burned out.

S#3 the isolation valve did not hold was not able to replace the pump. need to bring the ponds down to be able to slow the flow to the pumps and replace the valve.

gypsum received getting a tractor together aswell as a spreader and will begin spreading.

Work Product Samples for Weekly/Monthly Activities

Monthly Project Status Update

TO: Laura Wilson Utilities Director, City of Midland e-mail: lwilson@midlandtexas.gov Phone: 432.685.7937	FROM: Chris Mosley Agri-Waste Technology, Inc. e-mail: cmosley@agriwaste.com Phone: 919.367.6311
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The intent of this update is to enhance our team's communication. The following provides a list of our needs from you and upcoming events and issues we consider important. Please call or email me if you have any questions.

Needs from Midland

- Continued weekly submittal of effluent applications, WPCP pumping volumes, rainfall, reservoir liquid levels.
- Monthly submittal of effluent analyses and sludge analyses
- Submittal of crop tissue analyses by plot per harvest
- Continued updates on harvest by plot.
- Weekly crop assessments.
- Other action items from Site Visit Report dated August 9, 2018.

Upcoming Deliveries to Midland

- Weekly reporting to Midland including evaluation of the status of Spraberry and Plant Farm, effluent/sludge application recommendations and summary of the weekly effluent application program (Weekly; On-going).
- Nitrate Study Activity Update (October 4, 2018)
- 2017/18 Data for Annual Irrigation Report (October 5, 2018)
- 2017/18 Soil Moisture Monitoring Plan Data Summary (October 12, 2018)

Completed Milestones, Events, and Meetings

- Review pivot calibration data (November 17, 2017)
- Assemble harvest data (November 17, 2017)
- Quarterly Report (December 15, 2017)
- Quarterly Model Simulation (December 29, 2017)
- Nitrate Study Plan Quarterly Status Report Summary (January 3, 2018)
- Winter Site Visit (February 28, 2018)
- Winter Site Visit Report (March 2, 2018)
- Sludge Application Data for Quarterly Report (March 9, 2018)
- Quarterly Report (March 16, 2018)
- Quarterly Model Simulation (March 30, 2018)
- Draft map of irrigation systems at the Plant Farm (March 30, 2018)
- Incorporate new soil sample results into the model (April 6, 2018)
- Sludge Application Data for Quarterly Report (June 8, 2018)
- Quarterly Report (June 15, 2018)
- Quarterly Model Simulation (June 29, 2018)
- Summer site visit and report (August 6, 2018)
- Preparation of 2018/19 Water Balance Model (August 31, 2018)

- Sludge Application Data for Annual Reports (September 7, 2018)
- Quarterly Report (September 14, 2018)
- Quarterly Model Simulation (September 28, 2018)

CC: Cory Moose, City of Midland
Jeff Vaughan, AWT

On-Going Quarterly Activities

We will continue to utilize the same process we have been since 2013 for delivering quarterly information to the City. We will continue to provide quarterly model simulations, internal reports, sludge application updates for TCEQ reporting and Nitrate Study Plan updates for TCEQ reporting on a quarterly basis. No additional information will be required from the City for AWT to accomplish the quarterly tasks. The following outline includes the deliverables and timeline for deliverables.

1. Full rerun/update of model –full scale rerun or update to the model, either to simulate proposed management changes or reflect actual management changes.
 - a. A report will be delivered to the City that will include revised monthly projected land application amounts by plot
2. Crop information updates –the City will provide and AWT will gather (during site visits) updated crop information (crop location, condition, and harvest) to AWT, these updates will be incorporated into the model.
3. AWT will prepare a brief quarterly report. The report will cover:
 - a. Snapshot of year-to-date land application activities
 - b. Needs from the client
 - c. Upcoming deliverables to the City
 - d. Completed & upcoming milestones, events, and meetings
 - e. Outstanding issues
4. AWT will provide sludge application data to the City for Quarterly Sludge reporting to the TCEQ.
 - a. Update of cumulative loading rates of metals by plot
 - b. Update of metals land applied by plot
 - c. Update of sludge applications utilizing TCEQ reporting form
5. Timeline: The preceding information will be provided to the City in March, June, September and December.
6. AWT will provide quarterly progress updates related to the Nitrate Study Plan to the City for Quarterly Progress reporting to the TCEQ.
 - a. Summary of work performed related to the Nitrate Study Plan
 - b. Updates of work activities to be completed related to the Nitrate Study Plan
7. Timeline: The preceding information will be provided to the City in January, April, July and October.
8. Sample Forms, Reports, Etc. follow.

Work Product Samples for Quarterly Activities
Quarterly Report



Engineers and Soil Scientists

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919-859-0669
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September 14, 2018

TO: Laura Wilson, City of Midland
Cory Moose, City of Midland

FROM: Chris Mosley
Jeff Vaughan
Julie Davidson

SUBJECT: City of Midland Quarterly Land Application Report (September 1, 2017 – August 31, 2018)

In an effort to keep everyone informed of the status of the land application program, quarterly reports will be prepared for the City of Midland including this report which covers September 1, 2017 – August 31, 2018. AWT's involvement for the quarter includes: Quarterly Report, Quarterly Model Simulation, Summer Site Visit and Report, preparation of 2018/19 Water Balance Model, and weekly effluent/sludge application recommendations and record keeping throughout the quarter. These items along with the City's prospective plans and AWT's recommendations are discussed in detail below. In addition, cropping year reservoir levels for the Spraberry Farm, pumping from the WPCP, pumping to the plots, available storage, and N applied (effluent and sludge application) are compared to the ideal case (balancing crop N needs). Lastly, a series of figures are presented to show pertinent 2017/18 cropping year data for the Plant Farm and Spraberry Farm in a graphical format.

Quarter in Review

AWT has provided the following items to the City of Midland since June 15, 2018. Items such as modeling and record keeping are continuous projects.

- Weekly water/nitrogen balance recommendations and reporting for effluent and sludge applications (continuous).
- Record keeping (with the cooperation of the City of Midland) including: reservoirs, land application sites (effluent application, crops, and harvest), effluent analysis, and

numerous other pertinent items needed to produce an accurate and effective model (continuous).

- Quarterly Model Simulation (June 29)
- Summer Site Visit and Report (August 6)
- Preparation of 2018/19 Water Balance Model. (August 31)
- Sludge Application Data for Quarterly Report (September 11)

Accomplishments by the City of Midland related to the land application program this quarter including the following:

- Provided flow, rainfall, effluent application, sludge application and reservoir liquid level data to AWT on a weekly basis.
- Provided effluent and sludge sampling reports.
- Provided crop tissue analysis and crop yields.
- Provided detailed updates for each plot on the weekly status reports.

Prospective Plans

The following are prospective plans for Plant Farm, Spraberry Farm, and city personnel.

Plant Farm

- Continue to provide crop tissue sample results, harvest data, soil moisture monitoring data, effluent and sludge analyses reports to AWT.

Spraberry Farm

- Continue to provide crop tissue sample results, harvest data, soil moisture monitoring data and effluent analyses reports to AWT.

City of Midland

- Address remaining Action Items in AWT's Site Visit Report dated August 9, 2018.

WPCP

- None related to the land application program.

Recommendations

The following recommendations have been made for the next quarter.

- Provide weekly crop forage assessments for each plot to AWT (report on weekly status update spreadsheet).
- Implement soil moisture monitoring plan.

Comparative Data

Tables 1-2 have been developed in an effort to illustrate the status of the effluent and sludge cropping year applications.

Table 1. 2017-18 Cropping Year Comparison of Actual Effluent Applications with Ideal Effluent Applications

Destination	Actual Effluent Applications: (Sep.1, 2017-Aug. 31, 2018) Average (MGD)	Ideal Effluent Applications: (Sep.1, 2017-Aug. 31, 2018) Average (MGD)
Plant Farm	1.36	0.73
Spraberry Farm	10.10	6.37
Total	11.46	7.10

Table 1 indicates that applications to the Spraberry Farm exceeded the model recommendations during this cropping year. The Plant Farm has received more effluent than ideal. Future weekly land application and quarterly reports will keep the City of Midland informed of effluent applications at the Plant Farm and Spraberry.

Table 2. 2017-18 Cropping Year Comparison of Actual Sludge Applications with Ideal Sludge Applications

Destination	Actual Sludge Applications: (Sep.1, 2017-Aug. 31, 2018) Average (gallons/day)	Ideal Sludge Applications: (Sep.1, 2017-Aug. 31, 2018) Average (gallons/day)
Plant Farm	16,698	0

Table 2 shows that more sludge must be applied at the Plant Farm than is needed for crop production.

2017-18 Cropping Year Nitrogen Application Assessment

Before the growing season a target nitrogen application rate is determined based on the soil samples, effluent analysis, sludge analysis, crops and grazing practices. As effluent and sludge applications are made, the actual amount of nitrogen applied recorded for each plot and the target nitrogen applied is updated based on any changes that may have occurred on a plot by plot basis. The target rate and the actual rate are compared throughout the growing season to make weekly application recommendations. Table 3 is a comparison of the Target N Applied versus the Actual N Applied. The Difference column tracks the status of the N balance for each plot. We will continue to monitor all plots and report the year to date N application in the upcoming quarterly reports.

Table 3. Nitrogen Application Summary (September 1, 2017 to August 31, 2018)

Plot	Target N Application (lb/ac)	Year to Date N Application (lb/ac)	Difference (lb/ac)
2-3	145.80	268.58	-122.78
2-4	210.13	315.08	-104.95
3-1	161.02	289.14	-128.11
3-2	178.58	249.73	-71.15
3-4	94.37	235.17	-140.80
10-1	27.88	209.36	-181.48
10-2	18.84	192.56	-173.71
10-3	26.94	178.05	-151.10
10-4	26.93	144.80	-117.88
11-1	195.94	179.04	16.90
11-2	205.67	184.38	21.29
11-3	34.62	171.36	-136.74
11-4	156.81	263.36	-106.55
12-1	167.97	161.69	6.28
12-2	36.93	73.25	-36.32
13-1	107.50	171.55	-64.05
13-2	115.00	129.33	-14.33
14-1	124.00	216.62	-92.62
14-2	362.00	126.81	235.19
14-3	30.56	153.34	-122.78
14-4	0.00	98.52	-98.52
15-1	98.00	315.18	-217.18
15-2	113.00	197.73	-84.73
15-3	130.11	128.03	2.08
12-1s	192.51	174.04	18.47
13-1s	0.00	0.00	0.00
13-2s	0.00	0.00	0.00
14-1s	365.00	251.19	113.81
14-2s	56.00	377.69	-321.69
14-3s	55.00	172.10	-117.10
15-1s	72.00	0.00	72.00
15-2s	0.00	0.00	0.00
F	38.48	145.63	-107.14
G	0.00	13.57	-13.57
I	133.25	249.61	-116.36
J	89.63	209.21	-119.57
K1	51.17	123.93	-72.76

Plot	Target N Application (lb/ac)	Year to Date N Application (lb/ac)	Difference (lb/ac)
K2	93.06	60.20	32.86
L	39.89	140.19	-100.29
M	40.29	284.04	-243.75
O	85.86	187.01	-101.14
P	43.42	160.78	-117.36
Cole Park	96.65	122.43	-25.78

2017-2018 Cropping Year Cumulative Data

Figures 1-7 have been created to graphically display a host of critical variables at the Plant Farm and Spraberry Farm (including precipitation, reservoir levels, pumping from the WPCP and pumping to the plots). Figure 1 shows the daily precipitation for the Plant Farm. The Plant Farm received 8.5 inches of precipitation for the cropping year.

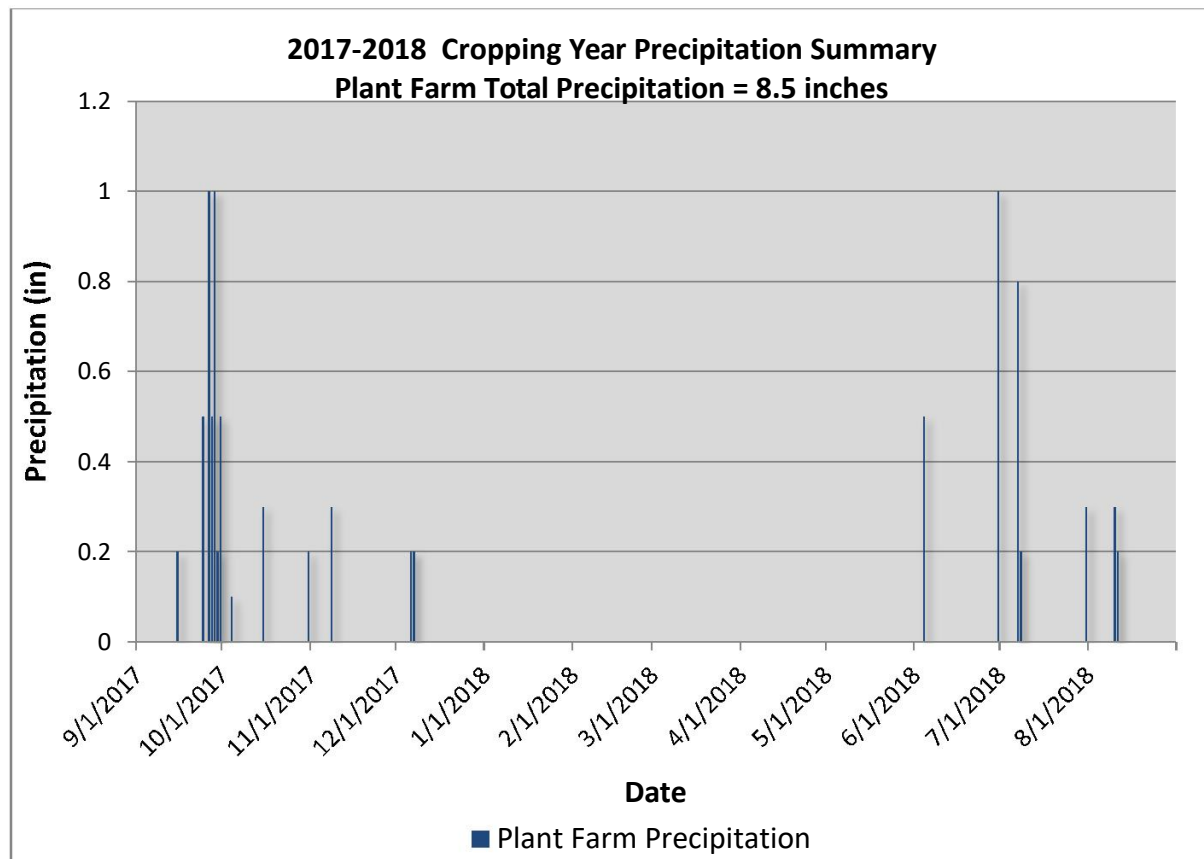


Figure 1. Plant Farm 2017/18 Cropping Year Precipitation Summary.

The Spraberry Farm received 8.4 inches of rainfall during the 2017/18 cropping year (Figure 2).

Figure 2. Spraberry Farm 2017/18 Precipitation Summary.

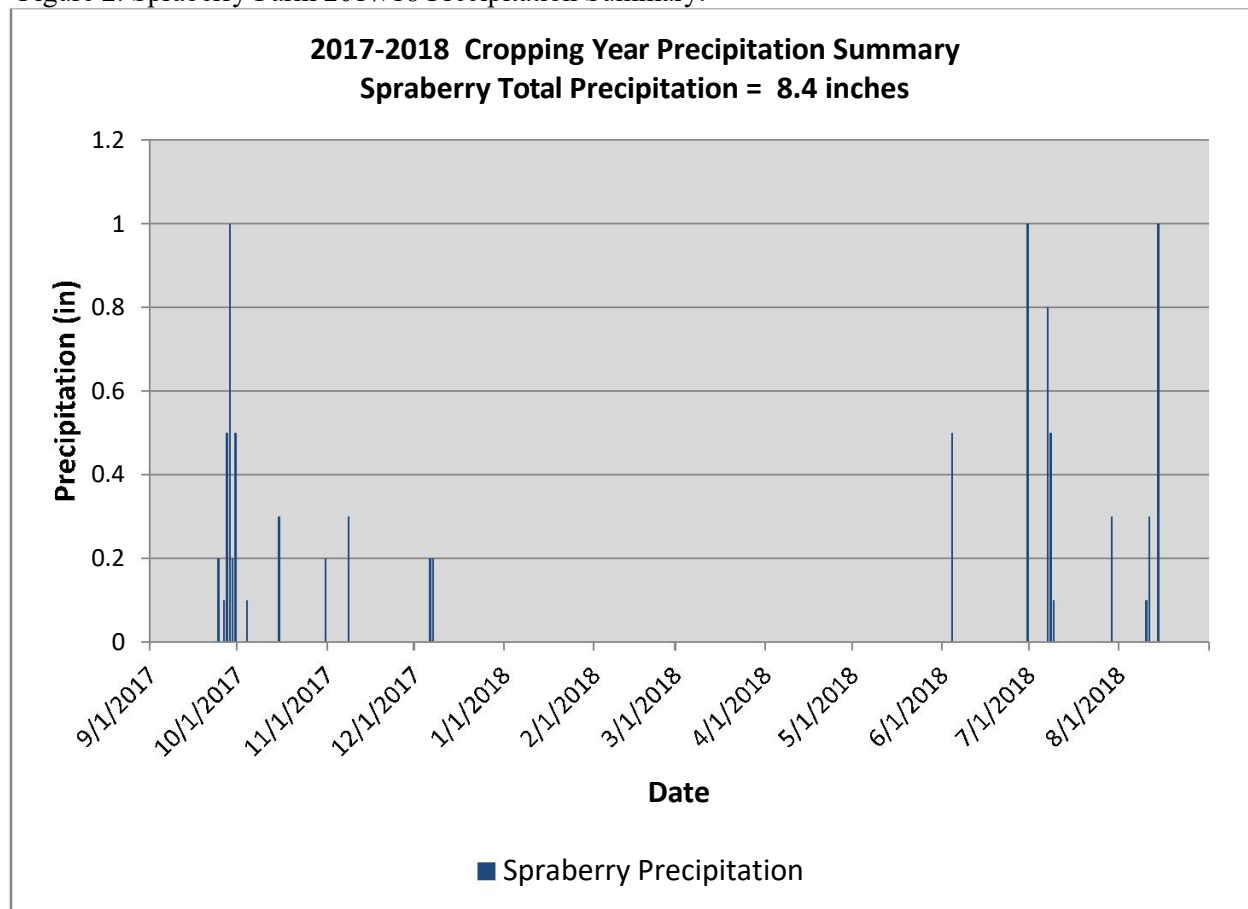


Figure 2. Spraberry Farm Precipitation for 2017/18 Cropping Year.

Figure 3 shows the Spraberry Pond 8 liquid level for the 2017/18 cropping year.

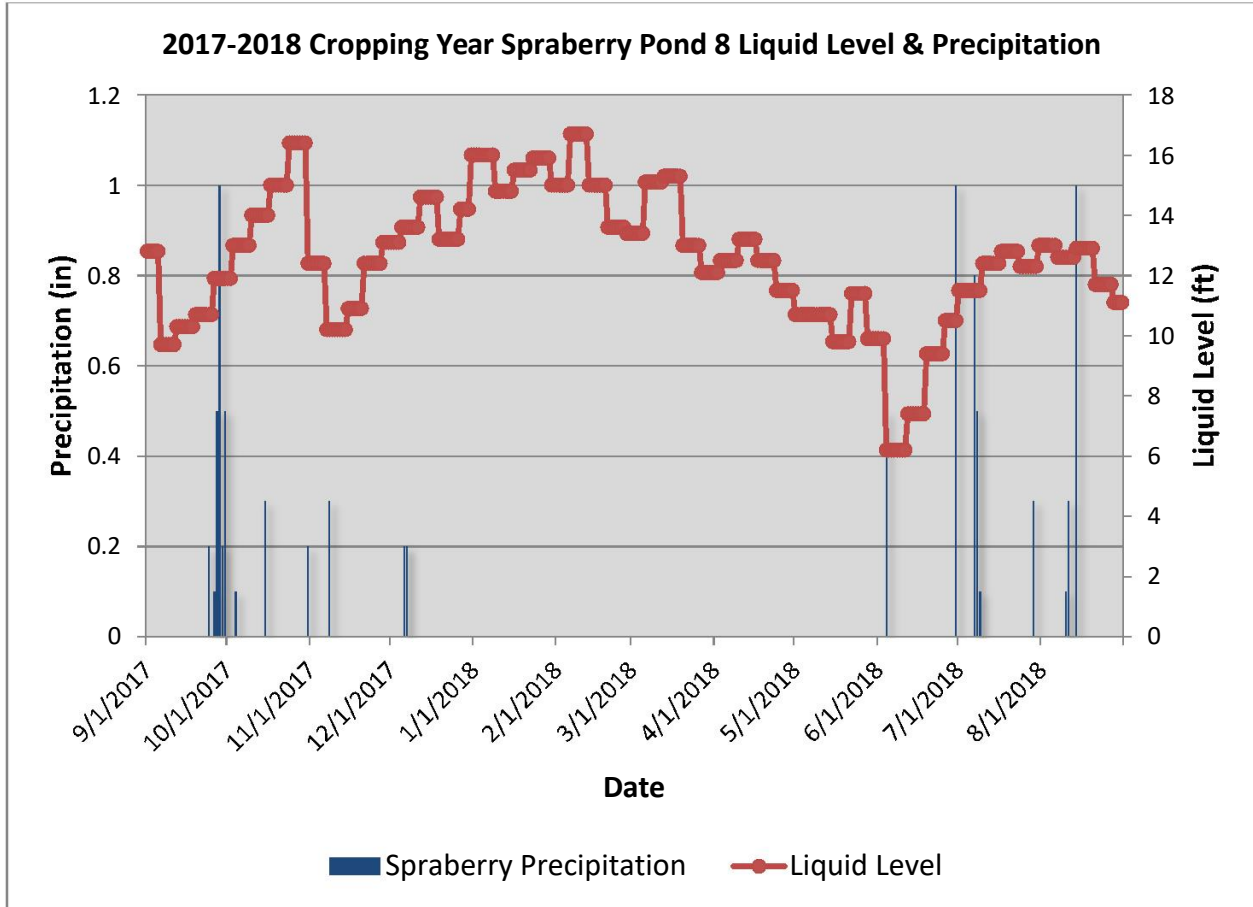


Figure 3. Spraberry Pond 8 Liquid Level and Precipitation for 2017/18 Cropping Year.

Figure 4 shows the WPCP outflow destinations for the 2017/18 cropping year. This information is reported weekly in the Land Application Weekly report. Additionally, we will continue to monitor the WPCP trends in the quarterly reports.

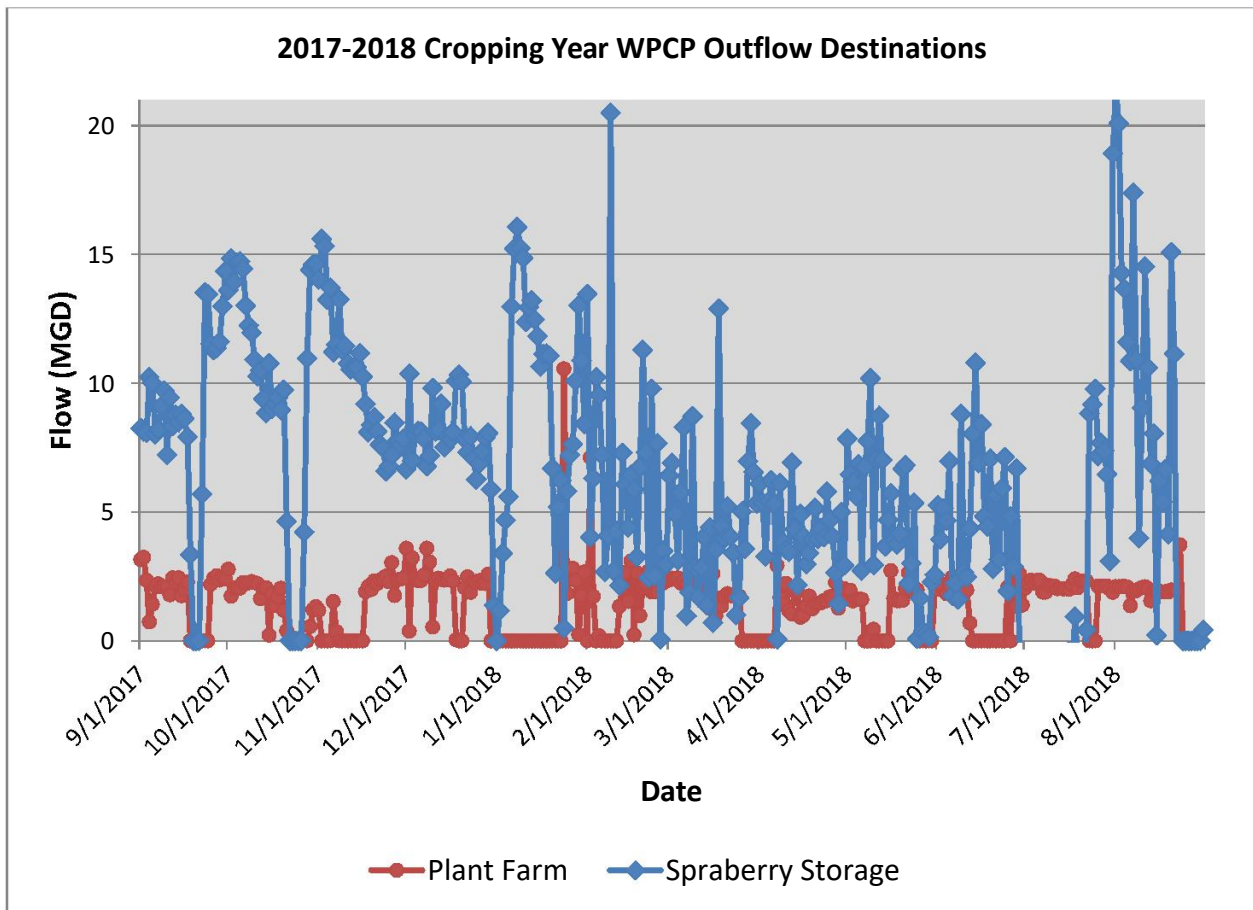


Figure 4. 2017/18 WPCP Outflow Destinations.

Figure 5 shows effluent applications made during the 2017/18 cropping season at the Plant Farm.

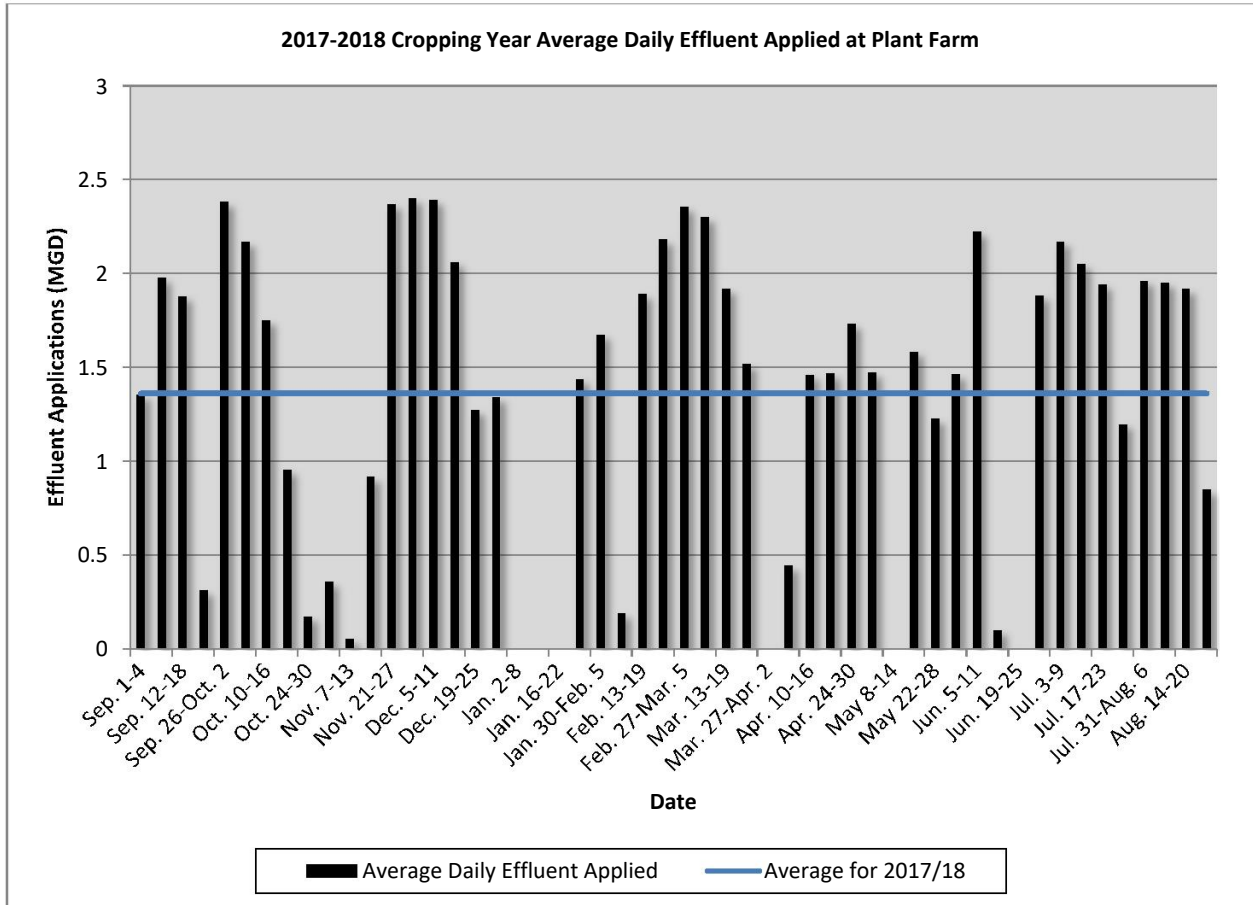


Figure 5. 2017-2018 Effluent Application at the Plant Farm (average daily by week).

Figure 6 shows sludge applications made during the 2017/18 cropping season at the Plant Farm.

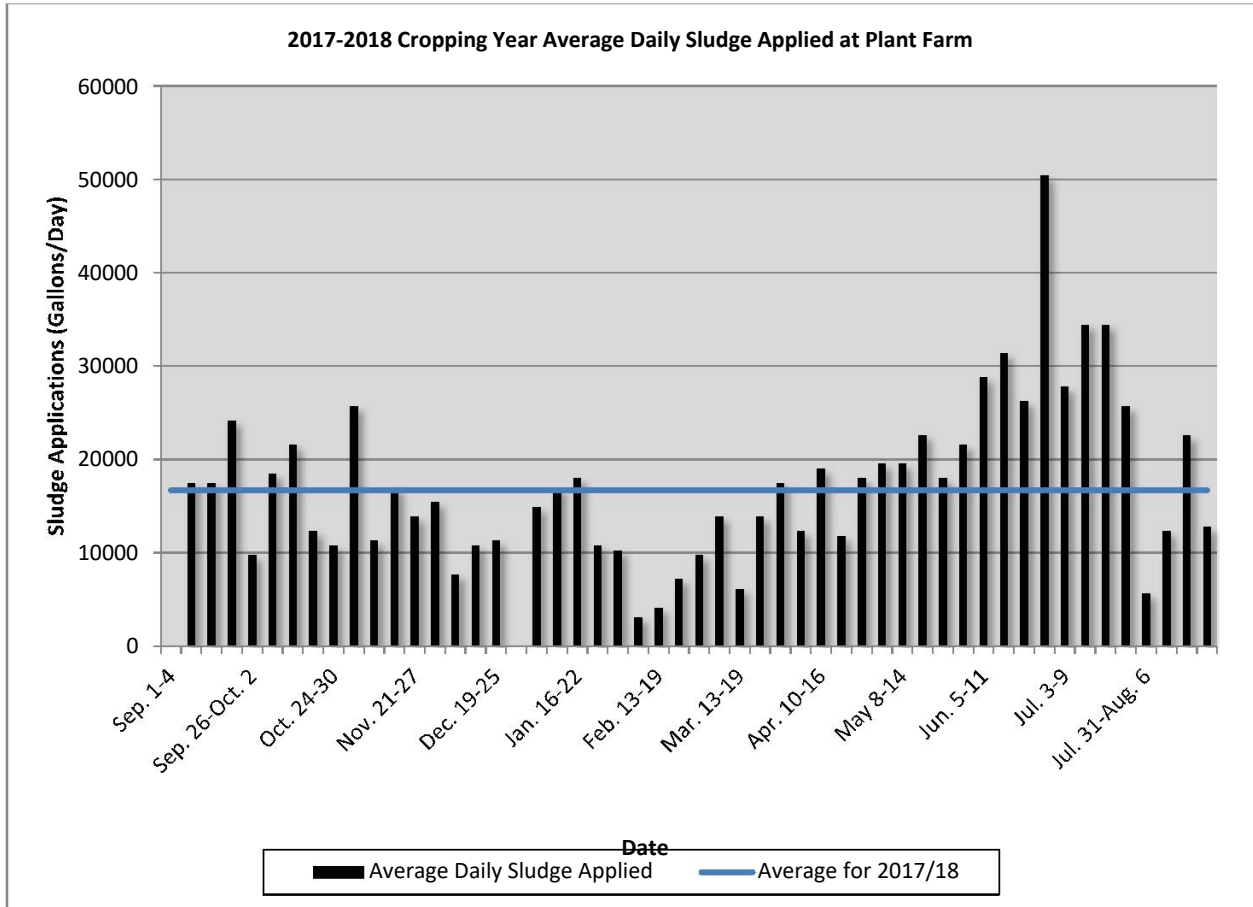


Figure 6. 2017-2018 Sludge Application at the Plant Farm (average daily by week).

Figure 7 shows average daily effluent applications rates for the Spraberry Farm by week.

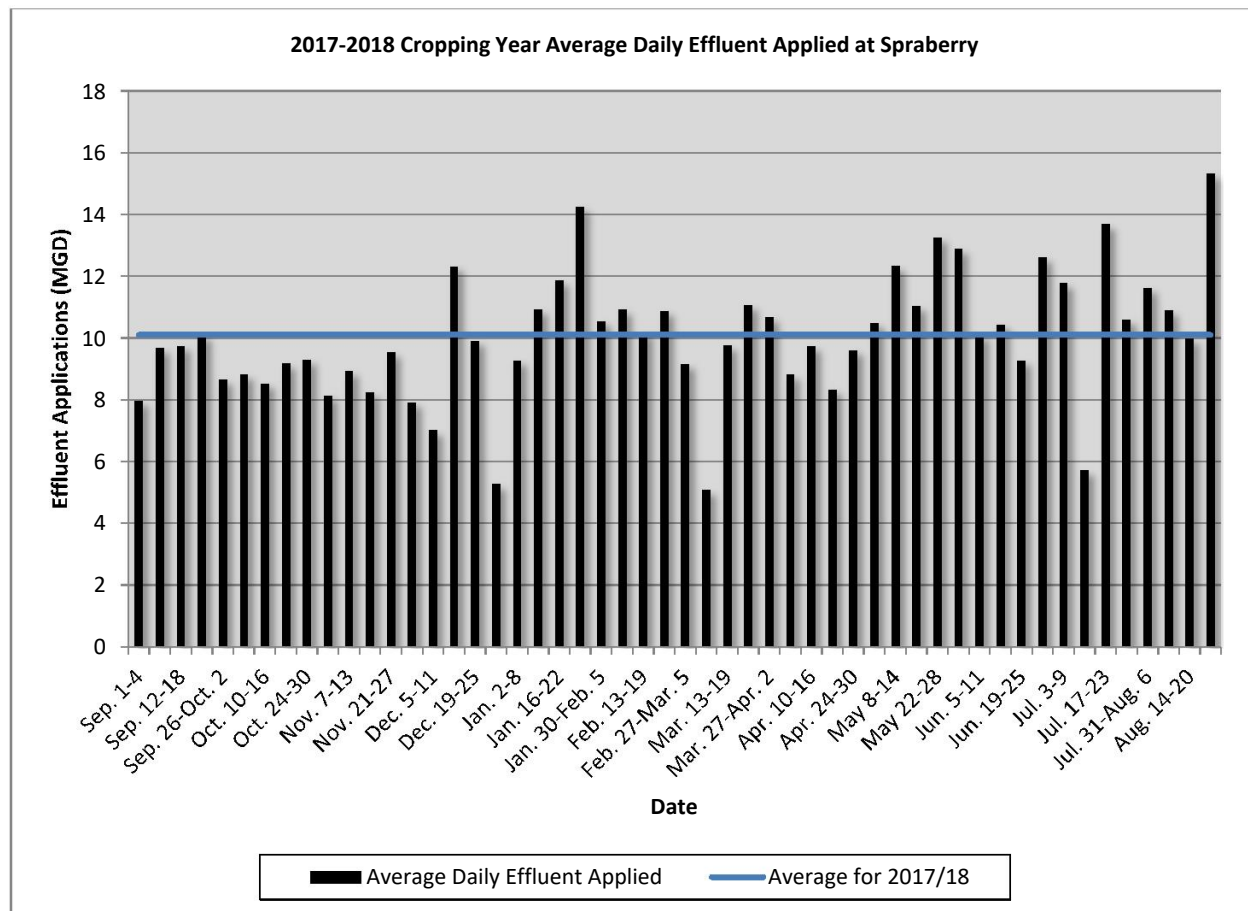


Figure 7. 2017-2018 Effluent Application at the Spraberry Farm (average daily by week).

Work Product Samples for Quarterly Activities

Model Simulations



Engineers and Soil Scientists

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September 28, 2018

MEMORANDUM

TO: Cory Moose, City of Midland
Laura Wilson, City of Midland

FROM: Chris Mosley, Agri-Waste Technology, Inc.

SUBJECT: Quarterly Model Update

I have updated the water/nitrogen balance model incorporating all planned crops and projected applications for the remainder of the 2018/19 cropping year. The following tables indicate projected monthly effluent application rates for each plot at the Spraberry and Plant farms to minimize the impact on the groundwater and maintain the reservoir levels. Applications in excess of the nitrogen requirement of the planned crops are projected for the Plant Farm. Sludge should be spread on the Plant Farm as evenly as possible on all the fields.

Table 1. Projected Spraberry Effluent Application Schedule (in/month)

Plot	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
2-3	3.25	2.75	2.25	3	3.5	4.25	2.25	2.5	1.75	4.5	4.75
2-4	3.75	3	2.25	2.75	3.75	6	5.75	2.5	1.75	3.75	5
3-1	3	2.75	2.25	3	3.5	4.25	3.5	2.75	3	8.75	9.5
3-2	3	2.75	2.25	3	3.5	4.5	2.25	2.5	2	3.5	5.75
3-4	2.25	2.25	2.75	3.25	2	2	1.75	1.75	2.25	7.5	7.75
10-1	3	2.5	1.25	1.25	2.25	2.25	2	2.5	1.25	1.25	1.75
10-2	3	2.5	1.25	1.25	1.75	2	2	2.5	1.5	1.25	1.75

Plot	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
10-3	0.75	1	0	0	0	1.75	2	2.5	1.25	1	1.5
10-4	2.5	2.25	1.25	1.25	2.25	3.25	2	2.5	1.25	1	1.5
11-1	3.75	3	2.25	2.75	3.75	6.75	6	2.75	3	8.75	9.25
11-2	3.75	3	2.25	2.75	3.75	6.75	4.5	2.5	2.75	8.25	8.75
11-3	3	2.5	1.25	1.25	2.25	4.25	2	2.75	1.5	1.5	2
11-4	3.5	3	2.25	2.75	3.75	5.75	2.5	2.75	2	4.75	5.25
12-1	2.5	1.75	1.5	2	2.25	3.25	1	1	1.5	4.25	5.5
12-2	3.75	0.75	0	0	0	0	0	0	0	0	0
13-1	2.5	2.25	1.25	1.25	2.25	3.75	2	2.75	1.5	1.25	2
13-2	2.5	2.25	1.25	1.25	2.25	4	2	2.75	1.5	1.5	2
14-1	2.5	2.25	1.25	1.25	2.25	3.25	2	2.5	2.25	3	3.5
14-2	4.25	3.75	2.5	2.75	3.25	6.25	7	10.75	9.75	8.5	9
14-3	0	0.75	0.75	0.75	1	1.5	1.5	1.5	0	0	0
14-4	0	3.25	1.25	1.25	1.25	1.75	1.75	1.75	0	0	0
15-1	2.5	2.25	1.25	1.25	2	1.75	1.75	2.25	1	0.75	1
15-2	2.5	2.25	1.25	1.25	2.25	3.25	2	2.75	1.5	1.25	1.75
15-3	2.75	2.25	1.25	1.25	2.25	4.5	1.75	2.25	1.25	1	1.25
12-1s	3.75	2.75	2.25	3	3.5	7	3	2.25	2.5	8	8.5
13-1s											
13-2s											
14-1s	4.25	3.75	2.5	2.75	3.25	6.25	7	10.75	9.75	8.25	9.25
14-2s	2	0.5	0	0	0	0	1	2.25	2.25	2.75	3.5
14-3s	2	0.5	0	0	0	0	0.25	2.25	2	2.75	3.25
15-1s											
15-2s											

Table 2. Projected Plant Farm Effluent Application Schedule (in/month)

Plot	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
F	3.5	0	0	0.75	0.5	0.75	0.5	0	1	2.25	3
I-Pivot	1.75	2	2.25	2	2	2.25	1.75	1.75	1.25	1.5	2.5
I-SWR	4.25	2.5	1.25	0.75	0.75	1.5	1.5	1.5	0.75	0.5	0.5
J-Pivot	0.5	0.5	1	1.25	1	1.25	1	0.75	0.5	0.75	1.5
J-SWR	4.25	1	0	0	0	0	0.75	0.75	0	0	0
K1	6	5.5	0.5	0.5	0.5	1.75	1.75	2	0.75	0	0
K2	4.5	2.25	0.5	0	0.75	1.25	1.25	1.25	0.5	0	0
L	0	0.5	1	1	1	1.25	1	0.75	0.5	0.75	1.25
M	0	0	0	0	0	0	0	0	0	0	0
O	4.5	1.75	1.75	1.75	1.5	1.75	1.5	1.25	1.5	3	4.25
P	4.5	2	1.75	1.75	1.75	1.75	1.5	1.25	1.5	3.25	4.25
Cole Park	4	2.5	1.25	1	1	1.5	1.5	1.75	0.75	0.5	0.5

Work Product Samples for Quarterly Activities

Sludge Report Samples

Field	Plant Farm I					Month	May		Soil N, lb/ac		54	
Crop	Wheat/Cotton					Cumulative Effluent, Gal/ac		517,534				
Crop hydraulic limit, gal/ac					2,258,670	Crop N Requirement, lb N/ac		175				
Cumulative Sludge Water to Date, gal/ac					0	Cumulative N to Date, lb N/ac		181.6570269				
F=Sludge-Water Conversion Factor					2.3965	G=Effluent Conversion Factor		0.000006676				
Effluent Composition						Sludge Composition						
NO₃-N, mg/L I = TKN+ NO₃-N Effective Dates						PAN= 0.2*TKN + 0.3*NH₄-N + 0.8*NO₃-N Effective Dates						
						K = % Solids						
						TKN, mg/L	NO ₃ -N, mg/L	NH ₄ -N, mg/L				
						43.4	0.177	43.577	1	28		
						37.5	0.281	37.781	29	31		
						0	0	0	0	0		
0	0	0	0	0								
0	0	0	0	0								
						3.08	58300	90.91	37800	23072.728	1	28
						6.05	31900	474.38	19700	12669.504	29	31
						0	0	0	0	0	0	0
						0	0	0	0	0	0	0
						0	0	0	0	0	0	0
Day	A	B	C=B/A	D	E=D*F* (100-K)/A	H=C+E	ΣH	L=PAN* (K/100)*D/A x 2000 / 8.34 * 0.00000835				
	J=C*I*G	(L+J)	Σ(L+J)									
	Irr. Area (acres)	Effluent Applied (gal)	Eff. App. Rate (gal/ac)	Sludge Applied (wet tons)	Sludge Water (gal/ac)	Total Daily (gal/ac)	Cum. Total (gal/ac)	Daily Effluent N (lb N/ac)	Daily Sludge N (lb N/ac)	Daily N (lb N/ac)	Cum. N (lb N/ac)	
1	94	357,455	3802.708	0	0	3802.708	521337	1.106283989	0	1.10628399	182.7633	
2	94	357,455	3802.708	0	0	3802.708	525139.8	1.106283989	0	1.10628399	183.8696	
3	94	281,455	2994.197	0	0	2994.197	528134	0.871072032	0	0.87107203	184.7407	
4	94	292,545	3112.186	150.12	370.93818	3483.124	531617.1	0.905397222	2.272536072	3.17793329	187.9186	
5	94	292,545	3112.186	0	0	3112.186	534729.3	0.905397222	0	0.90539722	188.824	
6	94	292,909	3116.054	0	0	3116.054	537845.3	0.906522638	0	0.90652264	189.7305	
7	94	0	0	150.12	370.93818	370.9382	538216.3	0	2.272536072	2.27253607	192.0031	
8	94	0	0	135.108	333.84437	333.8444	538550.1	0	2.045282464	2.04528246	194.0483	
9	94	0	0	150.12	370.93818	370.9382	538921	0	2.272536072	2.27253607	196.3209	
10	94	0	0	0	0	0	538921	0	0	0	196.3209	
11	94	0	0	150.12	370.93818	370.9382	539292	0	2.272536072	2.27253607	198.5934	
12	94	0	0	0	0	0	539292	0	0	0	198.5934	
13	94	0	0	0	0	0	539292	0	0	0	198.5934	
14	94	0	0	135.108	333.84437	333.8444	539625.8	0	2.045282464	2.04528246	200.6387	
15	94	0	0	135.108	333.84437	333.8444	539959.7	0	2.045282464	2.04528246	202.684	
16	94	0	0	135.108	333.84437	333.8444	540293.5	0	2.045282464	2.04528246	204.7293	
17	94	361,758	3848.485	135.108	333.84437	4182.329	544475.8	1.119601412	2.045282464	3.16488388	207.8941	
18	94	342,476	3643.357	120.096	296.75055	3940.107	548415.9	1.059925504	1.818028857	2.87795436	210.7721	
19	94	342,476	3643.357	0	0	3643.357	552059.3	1.059925504	0	1.0599255	211.832	
20	94	342,695	3645.688	0	0	3645.688	555705	1.060603639	0	1.06060364	212.8926	
21	94	442,172	4703.963	135.108	333.84437	5037.807	560742.8	1.368477074	2.045282464	3.41375954	216.3064	
22	94	578,242	6151.515	135.108	333.84437	6485.36	567228.2	1.789599108	2.045282464	3.83488157	220.1413	
23	94	765,926	8148.148	135.108	333.84437	8481.993	575710.1	2.370459683	2.045282464	4.41574215	224.557	
24	94	766,313	8152.263	120.096	296.75055	8449.014	584159.2	2.371656885	1.818028857	4.18968574	228.7467	
25	94	765,926	8148.148	135.108	333.84437	8481.993	592641.2	2.370459683	2.045282464	4.41574215	233.1624	
26	94	0	0	0	0	0	592641.2	0	0	0	233.1624	
27	94	0	0	0	0	0	592641.2	0	0	0	233.1624	
28	94	0	0	0	0	0	592641.2	0	0	0	233.1624	
29	94	0	0	0	0	0	592641.2	0	0	0	233.1624	
30	94	0	0	0	0	0	592641.2	0	0	0	233.1624	
31	94	813,119	8650.206	0	0	8650.206	601291.4	2.181806418	0	2.18180642	235.3442	
Total	94	7,395,466	78675.17	2056.644	5081.8531	83757.02	601291.4	22.553472	31.13374418	53.6872162	235.3442	

Field Crop	Plant Farm I Wheat/Cotton					Month	May							
Sludge Composition														
Arsenic (mg/kg)	Cadmium (mg/kg)	Chromium (mg/kg)	Copper (mg/kg)	Lead (mg/kg)	Mercury (mg/kg)	Molybdenum (mg/kg)	Nickel (mg/kg)	PCBs (mg/kg)	Selenium (mg/kg)	Zinc (mg/kg)	TS (%)	Effective Dates		
1.69	1.69	3.39	18.7	1.69	0.0239	1.89	1.69	0.1	1.69	38.4	3.1	1	31	
0	0	0	0	0	0	0	0	0	0	0	0	32	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Day	A	B	C	D	E	F	G	H	I	J	K	L	M	
	Irr. Area	Sludge Applied	Arsenic Applied	Cadmium Applied	Chromium Applied	Copper Applied	Lead Applied	Mercury Applied	Molybdenum Applied	Nickel Applied	PCBs applied	Selenium Applied	Zinc Applied	
	(acres)	(wet tons)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	
1	94	0	0	0	0	0	0	0	0	0	0	0	0	
2	94	0	0	0	0	0	0	0	0	0	0	0	0	
3	94	0	0	0	0	0	0	0	0	0	0	0	0	
4	94	150.12	0.011653	0.0116531	0.02337516	0.12894263	0.011653	0.000164798	0.01303217	0.0116531	0.00069	0.011653	0.264781	
5	94	0	0	0	0	0	0	0	0	0	0	0	0	
6	94	0	0	0	0	0	0	0	0	0	0	0	0	
7	94	150.12	0.011653	0.0116531	0.02337516	0.12894263	0.011653	0.000164798	0.01303217	0.0116531	0.00069	0.011653	0.264781	
8	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
9	94	150.12	0.011653	0.0116531	0.02337516	0.12894263	0.011653	0.000164798	0.01303217	0.0116531	0.00069	0.011653	0.264781	
10	94	0	0	0	0	0	0	0	0	0	0	0	0	
11	94	150.12	0.011653	0.0116531	0.02337516	0.12894263	0.011653	0.000164798	0.01303217	0.0116531	0.00069	0.011653	0.264781	
12	94	0	0	0	0	0	0	0	0	0	0	0	0	
13	94	0	0	0	0	0	0	0	0	0	0	0	0	
14	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
15	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
16	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
17	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
18	94	120.096	0.009322	0.0093225	0.01870013	0.103154104	0.009322	0.000131839	0.010425736	0.00932248	0.000552	0.009322	0.211824	
19	94	0	0	0	0	0	0	0	0	0	0	0	0	
20	94	0	0	0	0	0	0	0	0	0	0	0	0	
21	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
22	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
23	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
24	94	120.096	0.009322	0.0093225	0.01870013	0.103154104	0.009322	0.000131839	0.010425736	0.00932248	0.000552	0.009322	0.211824	
25	94	135.108	0.010488	0.0104878	0.02103765	0.116048367	0.010488	0.000148319	0.011728953	0.01048779	0.000621	0.010488	0.238303	
26	94	0	0	0	0	0	0	0	0	0	0	0	0	
27	94	0	0	0	0	0	0	0	0	0	0	0	0	
28	94	0	0	0	0	0	0	0	0	0	0	0	0	
29	94	0	0	0	0	0	0	0	0	0	0	0	0	
30	94	0	0	0	0	0	0	0	0	0	0	0	0	
31	94	0	0	0	0	0	0	0	0	0	0	0	0	
Total	94	2056.644	0.159648	0.1596475	0.32023971	1.766514032	0.159648	0.002257737	0.178540723	0.15964752	0.009447	0.159648	3.627494	

Plot F

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	11.2	4.3	2.4	4.5	0.1
Cadmium	35	2.0	0.5	0.3	1.1	0.0
Chromium	2677	16.9	5.6	3.1	8.1	0.1
Copper	1339	336.3	108.1	61	164.9	2
Lead	268	25.6	8.2	4.6	12.6	0.1
Mercury	15	0.4	0.2	0.1	0.1	0.0
Molybdenum		22.7	7.1	4.1	11.3	0.1
Nickel	375	13.8	5	2.7	6.0	0.1
Selenium	89	10.8	3.9	2.2	4.7	0.1
Zinc	2500	702.1	234.8	131.4	330.8	5.1

Plot G

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	0.0	0	0	0	0.0
Cadmium	35	0.0	0	0	0	0.0
Chromium	2677	0.0	0	0	0	0.0
Copper	1339	0.0	0	0	0	0.0
Lead	268	0.0	0	0	0	0.0
Mercury	15	0.0	0	0	0	0.0
Molybdenum		0.0	0	0	0	0.0
Nickel	375	0.0	0	0	0	0.0
Selenium	89	0.0	0	0	0	0.0
Zinc	2500	0.0	0	0	0	0.0

Plot I

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	22.1	14.9	4.5	2.6	0.2
Cadmium	35	2.9	0.9	0.9	0.9	0.2
Chromium	2677	26.4	17.5	3.8	4.8	0.3
Copper	1339	530.8	322.6	78.3	128.2	1.8
Lead	268	36.9	26.2	4.8	5.8	0.2
Mercury	15	3.6	2.9	0.7	0.0	0.0
Molybdenum		34.9	22.4	6.4	5.9	0.2
Nickel	375	20.3	11.7	5.1	3.3	0.2
Selenium	89	23.4	17.1	2.9	3.3	0.2
Zinc	2500	1058.2	651.3	120.2	283.0	3.6

Plot J

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	21.2	18.3	2.9	0	0.0
Cadmium	35	1.9	0.8	1.1	0	0.0
Chromium	2677	24.0	19.2	4.8	0	0.0
Copper	1339	544.1	367	99.4	77.7	0.0
Lead	268	38.2	30.3	7.9	0	0.0
Mercury	15	1.4	1	0.4	0.0	0.0
Molybdenum		31.2	23.7	7.5	0	0.0
Nickel	375	18.8	13.7	5.1	0	0.0
Selenium	89	23.3	20.2	3.1	0	0.0
Zinc	2500	1018.3	690.9	164.6	162.8	0.0

Plot K1

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	4.6	0	4.3	0	0.3
Cadmium	35	1.0	0	0.8	0	0.2
Chromium	2677	4.7	0	4.1	0	0.6
Copper	1339	328.1	0	82.9	183.7	61.4
Lead	268	16.6	0	5.4	10.8	0.4
Mercury	15	0.6	0	0.5	0.0	0.1
Molybdenum		19.1	0	6.4	12.3	0.4
Nickel	375	5.2	0	4.9	0	0.3
Selenium	89	3.4	0	3.1	0	0.3
Zinc	2500	654.1	0	143	377.5	133.6

Plot K2

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	0.0	0	0	0	0.0
Cadmium	35	0.0	0	0	0	0.0
Chromium	2677	0.0	0	0	0	0.0
Copper	1339	0.0	0	0	0	0.0
Lead	268	0.0	0	0	0	0.0
Mercury	15	0.0	0	0	0	0.0
Molybdenum		0.0	0	0	0	0.0
Nickel	375	0.0	0	0	0	0.0
Selenium	89	0.0	0	0	0	0.0
Zinc	2500	0.0	0	0	0	0.0

Plot L1

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	13.4	0	2.6	2.4	8.4
Cadmium	35	3.8	0	1.1	0.8	1.9
Chromium	2677	21.4	0	3.9	4.0	13.6
Copper	1339	463.5	0	77.6	82.1	303.8
Lead	268	27.5	0	6.1	5.1	16.3
Mercury	15	0.7	0	0.2	0.1	0.3
Molybdenum		27.5	0	6.7	5.0	15.8
Nickel	375	14.7	0	1.5	2.9	10.3
Selenium	89	14.9	0	3.2	3.0	8.7
Zinc	2500	998.7	0	153.4	174.7	670.5

Plot L2

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	0.0	0	0	0	0.0
Cadmium	35	0.0	0	0	0	0.0
Chromium	2677	0.0	0	0	0	0.0
Copper	1339	0.0	0	0	0	0.0
Lead	268	0.0	0	0	0	0.0
Mercury	15	0.0	0	0	0	0.0
Molybdenum		0.0	0	0	0	0.0
Nickel	375	0.0	0	0	0	0.0
Selenium	89	0.0	0	0	0	0.0
Zinc	2500	0.0	0	0	0	0.0

Plot M

Pollutant	Limit	Total	2014/15	2015/16	2016/17	2017/18
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Arsenic	36	13.7	7.8	2.5	0.2	3.2
Cadmium	35	2.7	0.7	1	0.1	0.9
Chromium	2677	19.7	9.4	4.4	0.5	5.5
Copper	1339	355.1	179.8	73.9	6.6	94.7
Lead	268	26.7	14	6	0.6	6.2
Mercury	15	0.5	0.3	0.1	0.0	0.1
Molybdenum		24.4	11.9	6	0.5	6.0
Nickel	375	14.9	8.1	2.3	0.3	4.3
Selenium	89	13.7	7.3	2.9	0.2	3.2
Zinc	2500	760.8	386.9	145.2	12.9	215.8

Work Product Samples for Quarterly Activities

Nitrate Study Plan Update

Nitrate Study Plan Quarterly Progress Report

October 4, 2018

The following list summarizes the work performed by AWT for the City of Midland since the Agronomist Scope of Work was developed on May 31, 2011 as required by Section 3.0 of the TCEQ approved Nitrate Study Plan for Irrigation Site #2.

- Review of data associated with the City of Midland's land application program (August-September, 2011)
- Initial site audit (September 26-28, 2011)
- Audit report (October 2011-March 2012)
- Soil sampling work plan (January 2012)
- Irrigation system testing work plan (January 2012)
- Soil sampling (February 2012)
- Irrigation system testing (March 2012)
- Crop Management Plan (April 2012)
- TCEQ Permit Application (April 2012 – March 2013)
- Summarize audit report (August 2013)
- Meeting with contract farmers (October 2013)
- Preparation of weekly water/nitrogen balance model and reporting spreadsheets (February-September, 2014)
- Site Visit and Report (August 2014)
- Began implementing water/nitrogen balance model and weekly reporting (September 17, 2014)
- Quarterly Report (December 12, 2014)
- Site Visit (December 17-18, 2014)
- Site Visit Report (December 23, 2014)
- Quarterly Model Simulation (January 9, 2015)
- Quarterly Report (March 19, 2015)
- Site Visit (March 24-25, 2015)
- Site Visit Report (March 26, 2015)
- Final Soil Moisture Monitoring Plan (April 7, 2015)
- Review of Groundwater Monitoring Plans (April 13, 2015)
- Quarterly Model Simulation (April 15, 2015)
- Quarterly Report (June 19, 2015)
- Quarterly Model Simulation (June 30, 2015)
- Summer site visit (August 3-4, 2015)
- Summer site visit report (August 7, 2015)
- Preparation of 2015/16 Water Balance Model (August 31, 2015)
- Quarterly Report (September 11, 2015)
- Preparation of 2014/15 Sludge Application Spreadsheets for Sludge Report to be Submitted to TCEQ (September 22, 2015)
- Quarterly Model Simulation (October 1, 2015)
- Preparation of 2014/15 Effluent Application Spreadsheets for Irrigation Report to be Submitted to TCEQ (October 30, 2015)

- Preparation of 2015 Soil Sampling MER data sheets to be submitted to TCEQ (November 24, 2015)
- Sodium Adsorption Rate treatment calculations (November 30, 2015)
- Quarterly Report (December 11, 2015)
- Summarized 2014-15 crop yield data (December 15, 2015)
- Quarterly Model Simulation (December 18, 2015)
- Nitrate Study Plan Quarterly Status Report Summary and Attachments (January 6, 2016)
- Revision of the 2011 Audit Report (February 3, 2016)
- Winter Site Visit (February 22-23, 2016)
- Winter Site Visit Report (February 26, 2016)
- Quarterly Report (March 11, 2016)
- Quarterly Model Simulation (March 30, 2016)
- Quarterly Report (June 10, 2016)
- Quarterly Model Simulation (June 24, 2016)
- Summer Site Visit (July 26-27, 2016)
- Summer Site Visit Report (August 1, 2016)
- SAR Letter (August 29, 2016)
- Preparation of 2016/17 Water Balance Model (August 31, 2016)
- Sludge Application Data for Annual Reports (September 7, 2016)
- Quarterly Report (September 16, 2016)
- Quarterly Model Simulation (September 30, 2016)
- Compilation of 2015/16 Data for Annual Irrigation Report (October 7, 2016)
- Compilation of 2015/16 Soil Moisture Monitoring Plan Data (October 10, 2016)
- Quarterly Report (December 16, 2016)
- Quarterly Model Simulation (December 23, 2016)
- Nitrate Study Plan Quarterly Status Report Summary (January 6, 2017)
- Winter Site Visit (February 23, 2017)
- Winter Site Visit Report (February 28, 2017)
- Minimum water requirement calculations for Spraberry and Plant Farms (March 10, 2017)
- Quarterly Report (March 17, 2017)
- Quarterly Model Simulation (March 31, 2017)
- Sludge Application Data for Quarterly Report (June 5, 2017)
- Gypsum Calculations (June 15, 2017)
- Quarterly Report (June 16, 2017)
- Quarterly Model Simulation (June 30, 2017)
- Crop Management Plan for North Portion of Spraberry (July 7, 2017)
- Crop Management Plan for Plant Farm (August 11, 2017)
- Preparation of 2017/18 Water Balance Model (August 31, 2017)
- Summer Site Visit and Report – September 5-6, 2017
- Assessment of Crops at Spraberry – September 6, 2017
- Sludge Application Data for Annual Reports (September 8, 2017)
- Quarterly Report (September 15, 2017)
- Quarterly Model Simulation (September 29, 2017)
- 2016/17 Data for Annual Irrigation Report (October 6, 2017)
- 2016/17 Soil Moisture Monitoring Plan Data Summary (October 10, 2017)

- Participation in Pre-Bid Farming Contract Meeting (October 11, 2017)
- Review pivot calibration data (November 17, 2017)
- Assemble harvest data (November 17, 2017)
- Quarterly Report (December 15, 2017)
- Quarterly Model Simulation (December 29, 2017)
- Winter Site Visit (February 28, 2018)
- Winter Site Visit Report (March 2, 2018)
- Sludge Application Data for Quarterly Report (March 9, 2018)
- Quarterly Report (March 16, 2018)
- Quarterly Model Simulation (March 30, 2018)
- Incorporate new soil sample results into the model (April 6, 2018)
- Sludge Application Data for Quarterly Report (June 8, 2018)
- Quarterly Report (June 15, 2018)
- Quarterly Model Simulation (June 29, 2018)
- Summer site visit and report (August 6, 2018)
- Preparation of 2018/19 Water Balance Model (August 31, 2018)
- Sludge Application Data for Annual Reports (September 7, 2018)
- Quarterly Report (September 14, 2018)
- Quarterly Model Simulation (September 28, 2018)

AWT will continue to provide weekly water/nitrogen balance reporting, quarterly land application site reporting, quarterly model updates and simulations, summer and winter site visits and will assist Midland in the preparation of annual soil, irrigation and sludge reports and quarterly nitrate study plan progress reports.

Midland has made strides to reduce the potential of off-site migration of nitrate-impacted groundwater including seeding summer and winter crops on all fields at the Spraberry land application site (Site #2) and elimination of commercial fertilizer applications (unless needed based on soil testing). Midland continues to monitor effluent quality on a monthly basis and tracks effluent applications on a weekly basis. Efforts are being made to keep the irrigation systems in good working order so that effluent can be utilized throughout the farm as needed. Cattle have been removed from Sections 2, 3, 10, 11 and 12 at Site #2. New farming contracts have been signed at both the Plant Farm and the Spraberry Farm.

The Nitrate Study Plan Reporting Form follows along with recent monitor well, soil and effluent quality testing results.

On-Going Semi-Annual Activities

We will continue to utilize the same process we have been since 2013 to accomplish the site visits to the Spraberry and Plant Farms. We will coordinate with the Superintendent and the Utilities Director prior to scheduling visits. The visits will typically require 1 to 2 days to accomplish. The following outline includes the deliverables and timeline for deliverables.

1. Agronomist & Engineer site visit to verify model parameters, assess the crops and meet with City personnel – AWT will schedule two site visits by an agronomist and engineer. During these site visits the agronomist and engineer will verify that conditions at the Plant Farm and Spraberry are consistent with the model parameters being used for weekly recommendations and meet with City personnel to discuss relevant issues.
2. Site visit report – AWT will develop a report providing notes from the visit and identifying any issues that need attention.
3. Timeline: Site visit reports will be provided to the City twice per year typically in February and August.
4. Sample Forms, Reports, Etc. follow.

Work Product Samples for Semi-Annual Activities

Site Visit Report



Engineers and Soil Scientists

Agri-Waste Technology, Inc.
501 N. Salem Street, Suite 203
Apex, North Carolina 27502
919-859-0669
www.agriwaste.com

August 9, 2018

To: Laura Wilson, City of Midland
Cory Moose, City of Midland

From: Jeff Vaughan, AWT
Chris Mosley, AWT

Subject: August 2018 Site Visit Report

Meeting at Plant

On Monday, August 6, 2018 we met with Cory Moose to discuss pertinent issues related to the land application program at the Plant Farm and Spraberry Farm. A summary of our discussion follows:

1. Effluent Negotiations

The completion date for the installation of infrastructure necessary to send water to Pioneer is still estimated in mid-2020. It is anticipated that 9-10 MGD will be sent to Pioneer and any excess water will be utilized at the Plant Farm. Sludge disposal will be via landfill after Pioneer begins taking effluent. The City submitted a discharge permit application to TCEQ in July 2018.

2. Storage Ponds at the Plant Farm

Two of the pumps at Pump Station 3 are now online. Each pump has a flowrate of approximately 0.5 MGD. The pumps are currently being utilized to apply wastewater out of the ponds. Approximately 75% of the wastewater applied at the Plant Farm is applied directly from the plant. The remainder of the wastewater (25%) is applied out of the ponds. Cory will send the latest wastewater sample results from the ponds. AWT will review the sample results to determine if there is a significance difference in the available N from the ponds compared to the wastewater coming directly from the treatment plant.

3. Irrigation Systems

Center pivots have replaced the sideroll irrigation systems on I, J, L and M. Siderolls should still be operated on I, J and L in the areas outside of the center pivot. This will require I and J to be split into I(J)-Pivot and I(J)-SWR fields and Field L1 and L2 to be renamed L-Pivot and L-SWR and split differently than they have been in the past.

4. Isolation Valve between Pond 8 and pump station

The repair of this valve has been included in the primary treatment plant rehab contract with Red River Construction.

5. Plan for Controlling Brush and Weeds Around the Storage Ponds at Both Farms

The City is in the process of developing an on-going maintenance plan for controlling brush and weeds around the storage ponds at both land application sites. This will be included in next fiscal year's budget. A brush cutter is planned to be purchased.

The repair of the isolation valve between Pond 8 and the Pump Station is likely going to be removed from the current contract and inserted into the sewer plant rehab contract.

6. Cattle Grazing Update

Cattle remain on Sections 13, 14 and 15 at the Spraberry Farm.

7. Soil SAR Above 10

The City will make gypsum applications based on the February 2018 soil sampling event.

8. AWT Contract

The contract will expire on December 18, 2018. Cory says the request for bids will go out in September. AWT will be submitting a bid to continue working with the City.

9. 2018 TCEQ Reporting Deadlines

Quarterly Sludge Reports Due **September 15**, **December 15**, March 15, June 15

Annual Sludge Report Due **September 30**

I.B.1 (Page 16)

II.F (Pages 25-26)

Special Provision 17 (Page 36)

Nitrate Study Plan Quarterly Progress Report Due **October 1**, **January 1**, April 1, July 1,

Special Provision 14 (Pages 32-33)

Annual Irrigation Report Due **November 30**

Special Provision 26 (Page 38)

Special Provision 27 (Page 38)

Special Provision 31 (Page 39)

Farm Tour – Plant Farm

10. J.R. and Cory toured us around the Plant Farm on August 6, 2018.
11. Haygrazer has been planted on Fields F, J-SWR, K, O, P and Cole Park. A new pipeline has temporarily taken out a portion of Field P. There are heavy weeds in all of the fields planted in haygrazer. Haygrazer plantings were not noted in the quarterly report submitted to the City by Kevin Cook.
12. Cotton has been planted under the new center pivots on Fields I, J, L and M. A new pipeline has temporarily taken out a portion of Field L. Prairie dogs have destroyed large portions of the cotton crop on Fields I, J and M.
13. A prairie dog control program has been initiated at the Plant Farm.

Farm Tour – Spraberry

14. J.R. and Cory toured us around the Spraberry Farm on August 6, 2018.
15. Fields 2-3, 3-1, 3-2, 3-4 and 11-4 have good stands of cotton.
16. Fields 2-4, 11-1, 11-2, 12-1, 12-1s and 12-2 have been planted in haygrazer. Fields 11-2, 12-1, 12-1s and 12-2 have been recently cut. Field 2-4 has a good stand. Field 11-1 and 12-1 have fair stands.
17. Fields 13-1, 13-2, 15-1 and 15-2 had a fair to good stand of wheatgrass.
18. Field 14-1s and 14-2 had a fair stand of mixed grasses and alfalfa.
19. Fields 10-1, 10-2, 10-3, 10-4, 11-3, 14-1, 14-3, 14-4, 14-2s, 14-3s, and 15-3 all had fair to poor stands of grass and weeds.
20. Field 15-1s has been taken out of production due to oil field operations.
21. Cows were observed on fields 14-2, 14-3, 14-4, 14-3s, 15-2, and 15-3.

Action Items

The following items summarize the issues that need to be addressed by the **City**.

1. Provide aerial photographs of Plant Farm to AWT.
2. Provide wastewater sample results from Plant Farm storage ponds to AWT.
3. Provide AWT with soil moisture readings as they are taken.
4. Provide AWT with planting information from Kevin Cook as available.
5. Provide hay yield and crop tissue analyses reports to AWT as available.
6. Keep AWT updated on gypsum applications.
7. Keep AWT informed of any communication from TCEQ related to the land application sites.
8. Quarterly Sludge Reports due to TCEQ on September 15, 2018 and December 15, 2018.
9. Nitrate Study Plan Quarterly Reports due to TCEQ in October 2018 and January 2019.
10. Annual Sludge Report due to TCEQ on September 30, 2018.
11. Annual Irrigation Report due to TCEQ on November 30, 2018.

The following items summarize the issues that need to be addressed by **AWT**.

12. Provide the City with a revised map of renamed and reconfigured fields at the Plant Farm.
13. Review effluent sample data from Plant Farm ponds in comparison to effluent sample data from Plant.
14. Provide data for Sludge Reports, Nitrate Study Plan Quarterly Reports and Irrigation Report.

Work Product Samples for Semi-Annual Activities

Crop Data Sheet

Spraberry Plot Management Goals

Plot	Current Crop(s)	Current Stand Status	2018 Crop Plan	2/28/18 Crops	9/5/17 Crops	2/23/17 Crops	7/27/16 Crops	Notes/Issues of Concern
2-3			Cotton/Wheat	Wheat	Wheatgrass	Wheat/WG	Wheatgrass	
2-4			Cotton/Wheat	Plowed (No crop)	Cotton	Wheat	Cotton	
3-1			Haygrazer/Wheat	Wheatgrass	Wheatgrass	Wheat/WG	Wheatgrass	
3-2			Cotton/Wheat	Wheat	Haygrazer	Wheat	Haygrazer	
3-4			Haygrazer/Wheat	Wheat	Wheatgrass	Wheat/WG	Wheatgrass	
10-1			Wheat Grain	Plowed (No crop)	Mixed Grass	Wheat/WG	Wheatgrass/Weeds	
10-2			Wheatgrass	Plowed (No crop)	Mixed Grass	Wheat/WG	Wheatgrass	
10-3			Wheatgrass	Mixed Grass	Mixed Grass	Wheat/WG	Wheatgrass	
10-4			Wheatgrass	Plowed (No crop)	Bermudagrass	Mixed Grass	Bermudagrass	
11-1			Wheatgrass	Plowed (No crop)	BG/WG	Mixed Grass/Wheat	Mixed Grass/Weeds	
11-2			Cotton/Wheat	Wheat	Cotton	Wheat	Cotton	
11-3			Wheatgrass	Plowed (No crop)	BG/WG	Mixed Grass/Wheat	Mixed Grass/Weeds	
11-4			Wheatgrass	Plowed (No crop)	WG/BG	Mixed Grass/Wheat	WG/BG	
12-1			Wheatgrass	Wheat	Cotton	Wheat	Cotton	
12-1s			Haygrazer/Wheat	Wheat	Cotton	Wheat	Cotton	
12-2			Haygrazer/Wheat	Wheat	Cotton	Wheat	Cotton	
13-1			Jose Wheatgrass interseeded with Wheat	Wheatgrass	Wheatgrass	Wheat/WG	Wheatgrass	
13-2			Jose Wheatgrass interseeded with Wheat	Wheatgrass	Wheatgrass	Wheat/WG	Wheatgrass	

On-Going Annual Activities

We will continue to utilize the same process we have been since 2013 for delivering annual information to the City. We will get soil sample analytical results from the lab, update the model and provide soil amendment recommendations after the February soil sampling event. We will continue to provide an annual model update and projections, data for annual irrigation reporting, data for annual sludge application reporting and soil moisture monitoring plan update on an annual basis. The following outline includes the deliverables and timeline for deliverables.

1. Update of soil data in model – once per year the City will provide updated soil analysis results. These results will be incorporated into the model.
2. Interpretation of soil analysis and recommendations on soil amendment applications by plot.
3. Timeline: The preceding tasks will be accomplished after the soil sample analytical results are obtained from the lab (typically in March).
4. Annual model update and preparation – each year AWT will completely update and prepare the model for use during the upcoming year. The revised model upcoming year and the completed and closed-out model for the previous year will be provided in electronic format to the City of Midland.
5. Annual model projections by month – each year AWT will use the updated model, using historical average precipitation, the latest soil samples, effluent analyses for the previous year and projected flows from the WWTP, to provide a snapshot of the projected applications needed for each plot on a monthly basis
6. Timeline: The preceding information will be provided to the City at the end of August each year.
7. AWT will provide wastewater application data to the City for Annual Irrigation reporting to the TCEQ.
8. Timeline: The preceding information will be provided to the City in October of each year.
9. AWT will provide sludge application data to the City for Annual Sludge reporting to the TCEQ. The data will include:
 - a. Sludge applications by plot using the TCEQ form
 - b. Sludge applications in dry tons/acre by plot and by month
 - c. Metals land applied by plot per month
 - d. Year to date cumulative loading rates by plot
10. Timeline: The preceding information will be provided to the City in September of each year.
11. Soil moisture monitoring plan update
 - a. Evaluation of soil moisture measurements
 - b. Update of soil moisture management data sheet including calculations
12. Timeline: The preceding information will be provided to the City in October of each year.
13. Sample Reports, Forms, Etc. follow.

Work Product Samples for Annual Activities

Gypsum Calculations

GypsumCalculations2018

Fields	d	Db	Ec	SARi	SARf	gypsum (kg/ha)	tons/acre	Acres	tons
10-4	0.4	1.45	128	12.2	9	2019.328	0.90	119	107
12-2	0.4	1.48	82.5	10.1	9	456.654	0.20	30	6
13-1	0.4	1.45	128	13.2	9	2650.368	1.18	124	147
13-1s	0.4	1.45	128	17.3	9	5237.632	2.34	16	37
13-2s	0.4	1.45	128	15.4	9	4038.656	1.80	16	29
14-1	0.4	1.45	128	10.3	9	820.352	0.37	126	46
14-4	0.4	1.45	75	11.1	9	776.475	0.35	95	33
14-3s	0.4	1.45	75	10.5	9	554.625	0.25	14	3
15-1s	0.4	1.43	245	20.7	9	13936.923	2.50	13	33
15-2	0.4	1.45	128	12	9	1893.12	0.84	124	105

Total 546

kg gypsum/ha = (8.5)d x Db x Ec(SARi-SARf)

d= soil depth (meters)

Db= bulk density in megagrams/cubic meter

Ec= soil cation exchange capacity (mmol/kg)

Based on February 2018 soil sample results

Work Product Samples for Annual Activities

Soil Moisture Monitoring Data

Spraberry Plot 2-3
(Soil Moisture Management Data Sheet)

Plot 2-3	Sample 1			Sample 2			Sample 3			Sample 4			Sample 5			Average (Surface Horizon)	Average (Sub- surface Horizon)	Water Required to Increase to FC (Surface)	Water Required to Increase to FC (Sub-Surface)	Water Required to Increase to FC (Total)
Sample Date	0-6"	6-18"	18-30"	0-6"	6-18"	18-30"	0-6"	6-18"	18-30"	0-6"	6-18"	18-30"	0-6"	6-18"	18-30"	%	%	(in)	(in)	(in)
Sep-16	78	74	0	86	0	0	96	0	0							61.9	9.9	0.54	3.17	3.71
Feb-17	95	96	0	93	0	0	68	0	0							64.0	12.8	0.54	3.17	3.71
																#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
																#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
																#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
																#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

Work Product Samples for Annual Activities

Irrigation Report Data

Field	Spraberry 2-3					Month	September		Soil N, lb/ac		45.5
Crop	Wheat Forage/Cotton					Cumulative Effluent, Gal/ac		0			
Crop hydraulic limit, gal/ac					2,258,670	Crop N Requirement, lb N/ac		260			
Cumulative Sludge Water to Date, gal/ac					0	Cumulative N to Date, lb N/ac		0			
F=Sludge-Water Conversion Factor					2.3965	G=Effluent Conversion Factor		0.000006676			
Effluent Composition					Sludge Composition						
					PAN=						
					0.2*TKN +						
					0.3*NH ₄ -N +						
					0.8*NO ₃ -N						
Effective Dates					Effective Dates						
TKN, mg/L	NO ₃ -N, mg/L	I = TKN+ NO ₃ -N			K = % Solids	TKN, mg/L	NO ₃ -N, mg/L	NH ₄ -N, mg/L			
18.2	0.1	18.3	1	27	0	0	0	0	0	1	30
4.07	0.133	4.203	28	30	0	0	0	0	0	31	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
Day	A	B	C=B/A	D	E=D*F* (100-K)/A	H=C+E	ΣH	L=PAN* (K/100)*D/A x 2000 / 8.34 * 0.00000835			
	Irr. Area (acres)	Effluent Applied (gal)	Eff. App. Rate (gal/ac)	Sludge Applied (wet tons)	Sludge Water (gal/ac)	Total Daily (gal/ac)	Cum. Total (gal/ac)	Daily Effluent N (lb N/ac)	Daily Sludge N (lb N/ac)	Daily N (lb N/ac)	Cum. N (lb N/ac)
1	140	1,444,593	10318.52	0	0	10318.52	10318.52	1.260621843	0	1.26062184	46.76062
2	140	1,444,593	10318.52	0	0	10318.52	20637.04	1.260621843	0	1.26062184	48.02124
3	140	1,444,593	10318.52	0	0	10318.52	30955.56	1.260621843	0	1.26062184	49.28187
4	140	1,444,593	10318.52	0	0	10318.52	41274.08	1.260621843	0	1.26062184	50.54249
5	140	0	0	0	0	0	41274.08	0	0	0	50.54249
6	140	0	0	0	0	0	41274.08	0	0	0	50.54249
7	140	0	0	0	0	0	41274.08	0	0	0	50.54249
8	140	0	0	0	0	0	41274.08	0	0	0	50.54249
9	140	0	0	0	0	0	41274.08	0	0	0	50.54249
10	140	0	0	0	0	0	41274.08	0	0	0	50.54249
11	140	0	0	0	0	0	41274.08	0	0	0	50.54249
12	140	0	0	0	0	0	41274.08	0	0	0	50.54249
13	140	0	0	0	0	0	41274.08	0	0	0	50.54249
14	140	1,733,511	12382.22	0	0	12382.22	53656.3	1.512746212	0	1.51274621	52.05523
15	140	1,733,511	12382.22	0	0	12382.22	66038.53	1.512746212	0	1.51274621	53.56798
16	140	1,733,511	12382.22	0	0	12382.22	78420.75	1.512746212	0	1.51274621	55.08073
17	140	1,733,511	12382.22	0	0	12382.22	90802.98	1.512746212	0	1.51274621	56.59347
18	140	1,733,511	12382.22	0	0	12382.22	103185.2	1.512746212	0	1.51274621	58.10622
19	140	722,296	5159.26	0	0	5159.26	108344.5	0.630310922	0	0.63031092	58.73653
20	140	722,296	5159.26	0	0	5159.26	113503.7	0.630310922	0	0.63031092	59.36684
21	140	0	0	0	0	0	113503.7	0	0	0	59.36684
22	140	0	0	0	0	0	113503.7	0	0	0	59.36684
23	140	0	0	0	0	0	113503.7	0	0	0	59.36684
24	140	0	0	0	0	0	113503.7	0	0	0	59.36684
25	140	0	0	0	0	0	113503.7	0	0	0	59.36684
26	140	0	0	0	0	0	113503.7	0	0	0	59.36684
27	140	0	0	0	0	0	113503.7	0	0	0	59.36684
28	140	0	0	0	0	0	113503.7	0	0	0	59.36684
29	140	0	0	0	0	0	113503.7	0	0	0	59.36684
30	140	1,444,593	10318.52	0	0	10318.52	123822.2	0.289529705	0	0.28952971	59.65637
31	140						123822.2	0	0	0	59.65637
Total	140	17,335,114	123822.2	0	0	123822.2	123822.2	14.15636998	0	14.15637	59.65637

Applications

Site	Field	Acres	Gallons	Gal/Acre	Ac-ft/Acre
Spraberry	2-3	140	273,028,039	1,950,200	5.98
Spraberry	2-4	140	258,506,080	1,846,472	5.67
Spraberry	3-1	140	277,894,036	1,984,957	6.09
Spraberry	3-2	140	242,995,715	1,735,684	5.33
Spraberry	3-4	140	234,176,096	1,672,686	5.13
Spraberry	10-1	118	163,797,273	1,388,112	4.26
Spraberry	10-2	110	147,315,881	1,339,235	4.11
Spraberry	10-3	118	164,950,775	1,397,888	4.29
Spraberry	10-4	119	110,511,349	928,667	2.85
Spraberry	11-1	120	145,458,547	1,212,155	3.72
Spraberry	11-2	120	139,788,792	1,164,907	3.57
Spraberry	11-3	120	161,946,456	1,349,554	4.14
Spraberry	11-4	120	227,572,243	1,896,435	5.82
Spraberry	12-1	57	55,583,288	975,145	2.99
Spraberry	12-2	30	12,691,780	423,059	1.30
Spraberry	13-1	124	153,404,894	1,237,136	3.80
Spraberry	13-2	36	34,135,836	948,218	2.91
Spraberry	14-1	126	188,450,932	1,495,642	4.59
Spraberry	14-2	34	32,571,766	957,993	2.94
Spraberry	14-3	61	64,765,005	1,061,721	3.26
Spraberry	14-4	95	68,721,343	723,383	2.22
Spraberry	15-1	87	203,331,596	2,337,145	7.17
Spraberry	15-2	124	170,173,032	1,372,363	4.21
Spraberry	15-3	63	52,929,120	840,145	2.58
Spraberry	12-1s	27	32,845,478	1,216,499	3.73
Spraberry	13-1s	16	0	0	0.00
Spraberry	13-2s	16	0	0	0.00
Spraberry	14-1s	13	20,433,600	1,571,815	4.82
Spraberry	14-2s	14	34,214,400	2,443,886	7.50
Spraberry	14-3s	14	13,780,800	984,343	3.02
Spraberry	15-1s	13	0	0	0.00
Spraberry	15-2s	15	0	0	0.00
Total		2610	3,685,974,152	1,412,251	4.33

Applications

Site	Field	Acres	Gallons	Gal/Acre	Ac-ft/Acre
Plant	F	88	54,244,726	616,417	1.89
Plant	G	12	699,381	58,282	0.18
Plant	I	94	85,150,255	905,854	2.78
Plant	J	89	77,675,196	872,755	2.68
Plant	K1	117.5	0	0	0.00
Plant	K2	45.5	12,377,685	272,037	0.83
Plant	L1	63	51,504,812	817,537	2.51
Plant	L2	40	22,050,204	551,255	1.69
Plant	M	109	106,943,091	981,129	3.01
Plant	O	21	16,678,313	794,205	2.44
Plant	P	48	32,903,332	685,486	2.10
Plant	Cole Park	66.7	36,210,305	542,883	1.67
Total		793.7	496,437,300	625,472	1.92

Work Product Samples for Annual Activities

Sludge Report Data

Field	Plant Farm I					Month	May		Soil N, lb/ac		70	
Crop	Wheat Forage/Cotton					Cumulative Effluent, Gal/ac			517,534			
Crop hydraulic limit, gal/ac					2,258,670	Crop N Requirement, lb N/ac			260			
Cumulative Sludge Water to Date, gal/ac					0	Cumulative N to Date, lb N/ac			197.6570269			
F=Sludge-Water Conversion Factor					2.3965	G=Effluent Conversion Factor			0.00006676			
Effluent Composition					Sludge Composition							
					PAN=							
					0.2*TKN +							
					0.3*NH ₄ -N +							
					0.8*NO ₃ -N							
Effective Dates					Effective Dates							
NO ₃ -N,	I = TKN+											
TKN, mg/L	mg/L	NO ₃ -N			K = % Solids	TKN, mg/L	mg/L					
43.4	0.177	43.577	1	28	3.08	58300	90.91	37800	23072.728	1	28	
37.5	0.281	37.781	29	31	6.05	31900	28.6	19700	12312.88	29	31	
0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	
Day	A	B	C=B/A	D	E=D*F* (100-K)/A	H=C+E	ΣH	L=PAN* (K/100)*D/A x 2000 / 8.34 * 0.0000835				
	J=C*I*G							(L+J)	Σ(L+J)			
	Irr. Area	Effluent	Eff. App.	Sludge	Sludge	Total Daily	Cum.	Daily Effluent	Daily Sludge	Daily N	Cum. N	
	(acres)	Applied	Rate	Applied	Water	(gal/ac)	Total	N	N	(lb N/ac)	(lb N/ac)	
		(gal)	(gal/ac)	(wet tons)	(gal/ac)		(gal/ac)	(lb N/ac)	(lb N/ac)			
1	94	357,455	3802.708	0	0	3802.708	521337	1.106283989	0	1.10628399	198.7633	
2	94	357,455	3802.708	0	0	3802.708	525139.8	1.106283989	0	1.10628399	199.8696	
3	94	281,455	2994.197	0	0	2994.197	528134	0.871072032	0	0.87107203	200.7407	
4	94	292,545	3112.186	150.12	370.93818	3483.124	531617.1	0.905397222	2.272536072	3.17793329	203.9186	
5	94	292,545	3112.186	0	0	3112.186	534729.3	0.905397222	0	0.90539722	204.824	
6	94	292,909	3116.054	0	0	3116.054	537845.3	0.906522638	0	0.90652264	205.7305	
7	94	0	0	150.12	370.93818	370.9382	538216.3	0	2.272536072	2.27253607	208.0031	
8	94	0	0	135.108	333.84437	333.8444	538550.1	0	2.045282464	2.04528246	210.0483	
9	94	0	0	150.12	370.93818	370.9382	538921	0	2.272536072	2.27253607	212.3209	
10	94	0	0	0	0	0	538921	0	0	0	212.3209	
11	94	0	0	150.12	370.93818	370.9382	539292	0	2.272536072	2.27253607	214.5934	
12	94	0	0	0	0	0	539292	0	0	0	214.5934	
13	94	0	0	0	0	0	539292	0	0	0	214.5934	
14	94	0	0	135.108	333.84437	333.8444	539625.8	0	2.045282464	2.04528246	216.6387	
15	94	0	0	135.108	333.84437	333.8444	539959.7	0	2.045282464	2.04528246	218.684	
16	94	0	0	135.108	333.84437	333.8444	540293.5	0	2.045282464	2.04528246	220.7293	
17	94	361,758	3848.485	135.108	333.84437	4182.329	544475.8	1.119601412	2.045282464	3.16488388	223.8941	
18	94	342,476	3643.357	120.096	296.75055	3940.107	548415.9	1.059925504	1.818028857	2.87795436	226.7721	
19	94	342,476	3643.357	0	0	3643.357	552059.3	1.059925504	0	1.0599255	227.832	
20	94	342,695	3645.688	0	0	3645.688	555705	1.060603639	0	1.06060364	228.8926	
21	94	442,172	4703.963	135.108	333.84437	5037.807	560742.8	1.368477074	2.045282464	3.41375954	232.3064	
22	94	578,242	6151.515	135.108	333.84437	6485.36	567228.2	1.789599108	2.045282464	3.83488157	236.1413	
23	94	765,926	8148.148	135.108	333.84437	8481.993	575710.1	2.370459683	2.045282464	4.41574215	240.557	
24	94	766,313	8152.263	120.096	296.75055	8449.014	584159.2	2.371656885	1.818028857	4.18968574	244.7467	
25	94	765,926	8148.148	135.108	333.84437	8481.993	592641.2	2.370459683	2.045282464	4.41574215	249.1624	
26	94	0	0	0	0	0	592641.2	0	0	0	249.1624	
27	94	0	0	0	0	0	592641.2	0	0	0	249.1624	
28	94	0	0	0	0	0	592641.2	0	0	0	249.1624	
29	94	0	0	0	0	0	592641.2	0	0	0	249.1624	
30	94	0	0	0	0	0	592641.2	0	0	0	249.1624	
31	94	813,119	8650.206	0	0	8650.206	601291.4	2.181806418	0	2.18180642	251.3442	
Total	94	7,395,466	78675.17	2056.644	5081.8531	83757.02	601291.4	22.553472	31.13374418	53.6872162	251.3442	

Field
Month

Plant Farm I
May

Sludge Applied (dry tons)	Sludge Applied (dry tons/ac)	Cumulative Sludge Applied (dry tons/ac)
0.00	0.00	0.00
0.00	0.00	0.00
0.00	0.00	0.00
4.62	0.05	0.05
0.00	0.00	0.05
0.00	0.00	0.05
4.62	0.05	0.10
4.16	0.04	0.14
4.62	0.05	0.19
0.00	0.00	0.19
4.62	0.05	0.24
0.00	0.00	0.24
0.00	0.00	0.24
4.16	0.04	0.29
4.16	0.04	0.33
4.16	0.04	0.37
4.16	0.04	0.42
3.70	0.04	0.46
0.00	0.00	0.46
0.00	0.00	0.46
4.16	0.04	0.50
4.16	0.04	0.55
4.16	0.04	0.59
3.70	0.04	0.63
4.16	0.04	0.67
0.00	0.00	0.67
0.00	0.00	0.67
0.00	0.00	0.67
0.00	0.00	0.67
0.00	0.00	0.67
0.00	0.00	0.67
63.34	0.67	0.67

Work Product Samples for Annual Activities

Water/Nitrogen Balance Model Samples

TreatmentPlant

Year	Date	Plant Farm Precipitation (in)	Spraberry Precipitation (in)	PET (in)	
2017	Sep. 1-4	0.000	0.000	1.270	
2017	Sep. 5-11	0.000	0.000	2.040	
2017	Sep. 12-18	0.200	0.000	2.110	
2017	Sep. 19-25	0.500	0.200	1.620	
2017	Sep. 26-Oct. 2	3.200	2.300	0.620	
2017	Oct. 3-9	0.100	0.100	1.350	
2017	Oct. 10-16	0.300	0.300	1.380	
2017	Oct. 17-23	0.000	0.000	1.450	
2017	Oct. 24-30	0.000	0.000	1.290	
2017	Oct. 31-Nov. 6	0.200	0.200	1.370	
2017	Nov. 7-13	0.300	0.300	0.610	
2017	Nov. 14-20	0.000	0.000	1.020	
2017	Nov. 21-27	0.000	0.000	1.100	
2017	Nov. 28-Dec. 4	0.000	0.000	0.990	
2017	Dec. 5-11	0.400	0.400	0.680	
2017	Dec. 12-18	0.000	0.000	0.820	
2017	Dec. 19-25	0.000	0.000	0.970	
2017	Dec. 26-Jan. 1	0.000	0.000	0.370	
2017	Jan. 2-8	0.000	0.000	0.820	
2017	Jan. 9-15	0.000	0.000	1.010	
2017	Jan. 16-22	0.000	0.000	0.880	
2017	Jan. 23-29	0.000	0.000	0.970	
2017	Jan. 30-Feb. 5	0.000	0.000	1.240	
2017	Feb. 6-12	0.000	0.000	0.920	
2017	Feb. 13-19	0.000	0.000	1.140	
2017	Feb. 20-26	0.000	0.000	1.110	
2017	Feb. 27-Mar. 5	0.000	0.000	1.290	
2017	Mar. 6-12	0.000	0.000	1.510	
2017	Mar. 13-19	0.000	0.000	1.610	
2017	Mar. 20-26	0.000	0.000	1.820	
2017	Mar. 27-Apr. 2	0.000	0.000	1.540	
2017	Apr. 3-9	0.000	0.000	1.840	
2017	Apr. 10-16	0.000	0.000	2.090	
2017	Apr. 17-23	0.000	0.000	1.950	
2017	Apr. 24-30	0.000	0.000	1.940	
2017	May 1-7	0.000	0.000	2.170	
2017	May 8-14	0.000	0.000	2.400	
2017	May 15-21	0.000	0.000	2.290	
2017	May 22-28	0.000	0.000	2.450	
2017	May 29-Jun. 4	0.500	0.500	2.680	
2017	Jun. 5-11	0.000	0.000	2.610	
2017	Jun. 12-18	0.000	0.000	2.220	
2017	Jun. 19-25	0.000	0.000	2.570	
2017	Jun. 26-Jul. 2	1.000	1.000	2.430	
2017	Jul. 3-9	1.000	1.400	2.100	
2017	Jul. 10-16	0.000	0.000	2.330	
2017	Jul. 17-23	0.000	0.000	2.850	
2017	Jul. 24-30	0.000	0.300	2.380	
2017	Jul. 31-Aug. 6	0.300	0.000	2.310	
2017	Aug. 7-13	0.500	0.400	1.700	
2017	Aug. 14-20	0.000	1.000	2.230	
2017	Aug. 21-31	0.000	0.000	3.730	
	Total	8.5	8.4	86.19	
		On-site Data	On-Site Data	Nearest PET weather station.	

Date	Spraberry Wastewater (Pivot)						Spraberry Wastewater (SWR)						Plant Farm Wastewater (SWR)					
	EC (mmhos/cm)	TKN (ppm)	NH ₃ -N (ppm)	NO ₃ -N (ppm)	PAN (ppm)	PAN (lb/gal)	EC (mmhos/cm)	TKN (ppm)	NH ₃ -N (ppm)	NO ₃ -N (ppm)	PAN (ppm)	PAN (lb/gal)	EC (mmhos/cm)	TKN (ppm)	NH ₃ -N (ppm)	NO ₃ -N (ppm)	PAN (ppm)	PAN (lb/gal)
Sep. 1-4	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.09	34.20	25.90	0.30	27.60	2.30E-04
Sep. 5-11	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.09	34.20	25.90	0.30	27.60	2.30E-04
Sep. 12-18	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.46	9.54	3.35	0.29	7.87	6.57E-05	3.09	34.20	25.90	0.30	27.60	2.30E-04
Sep. 19-25	3.46	8.40	2.50	0.10	6.80	5.68E-05	3.46	8.40	2.50	0.10	6.80	5.68E-05	3.12	25.10	25.00	0.10	20.16	1.68E-04
Sep. 26-Oct. 2	3.46	8.40	2.50	0.10	6.80	5.68E-05	3.46	8.40	2.50	0.10	6.80	5.68E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Oct. 3-9	3.46	8.40	2.50	0.10	6.80	5.68E-05	3.46	8.40	2.50	0.10	6.80	5.68E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Oct. 10-16	3.46	8.40	2.50	0.10	6.80	5.68E-05	3.46	8.40	2.50	0.10	6.80	5.68E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Oct. 17-23	3.38	9.43	2.67	0.25	7.74	6.47E-05	3.38	9.43	2.67	0.25	7.74	6.47E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Oct. 24-30	3.38	9.43	2.67	0.25	7.74	6.47E-05	3.38	9.43	2.67	0.25	7.74	6.47E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Oct. 31-Nov. 6	3.38	9.43	2.67	0.25	7.74	6.47E-05	3.38	9.43	2.67	0.25	7.74	6.47E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Nov. 7-13	3.38	9.43	2.67	0.25	7.74	6.47E-05	3.38	9.43	2.67	0.25	7.74	6.47E-05	1.85	22.00	11.90	0.10	17.68	1.48E-04
Nov. 14-20	3.50	9.43	2.67	0.25	7.74	6.47E-05	3.50	9.43	2.67	0.25	7.74	6.47E-05	3.30	43.90	31.30	0.10	35.20	2.94E-04
Nov. 21-27	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.10	29.00	21.70	0.10	23.28	1.94E-04
Nov. 28-Dec. 4	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.10	29.00	21.70	0.10	23.28	1.94E-04
Dec. 5-11	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.00	8.26	3.16	7.45	12.57	1.05E-04	3.10	29.00	21.70	0.10	23.28	1.94E-04
Dec. 12-18	3.00	8.26	3.16	7.45	12.57	1.05E-04	4.01	19.60	17.10	0.18	15.82	1.32E-04	3.10	29.00	21.70	0.10	23.28	1.94E-04
Dec. 19-25	3.00	8.26	3.16	7.45	12.57	1.05E-04	4.01	19.60	17.10	0.18	15.82	1.32E-04	3.10	29.00	21.70	0.10	23.28	1.94E-04
Dec. 26-Jan. 1	3.62	11.90	6.07	2.17	11.26	9.40E-05	4.01	19.60	17.10	0.18	15.82	1.32E-04	6.78	35.20	26.70	0.21	28.33	2.37E-04
Jan. 2-8	3.62	11.90	6.07	2.17	11.26	9.40E-05	4.01	19.60	17.10	0.18	15.82	1.32E-04	3.21	35.20	39.00	0.21	28.33	2.37E-04
Jan. 9-15	3.62	11.90	6.07	2.17	11.26	9.40E-05	4.01	19.60	17.10	0.18	15.82	1.32E-04	3.21	35.20	39.00	0.21	28.33	2.37E-04
Jan. 16-22	3.55	23.70	18.20	0.68	19.51	1.63E-04	4.01	19.60	17.10	0.18	15.82	1.32E-04	2.96	34.10	22.70	0.58	27.74	2.32E-04
Jan. 23-29	3.55	23.70	18.20	0.68	19.51	1.63E-04	4.01	19.60	17.10	0.18	15.82	1.32E-04	2.96	34.10	22.70	0.58	27.74	2.32E-04
Jan. 30-Feb. 5	3.55	23.70	18.20	0.68	19.51	1.63E-04	4.01	19.60	17.10	0.18	15.82	1.32E-04	2.96	34.10	22.70	0.58	27.74	2.32E-04
Feb. 6-12	3.55	23.70	18.20	0.68	19.51	1.63E-04	3.39	30.90	18.00	0.29	24.95	2.08E-04	2.96	34.10	22.70	0.58	27.74	2.32E-04
Feb. 13-19	3.39	36.00	29.50	0.29	29.03	2.42E-04	3.39	30.90	18.00	0.29	24.95	2.08E-04	3.78	42.60	29.80	0.15	34.20	2.86E-04
Feb. 20-26	3.39	36.00	29.50	0.29	29.03	2.42E-04	3.39	30.90	18.00	0.29	24.95	2.08E-04	3.78	42.60	29.80	0.15	34.20	2.86E-04
Feb. 27-Mar. 5	3.39	36.00	29.50	0.29	29.03	2.42E-04	3.39	30.90	18.00	0.29	24.95	2.08E-04	3.78	42.60	29.80	0.15	34.20	2.86E-04
Mar. 6-12	3.39	36.00	29.50	0.29	29.03	2.42E-04	3.39	30.90	18.00	0.29	24.95	2.08E-04	3.78	42.60	29.80	0.15	34.20	2.86E-04
Mar. 13-19	3.49	35.90	26.60	0.10	28.80	2.40E-04	3.34	33.40	29.70	0.28	26.94	2.25E-04	3.34	39.90	27.60	0.10	32.00	2.67E-04
Mar. 20-26	3.49	35.90	26.60	0.10	28.80	2.40E-04	3.34	33.40	29.70	0.28	26.94	2.25E-04	3.34	39.90	27.60	0.10	32.00	2.67E-04
Mar. 27-Apr. 2	3.49	35.90	26.60	0.10	28.80	2.40E-04	3.34	33.40	29.70	0.28	26.94	2.25E-04	3.34	39.90	27.60	0.10	32.00	2.67E-04
Apr. 3-9	3.49	35.90	29.70	0.10	28.80	2.40E-04	4.00	40.90	33.30	0.10	32.80	2.74E-04	3.34	39.90	27.60	0.10	32.00	2.67E-04
Apr. 10-16	3.85	31.60	29.20	0.17	25.42	2.12E-04	4.00	40.90	33.30	0.10	32.80	2.74E-04	3.98	43.40	34.50	1.77	36.14	3.02E-04
Apr. 17-23	3.85	31.60	29.20	0.17	25.42	2.12E-04	4.00	40.90	33.30	0.10	32.80	2.74E-04	3.98	43.40	34.50	1.77	36.14	3.02E-04
Apr. 24-30	3.85	31.60	29.20	0.17	25.42	2.12E-04	4.00	40.90	33.30	0.10	32.80	2.74E-04	3.98	43.40	34.50	1.77	36.14	3.02E-04
May 1-7	3.85	31.60	29.20	0.17	25.42	2.12E-04	3.85	31.60	33.30	0.10	25.36	2.12E-04	3.98	43.40	34.50	1.77	36.14	3.02E-04
May 8-14	4.05	31.60	29.20	0.17	25.42	2.12E-04	4.05	31.60	29.20	0.17	25.42	2.12E-04	3.98	43.40	34.50	1.77	36.14	3.02E-04
May 15-21	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.81	37.50	34.10	0.28	30.22	2.52E-04
May 22-28	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.81	37.50	34.10	0.28	30.22	2.52E-04
May 29-Jun. 4	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.81	37.50	34.10	0.28	30.22	2.52E-04
Jun. 5-11	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.87	25.90	25.90	0.80	21.36	1.78E-04	3.81	37.50	34.10	0.28	30.22	2.52E-04
Jun. 12-18	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.50	45.00	20.30	0.28	36.22	3.02E-04
Jun. 19-25	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.50	45.00	20.30	0.28	36.22	3.02E-04
Jun. 26-Jul. 2	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.50	45.00	20.30	0.28	36.22	3.02E-04
Jul. 3-9	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.73	25.90	25.90	0.80	21.36	1.78E-04	3.50	45.00	20.30	0.28	36.22	3.02E-04
Jul. 10-16	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.57	32.80	26.50	0.18	26.38	2.20E-04
Jul. 17-23	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.57	32.80	26.50	0.18	26.38	2.20E-04
Jul. 24-30	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.57	32.80	26.50	0.18	26.38	2.20E-04
Jul. 31-Aug. 6	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.57	32.80	26.50	0.18	26.38	2.20E-04
Aug. 7-13	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.83	13.60	11.60	0.13	10.98	9.17E-05	3.57	32.80	26.50	0.18	26.38	2.20E-04
Aug. 14-20	3.92	21.60	15.40	0.18	17.42	1.45E-04	3.92	21.60	15.40	0.18	17.42	1.45E-04	3.09	34.20	25.90	1.33	28.42	2.37E-04
Aug. 21-31	3.92	21.60	15.40	0.18	17.42	1.45E-04	3.92	21.60	15.40	0.18	17.42	1.45E-04	3.09	34.20	25.90	1.33	28.42	2.37E-04

Date	Plant Farm Sludge																
	TKN	NH ₃ -N	NO ₃ -N	TS	Arsenic	Cadmium	Chromium	Copper	Lead	Mercury	Molybdenum	Nickel	PCBs	Selenium	Zinc	PAN	PAN
	(ppm)	(ppm)	(ppm)	%	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(ppm)	(lb/gal)
Sep. 1-4	1794.00	895.00	2.17	2.67	0.46	0.19	0.99	13.80	1.16	0.00	1.05	0.59	0.00	0.51	27.00	629.47	5.26E-03
Sep. 5-11	1794.00	895.00	2.17	2.67	0.46	0.19	0.99	13.80	1.16	0.00	1.05	0.59	0.00	0.51	27.00	629.47	5.26E-03
Sep. 12-18	1794.00	895.00	2.17	2.67	0.46	0.19	0.99	13.80	1.16	0.00	1.05	0.59	0.00	0.51	27.00	629.47	5.26E-03
Sep. 19-25	1211.00	992.00	0.99	2.61	0.46	0.19	0.99	13.80	1.16	0.00	1.05	0.59	0.00	0.51	27.00	540.79	4.52E-03
Sep. 26-Oct. 2	1758.00	1341.00	2.45	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	0.51	27.00	756.35	6.32E-03
Oct. 3-9	1758.00	1341.00	2.45	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	0.51	27.00	756.35	6.32E-03
Oct. 10-16	1758.00	1341.00	2.45	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	0.51	27.00	756.35	6.32E-03
Oct. 17-23	1758.00	1341.00	2.45	2.54	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	756.35	6.32E-03
Oct. 24-30	1758.00	1341.00	2.45	2.54	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	756.35	6.32E-03
Oct. 31-Nov. 6	1758.00	1341.00	2.45	2.54	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	756.35	6.32E-03
Nov. 7-13	1758.00	1341.00	2.45	2.54	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	756.35	6.32E-03
Nov. 14-20	1758.00	1341.00	2.45	2.54	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	756.35	6.32E-03
Nov. 21-27	1343.00	844.50	0.99	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	522.94	4.37E-03
Nov. 28-Dec. 4	1343.00	844.50	0.99	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	522.94	4.37E-03
Dec. 5-11	1343.00	844.50	0.99	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	522.94	4.37E-03
Dec. 12-18	1343.00	844.50	0.99	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	522.94	4.37E-03
Dec. 19-25	1343.00	844.50	0.99	2.61	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	522.94	4.37E-03
Dec. 26-Jan. 1	1401.00	1070.00	2.39	3.02	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	603.59	5.04E-03
Jan. 2-8	1401.00	1070.00	2.39	3.02	0.79	6.58	1.27	24.30	0.94	0.10	0.93	0.73	0.00	1.80	62.20	603.59	5.04E-03
Jan. 9-15	1401.00	1070.00	2.39	3.02	1.90	6.58	3.80	17.70	1.90	0.10	0.93	0.73	0.00	1.80	62.20	603.59	5.04E-03
Jan. 16-22	1015.20	906.50	5.85	2.37	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	480.84	4.02E-03
Jan. 23-29	1015.20	906.50	5.85	2.37	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	480.84	4.02E-03
Jan. 30-Feb. 5	1015.20	906.50	5.85	2.37	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	480.84	4.02E-03
Feb. 6-12	1015.20	906.50	5.85	2.37	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	480.84	4.02E-03
Feb. 13-19	2023.50	983.20	3.77	2.37	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	703.43	5.87E-03
Feb. 20-26	2023.50	983.20	3.77	2.18	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	703.43	5.87E-03
Feb. 27-Mar. 5	2023.50	983.20	3.77	2.15	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	703.43	5.87E-03
Mar. 6-12	2023.50	938.90	3.77	2.15	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	690.14	5.76E-03
Mar. 13-19	1361.00	1119.40	2.96	2.15	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	610.98	5.10E-03
Mar. 20-26	1361.00	1119.40	2.96	2.24	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	610.98	5.10E-03
Mar. 27-Apr. 2	1361.00	1119.40	2.96	2.24	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	610.98	5.10E-03
Apr. 3-9	1361.00	1119.40	2.96	2.24	1.96	1.96	3.92	22.00	1.69	0.10	1.96	1.69	0.00	1.96	47.70	610.98	5.10E-03
Apr. 10-16	1795.00	1164.00	2.80	2.09	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	711.00	5.94E-03
Apr. 17-23	1795.00	1164.00	2.80	2.09	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	711.00	5.94E-03
Apr. 24-30	1795.00	1164.00	2.80	2.09	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	711.00	5.94E-03
May 1-7	1795.00	1164.00	2.80	2.09	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	711.00	5.94E-03
May 8-14	1795.00	1164.00	2.80	2.09	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	711.00	5.94E-03
May 15-21	1929.00	1197.00	1.73	1.97	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	746.63	6.23E-03
May 22-28	1929.00	1197.00	1.73	1.97	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	746.63	6.23E-03
May 29-Jun. 4	1929.00	1197.00	1.73	1.97	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	746.63	6.23E-03
Jun. 5-11	1929.00	1197.00	1.73	1.97	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	746.63	6.23E-03
Jun. 12-18	1680.00	891.00	1.73	1.83	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	605.03	5.05E-03
Jun. 19-25	1680.00	891.00	1.73	1.83	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	605.03	5.05E-03
Jun. 26-Jul. 2	1617.00	984.00	1.73	2.40	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	620.33	5.18E-03
Jul. 3-9	1617.00	984.00	1.73	2.40	1.96	1.96	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.96	38.40	620.33	5.18E-03
Jul. 10-16	688.00	477.00	1.76	3.68	1.69	1.69	3.39	18.70	1.69	0.10	1.89	1.69	0.00	1.82	59.60	282.46	2.36E-03
Jul. 17-23	688.00	477.00	1.76	3.68	1.69	1.69	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	282.46	2.36E-03
Jul. 24-30	688.00	477.00	1.76	3.68	1.69	1.82	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	282.46	2.36E-03
Jul. 31-Aug. 6	688.00	477.00	1.76	3.68	1.69	1.82	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	282.46	2.36E-03
Aug. 7-13	688.00	477.00	1.76	3.68	1.69	1.82	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	282.46	2.36E-03
Aug. 14-20	856.00	453.00	1.76	3.68	1.69	1.82	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	308.86	2.58E-03
Aug. 21-31	856.00	453.00	1.76	3.68	1.69	1.82	3.39	6.66	1.69	0.01	1.69	1.69	0.00	1.82	59.60	308.86	2.58E-03

TreatmentPlant

Year	Week	F				G				I			
		0-6"	6-18"	18-30"	Residual N (lb/ac)	0-6"	6-18"	18-30"	Residual N (lb/ac)	0-6"	6-18"	18-30"	Residual N (lb/ac)
		NO ₃ -N (ppm)	NO ₃ -N (ppm)	NO ₃ -N (ppm)		NO ₃ -N (ppm)	NO ₃ -N (ppm)	NO ₃ -N (ppm)		NO ₃ -N (ppm)	NO ₃ -N (ppm)	NO ₃ -N (ppm)	
2017	Sep. 1-4	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Sep. 5-11	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Sep. 12-18	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Sep. 19-25	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Sep. 26-Oct. 2	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Oct. 3-9	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Oct. 10-16	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Oct. 17-23	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Oct. 24-30	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Oct. 31-Nov. 6	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Nov. 7-13	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Nov. 14-20	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Nov. 21-27	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Nov. 28-Dec. 4	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Dec. 5-11	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Dec. 12-18	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Dec. 19-25	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Dec. 26-Jan. 1	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Jan. 2-8	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Jan. 9-15	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Jan. 16-22	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Jan. 23-29	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Jan. 30-Feb. 5	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Feb. 6-12	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Feb. 13-19	4.5	2	2	25	8	12	43	236	13	6	5	70
2017	Feb. 20-26	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Feb. 27-Mar. 5	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Mar. 6-12	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Mar. 13-19	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Mar. 20-26	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Mar. 27-Apr. 2	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Apr. 3-9	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Apr. 10-16	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Apr. 17-23	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	Apr. 24-30	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	May 1-7	12.5	19	21	185	35	14	17	194	7	5	5	54
2017	May 8-14	12.5	19	21	185	35	14	17	194	7	5	5	54

TreatmentPlant

Year	Week	Total Outflow	Plant Farm	Spraberry Storage
2017	Sep. 1-4	55.617	10.890	44.728
2017	Sep. 5-11	74.919	14.867	60.053
2017	Sep. 12-18	56.658	10.715	45.943
2017	Sep. 19-25	60.087	4.620	55.467
2017	Sep. 26-Oct. 2	108.989	16.294	92.695
2017	Oct. 3-9	107.358	15.398	91.960
2017	Oct. 10-16	79.318	11.378	67.940
2017	Oct. 17-23	38.090	5.312	32.778
2017	Oct. 24-30	61.860	3.083	58.778
2017	Oct. 31-Nov. 6	97.657	3.070	94.587
2017	Nov. 7-13	78.495	0.000	78.495
2017	Nov. 14-20	74.443	10.561	63.882
2017	Nov. 21-27	68.670	16.735	51.935
2017	Nov. 28-Dec. 4	72.433	16.770	55.663
2017	Dec. 5-11	72.900	16.840	56.060
2017	Dec. 12-18	72.963	12.002	60.961
2017	Dec. 19-25	66.700	13.302	53.398
2017	Dec. 26-Jan. 1	38.752	7.037	31.715
2017	Jan. 2-8	73.190	0.000	73.190
2017	Jan. 9-15	88.335	0.000	88.335
2017	Jan. 16-22	54.093	0.000	54.093
2017	Jan. 23-29	77.511	22.376	55.135
2017	Jan. 30-Feb. 5	70.936	11.726	59.210
2017	Feb. 6-12	47.099	3.428	43.671
2017	Feb. 13-19	57.385	13.305	44.080
2017	Feb. 20-26	48.624	15.339	33.285
2017	Feb. 27-Mar. 5	54.977	16.570	38.407
2017	Mar. 6-12	38.929	15.948	22.981
2017	Mar. 13-19	40.894	10.936	29.958
2017	Mar. 20-26	32.827	8.892	23.935
2017	Mar. 27-Apr. 2	42.035	0.000	42.035
2017	Apr. 3-9	38.802	8.258	30.544
2017	Apr. 10-16	38.161	9.337	28.824
2017	Apr. 17-23	41.116	10.481	30.635
2017	Apr. 24-30	41.076	12.527	28.549
2017	May 1-7	50.682	8.343	42.339
2017	May 8-14	44.715	0.445	44.270
2017	May 15-21	46.985	13.721	33.264
2017	May 22-28	16.879	5.941	10.938
2017	May 29-Jun. 4	43.234	12.399	30.835
2017	Jun. 5-11	37.999	14.092	23.907
2017	Jun. 12-18	50.461	0.000	50.461
2017	Jun. 19-25	33.517	2.085	31.432
2017	Jun. 26-Jul. 2	16.396	15.533	0.863
2017	Jul. 3-9	0.000	14.978	-14.978
2017	Jul. 10-16	2.576	14.382	-11.806
2017	Jul. 17-23	27.964	11.435	16.529
2017	Jul. 24-30	72.869	12.393	60.476
2017	Jul. 31-Aug. 6	123.138	13.788	109.350
2017	Aug. 7-13	77.648	13.640	64.008
2017	Aug. 14-20	62.308	13.468	48.840
2017	Aug. 21-31	0.000	5.250	-5.250
	Total	2739.314	487.5303	2251.7837
	Units = Million Gallons			

Applications

Date	2-3	2-4	3-1	3-2	3-4	10-1	10-2	10-3	10-4	11-1
Sep. 1-4	5,778,371	5,170,122	5,170,122		0 1,330,546	1,153,502	1,075,298	5,767,510	0	0
Sep. 5-11	0	0	0		0 9,313,822	8,074,513	3,225,895	0	8,142,942	7,038,317
Sep. 12-18	8,667,557		0 7,755,182		0 2,661,092	0	0	6,921,012	8,142,942	0
Sep. 19-25	1,444,593		0 2,585,061		0 9,313,822	5,767,510	5,376,492	2,307,004	0	5,865,264
Sep. 26-Oct. 2	4,333,778		0 3,877,591		0 9,313,822	1,153,502	4,301,194	6,921,012	0	4,692,211
Oct. 3-9	5,778,371		0 9,047,713		0 7,983,276	6,921,012	0	0	0	0
Oct. 10-16	1,444,593		0 1,292,530	7,755,182	0	5,767,510	1,075,298	2,307,004	6,979,664	0
Oct. 17-23	8,667,557		0 7,755,182	1,292,530	0	4,614,008	6,451,790	6,921,012	0	4,692,211
Oct. 24-30	5,778,371		0 6,462,652	7,755,182	6,652,730	1,153,502	3,225,895	8,074,513	2,326,555	0
Oct. 31-Nov. 6	4,333,778		0 5,170,122	1,292,530	1,330,546	0	7,527,089	5,767,510	2,326,555	3,519,158
Nov. 7-13	7,222,964		0 2,585,061	6,462,652	0	5,767,510	2,150,597	2,307,004	5,816,387	0
Nov. 14-20	10,112,150		0 5,170,122	3,877,591	5,322,184	3,460,506	4,301,194	0	3,489,832	4,692,211
Nov. 21-27	4,333,778		0 3,877,591	6,462,652	3,991,638	5,767,510	3,225,895	5,767,510	0	3,519,158
Nov. 28-Dec. 4	5,778,371		0 2,585,061	0	0	2,307,004	4,301,194	2,307,004	0	0
Dec. 5-11	2,889,186	1,292,530	2,585,061	5,170,122	5,322,184	1,153,502	1,075,298	2,307,004	2,326,555	0
Dec. 12-18	0	9,047,713	9,047,713	9,047,713	3,991,638	0	4,301,194	8,074,513	4,653,109	4,692,211
Dec. 19-25	0	9,047,713	2,585,061	9,047,713	0	0	2,150,597	8,074,513	2,326,555	1,173,053
Dec. 26-Jan. 1	0	5,170,122	0	5,170,122	0	0	0	4,614,008	0	0
Jan. 2-8	7,222,964	6,462,652	6,462,652	6,462,652	6,652,730	0	0	5,767,510	0	0
Jan. 9-15	2,889,186	9,047,713	9,047,713	9,047,713	2,661,092	0	5,376,492	2,307,004	0	0
Jan. 16-22	7,222,964	9,047,713	9,047,713	5,170,122	0	0	1,075,298	0	0	0
Jan. 23-29	4,333,778	9,047,713	1,292,530	9,047,713	0	0	6,451,790	6,921,012	0	7,038,317
Jan. 30-Feb. 5	0	9,047,713	6,462,652	9,047,713	6,652,730	0	2,150,597	2,307,004	0	8,211,370
Feb. 6-12	7,222,964	9,047,713	9,047,713	2,585,061	9,313,822	0	0	0	0	2,346,106
Feb. 13-19	2,889,186	9,047,713	9,047,713	0	2,661,092	5,767,510	0	0	5,816,387	0
Feb. 20-26	7,222,964	9,047,713	9,047,713	6,462,652	6,652,730	2,307,004	5,376,492	0	2,326,555	5,865,264
Feb. 27-Mar. 5	2,889,186	7,755,182	7,755,182	2,585,061	7,983,276	4,614,008	2,150,597	0	0	2,346,106
Mar. 6-12	0	7,755,182	0	6,462,652	0	5,767,510	0	0	5,816,387	0
Mar. 13-19	0	2,585,061	0	2,585,061	6,652,730	8,074,513	0	0	8,142,942	5,865,264
Mar. 20-26	7,222,964	6,462,652	6,462,652	0	1,330,546	1,153,502	5,376,492	5,767,510	2,326,555	2,346,106
Mar. 27-Apr. 2	7,222,964	9,047,713	7,755,182	7,755,182	1,330,546	4,614,008	2,150,597	8,074,513	5,816,387	0
Apr. 3-9	0	9,047,713	5,170,122	6,462,652	1,330,546	0	3,225,895	3,460,506	0	4,692,211
Apr. 10-16	7,222,964	2,585,061	2,585,061	2,585,061	6,652,730	5,767,510	5,376,492	5,767,510	0	2,346,106
Apr. 17-23	2,889,186	6,462,652	6,462,652	0	2,661,092	2,307,004	2,150,597	2,307,004	5,816,387	5,865,264

PACKET

7.103

January 23, 2024

Effluent

Applications

Date	F	G	I	J	K1	K2	L1	L2	M	O
Sep. 1-4	0	0	0	0	0	0	0	0	0	0
Sep. 5-11	0	0	0	0	0	0	0	0	122,400	0
Sep. 12-18	0	0	0	0	0	0	0	0	122,400	0
Sep. 19-25	0	0	0	0	0	0	0	0	169,200	0
Sep. 26-Oct. 2	0	0	0	0	0	0	0	0	68,400	0
Oct. 3-9	0	0	0	0	0	0	0	0	129,600	0
Oct. 10-16	0	0	0	0	0	0	0	0	151,200	0
Oct. 17-23	0	0	0	0	0	0	0	0	86,400	0
Oct. 24-30	0	0	0	0	0	0	0	0	75,600	0
Oct. 31-Nov. 6	0	0	0	0	0	0	151,200	0	28,800	0
Nov. 7-13	0	0	0	0	0	0	79,200	0	0	0
Nov. 14-20	0	0	0	0	0	0	118,800	0	0	0
Nov. 21-27	0	0	0	0	0	0	97,200	0	0	0
Nov. 28-Dec. 4	0	0	0	0	0	0	108,000	0	0	0
Dec. 5-11	0	0	0	0	0	0	54,000	0	0	0
Dec. 12-18	0	0	0	0	0	0	75,600	0	0	0
Dec. 19-25	0	0	0	0	0	0	79,200	0	0	0
Dec. 26-Jan. 1	0	0	0	0	0	0	0	0	0	0
Jan. 2-8	0	0	0	0	0	0	104,400	0	0	0
Jan. 9-15	0	0	0	0	0	0	118,800	0	0	0
Jan. 16-22	14,400	0	0	0	0	0	111,600	0	0	0
Jan. 23-29	0	0	0	0	0	0	75,600	0	0	0
Jan. 30-Feb. 5	0	0	0	0	0	0	72,000	0	0	0
Feb. 6-12	0	0	0	0	0	0	21,600	0	0	0
Feb. 13-19	0	0	0	0	0	0	28,800	0	0	0
Feb. 20-26	0	0	0	0	0	0	50,400	0	0	0
Feb. 27-Mar. 5	0	0	0	0	28,800	0	39,600	0	0	0
Mar. 6-12	0	0	0	0	97,200	0	0	0	0	0
Mar. 13-19	0	0	0	0	43,200	0	0	0	0	0
Mar. 20-26	0	0	0	0	97,200	0	0	0	0	0
Mar. 27-Apr. 2	0	0	0	0	122,400	0	0	0	0	0
Apr. 3-9	0	0	0	0	86,400	0	0	0	0	0
Apr. 10-16	0	0	0	0	133,200	0	0	0	0	0
Apr. 17-23	0	0	0	0	82,800	0	0	0	0	0

PACKET

7.104

January 23, 2024

Sludge

PlantFarmFields

Date	Crop	Rainfall	Runoff	Infiltrated Rainfall	ET	Required Leaching	Water Needed in Root Zone	Effluent Applied	Sludge Applied	Sludge Applied (dry tons/ac)	Ideal Effluent Applied	Ideal Sludge Applied	Actual Water Balance	Ideal Water Balance effluent	Ideal Water Balance sludge	Running Water Balance effluent	Running Water Balance sludge	Crop Nitrogen Required	Residual Soil N
		(in)	(in)	(in)	(in)	(in)	(in)	(in)	(in)	(dry tons/ac)	(in)	(in)	(in)	(in)	(in)	(in)	(in)	(lb/ac)	(lb/ac)
Sep. 1-4	Common Bermuda	0.00	0.00	0.00	0.75	0.14	0.89	0.49	0.00	0.00	0.13	0.00	-0.40	-0.76	-0.89	-0.36	-0.49	2.30	1.35
Sep. 5-11	Common Bermuda	0.00	0.00	0.00	1.20	0.22	1.42	0.71	0.00	0.00	0.13	0.00	-1.11	-2.05	-2.31	-0.94	-1.20	2.30	1.35
Sep. 12-18	Common Bermuda	0.20	0.00	0.20	1.24	0.19	1.24	0.68	0.00	0.00	0.13	0.00	-1.66	-3.16	-3.55	-1.49	-1.88	2.30	1.35
Sep. 19-25	Common Bermuda	0.50	0.00	0.50	0.96	0.08	0.54	0.11	0.00	0.00	0.18	0.00	-2.09	-3.52	-4.09	-1.43	-2.00	2.30	1.35
Sep. 26-Oct. 2	Wheatgrass	3.20	0.34	2.86	0.35	0.00	-2.51	0.86	0.00	0.00	0.25	0.00	1.27	-0.76	-1.58	-2.04	-2.86	2.53	1.35
Oct. 3-9	Wheatgrass	0.10	0.00	0.10	0.77	0.10	0.77	0.78	0.00	0.00	0.25	0.00	1.29	-1.29	-2.35	-2.57	-3.64	2.53	1.35
Oct. 10-16	Wheatgrass	0.30	0.00	0.30	0.79	0.07	0.56	0.63	0.00	0.00	0.25	0.00	1.36	-1.60	-2.91	-2.95	-4.27	2.53	1.35
Oct. 17-23	Wheatgrass	0.00	0.00	0.00	0.83	0.13	0.95	0.34	0.00	0.00	0.25	0.00	0.75	-2.30	-3.86	-3.05	-4.62	2.53	1.35
Oct. 24-30	Wheatgrass	0.00	0.00	0.00	0.74	0.11	0.85	0.06	0.00	0.00	0.25	0.00	-0.03	-2.89	-4.71	-2.86	-4.68	2.53	1.35
Oct. 31-Nov. 6	Wheatgrass	0.20	0.00	0.20	0.81	0.09	0.70	0.13	0.00	0.00	0.27	0.00	-0.61	-3.33	-5.41	-2.72	-4.81	2.61	1.35
Nov. 7-13	Wheatgrass	0.30	0.00	0.30	0.36	0.01	0.07	0.02	0.00	0.00	0.27	0.00	-0.66	-3.13	-5.48	-2.47	-4.83	2.61	1.35
Nov. 14-20	Wheatgrass	0.00	0.00	0.00	0.60	0.19	0.79	0.33	0.00	0.00	0.14	0.00	-1.11	-3.78	-6.27	-2.67	-5.16	2.61	1.35
Nov. 21-27	Wheatgrass	0.00	0.00	0.00	0.65	0.18	0.83	0.86	0.00	0.00	0.20	0.00	-1.09	-4.41	-7.10	-3.32	-6.01	2.61	1.35
Nov. 28-Dec. 4	Wheatgrass	0.00	0.00	0.00	0.47	0.13	0.60	0.87	0.00	0.00	0.12	0.00	-0.82	-4.89	-7.70	-4.07	-6.88	2.08	1.35
Dec. 5-11	Wheatgrass	0.40	0.00	0.40	0.32	0.00	-0.08	0.86	0.00	0.00	0.12	0.00	0.12	-4.69	-7.62	-4.81	-7.75	2.08	1.35
Dec. 12-18	Wheatgrass	0.00	0.00	0.00	0.39	0.11	0.50	0.74	0.00	0.00	0.12	0.00	0.37	-5.06	-8.12	-5.44	-8.49	2.08	1.35
Dec. 19-25	Wheatgrass	0.00	0.00	0.00	0.46	0.13	0.59	0.46	0.00	0.00	0.12	0.00	0.25	-5.53	-8.70	-5.78	-8.95	2.08	1.35
Dec. 26-Jan. 1	Wheatgrass	0.00	0.00	0.00	0.17	0.16	0.34	0.48	0.00	0.00	0.10	0.00	0.39	-5.77	-9.04	-6.17	-9.43	2.08	1.35
Jan. 2-8	Wheat Forage	0.00	0.00	0.00	0.86	0.26	1.12	0.00	0.00	0.00	0.46	0.00	-0.72	-6.43	-10.16	-5.70	-9.43	4.85	1.35
Jan. 9-15	Wheat Forage	0.00	0.00	0.00	1.06	0.32	1.38	0.00	0.00	0.00	0.46	0.00	-2.10	-7.34	-11.53	-5.24	-9.43	4.85	1.35
Jan. 16-22	Wheat Forage	0.00	0.00	0.00	0.92	0.25	1.17	0.00	0.00	0.00	0.47	0.00	-3.27	-8.04	-12.70	-4.77	-9.43	4.85	1.35
Jan. 23-29	Wheat Forage	0.00	0.00	0.00	1.02	0.27	1.29	0.00	0.00	0.00	0.47	0.00	-4.56	-8.86	-13.99	-4.29	-9.43	4.85	1.35
Jan. 30-Feb. 5	Wheat Forage	0.00	0.00	0.00	1.28	0.34	1.62	0.00	0.00	0.00	0.46	0.00	-6.18	-10.01	-15.61	-3.83	-9.43	4.75	1.35
Feb. 6-12	Wheat Forage	0.00	0.00	0.00	0.95	0.25	1.20	0.00	0.00	0.00	0.46	0.00	-7.38	-10.76	-16.82	-3.37	-9.43	4.75	1.35
Feb. 13-19	Wheat Forage	0.00	0.00	0.00	1.17	0.43	1.61	0.72	0.00	0.00	0.37	0.00	-8.28	-11.99	-18.42	-3.72	-10.15	4.75	1.35
Feb. 20-26	Wheat Forage	0.00	0.00	0.00	1.14	0.42	1.57	0.83	0.00	0.00	0.23	0.00	-9.02	-13.33	-19.99	-4.31	-10.97	4.75	2.65
Feb. 27-Mar. 5	Wheat Forage	0.00	0.00	0.00	1.35	0.50	1.86	0.89	0.00	0.00	0.24	0.00	-9.98	-14.94	-21.85	-4.96	-11.87	4.85	2.65
Mar. 6-12	Wheat Forage	0.00	0.00	0.00	1.59	0.59	2.17	0.87	0.00	0.00	0.24	0.00	-11.28	-16.87	-24.02	-5.59	-12.74	4.85	2.65
Mar. 13-19	Wheat Forage	0.00	0.00	0.00	1.69	0.53	2.22	0.73	0.00	0.00	0.26	0.00	-12.77	-18.84	-26.24	-6.06	-13.46	4.85	2.65
Mar. 20-26	Wheat Forage	0.00	0.00	0.00	1.91	0.60	2.51	0.57	0.00	0.00	0.26	0.00	-14.71	-21.09	-28.75	-6.38	-14.04	4.85	2.65
Mar. 27-Apr. 2	Wheat Forage	0.00	0.00	0.00	1.63	0.51	2.14	0.00	0.00	0.00	0.26	0.00	-16.85	-22.97	-30.89	-6.12	-14.04	4.89	2.65
Apr. 3-9	Wheat Forage	0.00	0.00	0.00	1.95	0.61	2.56	0.19	0.00	0.00	0.26	0.00	-19.23	-25.27	-33.45	-6.04	-14.23	4.89	2.65
Apr. 10-16	Wheat Forage	0.00	0.00	0.00	2.22	0.88	3.10	0.62	0.00	0.00	0.23	0.00	-21.70	-28.13	-36.55	-6.43	-14.85	4.89	2.65
Apr. 17-23	Wheat Forage	0.00	0.00	0.00	2.07	0.82	2.89	0.62	0.00	0.00	0.23	0.00	-23.97	-30.79	-39.44	-6.82	-15.47	4.89	2.65
Apr. 24-30	Wheat Forage	0.00	0.00	0.00	2.06	0.82	2.87	0.73	0.00	0.00	0.23	0.00	-26.11	-33.43	-42.31	-7.32	-16.20	4.89	2.65
May 1-7	Wheat Forage	0.00	0.00	0.00	1.80	0.72	2.52	0.62	0.00	0.00	0.12	0.00	-28.00	-35.83	-44.83	-7.82	-16.82	3.83	2.65
May 8-14	Wheat Forage	0.00	0.00	0.00	1.99	0.79	2.78	0.00	0.00	0.00	0.12	0.00	-30.78	-38.49	-47.61	-7.70	-16.82	3.83	2.65
May 15-21	Wheat Forage	0.00	0.00	0.00	1.90	0.71	2.61	0.61	0.00	0.00	0.15	0.00	-32.79	-40.95	-50.22	-8.17	-17.43	3.83	2.65
May 22-28	Wheat Forage	0.00	0.00	0.00	2.03	0.76	2.79	0.19	0.00	0.00	0.15	0.00	-35.39	-43.60	-53.01	-8.21	-17.63	3.83	2.65
May 29-Jun. 4	Cotton	0.50	0.00	0.50	2.06	0.58	2.15	0.54	0.00	0.00	0.10	0.00	-36.99	-45.64	-55.16	-8.65	-18.17	3.50	2.65
Jun. 5-11	Cotton	0.00	0.00	0.00	2.01	0.75	2.76	0.87	0.00	0.00	0.10	0.00	-38.88	-48.30	-57.92	-9.42	-19.04	3.50	2.65
Jun. 12-18	Cotton	0.00	0.00	0.00	1.71	0.57	2.28	0.04	0.00	0.00	0.09	0.00	-41.12	-50.49	-60.20	-9.37	-19.08	3.50	2.65
Jun. 19-25	Cotton	0.00	0.00	0.00	1.98	0.66	2.64	0.00	0.00	0.00	0.09	0.00	-43.76	-53.04	-62.84	-9.28	-19.08	3.50	2.65
Jun. 26-Jul. 2	Cotton	1.00	0.06	0.94	2.24	0.43	1.73	1.16	0.00	0.00	0.16	0.00	-44.32	-54.61	-64.57	-10.29	-20.25	4.18	2.65
Jul. 3-9	Cotton	1.00	0.06	0.94	1.93	0.33	1.32	1.20	0.00	0.00	0.16	0.00	-44.44	-55.77	-65.89	-11.34	-21.45	4.18	2.65
Jul. 10-16	Cotton	0.00	0.00	0.00	2.14	0.73	2.88	1.14	0.00	0.00	0.22	0.00	-46.18	-58.43	-68.76	-12.26	-22.59	4.18	2.65
Jul. 17-23	Cotton	0.00	0.00	0.00	2.62	0.90	3.52	1.08	0.00	0.00	0.22	0.00	-48.62	-61.74	-72.28	-13.12	-23.66	4.18	2.65
Jul. 24-30	Cotton	0.00	0.00	0.00	2.19	0.75	2.94	0.66	0.00	0.00	0.22	0.00	-50.89	-64.46	-75.22	-13.57	-24.33	4.18	2.65
Jul. 31-Aug. 6	Cotton	0.30	0.00	0.30	2.52	0.76	2.98	0.82	0.00	0.00	0.33	0.00	-53.05	-67.11	-78.20	-14.06	-25.15	4.95	2.65
Aug. 7-13	Cotton	0.50	0.00	0.50	1.85	0.46	1.82	0.84	0.00	0.00	0.33	0.00	-54.03	-68.60	-80.02	-14.57	-25.99	4.95	2.65
Aug. 14-20	Cotton	0.00	0.00	0.00	2.43	0.69	3.12	0.85	0.00	0.00	0.30	0.00	-56.30	-71.42	-83.14	-15.12	-26.84	4.95	2.65
Aug. 21-31	Cotton	0.00	0.00	0.00	4.07	1.15	5.22	0.48	0.00	0.00	0.30	0.00	-61.03	-76.33	-88.35	-15.30	-27.32	4.95	2.65
Total		8.50	0.46	8.04	74.19	22.20	88.35	27.32	0.00	0.00	12.02	0.00	-61.03	-76.33	-88.35			194.94	105.31

Date	Commercial Fertilizer N	Additional Nitrogen Required	Effluent N Applied	Sludge N Applied	Ideal Effluent N Applied	Ideal Sludge N Applied	Actual Nitrogen Balance	Ideal Nitrogen Balance effluent
	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)	(lb/ac)
Sep. 1-4	0.00	0.95	3.60	0.00	0.95	0.95	2.64	0.00
Sep. 5-11	0.00	0.95	5.26	0.00	0.95	0.95	6.95	0.00
Sep. 12-18	0.00	0.95	5.00	0.00	0.95	0.95	10.99	0.00
Sep. 19-25	0.00	0.95	0.61	0.00	0.95	0.95	10.65	0.00
Sep. 26-Oct. 2	0.00	1.18	4.06	0.00	1.18	1.18	13.52	0.00
Oct. 3-9	0.00	1.18	3.70	0.00	1.18	1.18	16.04	0.00
Oct. 10-16	0.00	1.18	2.98	0.00	1.18	1.18	17.84	0.00
Oct. 17-23	0.00	1.18	1.63	0.00	1.18	1.18	18.29	0.00
Oct. 24-30	0.00	1.18	0.29	0.00	1.18	1.18	17.40	0.00
Oct. 31-Nov. 6	0.00	1.27	0.61	0.00	1.27	1.27	16.74	0.00
Nov. 7-13	0.00	1.27	0.09	0.00	1.27	1.27	15.56	0.00
Nov. 14-20	0.00	1.27	3.11	0.00	1.27	1.27	17.41	0.00
Nov. 21-27	0.00	1.27	5.32	0.00	1.27	1.27	21.45	0.00
Nov. 28-Dec. 4	0.00	0.74	5.38	0.00	0.74	0.74	26.10	0.00
Dec. 5-11	0.00	0.74	5.37	0.00	0.74	0.74	30.73	0.00
Dec. 12-18	0.00	0.74	4.62	0.00	0.74	0.74	34.62	0.00
Dec. 19-25	0.00	0.74	2.85	0.00	0.74	0.74	36.73	0.00
Dec. 26-Jan. 1	0.00	0.74	3.66	0.00	0.74	0.74	39.65	0.00
Jan. 2-8	0.00	3.50	0.00	0.00	3.50	3.50	36.15	0.00
Jan. 9-15	0.00	3.50	0.00	0.00	3.50	3.50	32.65	0.00
Jan. 16-22	0.00	3.50	0.00	0.00	3.50	3.50	29.15	0.00
Jan. 23-29	0.00	3.50	0.00	0.00	3.50	3.50	25.65	0.00
Jan. 30-Feb. 5	0.00	3.41	0.00	0.00	3.41	3.41	22.25	0.00
Feb. 6-12	0.00	3.41	0.00	0.00	3.41	3.41	18.84	0.00
Feb. 13-19	0.00	3.41	6.53	0.00	3.41	3.41	21.96	0.00
Feb. 20-26	0.00	2.10	7.53	0.00	2.10	2.10	27.40	0.00
Feb. 27-Mar. 5	0.00	2.19	8.14	0.00	2.19	2.19	33.34	0.00
Mar. 6-12	0.00	2.19	7.95	0.00	2.19	2.19	39.09	0.00
Mar. 13-19	0.00	2.19	6.20	0.00	2.19	2.19	43.11	0.00
Mar. 20-26	0.00	2.19	4.90	0.00	2.19	2.19	45.82	0.00
Mar. 27-Apr. 2	0.00	2.24	0.00	0.00	2.24	2.24	43.58	0.00
Apr. 3-9	0.00	2.24	1.60	0.00	2.24	2.24	42.94	0.00
Apr. 10-16	0.00	2.24	5.97	0.00	2.24	2.24	46.67	0.00
Apr. 17-23	0.00	2.24	5.99	0.00	2.24	2.24	50.43	0.00
Apr. 24-30	0.00	2.24	7.07	0.00	2.24	2.24	55.26	0.00
May 1-7	0.00	1.18	6.02	0.00	1.18	1.18	60.10	0.00
May 8-14	0.00	1.18	0.00	0.00	1.18	1.18	58.92	0.00
May 15-21	0.00	1.18	4.92	0.00	1.18	1.18	62.66	0.00
May 22-28	0.00	1.18	1.55	0.00	1.18	1.18	63.04	0.00
May 29-Jun. 4	0.00	0.84	4.38	0.00	0.84	0.84	66.58	0.00
Jun. 5-11	0.00	0.84	7.04	0.00	0.84	0.84	72.77	0.00
Jun. 12-18	0.00	0.84	0.37	0.00	0.84	0.84	72.29	0.00
Jun. 19-25	0.00	0.84	0.00	0.00	0.84	0.84	71.45	0.00
Jun. 26-Jul. 2	0.00	1.52	11.25	0.00	1.52	1.52	81.17	0.00
Jul. 3-9	0.00	1.52	11.64	0.00	1.52	1.52	91.29	0.00
Jul. 10-16	0.00	1.52	8.00	0.00	1.52	1.52	97.76	0.00
Jul. 17-23	0.00	1.52	7.59	0.00	1.52	1.52	103.83	0.00
Jul. 24-30	0.00	1.52	4.68	0.00	1.52	1.52	106.98	0.00
Jul. 31-Aug. 6	0.00	2.30	5.78	0.00	2.30	2.30	110.46	0.00
Aug. 7-13	0.00	2.30	5.89	0.00	2.30	2.30	114.05	0.00
Aug. 14-20	0.00	2.30	6.44	0.00	2.30	2.30	118.20	0.00
Aug. 21-31	0.00	2.30	3.67	0.00	2.30	2.30	119.57	0.00
	0.00	89.63	209.21	0.00	89.63	89.63	119.57	0.00

Crops

Crop	CI ¹ (mmohs/cm)	CN ² (Hydrologic Soil Group A)	CN ² (Hydrologic Soil Group B)	CN ² (Hydrologic Soil Group C)	N Requirement ³ (lb/ac)
Wheatgrass	7	39	58	74	140
Annual Ryegrass	7	39	58	74	140
Harvest, Tillage, Planting	N/A	77	86	91	0
Haygrazer	7	67	78	85	160
Oats	7	63	75	83	120
Millet Hay	5	63	75	83	150
Wheat Grain	7	63	75	83	75
Wheat Forage	7	63	75	83	160
Triticale	7	63	75	83	160
Coastal Bermudagrass	10	39	61	74	300
Common Bermudagrass	10	39	61	74	210
Midland Bermudagrass	10	39	61	74	200
Alfalfa	7	58	72	81	420
Cotton	7	67	78	85	100

¹ Source: TNRCC Chapter 309 Table 3

² Source: USDA Technical Release 55: Urban Hydrology for Small Watersheds (Table 2-2c)

³ Source: Texas A&M s-crops.xls

ET and Leaching Requirement (Cotton)

Crop	Cotton				
Week	Leaching Requirement (in/wk)	kc	PET (in/wk)	ET (in/wk)	Total Water Requirement (in/wk)
1	0.47	1.12	1.42	1.59	2.06
2	0.75	1.12	2.28	2.56	3.31
3	0.71	1.12	2.36	2.65	3.36
4	0.43	1.12	1.81	2.03	2.46
5	0.00	0.68	0.42	0.29	0.29
6	0.27	0.68	0.92	0.62	0.89
7	0.21	0.68	0.94	0.64	0.85
8	0.31	0.68	0.99	0.67	0.98
9	0.28	0.68	0.88	0.60	0.88
10	0.00	0.00	0.00	0.00	0.00
11	0.00	0.00	0.00	0.00	0.00
12	0.00	0.00	0.00	0.00	0.00
13	0.00	0.00	0.00	0.00	0.00
14	0.00	0.00	0.00	0.00	0.00
15	0.00	0.00	0.00	0.00	0.00
16	0.00	0.00	0.00	0.00	0.00
17	0.00	0.00	0.00	0.00	0.00
18	0.00	0.00	0.00	0.00	0.00
19	0.00	0.00	0.00	0.00	0.00
20	0.00	0.00	0.00	0.00	0.00
21	0.00	0.00	0.00	0.00	0.00
22	0.00	0.00	0.00	0.00	0.00
23	0.00	0.00	0.00	0.00	0.00
24	0.00	0.00	0.00	0.00	0.00
25	0.00	0.00	0.00	0.00	0.00
26	0.00	0.00	0.00	0.00	0.00
27	0.00	0.00	0.00	0.00	0.00
28	0.00	0.00	0.00	0.00	0.00
29	0.00	0.00	0.00	0.00	0.00
30	0.00	0.00	0.00	0.00	0.00
31	0.00	0.00	0.00	0.00	0.00
32	0.00	0.00	0.00	0.00	0.00
33	0.00	0.00	0.00	0.00	0.00
34	0.00	0.00	0.00	0.00	0.00
35	0.31	0.42	0.81	0.34	0.65
36	0.35	0.42	0.91	0.38	0.73
37	0.41	0.42	1.01	0.42	0.83
38	0.37	0.42	0.96	0.40	0.77
39	0.39	0.42	1.03	0.43	0.83
40	0.60	0.77	2.06	1.59	2.19
41	0.77	0.77	2.01	1.55	2.32
42	0.62	0.77	1.71	1.32	1.94
43	0.72	0.77	1.98	1.52	2.24
44	0.47	0.92	2.24	2.06	2.53
45	0.36	0.92	1.93	1.78	2.14
46	0.81	0.92	2.14	1.97	2.78
47	0.99	0.92	2.62	2.41	3.40
48	0.82	0.92	2.19	2.01	2.84
49	0.84	1.09	2.52	2.74	3.58
50	0.51	1.09	1.85	2.02	2.53
51	0.95	1.09	2.43	2.65	3.59
52	1.58	1.09	4.07	4.43	6.01
Total =					56.97

On-Going Ad-hoc Activities

Occasionally consultation will be needed to address unforeseen issues, related, but not included, in the activities described above. These additional consultation requests would be limited in scope, would not exceed 50 hours of professional staff time annually, and would only be performed at the direction and with the consent of the City of Midland. Many of the ad-hoc activities that we have accomplished under our current contract with the City have been moved into the On-Going Quarterly and Annual Activities in the preceding pages.

Description of Work Required of City Staff

The following detail the responsibilities of the City. It should be noted that AWT will be available to answer questions and assist with these activities as needed.

- a. Contract development and negotiations with Farmer(s)
- b. Final submittal of reports to TCEQ (using data provided by AWT)
- c. Soil sample data entry for TCEQ (using form provided by AWT)
- d. Irrigation system operation
- e. Irrigation system calibration (using procedure developed by AWT)
- f. Irrigation system maintenance and inspections
- g. Sampling required by permit
- h. Implementation of soil moisture monitoring plan (Using form developed by AWT)
- i. Record wastewater and sludge applications by plot by event (using tool developed by AWT)
- j. Record daily rainfall at Plant Farm and Spraberry Farm (using tool developed by AWT)
- k. Record storage pond liquid level (using tool developed by AWT)
- l. Record crop yields by plot for each harvest

5. Unique Challenges in Completing Similar Projects and Outcomes

- a. Analytical Laboratory Issues: A critical component to managing the nutrient balance of a crop or hay field is timely, consistent and accurate results from the analytical laboratory that processes the wastewater, sludge, crop and soil samples. There have been several instances including our project with the City of Midland where problems with the laboratory have impacted the effectiveness of the plans put in place to manage and evaluate the nutrient balance. Typically, the best approach is to engage a laboratory that participates in the North American Proficiency Testing Program. These laboratories understand how to handle and prepare the samples as well as practical aspects like realistic detection limits and quick processing that serve the needs of clients in agricultural settings. In fact, this was the approach we took with the City of Midland as one of the action items

stemming from the 2012 Audit Report. In some instances, due to contract obligations, our clients have not had the freedom to engage other laboratories. In these instances we have interfaced with the laboratories to explain the issues and work toward improvements until the contract is complete and a new laboratory could be engaged.

- b. TCEQ Permit Restrictions: We have had the opportunity on several occasions to help our clients lift TCEQ permit restrictions that severely impacted the feasibility of remaining in compliance with their permit. In these situations we have communicated our concerns with TCEQ, researched the issues, written reports for the TCEQ and presented to the TCEQ with the intention of reducing the permit restrictions such that compliance is achievable and no environmental impact is introduced. We have successfully reduced restrictions based on sodium adsorption ratio (SAR) and waste applications on certain soil types. Both of these issues required an approach that supported the restrictions to a degree but reduced the restrictions enough that the client could comply with their permit with little impact on their operations.
- c. Multi-Stakeholder Issues: Municipal projects that we have been involved in always involve a host of stakeholders. These stakeholders include TCEQ, city attorneys, town council, utilities director, plant manager, farmers and neighbors. It is important to keep all of their points of view in mind as we carry out our role as an advisor to the municipality. To that end, we have always been open to meeting with all parties and answering questions or concerns that each party may have. We operate from the standpoint that our client will be served to the best of our ability and understand that at times what is best for our client is not perceived as what is best for all stakeholders. In these situations, we rely on the science and always support our positions with pertinent references in our field of study.
- d. Physical Infrastructure Issues: One of the main challenges we face on projects like this one relate to infrastructure. In past projects our approach has been to identify the infrastructure needs up front and then find out from our client what can be implemented and when. This gives us a framework to work within and usually requires compromises until the infrastructure is put in place. One project had a need to distribute wastewater to multiple destinations but did not have the pipelines in place to do so. The process of adding this infrastructure was lengthy and we had to manage the project differently leading up to the installation of the pipelines when compared to after the pipelines were installed. However, without our input they would not have been able to get approval to install the pipeline.

6. Relevant Experience

a. Agronomics Compliance Consulting Project

City of Midland, Texas

Carl Craigo (432) 685-7261

- i. Project Description: The City of Midland wastewater and sludge land application system consists of two farms (Plant Farm and Spraberry Farm) that are utilized for the beneficial use of treated municipal wastewater and sludge. The daily flow to the land application sites is approximately 10 MGD.
- ii. Budget: Approximately \$165,000 per year
- iii. Role: We were originally hired as a subcontractor by Arcadis to investigate the nitrogen balance for the Plant Farm and Spraberry Farm. We audited the City's land application program and prepared a report detailing our findings and recommendations. These recommendations formed the basis of the crop management plan we prepared in conjunction with the permit renewal application package. Additionally, we prepared a nutrient management plan for biosolids applications and provided input on the land application portion of the permit renewal application. In 2013, we were awarded the Agronomic Compliance Consulting Contract by the City of Midland. For this project, we have prepared a water/nitrogen balance model, TCEQ reporting forms, weekly, quarterly and annual reports, site visit forms and other documents pertaining to the land application program. This project is in progress and we are currently providing all of the services outlined in the new RFP provided by the City.

b. Municipal Land Application Project

City of Lubbock, Texas

Craig Henderson (806) 775-3223

- i. Project Description: The City of Lubbock's wastewater treatment system processes approximately 20 MGD with approximately 14 MGD designated for land application.
- ii. Budget: Approximately \$195,000 per year

- iii. Role: We have been a consultant with the City since 2000 and have provided a range of services to them including an audit of the land application system, permit modifications related to soil types and SAR, grazing reports, crop management plans, participation in TCEQ hearings and town council meetings, groundwater recharge reports and management of the land application system of two city-owned farms on an on-going basis.

c. Chevron Groundwater Remediation Project

Arcadis (Midland Office)

Hugh Robotham (432-687-5400)

- i. Project Description: The Chevron Keener site, located near Welch, TX is a farm site utilized to accomplish groundwater remediation of high Cl and TDS groundwater resulting from historic oilfield operations on the site. Approximately 300 million gallons of groundwater per year is pumped to the site through one of seven center pivot irrigation systems in order to grow a combination of grass and row crops.
- ii. Budget: Approximately \$15,000
- iii. Role: Arcadis hired us to evaluate the crops, soils and irrigation water and make recommendations for the future management of the site.

d. Food Processing Sludge Application Project

Brookwood Farms, Inc.

Twig Wood (919) 663-3612

- i. Project Description: Brookwood Farms is a food processing facility that specializes in meat products such as barbeque, ribs, and chili. A sludge product is generated during the food processing procedure. The sludge is land applied as a crop nutrient onto two different local farms using tanker trucks.
- ii. Budget: Approximately \$8,000 per year
- iii. Role: We were hired by Brookwood Farms in the early 1990's and have been working with them continually through the present. Our role mainly has been annual regulatory reporting, annual sludge and soil sampling, and monthly sludge application scheduling for the crops. We also conducted

all the permitting activities in 2002 when the 2nd land application farm was added to the permit. This included mapping, soils evaluation, agronomic evaluation, sludge loading calculations, and environmental monitoring planning.

e. Wastewater Residuals Permitting

The City of Raleigh

Marla Dalton (919) 996-3672

- i. Project Description: The City of Raleigh, NC operates the Neuse River Resource Recovery Facility, which is a wastewater treatment plant requiring residuals applications.
- ii. Budget: Approximately \$12,000
- iii. Role: The City hired us to convert hand drawn maps to electronic GIS maps and permit areas for land application of residuals.

7. Current Project Schedule

This project will involve weekly, quarterly, semi-annual and annual activities related to the implementation of the water and nitrogen balance model. As such, the estimated percentage of each team member's total hours is presented. The scope of work spans the entire year and repeats each year going forward. It should be noted that different months of the year will require variable percentages of staff's time and the Table presents an average percentage for the entire project.

Percentage of Total Hours Required to Fulfill Scope of Services

Staff	Role	Percentage of Time
Chris Mosley	Lead Engineer	20%
Jeff Vaughan	Lead Agronomist	12%
Julie Davidson	GIS Specialist	15%

AWT's current staff and workload accommodates the anticipated demand of this project. On average, the AWT staff assigned to this project are currently billing at approximately 75% of capacity. Additionally, AWT is located near prestigious universities offering degree programs relevant to the services we provide. Should the need arise to supplement our current staff, there are many qualified candidates in close proximity due to the presence of several renown universities nearby. We have had a lot of success hiring qualified staff in the past.

8. References

Carl Craigo
City of Midland, Texas
(432) 685-7261

Brad Welch
City of Lubbock, TX
Land Application Operations
4602 ECR 6700
4602 E. 19th Street
Lubbock, TX 79403
(806) 767-3157

Craig Henderson
City of Lubbock, TX
Water Reclamation
3603 Guava Ave
Lubbock, TX 79404
(806) 775-3223

Twig Wood
Brookwood Farms, Inc.
1015 Alston Bridge Road
Siler City, NC 27344
(919) 663-3612

9. Legal Challenges and Outcomes

None of the projects we have been involved in have had legal challenges in the last 5 years. We have been called upon to provide expert testimony in legal cases in the past.

Attachment A
Staff Resumes

Jeffrey David Vaughan

501 N. Salem Street, Suite 203
Apex, NC 27502

EDUCATION

Ph.D. Soil Science, December, 1997.

North Carolina State University, Raleigh, North Carolina.

M.S. Crop and Soil Environmental Sciences, December 1994.

Virginia Polytechnic Institute and State University, Blacksburg, Virginia.

B.S. Agronomy, May 1991.

Virginia Polytechnic Institute and State University, Blacksburg, Virginia.

Concentration: Crop Science and Turfgrass Management. Minor: Agricultural Economics.

EXPERIENCE

President/Senior Agronomist/Soil Scientist-Agri-Waste Technology, Inc., Raleigh, NC, March 1998 - present.

- Oversee a comprehensive records management system (called the Nutri-Link System or NLS) developed for managing/monitoring livestock farming operations and insuring compliance with federal/state/local regulations. Assess all waste management records in NLS to insure proper farm management/compliance and make recommendations for corrective action when needed. The types of records maintained with this system include waste/effluent land application, waste/effluent analysis, field maps and identifications, crop types, crop yield/analysis, soil analysis, well water analysis, freshwater irrigation, precipitation, livestock water use, waste lagoon levels, and waste lagoon pumping. Farms in the following states use NLS: Illinois, Kansas, Kentucky, Missouri, North Carolina, Oklahoma, Texas, and Wisconsin. The following companies participate in the NLS: Cargill Pork, Inc., DeKalb Swine Breeders, Inc., Hanor Company, Inc., Iowa Select Farms, Inc., Land O' Lakes Ag Services, Inc., National Farms, Inc., New Dominion Farms, Inc., Pig Improvement Company, Inc., Seaboard Farms, Inc., and Vall, Inc.
- Oversee weekly management of 21 MGD municipal wastewater land application system on approximately 4500 acres.
- Develop expert reports and presentations and provide depositions regarding soils, agronomy, land application of waste, wastewater systems, etc., for clients involved in litigation.
- Develop cropping systems and nutrient application recommendations for livestock waste management plans, nutrient management plans, environmental permits, and pollution prevention plans.

- Make fertility and liming recommendations for a variety of crop/soil systems in the United States. These recommendations are made using soil analyses and up-to-date crop and soils information on a site and/or state specific basis.
- Diagnose crop abnormalities and suggest corrective action(s).
- Make sampling, handling, and analysis recommendations for soils, crops, waste, and freshwater (ground and surface).
- Provide basic information on crops (types, management, etc.) and soils (management, nutrient transformations, etc.) to clients as needed.
- Audit waste application systems and cropping systems for livestock farming operations and recommend necessary management upgrades/changes.
- Interact with federal/state/local regulatory officials to insure compliance with recordkeeping/monitoring requirements and in the preparation of livestock waste (nutrient) management plans, environmental permits, and pollution prevention plans.
- Interact with laboratory personnel to insure proper quality assurance and control. The labs dealt with include A&L Analytical Laboratories, Inc., Midwest Laboratories, Inc., North Carolina Department of Agriculture-Agronomic Division, Prairie Analytical Systems, Inc., Southern Testing and Research Laboratories, Inc., and Servi-Tech Laboratories, Inc.
- Conduct soil evaluations and develop soil scientist reports for wastewater (industrial, municipal, residential) system suitability as well as permit applications and wastewater system design.
- Conduct wastewater system inspections in the central NC area to meet regulatory requirements and as part of real estate transactions.
- Greenhouse gas offset quantification and verification for soil carbon sequestration (reduced tillage, grassland, and rangeland).
- Manage nine full-time and two part-time employees.
- Participate in the marketing of company services through client contact, mailing materials development, and seminars.

Ph.D. Graduate Student, Soil Science Department, North Carolina State University, Raleigh, North Carolina, January 1995 - December 1997.

- Dissertation title: Assessment of Winter Cover Crops and Manure for Supplying Nitrogen to Corn and Burley Tobacco.
- Planned and designed Ph.D. research project with the assistance of Dr. G.D. Hoyt.
- Investigated the effectiveness of soil testing and plant analysis for predicting burley tobacco and corn nitrogen needs following winter cover cropping or manure application.
- Investigated cover crop residue decomposition and N mineralization patterns in conventional and no-till corn systems using nylon mesh bags.
- Prepared research presentations for the National Meetings of the American Society of Agronomy and the state meetings of the Soil Science Society of North Carolina.
- Assisted in planting, fertilization, and soil sampling (using a Giddings Soil Probe) operations associated with Ph.D. research project.

- Sampled plant tissue and soil at specific plant growth stages for Ph.D. research project.
- Conducted 2M KCl soil extractions and plant tissue drying and grinding associated with doctoral research project.
- Analyzed soil and plant samples for nitrate-nitrogen using the Nitrate Quick Test kit developed by Hawk Creek Laboratory in conjunction with Pennsylvania State University.
- Statistically analyzed data from Ph.D. research project using the Statistical Analysis System (SAS).

M.S. Graduate Student, Crop and Soil Environmental Sciences Department, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, August 1991 - December 1994.

- Thesis title: Management and Assessment of Winter Cover Crop Systems for Supplying Nitrogen to Corn in the Mid-Atlantic Region of the United States.
- Planned and designed master's research project with the assistance of Dr. G.K. Evanylo.
- Studied the ability of soil testing and plant analysis to predict nitrogen contributions from winter cover crops to corn.
- Studied the influence of winter cover crop spring kill time, particle size, and soil incorporation on the nitrogen availability from winter cover crops to corn.
- Assisted in the preparation of research presentations for the National Meetings of the American Society of Agronomy.
- Assisted in tillage, planting, fertilization, and spraying operations associated with master's research project.
- Sampled plant tissue and soil at specific plant growth stages for master's research project.
- Executed lab work including 2M KCl soil extractions, plant tissue drying and grinding, plant tissue digestion for total Kjeldahl nitrogen (TKN) analysis, and prepared buffer solutions, color reagents, and other reagents for various laboratory analyses.
- Analyzed soil samples for nitrate-nitrogen using the Nitrate Quick Test kit developed by Hawk Creek Laboratory in conjunction with Pennsylvania State University, N-Trak Quick Test kit developed by the Hach Company in conjunction with Iowa State University, and the Cardy Nitrate Quick Test kit developed by Spectrum Technologies.
- Operated a Lachat Quikchem Automated Ion Analyzer for soil nitrate-nitrogen and ammonium-nitrogen analysis and plant tissue TKN analysis.
- Managed an undergraduate student worker from May 1992 - September 1992 and March 1993 - May 1994.
- Statistically analyzed data from master's research project using the Statistical Analysis System (SAS).

Undergraduate Research Student, Agronomy Department, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, May 1990 - February 1991.

- Studied yield potential of prolific corn hybrids as influenced by plant population.
- Assisted in tillage, spraying, and data collection operations associated with undergraduate research project.

Lab Technician (Mechanic) A, Agricultural Engineering Department, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, summers of 1987 - 1990.

- Assisted in building and assembling machine components for various projects (i.e. used metal and woodworking shops).
- Assisted in planting, tillage, harvesting, and drying various crops including corn, sweet sorghum, grain sorghum, broccoli, cabbage, peanuts, and various forage crops.
- Worked on projects dealing with sustainable agriculture, conservation tillage, energy use, and soil compaction.

Data Entry Operator, Virginia Geographic Information Systems (VirGIS) Project, Agricultural Engineering Department, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, summers of 1985 - 1989 and March 1990 - May 1991.

- VirGIS was a project studying the non-point source pollution runoff into the Chesapeake Bay.
- Interpreted maps including United States Geographical Service 7.5 minute topographic sheets, county soil surveys, and high altitude infrared aerial photographs.
- Digitally encoded data (manually and electronically) using IBM PC and IBM 3090 mainframe computers and Numonics Electrical Digitizing Tablets.

Publications/Presentations

Vaughan, J.D. 2017. Leaking Septic Tanks Update. 2017 Proceedings of the Soil Science Society of North Carolina.

I presented a talk of the same title at the 2017 Annual Meetings of the Soil Science Society of North Carolina in Raleigh, North Carolina.

Vaughan, J.D. 2017. A Consultant's Experience Conducting Soils Evaluations for Septic System Suitability. North Carolina Environmental Health District Winter Meeting. Invited Speaker.

Vaughan, J.D. 2016. Leaking Septic Tanks Update. 32nd Annual Onsite Water Protection Conference. October 11-13, 2016.

Vaughan, J.D and D.K. Ward. 2015. Ksat Testing in the Field – Practical Information and Overview of Several Permeameters. 2015 Proceedings of the Soil Science Society of North Carolina.

I co-presented a talk of the same title at the 2015 Annual Meetings of the Soil Science Society of North Carolina in Raleigh, North Carolina.

Vaughan, J.D. 2015. Point-of-Sale vs. Monitoring/Maintenance Inspections. Orange County Health Department Workshop. Invited Speaker.

Vaughan, J.D. 2014. Leaking Septic Tanks. 30th Annual Onsite Water Protection Conference. October 14-16, 2014.

Vaughan, J.D. 2014. Point-of-Sale vs. Monitoring/Maintenance Inspections. 30th Annual Onsite Water Protection Conference. October 14-16, 2014.

Vaughan, J.D. 2013. Point-of-Sale Inspections vs. Monitoring/Maintenance Inspections. North Carolina Environmental Health District Winter Meeting. Invited Speaker.

Clapp, A., J. Koontz, W. Jones, C. Rakes, & J. Vaughan. 2012. Panel Discussion: Case Studies on Permitting Software and Converting Paper to E-Files. 28th Annual Onsite Water Protection Conference. October 16-18, 2012.

Vaughan, Jeffrey D. 2012. Assessment of BiOWiSH Technologies, Inc. Septic Tank Aid™ as a Septic Tank Additive. 2012 Proceedings of the Soil Science Society of North Carolina.

I presented a talk of the same title at the 2012 Annual Meetings of the Soil Science Society of North Carolina in Raleigh, North Carolina.

Vaughan, Jeffrey D. 2009. Agriculture and Carbon Credit Offset Possibilities. 2009 Northwest Piedmont Annual Certified Crop Advisor School. Winston-Salem, NC. November 16-18, 2009.

Vaughan, Jeffrey D. and Christopher T. Mosley. 2009. Soils and Carbon Offset Credit Possibilities. 2009 Proceedings of the Soil Science Society of North Carolina.

We presented a talk of the same title at the 2009 Annual Meetings of the Soil Science Society of North Carolina in Raleigh, North Carolina.

Vaughan, Jeffrey D. 2009. Soil Carbon Offsets – Project Verification. American Society of Agronomy Webinar. September 16, 2009. Invited Presenter.

Vaughan, Jeffrey D., Greg D. Hoyt, and Arthur G. Wollum. 2007/2008. Assessment of Burley Tobacco Nitrogen Needs after Cover Cropping and Manure Application. Tobacco Sci. 47:1-10.

Vaughan, Jeffrey D. and Greg D. Hoyt. 2007/2008. Evaluation of a Quick Test Method for Tobacco Petiole Nitrate Analysis. Tobacco Sci. 47:11-12.

Vaughan, J.D., G.D. Hoyt, and A.G. Wollum, II. 2000. Cover crop nitrogen availability to conventional and no-till corn: soil mineral N, corn N status, and corn yield. *Commun. Soil Sci. Plant Anal.* 31:1017-1041.

Vaughan, J.D. and G.K. Evanylo. 1999. Soil nitrogen dynamics in winter cover crop-corn systems. *Commun. Soil Sci. Plant Anal.* 30:31-52.

Vaughan, J.D. and G.K. Evanylo. 1998. Corn response to cover crop species, spring desiccation time, and residue management. *Agron. J.* 90:536-544.

Vaughan, J.D. and G.D. Hoyt. 1997. Nitrogen dynamics in conventional and no-till corn systems following winter cover cropping. *Soil Sci. Soc. North Carolina Proc.* 40:47-60.

Vaughan, J.D., G.D. Hoyt, and A.G. Wollum. 1997. Mineralization of cover crop and manure nitrogen in burley tobacco production systems. *Agron. Abstr.* p. 295.

I presented a poster of the same title at the 1997 National Meetings of the American Society of Agronomy in Anaheim, California.

Hoyt, G.D., J.D. Vaughan, and A.G. Wollum. 1997. Cover crop decomposition and nitrogen release in conventional and no-till corn. *Agron. Abstr.* p. 296.

I presented a poster of the same title at the 1997 National Meetings of the American Society of Agronomy in Anaheim, California.

Vaughan, J.D. and G.D. Hoyt. 1996. Nitrogen dynamics in conventional and no-till corn systems following winter cover cropping. *Agron. Abstr.* p. 294.

Vaughan, J.D. and G.K. Evanylo. 1994. Nitrogen cycling in cover crop-corn rotations. *Agron. Abstr.* p. 351.

Evanylo, G.K. and J.D. Vaughan. 1993. Nitrogen availability to corn under varying cover crop management. *Agron. Abstr.* p. 271.

I presented a poster of the same title at the 1993 National Meetings of the American Society of Agronomy in Cincinnati, Ohio.

Vaughan, J.D. and G.K. Evanylo. 1993. Soil and tissue testing to determine nitrogen availability from cover crops to corn. *Agron. Abstr.* p. 290.

I presented a talk of the same title at the National Meetings of the American Society of Agronomy in Cincinnati, Ohio.

Ess, D.R., D.H. Vaughan, J.D. Vaughan, and G.K. Evanylo. 1992. Nutrient management strategies for sustainable cropping systems. *ASAE Paper No.* 928509.

Vaughan, J.D. and G.K. Evanylo. 1992. Nitrogen dynamics in reduced-till corn following winter cover cropping. Agron. Abstr. p. 294.

I presented a poster of the same title at the 1992 National Meetings of the American Society of Agronomy in Minneapolis, Minnesota.

Vaughan, J.D., J.R. McKenna, and S.T. Reed. 1991. Evaluation of genetic-population interactions as they relate to prolificacy and silk delay in corn. Agron. Abstr. p. 3.

I presented a talk of the same title at the 1991 Southern Branch Meetings of the American Society of Agronomy in Fort Worth, Texas.

Teaching

Taught Soils Laboratory (SSC 012) in Spring Semesters of 1995 - 1996 and Fall Semesters of 1995 and 1997 in the Soil Science Department at North Carolina State University.

- Prepared and administered weekly lectures and laboratory experiments, prepared and graded tests and homework assignments, and assigned final grades associated with this lab.
- Received an overall rating of 4.63 out of 5.00 by student evaluation.

Taught Soils Laboratory (CSES 3124) in Fall Semesters of 1991 - 1993 and Spring Semesters of 1993 - 1994 in the Crop and Soil Environmental Sciences Department at Virginia Polytechnic Institute and State University.

- Prepared and administered weekly lectures and laboratory experiments, prepared and graded tests and homework assignments, and assigned final grades associated with this lab.
- Assisted or taught in some lectures, prepared test questions, and graded quizzes associated with Soils (CSES 3114) in Fall Semesters of 1991-1993 and Spring Semesters of 1993-1994.
- Received an overall rating of 3.50 out of 4.00 by student evaluation.

Teaching Assistant for Soil Fertility and Management (CSES 4214) in Spring Semesters of 1993 - 1994 in the Crop and Soil Environmental Sciences Department at Virginia Polytechnic Institute and State University.

- Prepared, administered, and graded homework assignments.
- Prepared and presented one lecture each semester.
- Assisted in exam preparation, administration, and grading.
- Assisted in assigning final grades.

HONORS/ACTIVITIES - All items are from Virginia Polytechnic Institute and State University unless otherwise specified.

- 2018 North Carolina State University College of Agriculture and Life Sciences Outstanding Alumni.
- North Carolina State University Crop & Soil Sciences External Advisory Board, 2016 to present.
- North Carolina State University On-Site Wastewater External Advisory Board, 2016 to present.
- Selected to attend the Tenth Annual Graduate Student Professional Development Workshop in 1996 for North Carolina State University, College of Agriculture and Life Sciences, graduate students.
- Selected to present my research at the 1996 Chancellor's Circle for North Carolina State University scholarship donors.
- William Walton Stevens and Emily Inscoe Stevens Conservation Graduate Fellowship from North Carolina State University, 1996 - 1997.
- Fred Bond Graduate Scholarship from North Carolina State University, 1996 - 1997.
- Graduate Teaching Assistant Award Honorable Mention, 1994.
- David R. Spence Graduate Scholarship, 1993.
- Moderator for the "Cover Crops for Soil Fertility" section of the 1992 Virginia Sustainable Agriculture Conference.
- Alpha Zeta Outstanding Senior in Crop and Soil Environmental Sciences, 1991.
- Sigma Xi Undergraduate Research Award, 1991.
- John Lee Pratt Animal Nutrition Scholarship, 1990.
- Agronomy Club Scholarship, 1988.
- John Lee Pratt Memorial Scholarship, 1987.
- Treasurer of Agronomy Club, 1989 - 90.
- Chair of Agronomy Club annual fundraiser for two years, 1989 - 90.
- Member of Agricultural Club Council, 1990 - 1991.
- Representative for the Dean of the College of Agriculture and Life Sciences at my former high school recruiting potential students, 1990.

MEMBERSHIPS/TITLES

- Certified Crop Advisor (CCA), Certified Professional Agronomist (CPAg), and Certified Professional Soil Scientist (CPSSc) as certified by ARCPACS, A Federation of Certifying Boards in Agriculture, Biology, Earth and Environmental Sciences.
- Technical Service Provider (TSP) for the Natural Resources Conservation Service.
- CCX Verifier for Agricultural Soil Carbon Sequestration and Rangeland Soil Carbon Sequestration.
- Licensed Soil Scientist as licensed by the North Carolina Board for Licensing of Soil Scientists.

- Certified Professional Soil Scientist as certified by Virginia Board for Professional Soil Scientists and Wetland Professionals.
- Certified Soil Classifier as certified by the South Carolina Department of Natural Resources.
- Certified Professional Soil Scientist as certified by the Tennessee Registry of Certified Professionals in Soils.
- Licensed Professional Geoscientist (Soil Science) as licensed by the State of Texas Board of Professional Geoscientists.
- Subsurface Water Pollution Control System Operator as certified by the North Carolina Water Pollution Control Systems Operators Certification Commission.
- Certified Septic System Inspector as certified by the North Carolina Onsite Wastewater Contractors and Inspectors Certification Board.
- Nutrient Management Consultant as licensed by the State of Maryland, Maryland Department of Agriculture, Office of Resource Conservation.
- Certified Nutrient Management Planner as certified by the Commonwealth of Virginia, Department of Conservation and Recreation, Division of Soil and Water Conservation.
- Soil Science Society of North Carolina President-Elect, 2011.
- Soil Science Society of North Carolina President, 2012.
- Soil Science Society of North Carolina Past-President, 2013.
- Soil Science Society of North Carolina President, 2016 (special appointment by Society due to elected President resigning).
- Soil Science Society of North Carolina Past-President, 2017.
- Continuing Education Committee Chair for Soil Science Society of North Carolina, 2006 – present.
- Member of Annual Meeting Planning Committee for 2010 - Present North Carolina On-site Wastewater Conference.
- Member of American Society of Agronomy.
- Member of Soil Science Society of America.
- Member of Soil Science Society of North Carolina.
- Member of Soil and Water Conservation Society.
- Member of Alpha Zeta.
- Member of Gamma Sigma Delta.
- Member of Phi Sigma.

Christopher T. Mosley
501 N. Salem Street, Suite 203
Apex, NC 27502

Education North Carolina State University (1996)
Degree: Bachelor of Science in Biological and Agricultural Engineering
Concentration: Soil and Water / Environmental
Summa Cum Laude

Purdue University (1998)
Degree: Master of Science in Agricultural and Biological Engineering
Concentration: Soil and Water / Environmental

Work Experience

September 2000-
Present

Agri-Waste Technology, Inc.

CEO /Senior Project Engineer

Responsibilities:

- Business management
- Project management
- Engineering design and specifications for animal waste management systems
- Comprehensive nutrient management planning for animal feeding operations.
- Waste management planning for animal feeding operations.
- Mortality management planning for animal feeding operations.
- Consultation on soil and manure sampling protocols.
- Irrigation uniformity evaluations.
- Environmental site audits of farms and land application sites.
- Permitting of animal feeding operations and municipal land application facilities.
- Freshwater and wastewater irrigation planning for municipalities and farms.
- Development/maintenance of water and nitrogen balance models for large scale land application projects.
- Groundwater recharge estimations for wastewater irrigation projects.
- Greenhouse gas offset quantification and verification for livestock projects.

August 1998-
September 2000

North Carolina State University

Research Assistant

Responsibilities:

- Data collection
- Data management

- Data analysis
- Equipment maintenance and troubleshooting
- Hydrologic model testing and evaluation
- Redesign of gypsum dispenser

August 1996-
August 1998

Purdue University

Graduate Research Assistant

Responsibilities:

- Master's thesis research
- Teaching DRAINMOD to graduate and undergraduate students
- Organizing and gathering data for long-term agricultural research center
- Field work

Summer 1996

Precision Partners, Hope, IN

Position: *Crop Scout*

Responsibilities:

- Checked corn and soybeans for crop growth, weeds, and injury
- Wrote reports for farmers
- Advised farmers of potential problems.

Summer 1994

Will Connell, Agricultural Consultant

Position: *Crop Scout*

Responsibilities:

- Checked tobacco, peanuts, and cotton for crop growth, weeds, and injury.

Professional Licenses and Certifications

- 2005-Present: North Carolina, Professional Engineer (License #029424)
- 2006-Present: South Carolina, Professional Engineer (License #025556)
- 2008-Present: Alabama, Professional Engineer (License #29693-E)
- 2008-Present: Ohio, Professional Engineer (License #73355)
- 2009-Present: Texas, Professional Engineer (License #102607)
- 2015-Present: Georgia, Professional Engineer (License #040297)
- 2006-Present: NRCS Technical Service Provider
- 2006-Present: NC Technical Specialist
- 2007-2010: Chicago Climate Exchange (CCX) Verifier for Agricultural Methane & Combustion and Landfill Methane
- 2009-2012: CSA America, Inc. Verifier for Greenhouse Gas
- 2012-Present: Texas Nutrient Management Specialist
- 2015-Present: California Air Resources Board Lead Verifier (H2-15-205)
- 2018-Present: California Air Resources Board Livestock Project Specialist (H2-15-205)

Publications

Master's Thesis, Title: "*Prediction of subsurface drain flow and water table depth in southern Indiana.*"

Wang, X, C.T. Mosley, J.R. Frankenberger, E.J. Klavivko. 2006. "Subsurface drain flow and crop yield predictions for different drain spacings using DRAINMOD" *Agricultural Water Management* 79(2006):113-136.

Deerhake, M., P. Peterson, N. Ubaka-Blackmoore, J. M. Rice, C. Mosley. Achieving Livestock and Poultry Nutrient Runoff Reductions through Voluntary Farm Assistance Programs. 2010 American Society of Civil Engineers, Madison, WI. August 23-27, 2010.

Deerhake, M., J.M. Rice, K.Schaffner, N.Ubaka-Blackmoore, A.Wesley-Snider, P. Peterson, C. Mosley. CLEAN EAST TM Project: Performance of a Voluntary Approach to Environmental Protection at Livestock and Poultry Operations – Final Project Results. 2012 American Society of Agricultural and Biological Engineers Annual International Meeting. Dallas, TX. August 2011.

Schaffner, K., N. Ubaka-Blackmoore, A. Wesley-Snider, P. Peterson, J.M. Rice, C. Mosley. CLEAN EAST TM Project: Final Results from Nutrient Management Planning and Other Environmental Services to More Than 400 Animal Feeding Operations. 2012 American Water Resources Association Annual Meeting, Jacksonville, FL. November 2012.

Deerhake, M., A. Wesley-Snider, J.M. Rice, K. Schaffner, N. Ubaka-Blackmoore, C. Mosley. What Motivates Farmers to Protect Water Quality? – Analysis of a Voluntary Nutrient Management Planning Project. 2012 American Water Resources Association Annual Meeting, Jacksonville, FL. November 2012.

Technical Skills

- Computer-aided drawing software (AutoCAD)
- Water quality modeling software including GLEAMS, DRAINMOD, AGNPS, ANSWERS, and SWAT.
- Nutrient Management Software (AWM, AFOPro, MMP, NutMan, WatNut, NC, TX, GA)
- Erosion Software (RUSLE2)

Honors

- Graduate research assistantship offers from Purdue University, Texas A&M, and Virginia Tech (1996).
 - Graduate fellowship offer from the University of Illinois at Urbana-Champaign (1996).
 - Phi Kappa Phi honor society (1996).
- Charles W. Suggs, R.J. Reynolds, and NC Section ASAE scholarships (1993-1996).

Julie A. Peele
501 N. Salem Street, Suite 203
Apex, NC 27502

Education

University of North Carolina at Wilmington (1997)
Degree: Bachelor of Science in Biology
Concentration: Chemistry and Environmental Science

Southeastern Community College (1994)
Degree: Associates in Science

Work Experience

Sept. 2005-Present

Agri-Waste Technology, Inc., Raleigh, NC

Environmental Technician/GIS Specialist

Responsibilities: Perform wetland determination and delineation. 404/401 and Nationwide permitting from the Army Corps of Engineers and Department of Water Quality for wetland delineation. Provide waste management assistance to producers and agricultural co-operations by writing Comprehensive Nutrient Management Plans/Nutrient Management Plans. Effective in ArcView software in order to develop maps for clients. Work closely with Senior Engineers to complete agricultural, land development and wastewater treatment system design projects. Successfully maintain weekly/monthly records for various agriculture clients and create reports based on data. Assist with greenhouse gas validation/verification (field audits, desk audits, mapping)

March 2002-
September 2005

Triangle Environmental Services; RTP, NC

Laboratory Analyst

Responsibilities: Test and analyze air samples utilizing the Method 25 procedure. Work closely with the EPA to ensure laboratory practices follow strict air quality standards. Assist in data analysis. Examine air samples using gas chromatography. Responsible for quality assurance and quality control of air vessels containing samples. Possess problem-solving skills needed to maintain and repair laboratory equipment. Proficient in Microsoft Word and Excel. Retain incredible rapport with clients to assist them with any problems or concerns they may have with collecting samples. Always prioritize projects to ensure deadlines are met. Continue to exhibit excellent multitasking skills in this dynamic environment.

January 2001-
January 2002

Southeastern Community College, Whiteville, NC

Instructor of Water Quality

Responsibilities: Instruct Water Quality course and lab for the Environmental Science Technology Program. Single handily developed course syllabus, lectures, exam material, and lab material. Class topics include common components of water, water source, water law, water

treatment procedures and the design of water treatment plant. Lessons incorporate use of professional laboratory equipment such as, spectrophotometer, suspended solids and turbidity analyzers, compound microscope, and reagents needed to determine nutrients and contamination in water.

February 1999-
January 2002

Home Depot, Wilmington, NC

Horticulturist

Responsibilities: Provide expert knowledge to customers regarding soil chemistry, pesticides, herbicides, fungicides, fertilizers, selection and placement of plants in their homes and landscapes. Coordinate a weekly public informational seminar concerning customer's lawn and garden needs. Responsible for ordering and managing all live goods in the department by utilizing Windows based software. Command efficient skills in interpreting sales reports, previous sales histories, and weekly inventory reports. Successfully train new associates on how to use the computer system, product knowledge, and Home Depot procedures.

Additional Training

- Certificate of Completion for Introductory to ArcView ESRI, January 2006
- Certificate of training in Wetland Determination and Delineation, NCSU, October 2006
- Certificate of training in Intermittent and Perennial Stream Identification for Regulatory Applications, NCSU, October 2008
- Certificate of training in Rain Garden Design and Construction, NCSU, August 2009
- North Carolina Plant Professional Certification; NC Extension Service and NCSU, June 2000
- Department Supervisor Training; Home Depot, June 2000
- Master Gardener Certification Course; NC Extension Service and NCSU, March 2000
- North Carolina Pesticide Certification; NC Agricultural Extension Service and NCSU, July 1998
- Hazardous Material Training, April 1996



City Council Meeting

Item Number: 8
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Justine Ruff, Director
Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO RECEIVE AN ARTIFACT LOAN FROM THE NATIONAL AIR AND SPACE MUSEUM; SAID ARTIFACT BEING THE WINDECKER EAGLE I, WHICH IS THE FIRST ALL-COMPOSITE AIRCRAFT TO RECEIVE FEDERAL AVIATION ADMINISTRATION CERTIFICATION; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID ARTIFACT LOAN (DISTRICT 4) (AIRPORTS)

Purpose:

Resolution authorizing the City of Midland to request the loan of the Windecker Eagle I from the National Air and Space Museum for display at the Midland International Air & Spaceport.

Recommended City Council Action:

Approve

Fiscal Impact:

Meeting Date Display

Strategic Priority:

Transparent & Consistent Communication

Discussion:

The Windecker Eagle I was manufactured in Midland, Texas and has the distinction of being the first all-composite aircraft to receive FAA certification. The Eagle is the product of several years of experimentation by Dr. Leo Windecker and his wife, Dr. Fairfax Windecker, working

with Dow Chemical Company to develop lightweight fiberglass reinforced plastic structures for aviation use. The Windeckers were dentists that moved to Midland from Dallas in 1962. The couple gave up dentistry for Leo's love of aviation, including composite material research and development. In 1969, the Eagle I, a four-seat, low-wing monoplane, received FAA certification. Six Eagles were completed, but it was never able to break into the 1970's market that already held several well-established production aircraft. Nevertheless, the Windecker Eagle I is a testament to their pioneering work in the field of composite materials.

In order to receive an artifact loan from the Smithsonian's National Air and Space Museum (NASM) there is an extensive process involved. All loan requests must be received at least one year in advance of the loan start date. It is the Airport's intention to include the Windecker Eagle I in the design and planning for the new Security Checkpoint project. Including the display so early in the process assures us to have the necessary infrastructure in place to showcase the aircraft. Once the loan request form has been submitted, it will be reviewed by relevant NASM staff for merit, nature of proposed venue and audience. The condition and durability of the requested artifact will be carefully assessed. Recommendations about mounting or lighting requirements, shipment, etc. will be formulated after the artifact inspections have been completed. Based on the staff's assessment, the NASM Loan Committee may decide to either approve the loan to the next stage of the process, suggest modifications, or decline the request. Borrowers whose requests are denied will receive an explanation and, where appropriate, ways in which their requests might be strengthened. If the loan is approved, requirements for mounting, environment, packing, courier, transportation, insurance, photo request information and a list of estimated costs will be provided. Once the borrower signs the letter of approval letter, formal preparation of the artifact begins. Estimates of expenses will be provided and borrowers must confirm that they are prepared to accept payment obligation before artifact preparation will begin.

For E. Out

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE SUBMISSION OF
AN APPLICATION TO RECEIVE AN ARTIFACT LOAN
FROM THE NATIONAL AIR AND SPACE MUSEUM;
SAID ARTIFACT BEING THE WINDECKER EAGLE I,
WHICH IS THE FIRST ALL-COMPOSITE AIRCRAFT
TO RECEIVE FEDERAL AVIATION
ADMINISTRATION CERTIFICATION; AND
AUTHORIZING THE EXECUTION OF ALL
NECESSARY DOCUMENTS FOR THE ACCEPTANCE
OF SAID ARTIFACT LOAN**

WHEREAS, the Windecker Eagle I was developed by Dr. Leo Windecker and Dr. Fairfax Windecker in Midland, Texas; and

WHEREAS, the Windecker Eagle I is the first all-composite aircraft to receive Federal Aviation Administration certification, which was issued in 1969; and

WHEREAS, the Windecker Eagle I is housed at the Smithsonian's National Air and Space Museum ("*NASM*"); and

WHEREAS, the City seeks to display the Windecker Eagle I as part of a new security checkpoint at Midland International Air & Space Port; and

WHEREAS, inclusion of the Windecker Eagle I in the new security checkpoint referenced herein necessarily requires that the City submit an application to receive an artifact loan from NASM; and

WHEREAS, the City Council finds it to be in the public interest to authorize the submission of an application to receive the Windecker Eagle I as an artifact loan from NASM; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, or his designee, to execute all necessary documents to provide for the acceptance of said artifact loan from NASM;

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

SECTION ONE. That the above recitals are hereby approved and adopted for all

purposes.

SECTION TWO. That the City of Midland is hereby authorized to submit an application to the Smithsonian's National Air and Space Museum to receive the Windecker Eagle I as an artifact loan for the purpose of displaying the same as part of a new security checkpoint at Midland International Air & Space Port.

SECTION THREE. That upon the approval of the City of Midland's application to the Smithsonian's National Air and Space Museum to receive the Windecker Eagle I as an artifact loan, the City Manager or his designee is hereby authorized and directed to execute all necessary documents to provide for the acceptance of the artifact loan from NASM.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS

Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 9
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Justine Ruff, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH DELTA SPECIALTY CONTRACTORS, LLC, IN THE AMOUNT OF \$1,233,900.00 FOR THE AIRPARK NORTH FENCE REPLACEMENT PROJECT AT MIDLAND AIRPARK; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (AIRPORTS)

Purpose:

Resolution authorizing the execution of a contract with Delta Specialty Contractors, LLC in the amount of \$1,233,900.00 for the Airpark North Fence Replacement Project at Midland Airpark, and appropriate necessary funds for said project.

Recommended City Council Action:

Approve

Fiscal Impact:

Airport Fund (100%)	\$ 1,662,290.00
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Breakout of Costs

Construction Phase Airport Admin Costs	\$ 5,000.00
Construction Phase Engineering Fee	\$ 90,000.00
Construction Phase Close-Out Fee	\$ 15,000.00
Construction Phase Admin/Resident Project Representative (RPR)	\$ 145,000.00
Construction Phase Surveying and Testing	\$ 40,000.00
Construction Phase Reimbursable Costs	\$ 10,000.00
Construction Improvements Bid	\$1,233,900.00
Construction Contingency	\$ 123,390.00
Total Recommended Construction	\$1,662,290.00

Phase Appropriation
Appropriation Language:

\$1,662,290.00 will be appropriated from the Airport Operating Fund Unappropriated Fund balance and transferred to the Airpark North Fence Replacement Project.

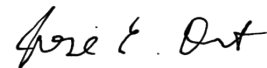
Strategic Priority:

Transparent & Consistent Communication

Discussion:

During the November 14, 2023, Council Meeting, a motion authorized the advertisement for bids for the MDD North Fence Replacement Project at Midland Airpark. On December 20th, three bids were submitted and opened for the project; Delta Specialty Contractors, LLC was the low bidder with their bid of \$1,233,900.00.

The Airpark North Fence Project addresses the replacement of the existing chain-link fence located along the north side of Midland Airpark adjacent to Loop 250 and Garfield Street. The anticipated fence material is a coated woven wire fabric which provides an enhanced visual appearance from Loop 250 and Garfield Street. The length of the fence is approximately 8,000 linear feet. A concrete mow strip will be placed beneath the fence line to reduce vegetation growth within the fence fabric. This project will be funded by the Airport Operating Fund.



City Manager's Office

December 21, 2023

Ms. Justine Ruff
Director of Airports
City of Midland
P.O. Box 60305
Midland, Texas 79711

Re: Midland Airpark
MDD North Fence Replacement (#900414)
Recommendation for Award of Construction Contract

Dear Ms. Ruff:

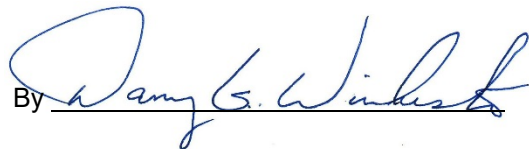
We reviewed the bids received December 20, 2023, for the above referenced project. The low bid submitted met the requirements of a Bid Bond, Acknowledgement of Addenda and Signed Bid Proposal. We checked the System for Award Management (SAM) for the bidder to determine if their company was listed as debarred or suspended by any Federal department or agency from participating in this Project. We did not find any data indicating Delta Specialty Contractors, LLC has been debarred or suspended.

We recommend the Construction Contract for the MDD North Fence Replacement be awarded to Delta Specialty Contractors, LLC for a total Contract amount of \$1,233,900.00.

If you have any questions on the bids received or the low bidder, please don't hesitate to give me a call.

Sincerely,

PARKHILL

By 

Danny G. Winchester, P.E.
Firm Principal

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH DELTA SPECIALTY
CONTRACTORS, LLC, IN THE AMOUNT OF
\$1,233,900.00 FOR THE AIRPARK NORTH FENCE
REPLACEMENT PROJECT AT MIDLAND AIRPARK;
AND APPROPRIATING FUNDS FOR SAID PROJECT**

WHEREAS, the City Council approved the plans and specifications and authorized advertisement for bids for the Airpark North Fence Replacement Project at Midland Airpark; and

WHEREAS, on December 20, 2023, three (3) bids were opened, with the lowest and most responsible bid was submitted by Delta Specialty Contractors, LLC, for a total cost of \$1,233,900.00 as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds the price proposed by Delta Specialty Contractors, LLC, for said project to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Delta Specialty Contractors, LLC, for said project and to appropriate funding for said project;

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

SECTION ONE. That the City Manager, or his designee, and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Delta Specialty Contractors, LLC, in the amount of \$1,233,900.00 for the Airpark North Fence Replacement Project at Midland Airpark. Said contract shall be on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$1,662,290.00 is hereby appropriated from the Airport Operating Fund Unappropriated Fund balance to the Airpark North Fence

Replacement Project.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Delta Specialty Contractors, LLC, pursuant to the terms of said contract from funds available in the above-referenced project upon receipt of proper invoices or statements approved by the City Manager or his designee.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

MIDLAND AIRPARK (MDD)
NORTH FENCE REPLACEMENT
Midland, Texas
2:30pm, Wednesday, December 20, 2023

Parkhill Project No. 01618422
City Project No. 900414

BIDDER	BID BOND	ADDENDUM 1	TOTAL BID
Construction Rent-A-Fence, Inc.	X	X	\$1,634,856.00
Delta Specialty Contractors	X	X	\$1,233,900.00
Swift Corporation LLC	X	X	\$1,788,000.00

PROJECT MANUAL

MIDLAND AIRPARK (MDD)

North Fence Replacement

Midland, Texas



November | 2023

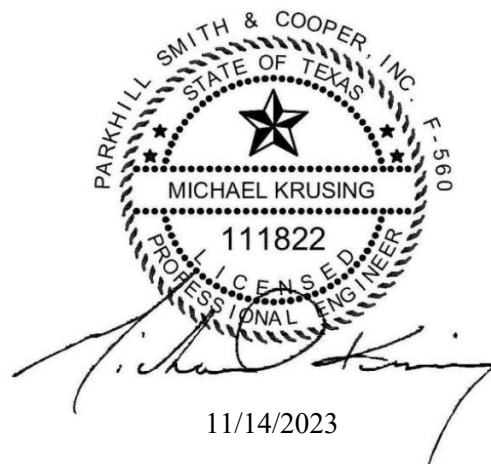
Parkhill Project #01618422

PROJECT MANUAL

MIDLAND AIRPARK (MDD)

North Fence Replacement

Midland, Texas



November | 2023

Parkhill Project #01618422

ADDENDUM NO. 01

TO: All Planholders

FROM: Michael Krusing, PE

PROJECT NAME: MDD North Fence Replacement

PROJECT NO.: 01618422

DATE: Monday, December 4, 2023

Attention all Prospective Proposers/Planholders: The following are modifications to referenced Drawings and Project Manual. This Addendum becomes a part of Contract Documents and modifies original Contract Documents dated November 14, 2023, as noted herein:

Addendum consists of Summary, Prebid Meeting Minutes/Attendance, and Drawing Nos. G-004, G-006, C-501, C-502, and C-503 for a total of six pages.

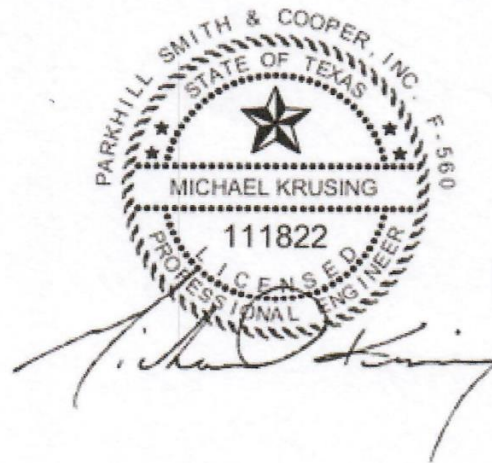
I. CHANGES TO DRAWINGS:

1. Replace in their entirety the following enclosed Drawings:
 - a. G-004
 - b. G-006
 - c. C-501
 - d. C-502
 - e. C-503

II. OTHER:

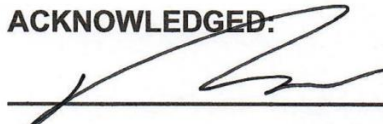
1. See enclosed Prebid Meeting Minutes for questions received and answers provided.

END OF ADDENDUM NO. 01



***Bidder shall acknowledge receipt of this addendum below and on Bid Proposal.
Attach entire addendum to Bid Proposal submission.***

ACKNOWLEDGED:



Owner

By: Derek Collins

PACKET

9.10

January 23, 2024

PREBID MEETING MINUTES

PROJECT NAME: MDD North Fence Replacement Project

PARKHILL PROJECT NO.: 01618422

DATE: November 28, 2023

TIME: 2pm

LOCATION: MDD Basin Aviation Conference Room

ATTACHMENTS: Sign-In Sheet

Meeting minutes noted in red.

I. ATTENDANCE (see attached)

II. INTRODUCTIONS

A. OWNER (City of Midland)

9506 La Force Blvd, Midland Texas 79701

1. Justine Ruff, Director of Airports
jruff@midlandtexas.gov
2. Aaron Easton, Deputy Director of Airports
aeaston@midlandtexas.gov
3. Nicholas Krakovec, Operations Supervisor
nkrakovec@midlandtexas.gov

B. ENGINEER (Parkhill)

1. Danny Winchester, PE, Program Manager
1700 West Wall Street Suite 100, Midland Texas 79701
dwinchester@parkhill.com
432.697.1447
2. Michael Krusing, PE, Project Manager
4222 85th Street, Lubbock Texas 79423
mkrusing@parkhill.com
806.473.3671

III. SECTION A – ADVERTISEMENT FOR BIDS

- A. Bid Opening: 2:30pm CST, Wednesday, December 20, 2023
- B. Location: City Hall City Secretary Office
- C. Minimum Wage Rates as established by DOL.

IV. SECTION IB – INSTRUCTIONS TO BIDDERS

A. Contractor Proposal

1. All pricing items must be completed or Bid will be rejected.
2. Bid must have original signature or Bid will be rejected.
3. Bid form shall not be changed or altered in any manner or Bid will be rejected.
4. Any addenda issued up to Bid Opening date must be acknowledged on Page C-3 of Proposal.

B. Bid Security

1. 5% security will be submitted with Bid (based on maximum amount of Bid including all additive alternates).
2. Security must be in the form of a Cashier's or Certified Check, bond, or combination of the two providing it equals 5%.
3. Bonds must have an original signature and a power of attorney attached.

4. Securities including cashier's checks will not be returned until Bid is fully let (can take up to 90 days).

C. Financial Statement

1. Include with Bid in a separate, sealed envelope.
2. TxDOT prequalification acceptable.

V. EXPERIENCE RECORD: Form must be completed in its entirety.

VI. EQUIPMENT SCHEDULE: Form must be completed in its entirety.

VII. ENGINEER'S OVERVIEW

A. PROJECT SUMMARY:

1. Time of Completion: 90 Consecutive Calendar Days
2. Scope:
 - a. Remove existing chain-link fence.
 - b. Install new Parkland Security Fence, gates, and concrete footer, as specified.
 - c. Goal is to maintain a secure site; therefore, temporary fence to be erected as fence is demolished and new fence erected.

B. PROJECT PHASING: Single Phase of 90 Calendar Days.

C. PLANS AND SPECIFICATIONS

1. All questions concerning documents will be directed to Engineer's office, addressed to Debbie German at dagerman@parkhill.com. Do not address any questions to Owner during bid stage.
2. Planholders must email dagerman@parkhill.com to register and guarantee accurate communication, including distribution of Addenda.

D. ADDENDA

1. Questions regarding any addenda issued to this point.
2. Deadline for submitting questions will be by Close of Business (COB), December 7, 2023.
3. Addenda will be issued no later than COB December 12, 2023.
4. All items discussed in Prebid Meeting will be issued to all registered Planholders through an Engineer-issued Addendum.

VIII. OTHER

A. ENTRY/STAGING AREAS

1. Staging areas outside airfield secure area will be identified on active Phase. Before each phase, Contractor shall coordinate with Airport Operations to determine approved access from staging area entrance gate to work area.
2. Access gates used by Contractor to enter secure area will also depend upon active Phase.
3. Due to location of work, Contractor is required to keep access routes clean.
4. Contractor responsible for controlling access of workers through designated access gate for active phase.

B. TESTING

1. All material approval during submittals at cost of and by Contractor.
2. Passing material acceptance tests during construction of improvements for in-place material performed by third party laboratory provided by and at cost of Owner.
3. Engineer to perform concrete testing at his discretion.

C. LINES AND GRADES

1. Parkhill will provide Contractor with horizontal control points and benchmark for vertical control.
2. Contractor responsible for all construction staking and laying out of Work.

IX. QUESTIONS

- A. Is Project following a Buy American Act or do domestic materials need purchased?
 1. No, Project is locally funded with no requirement for Buy American-compliant materials to be used.
- B. Project budget: \$1,954,260.00
- C. Cochrane materials come with a 120- to 150-day lead time. Project duration is 90 days from Notice to Proceed (NTP). Will NTP be provided after materials received or liquidated damages factored in due to extended lead time past Project duration?
 1. NTP not provided until receipt of material delivery date.
- D. What type of temporary fencing is required? Standard 6-foot-tall temporary panel and stand system? Does panel need barbwire on top?
 1. Standard 6-foot-tall temporary panel and stand system is acceptable without need for barbwire top. Only requirement is ensuring temporary fence is secured to withstand windstorms. Temporary fence length is Contractor preference.
- E. Specification calls for a lighted barricade for this Project. Is this required since we are so far off runway or does a section of fencing need this lighted barricade?
 1. Lighted barricades required only if taxiway closure requires access restriction to construction area. Lighted barricades based upon normal construction activities are not anticipated.
- F. Specification calls for a SWPPP. Amount of area disturbed should be minimal. Is a SWPPP needed or will it be provided to awarded GC?
 1. Normal and anticipated construction activities should not disturb more than one acre; therefore, an SWPPP is not anticipated.
 2. If SWPPP becomes required during construction, Engineer will provide.
- G. Fiber optic line runs along west fence line. Are private locates required to find line?
 1. Fiber optic line must be located and construction activities coordinated. Private locates not anticipated.
- H. Sheet G-006, Note 10 calls for a dedicated Safety Officer/Construction Inspector, further stating this person cannot be Project Superintendent. Can this person be from work crew or a stand-alone person who cannot perform other work?
 1. Will update note to read, "This individual may be Project Superintendent."
- I. Plans state to demolish trees/brush within 10 feet from inside of proposed fence line. Do stumps need taken down to existing grade or another certain depth?
 1. Any removed tree must have stump taken down to existing grade.

PREBID MEETING ATTENDANCE	PROJECT: Midland Airpark North Fence Replacement Project
	PROJECT NO.: 01618422
	DATE: Tuesday, November 28, 2023
	TIME: 2pm
	LOCATION: MDD Basin Aviation Conference

NAME	ORGANIZATION	PHONE	EMAIL
Aaron Easton	MAF/MDD	432.560.2200 X3010	aeaston@midlandtexas.gov
Chris Welch	MAF/MDD		cwelch@midlandtexas.gov
Michael Krusing, PE	Parkhill	806.473.3671	mkrusing@parkhill.com
Danny Winchester, PE	Parkhill	432.681.6114	dwinchester@parkhill.com
Matt Ford	CRAF	512.595.5366	matt@crafinc.com
Mario Vasquez	Swift Corp	512.993.1662	mariov@swiftcorptx.com



Midland Airport
North Fence Replacement

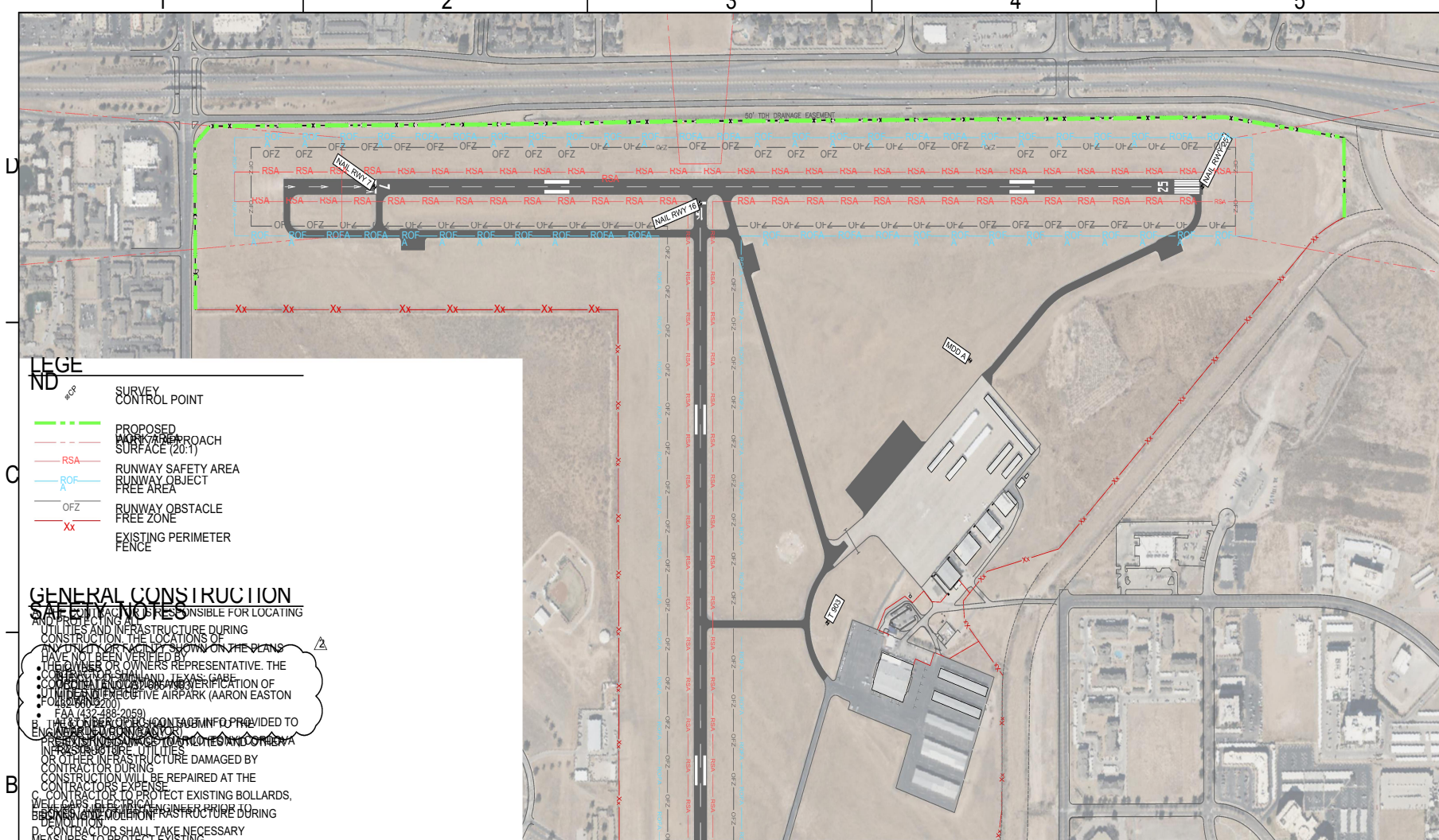


CLIN
City of Midland
Midland Airport
901 Veterans
Airport Lane
Midland, Texas
79705

PROJECT
#184.2

2 11/30/2023
1 Addendum No. 1
11/30/2023
11/30/2023

Project
Layout
Plan
G-004



- LEGEND**
- ND SURVEY CONTROL POINT
 - PROPOSED FENCE
 - RSA RUNWAY SAFETY AREA
 - ROF RUNWAY OBJECT FREE AREA
 - OFZ RUNWAY OBSTACLE FREE ZONE
 - Xx EXISTING PERIMETER FENCE

GENERAL CONSTRUCTION SAFETY NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES AND INFRASTRUCTURE DURING CONSTRUCTION. THE LOCATIONS OF UTILITIES SHALL BE SHOWN ON THE PLANS BY THE OWNER OR OWNERS REPRESENTATIVE. THE CONTRACTOR SHALL VERIFY THE LOCATION OF UTILITIES AND INFRASTRUCTURE PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES AND INFRASTRUCTURE DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES AND INFRASTRUCTURE DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES AND INFRASTRUCTURE DURING CONSTRUCTION.

GENERAL CONTROL NOTES

1. THIS PLAN SHALL BE PRINTED IN COLOR. THE CONTRACTOR IS RESPONSIBLE FOR ALL CONSTRUCTION STAKING. COST IS SUBSIDIARY TO ALL OTHER BID ITEMS.

2. THE CONTRACTOR SHALL VERIFY THE ENTIRE CONTROL NETWORK WITHIN 14 CALENDAR DAYS FOLLOWING NOTICE TO PROCEED.

3. ANY DEVIATION BETWEEN FIELD SURVEY AND PLAN INFORMATION SHALL BE BRINGED TO THE IMMEDIATE ATTENTION OF THE ENGINEER BY THE CONTRACTOR.

4. THE CONTRACTOR SHALL TAKE NECESSARY MEASURES TO PROTECT EXISTING STRUCTURES (BUILDINGS, FENCE, UTILITIES, ETC.). REPAIRS AT THE CONTRACTORS SOLE EXPENSE.

CONTROL MONUMENTS

1. MONUMENTS ARE LOCATIONS RELATIVE TO NATIONAL GEODETIC SURVEY.

2. HORIZONTAL: NAD 83 U.S.

3. SURVEY FEET

4. STATE PLANE COORDINATES: TEXAS

5. CENTRAL ZONE (4203)

6. GPS BASE STATION:

7. NORTHING: 10708889.600

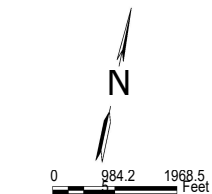
8. EASTING: 1748790.227

9. ELEVATION: 2803.4

CONTROL INFORMATION			
POINT	NORTHING	EASTING	ELEVATION
ND	10709180.0	1746300.7	2793.9
MDD	3400	700	0
A	10707676.0	1749561.0	2791.7
T 903	1100	400	8

RUNWAY THRESHOLD INFORMATION			
POINT	NORTHING	EASTING	ELEVATION
RWY 16	10709154.0	1746356.7	2803.5
RWY 17	3910	920	0
RWY 25	10710379.0	1751226.0	2789.9
RWY 26	8650	440	13
RWY 16	10709555.0	1748292.4	2799.8
	2290	400	33

9.15



January 23, 2024

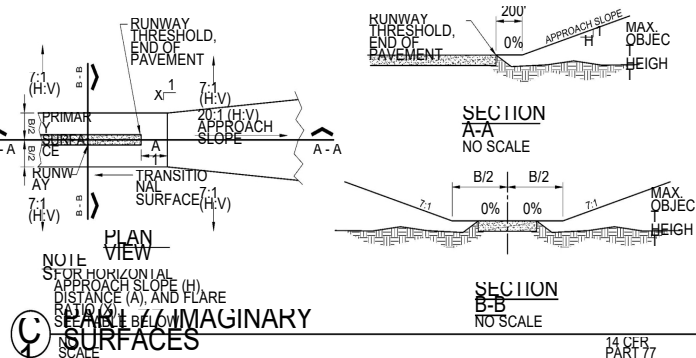
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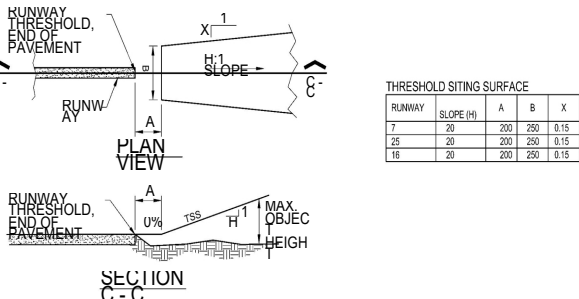
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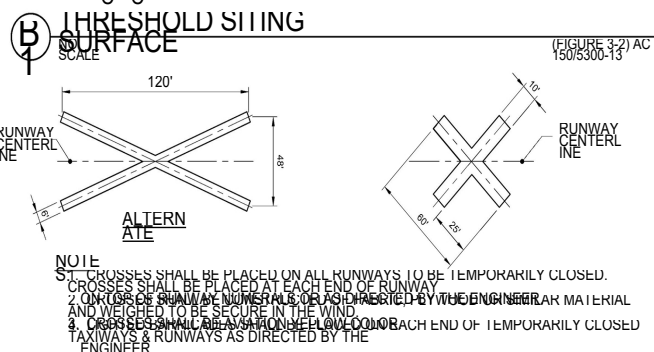
APPROACH SURFACE				
RUNWAY	SLOPE (H)	A	B	X
7	20	200	250	0.15
25	20	200	250	0.15
16	20	200	250	0.15



THRESHOLD SITING SURFACE				
RUNWAY	SLOPE (H)	A	B	X
7	20	200	250	0.15
25	20	200	250	0.15
16	20	200	250	0.15

RUNWAY SAFETY AREA		
RUNWAY	WIDTH	LENGTH BEYOND END OF RUNWAY
7-25/16-34	150'	300'

RUNWAY OBJECT FREE AREA		
RUNWAY	WIDTH	LENGTH BEYOND END OF RUNWAY
7-25/16-34	500'	300'



GENERAL SAFETY/NOTES

1. INSPECT MARKINGS AND BARRICADES DAILY AND MAKE REPAIRS AND IMPROVEMENTS IN A TIMELY MANNER. PROVIDE INSPECTION LOGS TO ENGINEER.
2. EMPLOYEE PARKING SHALL BE WITHIN THE STAGING AREA.
3. THE AIRPORT DIRECTOR SHALL HAVE AN OFFICE CONTAINING ALL VEHICLES SHALL BE SECURED AND KEPT IN A SAFE LOCATION. NO LONG SURFACES SHALL BE SHOWN IN B1 AND/OR C1.
4. MATERIAL STOCK OR SHOWN IN B1 AND/OR C1 SHALL NOT PENETRATE THE PRIMARY, SURFACE OR TRANSITION SURFACES, AND EQUIPMENT OR OTHER OBJECTS THAT PENETRATE ANY OF THE IMAGINARY SURFACES MUST BE ENGINEERED IN ADVANCE. OBSTRUCTIONS TO SURFACES MUST BE MARKED AND/OR LIGHTED IN ACCORDANCE WITH FAA GUIDELINES.
5. THE CONTRACTOR SHALL PREPARE AND SUBMIT A DETAILED SAFETY PLAN PRIOR TO PRE-CONSTRUCTION CONFERENCE. THE PLAN SHALL DETAIL PLACEMENT OF SAFETY DEVICES, MARKING, LIGHTING, ETC. DURING EACH PHASE OF THE PROJECT AS EDITION OF AC 150/5300-13.
6. THE CONTRACTOR SHALL PROVIDE A 24-HOUR POINT OF CONTACT WHO WILL BE RESPONSIBLE FOR IMMEDIATE CORRECTION OF SAFETY CONCERNS.
7. THE CONTRACTOR IS RESPONSIBLE FOR ADHERING TO THE REQUIREMENTS OF LATEST EDITION OF AC 150/5300-13 OPERATIONAL SAFETY ON AIRPORTS DURING CONSTRUCTION.
8. CONTINUALLY CLEAR TAXIWAY, APRONS, AND RUNWAYS OF FOREIGN OBJECTS.
9. OPEN TRENCHES SHALL NOT BE PERMITTED WITHIN 75' OF EITHER RUNWAY.
10. DEEP TRENCHES SHALL BE PROVIDED A SAFETY OFFICER TO WORK WITHIN TRENCHES WITH RED DANGER FLAGS AND WITH AIRPORT SAFETY TO DENY ACCESS TO THE TRENCHES.
11. INDIVIDUALS SHALL NOT BE PERMITTED WITHIN 100' OF EITHER RUNWAY OR WITHIN 100' OF EITHER RUNWAY OR WITHIN 100' OF EITHER RUNWAY.
12. NO CONSTRUCTION SHALL OCCUR WITHIN 75-FT OF EITHER RUNWAY CENTERLINE TO A DISTANCE OF 300 FT BEYOND THE RUNWAY THRESHOLD, UNLESS THE RUNWAY IS CLOSED MUST NOT PENETRATE THE OFZ OR INNER APPROACH OFZ AS DEFINED IN LATEST EDITION OF AC 150/5300-13 (PARAGRAPH 308)

Parkhill



Midland Airport
North Fence Replacement



CLIN
City of Midland
Midland Airport
901 Veterans
Airpark Lane
Midland, Texas
79705

PROJECT
#184.2

2 11/30/2023
1 Addendum No. 1
11/30/2023
Documents
11/30/2023

Construction
Safety
Details
006

9.16

January 23, 2024



CLIN
City of Midland
Midland Airpark
901 Veterans
Airpark Lane
Midland, Texas
79705

PROJECT
#184.2

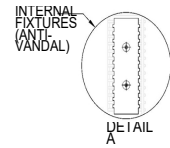
2 11/30/2023
1 Addendum No. 1
1 11/30/2023 - Bld
11/30/2023 - Bld
11/30/2023 - Bld

SPECIFICATION PARKLAND WALL PANEL		
NO#	PAN	DESCRIPT
1	PAN	PARKLAND MESH PANELS (10'-10" HIGH) GALVANIZED (7")
		PANEL FORMATION: PANEL REINFORCED WITH 4 X 2" DEEP V-BENDS, 2 X FLANGES ALONG SIDES
		(INTERNAL FIXTURES - ANTI VANDAL, ALLOWING FOR FLUSH POST AND PANEL FINISH, LINE WIRE SECURE CONNECTION, LOCKING RECESS MECHANISM) AND 1 X 90° FLANGE AT TOP AND 1 X 30° FLANGE AT TOE
2	POS	(ARROW - STRAIGHT EDGES, INTEGRATED ANGLE)
3	CLAM	COATING: MESH GALVANIZED, THEN MARINE FUSION BOND COATED.
4	FOUND	(PATENTS AND DESIGN REGISTRATIONS APPLY)
5	ON	COCHRANE TAPER LOCKING POST GALVANIZED, SEALED WITH STEEL CAPS THEN STRUCTURAL MARINE COATED.
6	TOPPING	SINGLE BOLT COMB CLAMPS, DOUBLE BOLT COMB CLAMPS. COATING: GALVANIZED, THEN STRUCTURAL MARINE GRADE COATED.
	ANTI-SCALE	18" DIA X 4 FT DEEP CONCRETE COCHRANE SHARK TOOTH SPIKE COCHRANE ANTI-SCALE

NOTE: CONCRETE MOW SHOWN FOR CLARITY.

SPECIFICATION BILL OF MATERIAL		
NO#	MATERIAL	QUANTI
1	HINGE	1
2	LOCKING	1
3	POST	1
4	GATE	1
	FRAME	1
	LOCKING	1
5	BASE PIN	2
6	COVER	4
7	PLATE	2
8	HAND	1
9	LE	1
10	MESHE	2
11	IRON	1
12	PLATE	1
13	ANGLE	1
14	IRON	1
	TOPPING	1
	DROP	1
	COCHRANE SHARK	1
	TOOTH SPIKE	1
	ROUND BAR	1

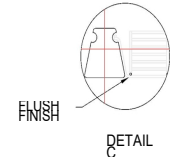
NOTE: CONCRETE MOW SHOWN FOR CLARITY.



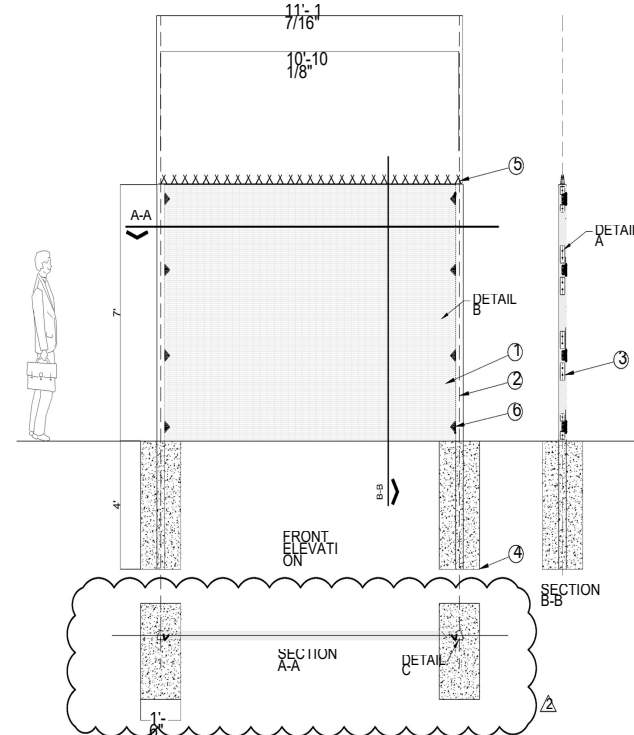
DETAIL A



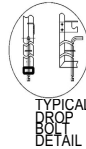
DETAIL B



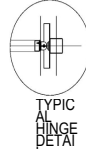
DETAIL C



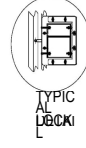
COCHRANE FENCE
PANEL DETAIL
SCALE



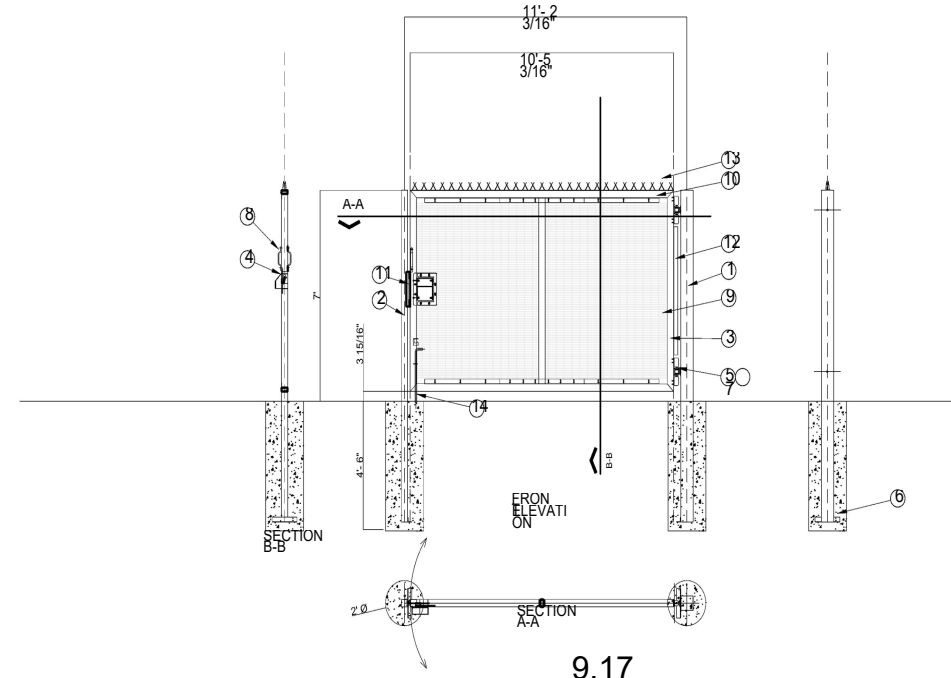
TYPICAL
DROP
BOLT
DETAIL



TYPICAL
HINGE
DETAIL



TYPICAL
LOCK
DETAIL



COCHRANE 10'-1001
SWING-GATE DETAIL
SCALE

PACKET

9.17

January 23, 2024



Midland Airpark
North Fence Replacement

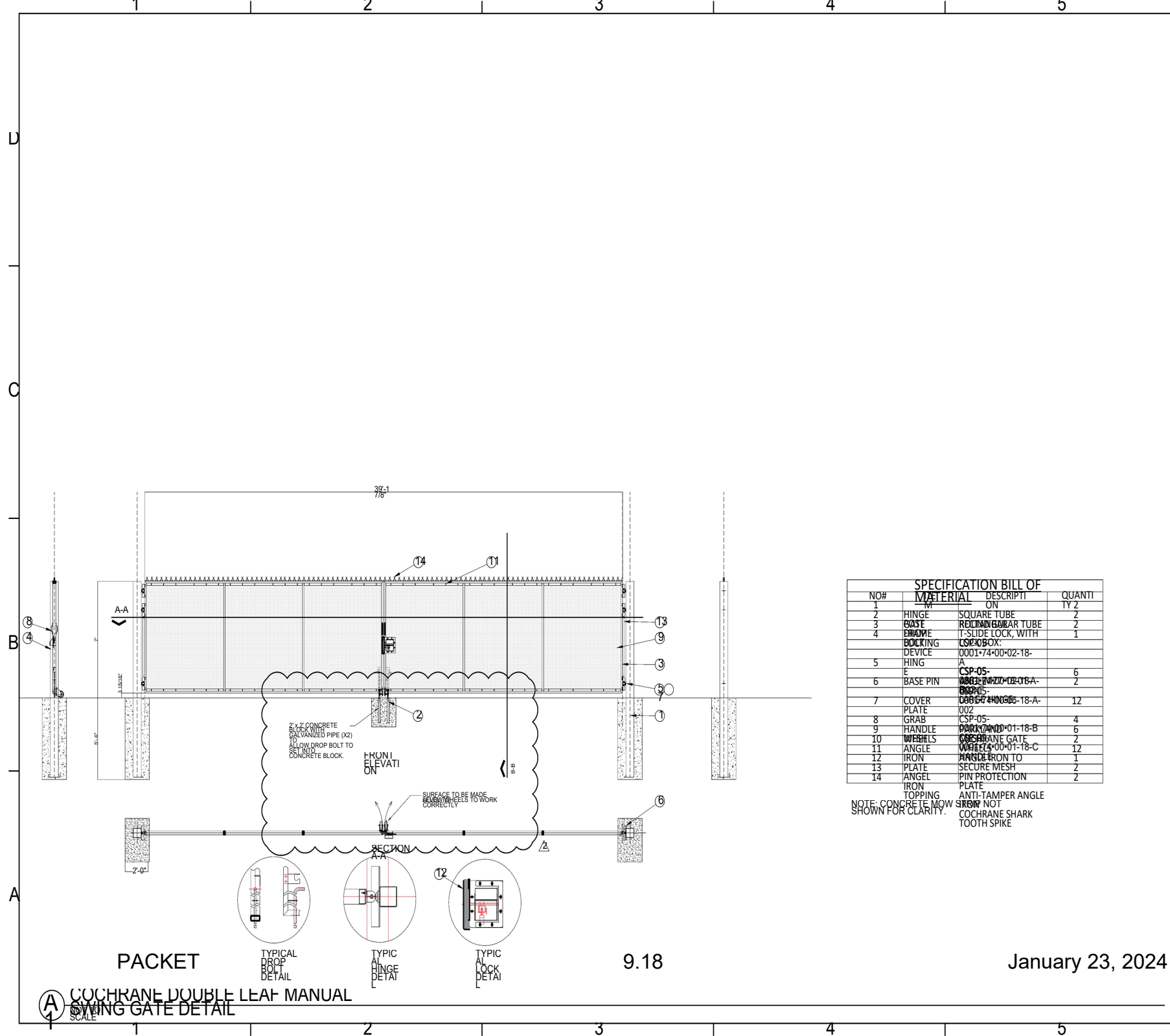


CLIN
City of Midland
Midland Airpark
901 Veterans
Airpark Lane
Midland, Texas
79705

PROJECT
#184.2

2 11/30/2023
1 Addendum No. 1
11/30/2023 - RIT
11/30/2023 - RIT
11/30/2023 - RIT

Cochrane
Large
Gate
Details
502



SPECIFICATION BILL OF MATERIAL		
NO#	MATERIAL DESCRIPTION	QUANTITY
1	HINGE	2
2	BASE	2
3	HANDLE	2
4	WHEELS	1
5	ANGLE	12
6	IRON	1
7	PLATE	2
8	PIN PROTECTION	2

NOTE: CONCRETE MOW STRIP NOT SHOWN FOR CLARITY.

PACKET

9.18

January 23, 2024

COCHRANE DOUBLE LEAF MANUAL SWING GATE DETAIL

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**ADVERTISEMENT
FOR BIDS TO
BIDDERS**

Sealed proposals addressed to the City Secretary will be received at the office of the City Secretary, City Hall, Midland, Texas until 2:30pm CST, Wednesday, December 20, 2023, for furnishing all necessary materials, machinery, equipment, superintendence, and labor for constructing certain improvements at Midland Airport (MDD), Midland, Texas. These improvements are contained in Proposal and Specifications opened and read at Midland Airport after closing time for receipt of proposals. Principal items of Work are set forth in specific detail in the Proposal Section of these Specifications; however, Work items may be generally described as the removal of existing chain link fence and installation of new chain link fence, gates, and construction, grading, machinery, superintendence, and labor for constructing these improvements for MDD, Midland, Texas. A Bid Proposal guaranty is to accompany the Bid, thereby guaranteeing the good faith of the Bidder and that Bidder will enter the written contract. The guaranty is to amount to 5 percent of the total bid and must be in the form of cash or certified check, issued by a bank satisfactory to the City of Midland, or a bond. Information for Bidders, Proposal forms, Specifications, and Plans are on file in the office of the Director of Airport, MAF/MDD. Downloaded documents (PDF file extension format) can be obtained from the PSC Info Exchange web site after registering as a plan holder with Parkhill via <https://parkhill.com/projects-for-bid/> or by contacting Debbie German, Project Coordinator, at dagerman@parkhill.com. No cost or deposit required for downloaded documents.

MIDLAND, TEXAS
Marcia Bentley-German,
City Secretary

016184
22
11/23

ADVERTISEMENT
FOR BIDS

A-1

INSTRUCTIONS TO BIDDERS

IB-1. BID

FORMS shall be submitted on Proposal form in

the bound Specifications.

In addition to the completed Proposals, bid forms shall include Bid Security, Financial Statement, and other specified documents. Failure to submit a complete Bid as specified will be considered as sufficient cause for rejection of the Bid.

PROPOSALS in the forms shall be filled in or marked "N.A."

(Not Applicable) and all required

information shall be included with Proposals. Bid prices shall be written in ink. Receipt of all addenda issued shall be acknowledged in the space provided on the addendum. Each addendum received and the

Bid Security shall be enclosed with Proposal. Proposal and accompanying documents shall be enclosed in

sealed envelopes addressed to the City of Midland, 1300 STAGG AVE

Midland, Texas 79701, marked "Proposal", shall be filled in, showing

North American Reporting System that name and address of Bidder

is to be used in the Proposal. Bid is work in progress with contract and

sent in a separate envelope and will be submitted in lieu of a

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INSTRUCTIONS TO
BIDDERS

IB-1

IB-6.

INTERPRETATION OF BIDS. Information indicated, or which has any limitation or provisions placed upon it by Bidder. In case of a difference between the written words and the figures in Proposal, amount stated in written words will be considered as bid price, without recourse on the part of Contractor. In case of ambiguity or lack of clearness in Proposal, Owner will adopt the most advantageous construction thereof or reject the bid. Owner reserves the right to reject any or all bids at any time prior to the opening of the bids. Bids may be opened at the opening of the bids. Further, Owner reserves the right to hold all Proposals for a period not to exceed 90 days before making any award. Proposals having been opened, may be withdrawn prior to expiration of this 90-day period. Bid security shall be returned upon making arrangements of the Advertisement for Bidders and the Instructions to Bidders.

EXAMINATION OF SITE, PLANS, AND SPECIFICATIONS. Prior to the opening of bids, each Bidder shall have made a thorough examination of the site of work and of the plans and specifications, and shall become informed as to the location and nature of the proposed construction, labor conditions and all other matters that may affect the cost and time of completion of the work upon which he bids. Bidders shall make such investigations of the nature of the project as deemed necessary and shall assume all responsibility for fully informing themselves of the character of the work to be done. Proposals shall be received until 2:00 PM, of the day, at the address shown in the Advertisement. Proposals received after that time shall not be opened. Bidders are urged to attend the prebid conference because they will be charged with knowledge of the matters discussed therein. Attendance at the prebid conference is mandatory. The time for the prebid conference will be answered by an addendum which will be sent to all who have placed a deposit and/or furnished plans and Contract documents issued by Parkhill, Engineer shall receive each addendum shall be acknowledged by Bidder. Specifications and plans shall be received at least three days prior to the date for receipt of bids. Addendum shall be enclosed with Proposal when it is submitted. All addenda shall become a part of these Contract Documents.

RIGHT OF PAANS. Bidders parties with an interest in the type of work included in the project covered by these documents, shall be given a reasonable opportunity to examine the documents and prepare a bid or sub-bid. Documents may be examined without charge as noted in the Notice to Bidders.

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INSTRUCTIONS TO
BIDDERS

IB-2

Downloadable documents (PDF file extension format) can be obtained from the PSC Info Exchange web site after registering as a plan holder with Parkhill via <https://parkhill.com/projects-for-bid/> or through Debbie German, Project Coordinator, at degerman@parkhill.com. No cost or deposit required for download of documents. Plans and specifications and plans for his use during construction. This shall include all plans and specifications furnished to material suppliers and subcontractors but does not include the executed contract copies. Plans and specifications for use during construction will be furnished to the contractor. The contractor shall distribute copies of plans and specifications to subcontractors only, at the subcontractors' expense, including postage and freight charges. Plans and Specifications are \$150.00 per set.

IB-12. SPECIAL PROVISIONS

Attention of Bidders is directed to SPECIAL PROVISIONS included in these documents for requirements concerning scope of work, labor, insurance, and similar subjects.

PLANT LOCATION AND STORAGE AREA

Bidders bidding on the work included in this contract who desire to locate a material storage area or other similar facility on the airport property may secure such site, buildings or areas by direct negotiation with the Director of Airport, MAF/MDD, Midland, Texas. Available adjacent to the PROPOSED Runway identified as available for present construction staging and material storage. permission to withdraw his Proposal not later than the time set for opening thereof. At the time of opening of Proposals, when such Proposal is reached, it will be read.

Any one or more of the following causes may be considered as sufficient for the disqualification of bidder and the rejection of his bid or bids:

More than one Proposal for the same work from an individual firm, partnership, or corporation under the same or different name.

Evidence of collusion among bidders. Participants in such collusion may not receive recognition as Bidders for any future work.

Unbalanced Proposals in which the prices for some items are out of proportion to the prices for other items.

Failure to submit a unit price for each item of work for which a bid price is required by Proposal.

Lack of competency as revealed by the financial statement submitted, responsibility as shown by past work judged from workmanship and progress standpoints.

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INSTRUCTIONS TO
BIDDERS

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1B-16. MATERIAL

WE AND OUR SUBS AND AFFILIATES FOR THE BID WORK

THE LOWEST PRICED BIDDING OF ANY REQUIREMENT
UNDER BID DOCUMENTS OR
CONTRACT DOCUMENTS:

AN UNDERSTANDING OF ALL
BIDDING DOCUMENT TERMS AND CONSENTS TO BIDDING

~~AGREES/AGRIERE WAS/IS NO DISPARITY OF~~

ARRESTING AGENCY TEXT OF
 LB 10 - WAIVER OF

HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY
AND INTENTIONALLY WAIVE

ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO CONTRACT, OR CONSTRUCTION,

OR PROCEEDING RELATED TO THIS CONTRACT CONSTRUCTION INTERPRETATION

**ACTION PURSUANT TO REINVESTMENT
OF THE BAYDUNNE FOR MEDICAL PRESCRIPTIONS ACT**

CONTRACT GOVERNMENTER ACKNOWLEDGES AND AGREES

CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

THIS SECTION SHALL NOT BE CONSTRUED OR
INTERPRETED AS A WAIVER OF
SOVEREIGN IMMUNITY.
CONTRACTOR AND OWNER ARE RELYING ON
THEIR OWN JUDGMENT. EACH
PARTY HAD THE OPPORTUNITY TO DISCUSS THIS
CONTRACT WITH COMPETENT LEGAL
COUNSEL PRIOR TO ITS EXECUTION.

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INSTRUCTIONS TO
BIDDERS

IB-5

BID BOND

THE STATE OF TEXAS)

SURETY'S NO. NAIC #10671

COUNTY OF MIDLAND)

KNOWN ALL MEN BY THESE PRESENTS, THAT Delta Specialty Contractors, LLC

_____ (hereinafter called
"Principal"), as Principal, and Gray Surety & Casualty Company

_____ (hereinafter called "Surety"), as Surety, are held and firmly bound
unto the City of Midland, a home rule municipal corporation of Midland County (hereinafter called
"Obligee"), in the amount of ** Five Percent % of Gross Amount of Bid**

_____ DOLLARS (^{5% of}~~\$GAB~~), for payment whereof said Principal and Surety bind themselves and their
heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal submitted a Bid or Proposal to enter a certain written contract with Obligee
to perform all work associated with the MDD, North Fence Replacement Project.

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

IT IS EXPRESSLY UNDERSTOOD AND AGREED if said Principal should withdraw its Bid any
time after such Bid is opened and before official rejection of 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, Obligee, in either of such events, shall be entitled and hereby given the right to collect this
Bid Bond as liquidated damages.

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

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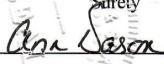
BID BOND

BB-1

IN WITNESS WHEREOF, the said Principal and Surety do sign and seal this instrument, this day
of December 13th 2023.

The Gray Casualty & Surety Company

Surety

By  Ann Daron

Address 2301 Tower Drive

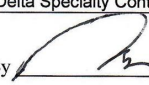
Monroe, LA 71201

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

Delta Specialty Contractors, LLC

By  Derek Collins
Owner/Member

Address 203 Mane Street

West Monroe, LA 71292

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BID BOND

BB-2

THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY

GENERAL POWER OF ATTORNEY

Bond Number: NA Bid bond Principal: Delta Specialty Contractors, LLC

Project: City of Midland, Midland County, TX
MDD, North Fence Replacement Project

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Daran H. Reeves, Ann Daron, Deborah L. Dillard, James Michael Stephens, Reita Portman and Jeffrey B. Coon of Monroe, Louisiana jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 13th day of December, 2023.

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 13th day of December, 2023.

Leigh Anne Henican



PROPOSAL

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

Date: 12-18-2023

Gentlemen:

Pursuant to foregoing Notice to Bidders, undersigned Bidder hereby proposes to do all work and furnish all necessary superintendence, labor, machinery, equipment, tools, and materials, and anything necessary to complete all work bid, as provided by attached Specifications and shown on Plans, and is bound to acceptance of this Proposal to execute Contract and Bonds per accompanying forms, performing and completing work within time stated, and furnishing all required guarantees, for the following prices to-wit:

NORTH FENCE REPLACEMENT

Item	Quantity Unit	Description of Item and Unit Prices	Total Amount
1	1 LS	Contractor Mobilization, complete, per lump sum: <u>SIXTY THOUSAND</u> Dollars and <u>00</u> Cents (\$ <u>60,000.00</u>)	\$ <u>60,000.00</u>
2	8,600 LF	Remove Chain-Link Fence, complete, per linear foot: <u>Four</u> Dollars and <u>00</u> Cents (\$ <u>4.00</u>)	\$ <u>34,400.00</u>
3	1 EA	Remove Swing Gate, complete, per each: <u>FIVE HUNDRED</u> Dollars and <u>00</u> Cents (\$ <u>500.00</u>)	\$ <u>500.00</u>
4	8,600 LF	Cochrane Parkland Fence, complete, per linear foot: <u>NINETY-THREE</u> Dollars and <u>00</u> Cents (\$ <u>93.00</u>)	\$ <u>799,800.00</u>
5	6 EA	10-Foot Wide Gate, complete, per each: <u>TEN THOUSAND</u> Dollars and <u>00</u> Cents (\$ <u>10,000.00</u>)	\$ <u>60,000.00</u>
6	1 EA	40-Foot Wide Double Swing Gate, complete, per each: <u>FORTY THOUSAND</u> Dollars and <u>00</u> Cents (\$ <u>40,000.00</u>)	\$ <u>40,000.00</u>

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Item	Quantity Unit	Description of Item and Unit Prices	Total Amount
7	8,600 LF	Concrete Mow Strip, complete, per linear foot: <u>TWENTY - TWO</u> Dollars and <u>00</u> Cents (\$ <u>22.00</u>)	\$ <u>189,200.00</u>
8	1 LS	Temporary Fencing, including Fence material, Maintenance and Relocation, etc., per lump sum: <u>FIFTY - THOUSAND</u> Dollars and <u>00</u> Cents (\$ <u>50,000.00</u>)	\$ <u>50,000.00</u>
TOTAL BID			\$ <u>1,233,900.00</u>

Bidder is required to separate cost of materials to be incorporated into this Project. Such material costs are separated from other costs, so Bidder is a seller of such materials to the City. Bidder shall be required to issue a resale certificate on such materials in lieu of paying sales tax on such materials at time of purchase. The City will provide successful Bidder with a sales tax exemption certificate for such materials.

Undersigned Bidder hereby confirms a visit to the Site of the Work and carefully examined Plans, Specifications, and Contract Documents pertaining to Work covered by this Bid, and prices bid herein are based on minimum wage rates included in Specifications.

Bidder certifies, by submission of this Proposal or acceptance of this Contract, neither Bidder nor Bidder's principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Bidder further agrees by submitting this Proposal, Bidder will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where Bidder or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this proposal.

Contractor or subcontractor, by submission of offer/execution of a contract, certifies it:

- is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- has not knowingly entered into any contract or subcontract for this Project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- has not procured any product nor subcontracted for the supply of any product for use on the Project that is produced in a foreign country on said list.

Unless restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to Contractor or subcontractor who is unable to certify to the above. If Contractor knowingly procures or subcontracts for supply of any product or service of a foreign country on said list for use on Project, the Federal Aviation Administration may direct, through the sponsor, cancellation of Contract at no cost to the Government.

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PROPOSAL

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Further, Contractor agrees if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. Contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

Contractor shall provide immediate written notice to sponsor if Contractor learns its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Subcontractor agrees to provide immediate written notice to Contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If later determined Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the sponsor, cancellation of contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, certification required by this provision. Knowledge and information of a contractor is not required to exceed that normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and making of a false, fictitious, or fraudulent certification may render maker subject to prosecution under Title 18, United States Code, Section 1001.

Bidder hereby agrees to commence work under this Contract within 10 days of a date specified in written "Notice to Proceed" and to complete work within the consecutive calendar day framework noted in Contract. Bidder further agrees to pay as liquidated damages, the sum of \$ 1,000.00 for each consecutive calendar day beyond each phase of days allowed as hereinafter provided in Article 32 of the General Conditions.

Bidder acknowledges receipt of the following addendum: No. 1

Enclosed with this Proposal is a Cashier's or Certified Check for N.A.

Dollars (\$)

or, a Proposal Bond in the sum of 5 percent of Greatest Amount Bid Dollars (\$ 61,695), which it is agreed shall be collected and retained by Owner as liquidated damages in the event the Proposal is accepted by the Owner within 90 days after date advertised for the reception of bids and undersigned fails to execute Contract or required bonds with Owner, under conditions hereof, within 10 days after date said proposal is accepted; otherwise, said check or bond shall be returned to undersigned upon demand.

(Seal if Bidder is a
Corporation)

DELTA SPECIALTY CONTRACTORS
Contractor

By DEREK COLLINS 

203 MAINE ST WEST MONROE, LA 71292
Address

NOTE: Complete all blanks in this and accompanying forms and include proper Bid Security.

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11/23

PROPOSAL

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STATE OF
TEXAS
COUNTY OF
MIDLAND

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22	CT	
11/23		

BY EXECUTING THIS CONTRACT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM CONTRACTOR HAS OR MAY HAVE AGAINST THE CITY OF MIDLAND, TEXAS, AND PARKHILL, REGARDING AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO CONTRACT, OR CONSTRUCTION, INTERPRETATION OR BREACH OF CONTRACT. CONTRACTOR SPECIFICALLY AGREES IF CONTRACTOR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, CONSTRUCTION, INTERPRETATION, VALIDITY, OR BREACH OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, IN ENFORCEMENT OF PROVISIONS OF THE TEXAS UNIFORM CONTRACTORY ACKNOWLEDGES THAT CONTRACTOR UNDERSTANDS AND HEREBY REPRESENTS AND AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO RECOVERY OF ATTORNEY FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED. All payments and performance under or connected to this contract shall be deemed to have been made exclusively in Midland County, Texas. All terms of this contract shall be deemed to have been made exclusively in Midland County, Texas. All payments and performance under or connected to this contract shall be deemed to have been made exclusively in Midland County, Texas. All terms of this contract shall be deemed to have been made exclusively in Midland County, Texas.

OWNE
R:
CITY OF
MIDLAND, TEXAS

ATTES
T:

By _____
Lori Blong,
Mayor

By _____
Marcia Bentley-German,
City Secretary

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CONTRA
CT

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CONTRACTOR: DELTA SPECIALTY CONTRACTORS

By _____ Signature
Name, _____
Title: _____ Print

Complete
Address:
203 Mane Street
West Monroe
Louisiana 71292

STATE _____
OF _____
COUNTY _____
OF _____

Before _____, on this day,
me, _____ Notary _____ personally
appeared _____ (Name of
☐ is known _____ Signer), who
to me _____
☐ proved to me on _____
the oath of _____ Witne
_____ ss
☐ proved to me _____
through _____ Document
_____ Description
to be the person whose name is subscribed
herein and acknowledged
to me execution of the same for purposes
and consideration herein
expressed under my hand and
seal of office this
_____ day _____
_____ Day _____ of _____ Mont _____ h _____ A.D., _____ Year _____

Notary
Seal

Signature of
Notary Officer

016184 _____ CONTRACT _____ D-3
22
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PERFORMANCE BOND

SUBMITTED IN COMPLIANCE WITH CHAPTER 2253 OF
THE TEXAS GOVERNMENT CODE

STATE OF _____ §
TEXAS
COUNTY OF _____ §
MIDLAND

KNOW ALL MEN BY THESE
PRESENTS: That we, _____
_____ and _____
of the City of _____, _____, _____ State of _____
County of _____, hereinafter
called as Principal, are held and firmly bound unto the City of
Midland, Texas, a home rule municipal
corporation of Midland County, Texas, (hereinafter called the _____
City-Obligee), in the penal sum of _____
DOLLAR _____)
S, (\$ _____)
lawful money of the United States, well and truly to be paid to the
City of Midland, Texas, for payment
whereof said Principal and Surety bind themselves and their heirs,
administrators, executors, successors,
and assigns jointly and severally, entered by these presents contract
with the Owner-Obligee, dated the _____
_____ day _____ 2024, to the North Fence Replacement
of _____ Project for the Midland
Airpark, Midland, Texas, specifically including in the scope of this
work and bond, additional maintenance
guaranty provisions set forth in Contract conditions, which Contract
is hereby referred to and made a part
hereof as fully and to the same extent as if copied at length herein,
as well as the Principal's primary
obligation to perform according to Plans and Specifications.
OBLIGATION IS SUCH, if said Principal
shall faithfully perform work in accordance with Plans, Specifications,
Instructions to Bidders, General and
Special Conditions, and other Contract Documents, including any
addenda thereto, further this obligation be filed upon this Bond
shall be of full force and effect.
State of Texas.
PROVIDED further this Performance Bond is submitted in
compliance with Chapter 2253 of the
Texas Government Code.
Surety, for value received, stipulates and agrees no change,
extension of time, alteration, or addition
to terms of the Contract, or to the work performed thereunder, or
Plans, Specifications or Drawings

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22 BOND
11/23

accompanying the same, or any assignment of the Contract as may
be provided for in Instructions to
Bidders, shall in any way 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,
as with the Sewer of Ohio Township
Principal and Surety have signed and
stapled to the same on this _____ day
2024.

DELTA SPECIALTY
CONTRACTOR _____ **Surety**
for **y**

By _____ **By** _____

NOTE: If signed by an officer of Surety Company, there must
be on file a certified extract from
by-laws showing this person has authority to sign such
obligation. If signed by an Attorney in Fact,
Owner must be furnished with a copy of Power of Attorney for
their files.

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22 _____
11/23 BOND

**PAYMENT
BOND WITH CHAPTER 2253 OF
THE TEXAS GOVERNMENT CODE**

STATE OF §
TEXAS
COUNTY OF §
MIDLAND

KNOW ALL MEN BY THESE PRESENTS: That we, _____ of
the City of _____, County of _____, and State of _____,
as principal, and _____, hereinafter called "Surety," are
bound unto the City of Midland, Texas, a home rule municipal
corporation of Midland County, Texas,
(hereinafter called "City-Obligee"), in the penal sum of _____
DOLLARS, (\$ _____) lawful money of the United States, well
and truly to be paid

to the City of Midland, for payment whereof said Principal and
Surety bind themselves and their heirs,

administrators, executors, successors, and assigns, jointly and
severally. By these presents, _____ entered into a certain written
contract with Owner-Obligee, dated the _____
day of _____, 2024, to the North Fence Replacement
Project for the Midland
Airport, Midland, Texas which contract is hereby referred to and
made a part hereof as fully and to the

same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is if 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. If this obligation shall be null and void, then this Bond
remains in full force and effect in Midland County,
State of Texas.

PROVIDE further this Payment Bond is submitted in
compliance with Chapter 2253 of the Texas
Government Code.

Surety, for value received, stipulates and agrees no change,
extension of time, alteration, or addition
to terms of this Contract, or to Work performed thereunder, or
Plans, Specifications, or Drawings
accompanying the same, or any assignment of Contract as may be
provided in Instructions to Bidders, shall
in any way affect its obligation on this Bond, and it does waive
notice of any such change, extension of
time, alteration, or addition to terms of the Contract, assignment
thereof, or to work to be performed
thereunder.

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22 BOND
11/23

WITNESS our _____ day _____ 2024.
hands this the _____ of

DELTA SPECIALTY
CONTRACTOR _____
for Surety

By _____ By _____

NOTE: If signed by an officer of Surety Company, there must be on file a certified extract from by-laws showing this person has authority to sign such obligation. If signed by an Attorney in Fact, Owner must be furnished with a copy of Power of Attorney for their files.

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22 BOND
11/23

**CERTIFICATE OF
INSURANCE**

TO: CITY OF
MIDLAND
MIDLAND
AIRPARK
MIDLAND,
TEXAS

Date _____

Type of Project: North Fence
Replacement

THIS IS TO
CERTIFY THAT _____

(Name of
Insured)

is, at the date of this certificate, insured by this Company with
respect to business operations hereinafter described, for types of Insurance and in accordance with provisions of
standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted
on reverse side hereof. INSURANCE CO. Limits of
Workmen's Compensation, Liability, Pools, Liability

Person \$ _____
accident \$ _____
person \$ _____
Liability _____
Liability _____

Property _____
Damage _____
Builder's _____
Risk _____
Automobile _____
Other _____

Existing Policies (do) (do not) cover
all sub-contractors.

Locations Covered: _____
Description of
Operations Covered: _____

The noted policies either in the body thereof or by appropriate
endorsement provide they may not be changed
or cancelled by insurer in less than the legal time required after insured
receives written notice of such change
or cancellation, or, in case there is no legal requirement, in less than
five days after insured receives such
notice.

OWNER _____
By _____
Title _____
Phone _____

**NOTE: Name CITY OF MIDLAND and PARKHILL as additional
insureds on required insurance policies.**

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CERTIFICATE OF
INSURANCE
G-1

EXPERIENCE RECORD

List of Projects, like that covered by Proposal, Bidder successfully completed:

[illegible]

List of Projects Bidder is now engaged in completing:

[illegible]

01618422
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EXPERIENCE RECORD

H-2

List of Surety Bonds in force on uncompleted work:

[illegible]

Delta Specialty Contractors, LLC
Bidder

Print Name: Derck Collins

203 Manc Street

West Monroe, LA 71292
Business Address

01618422
11/23

EXPERIENCE RECORD

H-3

EQUIPMENT SCHEDULE

Bidder should list major equipment available and serviceable for use on this Work.

Bobcat T66 skid steer

Bobcat T76 skid steer

Bobcat T595 skid steer

John Deere Mini-Excavator -270

Portion of Work Bidder proposes to sublet, if any:

concrete man strip

Dated this 18 day of December, 2023.

By Derek Collins

Title Owner



**FAA
Airports**

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

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APPENDIX A – CONTRACT PROVISIONS

A1 CIVIL RIGHTS -

GENERAL

A1.1 MANDATORY

CONTRACT CLAUSES

A1.1 General Clause that is used for

.1 Agreements, and Lease

Transfer Agreements

GENERAL CIVIL RIGHTS

PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent

Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

A1.1 Specific Clause that is used for

ents

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

Guidelines for Contract Provisions for Obligated Sponsors and

Airport Improvement Program Projects

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Title VI A2.1.1 Title VI
Title VI Solicitation Notice
Solicitation Notice:
The Midland International Air and

- 49 CFR part 21 (Non-discrimination in Federally Assisted programs of the Department of Transportation); Effectuation of Title VI of the Civil Rights Act of 1964, 49 CFR part 27 (Rehabilitation Act of 1973, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired by the Federal Government because of Federal aid programs and projects); and 49 CFR part 27 (Non-discrimination on the Basis of Disability in Programs and Activities Receiving Federal Financial Assistance on the basis of age); and 49 CFR part 27 (Non-discrimination on the basis of race, creed, or color, national origin, broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs and activities" to include all of the programs or activities of the Federal and territorial governments on the basis of disability in the programs of public entities, public and private transportation systems, places of public accommodation, and recreational facilities) as amended; and 49 CFR part 37 and 38;

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Page 3

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities that disproportionately impact and adversely human health or environmental effects on minority populations; the population agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 USC 10101-10106, 20 USC 1181, et seq].

A2.1 Nondiscrimination Requirements/Title VI Clauses for Compliance

Compliance with

Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows: **Compliance with Regulations.** The Contractor

- (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time which are herein incorporated by reference and made a part of the contract, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not discriminate in the selection of subcontractors or suppliers on the basis of race, color, national origin, sex, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities issued pursuant thereto and will permit access to national origin, its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to provide the information, the Contractor will set forth what efforts it has made to obtain the information.
2. Solicitations for Subcontracts, including Procurements of Materials and Equipment, shall be made by competitive bidding or negotiation made by the Contractor when the contract covers any activity, project, or program under a subcontract, including procurements of materials, or leases of equipment.
3. Information and Reports. The Contractor will provide all information and reports required by the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities issued pursuant thereto and will permit access to national origin, its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to provide the information, the Contractor will set forth what efforts it has made to obtain the information.
4. Information and Reports. The Contractor will provide all information and reports required by the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities issued pursuant thereto and will permit access to national origin, its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to provide the information, the Contractor will set forth what efforts it has made to obtain the information.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

24, 2023 Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

CONTRACT ASSURANCE

Contractor will ensure the following clause is placed in every DOT-assisted contract and subcontract:

Contractor or subcontractor shall not discriminate based on race, color, national origin, or sex in performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in award and administration of DOT-assisted contracts. Failure by Contractor to carry out requirements is a material breach of this Contract which may result in termination of this Contract or such other remedial actions as recipient deems appropriate. This may include denial of further funding as non-responsible.

PROMPT PAYMENT

Prime Contractor agrees to pay each subcontractor under this Prime Contract for satisfactory performance of contract no later than 30 working days from receipt of each payment Prime Contractor receives from the City of Midland. Prime Contractor agrees further to return retainage payments to each subcontractor within 30 working days after subcontractor's work is satisfactorily completed. Any delay or non-payment of payment from above referenced time frame may result in tasks called out in contract have been approved by the City of Midland, but the clause applied to both DBE and non-DBE subcontractors an incremental acceptance of a contract will not constitute work for work performed by subcontractors and accordingly that contractor satisfactory completion are promptly paid for Work they have performed.

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CONTRACT
ASSURANCE

I

SPECIAL PROVISIONS

SP-1 SCOPE OF WORK

Work to be accomplished under these Specifications including plans shall consist of:

- 1.1 Principal items of Work are set forth in specific detail in the proposal section of these Specifications; however, Work may be generally described as the removal of existing chain link fence and installation of specified fence, gate, concrete slab, and drainage labor, materials, and equipment necessary to complete other miscellaneous material called forth in these Specifications and shown on the Plans.
- 1.3 gate, concrete slab, and drainage labor, materials, and equipment necessary to complete other miscellaneous material called forth in these Specifications and shown on the Plans.
- 1.4 improvement for various items and Work will be made as specified in the Plans and in the General Conditions.

SP-2 CONTRACT DOCUMENTS

Articles of Technical Sections. All Work covered by this Contract shall be done in accordance with Contract Documents described in the General Conditions. Drawings included in documents consist of the plans entitled "North Fence Replacement Project" dated November 2023 with all Drawings and Specifications. Contractor shall be responsible for satisfactory completion of all Work shown on Drawings, Plans, and Specifications is to prescribe a complete Work or improvement which Contractor undertakes to do in full compliance with Plans, Specifications, Special Provisions, Proposal, and Contract. Contractor shall do all Work including such additional, extra, and incidental Work considered necessary to complete the Project in a satisfactory and acceptable manner, as provided in the Contract Documents and that called for by the Contract Documents. Unless otherwise provided in Specifications, Special Provisions, or General Conditions, shall consist of the Contract Documents, Plans, Specifications, and incidental Work necessary to prosecute the Project.

- Bond,
- Special Bonds
- Proposal,
- Notice to Bidders,
- Instructions to Bidders,
- General Conditions of Contract,
- Specifications,
- Plans, and

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SPECIAL
PROVISIONS

SP-1

Contractor is permitted to prosecute certain portions of Work in order and manner of own choosing to the best interest of the Project; however, Work shall be conducted in such manner and with such materials, equipment, and labor as required to ensure completion in accordance with Plans and Specifications. Contractor shall submit a proposed order and submit a Contracted shall be in accordance with the proposed progress Schedule and Parkhill shall approve progress prior to Work complete on or before the date of Parkhill as early as possible. Contractor shall have approval to execute various portions of the

currently in operation clearly identifying the aircraft. Personnel shall not enter the flight deck of an aircraft operating without specific permission.

providing a complete infrastructure through Parship and a direction of flash-attack for the interference across the command

- As required by the Federal Aviation Regulations (FARs) to divert weather constrained traffic to cross or travel

Successful Bidder is subject to a pre-award review by Office of Compliance and Security, Equal Opportunity Division, Federal Aviation Administration, to determine Contractor's previous compliance status. Contractor is subject to a preconstruction conference to discuss phasing and Project safety control after award of Contract.

SP-5 CONSTRUCTION ACTIVITY

DELETED
SP-6 AFFIDAVIT OF
BILLS PAID

Before Owner's final acceptance of this Project, Contractor shall execute an affidavit that all bills for labor, materials, and incidentals incurred in construction of these improvements, are paid in full, including any retainage, and no claims are pending, of which Contractor is notified.

DAY Time for Project completion and liquidated damages shall be in accordance with provisions of General Conditions, Article GC-32 - Time for Completion and Liquidated Damages. A calendar day is every day shown on the calendar.

PROPERTY
Contractor shall exercise care to prevent damage to all structures, above or below ground, including buildings, fences, pipelines, utilities, roads, etc., publicly or privately owned, and including Work performed by others. Contractor is responsible for locating all underground utilities and structures. Contractor shall be responsible for damage done to either public or private property during construction except as specifically provided otherwise in these Specifications. Existing underground utilities and structures are shown on Plans. Locations are believed reasonably accurate but not guaranteed.

Contractor shall take all steps necessary to protect existing facilities during construction to assure continuous operation of lights for runways and taxiways which will be open for light operation.

SP-7 ELECTRICAL POWER AND NATURAL GAS
Contractor shall provide electrical, natural gas, and other fuel requirements and pay for electricity, gas, or fuel consumed during Project construction. Contractor shall construct own service lines and such construction shall be in strict accordance with all applicable codes and standards.

GRADES
Parkhill will provide Contractor with horizontal control points and a benchmark for vertical control. Contractor shall do all construction staking. References to lines and grades as established by Parkhill shall refer to these control points. Contractor shall provide Contractor with all necessary information relating to control points set by Parkhill. Contractor will be responsible for laying out Work. Parkhill will check Contractor's grade control.

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PROVISIONS

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and major layouts at Parkhill's discretion, but this check will not relieve Contractor of responsibility of correctly locating line and grade in accordance with Plans and Specifications. Contractor shall take all measurements necessary to determine amount of Work performed under various items payment is provided. When necessary, Work will be suspended to permit this Work, but such suspension shall be for a reasonable period of time and Contractor shall be allowed to construct temporary permanent structure and not take advantage of any errors made in laying out Work. Contractor shall scrupulously preserve such stakes/markings as Parkhill may set for either Parkhill or Contractor guidance. In case of Contractor's or Employee negligence resulting in destruction of such stakes/markings, Contractor shall pay an amount equal to the cost of replacement. Contractor shall provide the water for use during construction due to water consumption during project construction. Contractor shall arrange and pay for connections to existing water mains, fire hydrants, and fire hydrant/hauling water to the point where water is required.

MATERIAL
Specifications require various tests on construction materials. In general, Contractor shall bear the cost of all material tests required before approval of material, source, or mix design. City will bear the cost of all passing commercial laboratory tests required for acceptance during construction. If any material is used or where Contractor shall bear the cost of all testing and construction tests. By visual inspection, no tests are required. Certificates of compliance required materials are not used may be tested any time during preparation and use. If, after trial, sources of supply approved do not furnish a product of uniform quality or product from any source proves unacceptable to DHS, Contractor shall furnish approved material.

TRAFFIC CONTROL
Contractor shall provide, erect, and maintain all necessary barricades, signs, danger signals, and lights for protection of Work and the safety of the public for passengers and aircraft. Before closing existing apron, runways, or taxiways, place warning signs for air traffic at such locations, visible day and night. Any movement of Contractor vehicles or equipment on/across aprons or taxiways shall carry in a standard way, and aprons closed to traffic marked off limits. Movement of other vehicles responsible to Contractor shall be under approved barricades. Each barricade shall have reflective striping and a red flashing light on each end. Barricades shall be spaced with no more than 10-foot clearance between flashing lights attached to successive barricades. Obstructions shall be illuminated at night. Proper illumination of obstructions is critical to safe operation of aircraft on the Airport. All warning lights shall be equipped with photocell controls to automatically turn on lights at night and off at daytime. Contractor shall check lights daily (and each night) to assure batteries/power cells are working. SP-5 shall immediately replace or repair any signs found out-of-order, flashing weakly, or in otherwise less than acceptable operating condition. Parkhill may suspend Work on Project if Contractor's warning lights are not maintained. A \$25.00/day charge will be assessed Contractor for each light found inoperative by Owner's personnel or representatives.

SP-14 PREVENTION OF AIR AND
WATER POLLUTION

Contractor shall use suitable precaution to minimize air and water pollution during Work progress. Contractor shall meet all EPA requirements concerning air and water pollution. Contractor shall implement Station Water Pollution Prevention Plan (SWPPP) as required by 40 CFR 122.26 and Specifications.

Materials stored on the Airport shall be placed and Work always conducted to cause no greater obstruction to air and ground traffic than Parkhill consider necessary. In protecting operational areas, minimum clearances maintained for runways shall agree with Part 77 of Federal Aviation Regulations. During Project construction, Contractor shall also maintain operational safety on Airport in accordance with the FAA Advisory Circular 150/5370-2G, "Operational Safety on Airports during Construction and for maintaining pavement free of obstructions." Contractor shall not place any active roadway, apron, runway, taxiway, or other area of the Airport shall be closed or opened to traffic by the Contractor on short notice. Contractor shall obtain the Director's approval for all obstructions, including but not limited to, aircraft, rocks, gravel, dirt, or other debris.

As each intermediate phase of Work is completed and before opening any portion of any airfield apron, roadway, runway, or taxiway, Contractor shall be responsible for cleaning construction site and adjacent areas to the satisfaction of the City of Midland and Parkhill. After completion of Work and before acceptance and final payment is made, Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, and temporary structures. Material cleared from site and deposited on adjacent property will not be considered satisfactorily disposed. Cleanup cost shall be included as a part of the cost of the Work.

Contractor shall obtain and maintain the City of Midland and Parkhill as additional insureds on the Contractor's Commercial General Liability Insurance Policy naming the City of Midland and Parkhill as additional insureds. The amount of policy shall be as follows:

- not less than \$1,000,000 per occurrence;
- \$1,000,000 total limit for all damages arising out of bodily injuries to or death of two or more persons in any one accident;
- limit not less than \$1,000,000 for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident; and
- \$2,000,000 total (or aggregate) limit for all damages arising out of injury to, or destruction of property during the project.

016184 out of injury to, or destruction of property during the project. SP-6
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Before Work on any Contract or subcontract begins, Contractor(s) and subcontractor(s) shall submit seven certificates to Owner for approval covering each insurance policy carried and offered as evidence of compliance with the address of insured signed by an authorized representative of the insurance company, showing

- forth:
- insurance company and type(s) of insurance in force thereunder on date borne by such
 - certificate;
 - policy expiration date and limit(s) of liability thereunder on date borne by such certificate;
 - statement insurance of type afforded by policy applies to all operations of whatever character, undertaken by insured during performance of Contract, provided such operations are required in performance of Contract and

These certificates shall become a part of the contract by attachments and must be included with the contract at the time of execution. Documents to be submitted to the City of Midland and County of Glasscock shall be submitted to the City of Midland and County of Glasscock. Contractor shall be responsible for the work, including subcontractors, and all subcontractors. All other sublevels of Contractors shall provide copies of proof of insurance if not covered by the contract. Contractor of Subrogation in favor of the City of Midland and Parkhill on

Worker's Compensation and Employee Liability Insurance, Contractor's Public Liability and Property Damage, Automobile and Liability Insurance, UTILITIES, AND OBSTRUCTIONS

All materials and debris specified to be disposed by Contractor shall become Contractor's property and Contractor shall properly dispose off Airport property.

SP-19 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces shall conform to lines, grades, cross sections, and dimensions. Any deviation from Plans required by exigencies of construction shall be determined and approved by the City of Midland and Parkhill. SP-20 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

All Work rejected or condemned shall be repaired or, if not satisfactorily repaired, removed and replaced at Contractor expense. Contractor shall immediately remove materials not conforming to Specifications or requirements shown on Plans and replaced with satisfactory materials at Contractor expense. Work done without written inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at Contractor risk and considered unauthorized. Contractor Parkhill may remove and be replaced, and for defective Work or materials immediately after receiving formal notice from Parkhill. Owner may recover for such defective Work or materials on Contractor bond, or by action in court having

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proper jurisdiction over such matters, or may employ labor, equipment, and satisfactorily repair or remove and replace such Work and charge cost of same to Contractor, which shall be deducted from any money due.

EXTRA WORK

EXTRA WORK

In case Contractor deems extra compensation is due for Work on materials not clearly covered in Contract nor ordered by Parkhill as an extra, Contractor shall notify Parkhill in writing of intention to make a claim for such extra compensation before beginning Work on which claim is based and shall afford Parkhill every facility for keeping actual cost of Work. Contractor's failure to give such notification or to afford Parkhill proper facilities for keeping strict account of actual cost shall constitute a waiver of claim.

For Road Construction Compensation. Contractor's filing of such notice and keeping up standards proposed on the Act of Congress known as the any way beed construction program of 1982. When Work is completed Contractor States that orders may pay a portion of improvement for extra compensation comes Parkhill, who will present it provides construction work and labor in each state shall be in accordance with laws of that state subject to FAA inspection and approval and in accordance with rules and regulations made pursuant to said Act.

Construction Work, therefore, will be subject to such inspection by Federal Administrative Agents as deemed necessary. CONTRACTOR SHALL NOT EMPLOY ANY FEDERAL AGENTS, but shall employ his own employees AND HIS OWNERS, PARKHILL, Adair and Allen OFFICERS, AGENTS, AND EMPLOYEES FOR THE ROAD CONSTRUCTION WORK.

ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR/ON ACCOUNT OF ANY INJURIES/DAMAGES RECEIVED/SUSTAINED BY ANY PERSON(S)/PROPERTY, ON ACCOUNT OF ANY NEGLIGENCE ACT OF CONTRACTOR, AGENCY, EMPLOYER OR INDEMNIFY AND HOLD SUBCONTRACTOR AND INDEMNIFY OWNER SUPERVISION, AND OPERATIONS OF/IN OFFICERS, AGENTS, AND EMPLOYEES AND A PART OF THE LAND WITH DEFECTS, AGENTS, AND CONTRACTORS AND PARKHILL CONTRACTOR'S, ACCOUNTS TO PAY ANY DAMAGES, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, PROPERTY DAMAGE, OR ANY OFFICERS, AGENTS, OR EMPLOYEES OF ANY CHARACTER, IN ADDITION TO REASONABLE ATTORNEY FEES, BROUGHT FOR/ON ACCOUNT OF ANY INJURIES/DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON(S)/PROPERTY, ON ACCOUNT OF ANY NEGLIGENCE ACT OF OWNER, OWNER'S OFFICERS, AGENTS, AND EMPLOYEES, OR ON ACCOUNT OF ANY NEGLIGENCE ACT OF PARKHILL, OR OFFICERS, AGENTS, AND EMPLOYEES OF PARKHILL WHETHER SUCH NEGLIGENCE ACTS WERE SOLE PROXIMATE CAUSE OF INJURY/DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONTRACTOR OR CONTRACTOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS NEGLIGENCE, IN EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF/IN

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ANY WAY CONNECTED WITH PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR IS REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST OWNER OR ANY OFFICERS, AGENTS OR EMPLOYEES TO INDEMNIFY AND HOLD OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN FURTHERING PERFORMANCE OF WORK. THIS CONTRACTOR WHEN OWNER SO DESIRES, CONTRACTOR SHALL BE RESPONSIBLE FOR ALL OBLIGATIONS OF CONTRACTOR UNDER CONTRACT RELATING TO THIS CONTRACT. CONTRACTOR SHALL BE RESPONSIBLE FOR THE COST OF REPAIR, DISCHARGE, OR

WARRANTY. Acceptance by Parkhill of any part or all construction, as provided for in these Specifications, it shall be under charge and care of Contractor who shall take every necessary precaution against injury or damage to any part of Work by action of elements or from any other cause whatsoever, whether arising from execution/non-execution of Work. Contractor shall rebuild, repair, restore and/or replace any WORK expense. All damages to any portion of Work occasioned by any injury or damage before completion and acceptance by Contractor shall not be the responsibility of Contractor for faulty materials or workmanship. Contractor shall promptly replace any such defects discovered within one year. **Performance Bond shall remain in effect until one year after date of written acceptance of Work to insure compliance by Contractor with requirements of Article 151.309 of the Texas Tax Code.**

SALES TAX
Work under this Contract is for an entity which qualifies for exemption pursuant to provisions of Article 151.309 of the Texas Tax Code. Contractor performing this Contract may purchase, rent, or lease all materials, supplies, and equipment incorporated into Project by issuing an exemption certificate to supplier in lieu of tax, said exemption certificate complying with State Comptroller rulings. However, Contractor shall not be permitted to issue an exemption certificate in lieu of paying such equipment tax on materials incorporated into Project if Contractor shall separate charges for materials incorporated into Project from charges for labor. Any such exemption certificate issued by Contractor in lieu of tax shall be subject to provisions of State Comptroller rulings.

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SP-27 SEPARATE CONTRACTS

Owner reserves the right to let other contracts about/near Project. Contractor shall afford other contractors a reasonable opportunity for introduction and storage of materials, execution of Work, and coordinate Work with theirs. Contractor coordination with other contractors shall require Parkhill approval.

See Article SP-3 for additional requirements concerning separate contracts.

Contractor shall strictly comply with all requirements of

Occupational Safety and Health Administration (OSHA) Manual, Chapter XVII, Subpart P -

Excavation, Trenching and Shoring, for all trenching and excavation operations. For all trenching operations over 5 feet, Contractor shall cut trench walls to angle of repose

of soils encountered or submit alternate shoring details to Parkhill for approval.

RESTRICTIONS

Contractor shall comply with all legal load restrictions in hauling materials on public roads beyond

limits of Work. A special permit will not relieve Contractor of

liability for damage which may result from moving materials on equipment

of such weight or so loaded to cause damage to structures or any other type

of construction will not be permitted. Hauling materials over base

course is not permitted. Hauling materials over base or surface course under construction shall be limited as

directed. No loads will be permitted on a

Surface Course base, or structure before curing period expiration.

Contractor shall be responsible for all damage done prior to start of work and shall contact the

Owner or City of Denver will begin construction and from which date Contract time will be charged. Contractor shall begin

Work to be performed under Contract within 10 days of date set by Parkhill in written Notice to Proceed, but

in any event Contractor shall notify Parkhill at least 24 hours in advance of time actual construction

operations will begin. Materials may be made to extent of delivered cost of

materials to incorporate in Work, if such materials meet requirements of Contract, Plans, and

Specifications and are delivered to acceptable sites on Airport property or other sites in the vicinity acceptable to

Owner. Such delivered costs of stored or stockpiled materials may be included in next partial payment after

these conditions are furnished Parkhill with satisfactory evidence

that materials are stored/stockpiled in a manner acceptable to

Parkhill. Contractor is to provide copies of B, in contract and furnish the cost of each acceptable evidence

of material for materials on base requested on partial payment

request stockpiled materials.

D. Contractor furnished Owner legal title (free of liens/encumbrances of any kind) to material

so stored/stockpiled.

E. Contractor furnished Owner evidence material

stored/stockpiled is insured against loss by

damage to or disappearance of such materials any time

before use in Work.

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Transfer of title and Owner's payment for such stored/stockpiled materials shall in no way relieve Contractor of responsibility for furnishing and placing such materials in accordance with requirements of Contract. ~~Contractor shall not be responsible for materials on hand exceed Contract price for such materials or Contract price for Contract item in which material is intended for use.~~ Payment made for stored/stockpiled living or perishable plant materials.

Contractor bears all costs associated with partial payment of stored/stockpiled materials in accordance with provisions of this subsection. See also General Conditions Article GC-46 - Partial

WEIGHING AND MEASURING EQUIPMENT

Except as modified herein, all scales and scale installations shall meet requirements of the National Institute of Standards and Technology Handbooks 44 and 112 (published by U.S. Department of Commerce and available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.D. 20402-9325), except required accuracy shall be 0.4 percent of load weight. ~~Contractor shall be responsible for the scale operations, after each move, at least once each month, and at least once each year.~~ Contractor shall furnish a report of calibration from a scale mechanic licensed by the Texas Department of Agriculture using certified weights and approved by Parkhill, certifying scales meet requirements of this item. Plant operations shall

~~be suspended during the scale operation. When inaccuracy/inadequacy is discovered, do not resume scale use until corrected. Weighing equipment shall be certified and calibrated by a certified scale company. Contractor shall submit a project progress schedule. Progress schedule shall be prepared in a form suitable to Parkhill and show proposed starting and completion dates for each phase of construction as well as each item of Work within each phase. Progress schedule shall include a "Percent Complete Curve" with monthly amount, monthly amount, and cumulative percent. Progress schedule, if submitted, shall be certain Project completion date for completion of Project. Project shall include writing by Parkhill of reasons for anticipated delays due to weather allowed until and unless such delays exceed claims for extension of time because of abnormal inclement weather. Such extension of time shall be granted only because such abnormal inclement weather prevented execution of major items of Work within the allowed time. Weather conditions on a particular day shall not be used to determine the normal weather conditions for a particular day. Delays shall not be considered as abnormal and contract extension of time will be considered.~~

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“abnormally inclement weather” is interpreted as number of days more than normal number of days on which rainfall exceeds 0.01 inch, or snow/ice pellets exceed 1.0 inch. Extensions of time to complete Work will be based on calendar days and shall be determined by monthly account. No “rain days” unused for previous months may be carried over to account for future periods of time.

MONTH	MEAN NO. OF RAIN DAYS	MEAN NO. OF SNOW/ICE PELLETS
January	3	0
February	4	0
March	5	0
April	5	0
May	4	0
August	5	0
September	7	0
October	3	0
November	3	0
December	4	0
Yearly Total	48	0

¹ Mean number of days’ rainfall, 0.01 inch or more.

² Mean number of days’ 1.0 inch or more.

* Less than 0.5 inch.

Table based on information reported from MAF, Midland, Texas.

Latitude: 31 degrees, 56 minutes N Longitude,

99 degrees 20 1/2 minutes W, covering 10

years (1989-1998) 2,862 feet.

SP-35 SUBMITTALS COMPLETE

In various specifications “Substantially Complete” is used. Definition shall be:

“Substantially complete shall occur at time Work to be completed is complete as specified and Owner accepts/occupies facility/improvement. All equipment

SP-36 shall have been completely installed, tested, ready

SUBMITTALS for Owner acceptance and

Transmittal and receipt of Work before Work is started. Each letter as substantially to appropriate.

address, and phone number. Identify Project, Contractor, subcontractor, or supplier, pertinent Drawing sheet and detail number(s), and Specification Section number, as appropriate. Apply Contractor stamp, signed/initialed certifying review, verification of Products required, field dimensions, adjacent construction

Work, and coordination of information, are in accordance with requirements of Work and Contract

Documents. Schedule submittals to expedite Project and deliver to Parkhill Digital Production Center (using PDF file extension. Each

for production shall be at Park Hill’s physical address). Coordinate submission of related items simultaneously. Multiple files for the same

variations from original concepts and product/system limitations detrimental to successful performance of completed Work. Parkhill Project Assistant (PASS) shall

12 distribute reviewed submittals to concerned parties via the Procure website instructing parties to promptly

report any inability to comply with provisions. Process/format as follows:

- January 23, 2024

Contractual claims or disputes, arising from or relating in any way that would direct application of laws of another jurisdiction.

SP-40 THIRD-PARTY BENEFICIARY

This Contract does not create a third-party beneficiary nor is there a third-party beneficiary to this Contract. No person/entity not a party to this Contract shall have any third-party beneficiary or other rights hereunder.

RELEASES

NOTWITHSTANDING ANY OTHER PROVISIONS, Contractor hereby releases, acquits, RELINQUISHES, and forever discharges OWNER, Owner's employees and officers, and PARKHILL, and its employees and officers, from any and all demands, claims, DAMAGES, or causes of action of any kind whatsoever which Contractor has/might have including but not limited to:

SP-BREACH OF CONTRACT, QUANTUM MERUIT, CONTRACT UNDER DUE PROCESS AND TAKINGS, SPECIAL USES, and AGREEMENT AND NEED STAGES OF CONSTRUCTION described herein, and OWNER NEGOTIATION.

Contractor shall not as an officer, agent, servant, or employee of Owner; that Contractor shall have exclusive control of and exclusive right to control details of services and work performed hereunder, and all persons performing the same; and shall be solely responsible for acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondent superior shall not apply as between owner and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Contractor. No person performing any work and services described hereunder by Contractor shall be considered an officer, agent, servant, or employee of Owner.

SP-OWNERS RIGHT OF AFFECTED BREACH:

SP-OWNERS RIGHT OF AFFECTED BREACH: This is to be a Precedent in this contract is intended or shall be a condition precedent to filing suit for alleged damages "Commenced by an alleged breach" or an "Equal Right of Control" which would give provision of this Contract, Contractor or legal representative of Contractor give City Manager, Contractor and shall establish of Owner, notice in writing (consisting of a signed and dated copy of this contract) to it as such independent contractor shall be responsible for such damages, duly verified, within 150 days after the same have been sustained. Owner shall not have the right to discover any work done by Contractor, and by giving this notice. Notice shall constitute work Contractor shall have the exclusive responsibility for work, Contractor shall be the amount of damages sustained, amount for which Contractor will settle, physical and mailing addresses of Contractor at time and date claim was presented as well as physical and mailing addresses of Contractor for six months immediately preceding occurrence of such damages and names and addresses of witnesses upon whom Contractor relies to establish claim. Failure to notify City Manager within time and manner provided herein shall exonerate, excuse, and except Owner from any liability whatsoever. Owner is under no obligation to provide notice to Contractor that Contractor's notice

is insufficient. Owner reserves the right to request reasonable, additional information regarding claim. Said additional information shall be supplied within 30 days after receipt of notice. 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 another provision, Contractor failure to comply with requirements herein shall perpetually bar Contractor's claim for damages under Chapter 271 of the Texas Government Code, and Section 311.034 of the Texas Government Code, regardless if Owner has actual/constructive knowledge of the defect. Contractor agrees requirements of this contract have the same force and effect as the written consent of Owner. Owner has the sole discretion on whether to grant or deny any assignment.

ATTORNEY FEES
BY EXECUTING THIS CONTRACT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST OWNER, REGARDING AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO CONTRACT OR CONSTRUCTION, INTERPRETATION, OR BREACH OF CONTRACT. CONTRACTOR SPECIFICALLY AGREES IF CONTRACTOR BRINGS/COMMENCES ANY LEGAL ACTION/PROCEEDING RELATED TO THIS CONTRACT, CONSTRUCTION, INTERPRETATION, VALUATION, OR BREACH OF CONTRACT INCLUDING BUT NOT LIMITED TO A DISPUTE CONCERNING AIA PERSEPOLIS TEXAS PROVISIONS ON THE TEXAS UNIFORM CONTRACT AGREEMENTS AS AN UNDERSTANDING OF A TEXAS PROVISION CONCERNING REMEDIES CODE SECTION 9.000 CONTRACTOR AGREES TO FURTHER ACKNOWLEDGES AND AGREES THERE WAS TEXAS LOCAL GOVERNMENT CODE DISAPPROPRIATE REGARDING POWER BETWEEN AN OWNER AND CONTRACTOR FROM THEIR RIGHTS TO RECOVER SOME MORE BY FORCE OR INTERPRETED AS THE CONTRACTOR'S OWNERSHIP OF THE CONTRACT WITH COMPETENT LEGAL COUNSEL BEFORE EXECUTION.

PAY ACT
Owner and Contractor agree Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

PAYMENT
After Contractor completes all Work including all Change Orders altering original scope, amount of

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said Contract are completed, and Owner inspected and approved that Work is completed and in compliance with Contract and all subsequent Change Orders, Owner may thereafter issue payment to Contractor in amount of Contract and all Change Orders. Owner shall be the final judge of when Contractor completes Work. Owner, at sole discretion, shall determine if Work under Contract and under any Change Orders was completed in accordance with requirements. Owner may make periodic payments to Contractor; however, such periodic payments shall not constitute payment in full of the Contract and only after completion of Work and Change Orders are completed shall Contractor be entitled to final payment. Contractor shall provide the following information to Parkhill and RPR:

- installations.
- provide weekly payroll records (not previously received)
- complete Contract and all subcontracts and completion of Work and before subcontracts final payment is made, Contractor shall remove from site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. Contractor shall cut all brush and woods within limits indicated and leave site neat and presentable. Material cleared from site and deposited on adjacent property will not be considered as having been disposed satisfactorily unless Contractor obtained written permission of such property owner.
- return copies of sales tax completion forms when applicable per state requirements.
- inspection
- provide manufacturer certifications for all items
- provide statement of release of all claims for labor and material
- make a record on Record, As-Built, or As-Constructed
- provide a reliable statement signed by subcontractors indicating actual amounts paid to
- deliver Project Operation and Maintenance (O&M)

SP-49 DBE Subcontractors
INTERESTED PARTIES OF
SUCCESSION PROPOSAL WITH ASSIGNED TO COMPLETION OF ETHICS
COMMISSION Form 1295 – Certificate
of Interested Parties and submit completed form with executed
Contracts for Project. Complete Form 1295
online at <http://www.texasmanicnews.com> contractor with an explanation once
http://www.texasmanicnews.com/new/elf_info_form1295.htm
responsible for completing form, printing, and submitting along with
all other Parkhill and RPR documents.

AUTHORITY AND DUTY

Parkhill nor RPR shall supervise, direct, or have control over Contractor's Work nor have any responsibility for construction means, methods, techniques, sequences, or procedures selected by Contractor nor for Contractor's safety precautions or programs in connection with Work. These rights and responsibilities are solely those of Contractor in accordance with Contract Documents.

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Parkhill nor RPR shall be responsible for any acts/omissions of Contractor, subcontractor, entity performing any portions of Work, or agents or employees of any of them. Parkhill nor RPR guarantee Contractor performance nor are responsible for Contractor's failure to perform Work in accordance with SB Anti-Boycott Statutes or any applicable laws, codes, rules, or regulations.

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

- that Contractor does not boycott, discriminate, and will not boycott, discriminate, or obtain the demand of this Contract during the term of this Contract; and
- that Contractor does not have a practice, policy, guidance, or directive that discriminates

against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association. To the extent that the Anti-Boycott Statutes do not apply to this Contract, Contractor shall be deemed to have not made such required, as a Contractor.

END OF
DOCUMENT

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PROVISIONS

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GENERAL CONDITIONS OF CONTRACT

- GC- OWNER
01. When "Owner," "Party of the First Part," or "First Party" are used in Contract Documents, it shall refer to Owner as described in Contract.
- GC- CONTRAC
02. When "Contractor," "Party of the Second Part," or "Second Party," are used, it shall mean person(s), co-partnership, or corporation so defined in Contract who agreed to perform Work embraced in this Contract or its legal representatives.
03. When "Architect/Engineer" is used in this Contract, Architect/Engineer or Owner, or another Architect/Engineer, supervisor, or inspector, as authorized by said Owner, to act as Owner's representative with respect to services performed or furnished by Architect/Engineer.
04. Documents shall consist of Notice to Bidders, Bidders, Proposal, Contract, Performance Bond, Payment Bond, General Conditions of the Contract, Special Provisions, Technical Specifications, Plans, and all modifications thereof incorporated in any documents hereinafter incorporated and called for by any one person/entity shall be as binding as if called for by all. In case of conflict between Contract Documents, priority of interpretation shall be in the following order:
1. Contract Documents
2. Performance Bond
3. Special Bonds (if any)
4. Proposal
5. Special Provisions
6. Notice to Bidders
7. General Conditions of the Contract
- GC- SUBCONTRA
05. "Subcontractor" as employed herein, includes only those who subcontract with Contractor and include those who furnished material worked to a special design according to plans or Specification of this Work but does not include one who merely furnished material or who shall be deemed to be duly served if member of firm or officer or person to whom delivered, or if delivered/sent by registered mail to last business address known.
- GC- WOR
07. Unless otherwise stipulated, Contractor shall provide and machinery, equipment, tools, supplies, labor, insurance, water, light, power, fuel, transportation, and other facilities necessary for execution and completion of Work covered by Contract Documents. Unless otherwise specified, all materials shall be new and both workmanship and material of good quality.
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OF CONTRACT

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Contractor shall, if required, furnish satisfactory evidence as to kind and quality of materials. Materials or Work described in words shall have a well-known technical or trade meaning and held to refer to such recognized standards.

08. ED

GC-09. DELETED
BYOUT OF WORK as specifically provided herein. Contractor shall be responsible for Work not acceptable to Architect/Engineer. Architect/Engineer will check Contractor's layout of all major structures and other layout work done by Contractor at Contractor request, but this check does not relieve Contractor of responsibility of correctly locating ALL WORK in accordance with Plans and Specifications. It is mutually agreed between parties to this Contract that progress of Work at various times. To prevent delays, disputes, and discourage litigation, it is further agreed Architect/Engineer shall, in all cases, determine amounts and quantities of several kinds of Work paid under this Contract. He shall determine all questions in relation to said Work and construction thereof, and in all cases, decide every question which may arise relative to execution of this Contract on part of said Contractor. Architect/Engineer estimates and findings shall be conditions precedent to right of parties hereto to any action of Contract, and any rights of Contractor to receive any money under this Contract; provided, however, should Architect/Engineer temporarily shut down within a reasonable time, render or give an award upon which Owner grants on either party hereto, is not in accord with them and claims of parties hereto and all questions with Contractor and the party may file with said court or arbitrator or interpose a motion with Court. Specifications, and Plans, should direct contractor's endeavor. Contract intent is for there to be no delay in completion of work. If there is a delay, time earned may be taken as compensation for loss of profit. As rendered shall be the final decision of the court or arbitrator. "Satisfactory," or words of similar import are small but they must be adjusted as hereinafter provided. direction, requirement, permission, order, designation, prescription, approved by, Specifications, or Plans of Architect/Engineer intended various qualities relative to finish, workmanship, or other qualities of similar kind which cannot, from their nature, be specifically and clearly described and specified, but necessarily described in general terms, fulfillment of which must depend on individual judgment, in all such cases, any question of interpretation of said Specifications shall be decided by Architect/Engineer, and said work done appointing and supervising engineers, inspectors or project management firms, and if any firm may deem proper its own material furnished and Work done under this Contract, see said material is furnished and done in accordance with GC-09. CONTRACT 22

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OF CONTRACT

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Specifications therefor, Contractor shall furnish all reasonable aid and assistance required by subordinate engineers, supervisors, or project representatives for proper inspection and examination of Work. Contractor shall regard and obey directions and instructions of any subordinate engineers, supervisors, or project representatives so appointed when such directions and instructions are consistent with obligations of this Contract and applicable laws and Specifications. Provided, Contractor shall direct attention to faithful execution of Work and shall not be responsible for project representative's actions or omissions. Contractor shall furnish all satisfactory Architect/Engineer's Subcontractor's representation. Contractor when absent and all directions given shall be as binding as if given to Contractor. Adequate supervision by competent and responsible Contractor representatives is essential to proper performance of Work and lack of such supervision shall be a breach of Contract. Grounds for suspension of Contractor shall be by incompetent and/or negligent workmanship, failure to maintain ground, character, quality and quantity of materials requested in each case. encountered, character of equipment and facilities needed preliminary to and during prosecution of Work, general and local conditions, and all other matters which can in any way affect Work under this Contract. No verbal agreement or conversation with any officer, agent, or employee of Contractor shall be a basis for any claim or liability and no verbal agreement shall be a basis for any claim or liability. Whenever an Architect/Engineer in writing, any employee(s) on Work are, in Architect/Engineer opinion, incompetent, unfaithful, or disorderly, such employee(s) shall be discharged from Work and not again employed on Work without Architect/Engineer's written consent. Buildings, structures, or other forms of protection will be permitted only at such places as Architect/Engineer shall direct, and sanitary conditions of grounds in or about such structures shall always be maintained as satisfactory to Architect/Engineer. Contractor shall construct and maintain necessary sanitary conveniences for use of laborers on work, properly secluded from public observation, approved by Architect/Engineer, and use strictly enforced. SHOP DRAWINGS shall submit to Architect/Engineer with such in work of project to Shop Schedules and drawings and schedules required for Work of various trades, and Architect/Engineer shall pass upon them with reasonable promptness, making required corrections. Architect/Engineer approval of such Drawings or schedules, shall not relieve Contractor from responsibility for deviations from Drawings or Specifications, unless Architect/Engineer called attention to, in writing, such deviations at time of submission nor relieve Contractor from responsibility for errors of any sort in Shop Drawings or schedules.

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GENERAL CONDITIONS

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GC- 23. KEEPING PLANS AND SPECIFICATIONS ACCESSIBLE
 copies of all specifications, which furnish the Contractor with a complete set of plans and specifications, shall be kept on the job site and be constantly accessible on Work, with latest revisions noted thereon.

GC- 24. OWNERSHIP OF DRAWINGS, Specifications, and copies thereof furnished by Architect/Engineer shall not be reused on other work, and with exception of signed contract sets, are returned to him on request, at completion of Work. All models are property of Owner.

25. DESIGN. Understood Owner employed competent engineers and draftsmen responsible for adequacy of design, sufficiency of Contract Documents, safety of structure, and practicability of operations of completed Project, provided Contractor complied with requirements of said Contract Documents, all approved modifications thereof, additions, and alterations thereto approved in writing by Owner. Burden of proof of such compliance shall be upon Contractor to show compliance with requirements of Contract Documents, approved modifications thereof, additions, and alterations thereto, and construction and installation thereof, supervised and inspected by such agent(s) as elected, to install such material and Work as said Owner may desire.

27. OWNER AGREES to provide by separate contract or otherwise, all labor and material essential to completion of Work specifically excluded from this Contract, not delaying progress of Work, or damage to Work.

GC- 26. DELAYS AND COMPLETION. In the event of any delay in completion of Work, the intent of this Contract is all furnished work and materials to be completed in accordance with the schedule of completion set forth in the Contract Documents, and in the event of any discrepancies between separate Contract Documents, priority of interpretation defined under "Contract Documents" shall govern. In the event of a remaining doubt as to meaning and intent of any Contract Document, Specifications, or Drawings, Architect/Engineer shall define which is intended to apply to Work.

GC- 28. PROTECTION AGAINST ACCIDENT TO EMPLOYEES. Contractor shall maintain a policy of worker compensation in each business in the State of Texas, which policy shall comply with Workman's Compensation Law of the State of Texas. Contractor shall always exercise reasonable precautions for the safety of employees and others on/near Work and comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes. All machinery, equipment, and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America except where incompatible with Federal, State, or Municipal laws or regulations. Contractor, sureties, and insurance carriers shall defend, indemnify, and save harmless Owner and Architect/Engineer and their employees, agents, and subcontractors from all suits, actions, or claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any persons/property, on account of any negligent act or fault of Contractor or any subcontractor, agents, or employees, in execution and supervision of said Contract and Project of this Contract or on account of Contractor or any subcontractor failure to provide necessary

b. Contractor's Public Liability and Property Damage Subcontract Insurance: Providing for a limit not less than \$1,000,000.00 for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of \$1,000,000.00 for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and regular Contractor's Property Damage Automobile Insurance: Providing for a limit not less than \$1,000,000.00 for all damages arising out of material damage to or destruction of one person and, subject to same limit for each person, a total limit and subject to that limit per accident of \$1,000,000.00 for all damages arising out of injury to or destruction of \$500,000.00.

d. Proof of Insurance Coverage: Before work on any contract or subcontract and address manufactured; and subcontract operations on which Contractor applies, a six certificate of policy and type(s) of insurance in force insurance policy carried and filed as evidence of compliance with the requirements, and a list of liability by an authorized representative of the insurance company, setting forth the:

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36. Said OBTAINING OF PROPERTY proper means to protect
in any way adjacent trading property rights properly measured seriously
affected by any process of construction
undertaken under this Contract, from any damage/injury by reason of
said process of construction; and shall
be liable for any/all claims for such damage on account of failure to
fully protect all adjoining property.
Contractor agrees to indemnify, save, and hold harmless Owner
against any and all claims or damages due to SUBCONTRACTOR,
any injury to ADJOINING OR EDJACENT PROPERTY arising/growing out
of performance of CONTRACTS, MATERIALS AND EQUIPMENT furnished
such undertakings shall include subcontractors, any other persons, firms, or corporations,
existence or character of work, furnishers of
machinery and parts thereof, equipment, power tools, and all
supplies, including commissary, incurred in
furthering the performance of this Contract. When so desired
by Owner, Contractor shall furnish
satisfactory evidence that all obligations of nature herein designated,
have been paid, discharged, or waived.
If Contractor fails, Owner may, at Contractor option, pay directly
any unpaid bills, of which Owner has
written notice, or withhold from Contractor's unpaid compensation a
sum of money sufficient to satisfy said ROYALTIES OR
sufficient to satisfy said claims and liens satisfactory
made made, or otherwise satisfied by suit or patent or copyright by suitable
legal remedy charged with or payments to Contractor shall be
construction shall include all suits or claims for infringement of any
patent, Copyright, trademark, or invention shall provide provisions of this article be
Construction less than any obligation thereon, except Owner shall
debt or liability for such claims and liens and
be responsible for all such loss when a particular
material, or process, product or particular

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GC- HINDRANCES AND DELAYS

43. No claims shall be made by Contractor for damages, any cause (resulting from Work as to delay by order of Owner for own convenience) during progress of any portion of Work embraced in this Contract. In case said Work shall be stopped by act of Owner, such expense as in judgment of Architect/Engineer is caused by such stoppage of said Work shall be paid by Owner to Contractor customary measurements of any kind computed in metric but solid contents, and grand weight only considered, unless otherwise specifically provided.

GC- ESTIMATED

45. This Contract including Specifications, Plans, and estimate, Work to be done and material shown shall be estimated hereunder. Where estimated quantities are shown for various classes of work to be done and material furnished under this Contract, they are approximate, used only as a basis for estimating probable cost of Work, and comparing proposals offered for Work. It is understood and agreed the actual amount of Work to be done and material furnished under this Contract may be different somewhat from the estimate and for here basis for payment under this Contract computed in metric but solid contents, and grand weight only considered, unless otherwise specifically provided. Where actual quantity of any major item in this Contract is an estimated quantity and actual quantity of such "major item" varies more than 10 percent from the estimated quantity, an equitable adjustment in Contract price shall be made on basis of actual quantity, computed on basis of estimated quantity. Equitable adjustment shall be based upon any and all data and facts in connection with the Work to be done and material furnished under this Contract, as provided under "Extra Work."

GC- PARTIAL

46. On or before the last day of each month, Contractor shall review, a statement showing in detail as completely as practicable, total value of Work done by Contractor for prior month/period. Statement shall also include value of all sound materials delivered on site of Work to be fabricated into Work. Architect/Engineer, after approval, shall submit Contractor's statement to Owner within three working days to Owner, after receipt of partial payment from applicable governmental authority, total amount of Architect/Engineer's statement, less 5 percent of amount thereof, which 5 percent shall be retained until final payment, and further less all previous payments and all further sums may be retained by Owner under terms of this Contract. It is understood; however, in case whole Work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on part of Contractor, Contractor may, upon Architect/Engineer's written recommendation, pay a reasonable and equitable portion of retained percentage to Contractor; or Contractor, at Owner's option,

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further agreed final acceptance of Work by Owner and acceptance by Contractor of final payment, shall be a bar to any claim by either party, except as noted otherwise in Contract Documents.

54. ~~ED~~
ABANDONMENT BY CONTRACTOR

~~GC-~~ In case Contractor should abandon and fail/refuse to continue work from this date after Architect/Engineer, or Contractor fails to comply with Architect/Engineer orders, when such orders are consistent with Contract Documents, then if where a performance bond exists, Surety on bond shall be notified in writing and directed to complete Work, notice of abandonment, Contractor copy of said shall not be delivered to Contractor. machinery, equipment, tools, materials, or supplies on the job, but same, together with any materials and equipment under contract for Work, may be held for use on Work by Owner or Surety on construction bond, or another contractor in completion of Work; and Contractor shall not receive any rental/credit therefor (except performance bond provided with Surety Work, which credit allowed as provided for under with Work completion and use of such equipment 10 days after service of such notice. Owner cost of completion employ such force of men Work and tools and materials in the following elective manners:

- a. Contractor shall, after 10 days of this Contract, In published expense not less than a newspaper having this contract lifted and had been of completed by Contractor. When Contractor shall complete the Work under substantially same terms as original conditions, shall be paid under this Contract. If case of any delay by said Contractor or Owner or Contractor and/or Surety shall pay to what would have been cost
- b. When Work shall be substantially completed, Contractor shall be charged to Contractor and Surety notified and Certificate of Completion and Acceptance, as provided herein. If under, should cost to complete any such new statement of Contractor, not less than cost by Architect/Engineer as correct, shall then prepare and Contract, Contractor and/or Surety delivered to Owner and Surety. If Contractor complete Work, or Owner or Surety shall have had Work completed by Contractor, then, with this Contract, or date of Contractor and/or Surety completion.

pay balance shown due by them to Owner, then all machinery, equipment, tools, materials, or supplies left on site of Work shall be held over in Contractor and/or Surety. Should cost to complete Work exceed

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Superseded General Decision Number: TX20220002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 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 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023

	Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER (Paving & Structures)...	\$ 13.55	**
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ELECTRICIAN.....	\$ 20.96	
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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	**
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Steel Worker (Reinforcing).....	\$ 13.50	**
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TRUCK DRIVER Lowboy-Float.....	\$ 14.46	**
Single Axle.....	\$ 12.74	**
Single or Tandem Axle Dump..	\$ 11.33	**
Tandem Axle Tractor with Semi.....	\$ 12.49	**

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

** Workers in this classification may be entitled to a higher

minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and

the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

**TECHNICAL
SPECIFICATIONS**

**SECTION 01 10 00 -
SUMMARY**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. Section include Work covered by Contract
2. Documents.
3. Contractor use of site and
4. Premises.
- B. Related Sections:
1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 WORK COVERED BY

CONTRACT DOCUMENTS

- A. Owner: City of Midland, Midland Airpark
- B. Identification: North Fence Replacement Project.
- C. Location: Midland, Texas
- D. Work consists of the removing existing chain-link fence and installing specified fence, gates, concrete strip, and grading.

**1.3 CONTRACTOR USE OF SITE
AND PREMISES**

- A. Limit use of site and premises to allow:
- B. Construction operations. Limited to areas
- C. noted on Drawings.
- D. Time restrictions for performing Work:
1. Shutoutages/days.
- Although not anticipated, if conflict with fence and existing utility requires a shutdown, schedule at least 1 week before outage/shutdown.

**1.4 WORK
SEQUENCE**

- A. Project will not be split into phases, but Contractor shall consult Owner on areas that could serve as access routes for other tenants.

1.5 OWNER

OCCUPANCY

- A. Owner will occupy premises during construction to conduct normal operations.
- B. Cooperate with Owner to minimize conflict and facilitate Owner operations.

**PART 2 - PRODUCTS
(Not Used)**

**PART 3 - EXECUTION
(Not Used)**

END OF
SECTION

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Y

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**SECTION 01 20 00 - PRICE AND
PAYMENT PROCEDURES**

**PART 1 -
GENERAL**

1.1 SUMMARY

RY

A. Section

Includes Application for Payment.

2. Change Procedures.

3. Measurement and payment

4. - unit prices.

B. Related Sections:

1. Other Division 01 Specification Sections

apply to Work of this Section.

**1.2 APPLICATIONS FOR
PAYMENT**

A. Submit application on Engineer-provided/-approved

Application for Payment or Contractor-

standard form, approved by Engineer

C. items in Application for Payment.

D. Payment Period: As defined in Owner-Contractor agreement.

Complete Application for Payment includes Construction

progress schedule, and submittal

1.3 CHANGE PROCEDURES

A. Submittals: Submit name of person authorized to receive

change documents and responsible

B. for informing others in Contractor's employ or subcontractors

of changes to Work.

C. Carefully study and compare Contract Documents before

proceeding with information and Clarifications: Allot

time for questions and answers by Engineer of any error,

inconsistencies, or omissions in the Contract Documents.

Establish procedures for handling

questions and clarifications.

D. Engineer will advise promptly of changes in the Work not

involving adjustment to Contract Price

or Time by issuing supplemental instructions on Engineer's

standard Supplemental Information

form.

Engineer may issue a change order on Engineer's standard

form, including a detailed description

F. of proposed change with supporting drawings or

change specifications for describing

change. Contractor will prepare and submit proposed change

G. specifications using order form language.

Unit prices, quantities, and unit prices and

quantities of Work to be performed with full documentation.

executed on a fixed unit price basis. For unit costs or

quantities of units not predetermined,

H. Execute Work under Engineer's standard form or

recommended by Engineer or as accepted by

I. Owner and Contractor.

Change Order Forms: Engineer's standard form.

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PRICE AND PAYMENT

PROCEDURES

01 20 00

- 1

-
- J. Execution of Change Orders; Engineer will issue Change Orders for signatures of parties as provided in ~~6.00~~ **Continuation** of the Contract.
 - K. Submittals promptly revise Schedule of Values and Application for Payment forms to record each
 - 2. authorized Change Order as separate line item and adjust Contract Price.
 - 3. Promptly revise Progress Schedules to reflect change in Contract Time, revise subschedules to adjust times for other items of Work affected by change and resubmit.
- 1.4 UNIT PRICES
- A. Authority: Measurements in Record Documents.
 - B. Individual brand standards compute quantities. Engineer to verify.
 - C. Unit Quantities: Quantities and measurements indicated in Bid Form are for Contract purposes only. Quantities and measurements supplied or placed in Work determine payment. When
 - 1. quantity of work requires more or fewer quantities than those indicated, provide required quantities at contract unit prices; and
 - 2. installation of Work item;
 - E. Final Overhead and Profit governed by unit prices will be made based on actual measurements and quantities accepted by Engineer multiplied by unit price for Work incorporated in or made necessary by Work.

PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

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PART 1 - GENERAL 1.1 SUMMA RY

K1
A. Section
1. Procedures for measurement
2. and payment.
3. Mobilization demobilization.
4. Unit price items.
5. Lump sum items.

2. Other Division 01 Specification Sections apply to Work of the Section.

A. Unit price bid on each item as stated in Section 00 41 00

- B. ~~Specified work or materials shown on Drawings or schedules for~~
~~it specified on same drawings and~~
 C. ~~Separate payment is made, included in bid prices on~~
 various pay items.

A. Payment made for mobilization and demobilization on lump sum basis.

- C. Bid amount for mobilization and demobilization shall not exceed one percent of total costs of preparatory work and operations, including but not limited to those necessary for movement of personnel, equipment, supplies, and incidentals to Work; establish all offices, buildings, and other facilities necessary for Work; and all other work and operations performed or costs incurred prior to beginning work on various items of Work.
- D. Item of Work Application for Payment: 50 percent of lump sum. Payment for Mobilization for Payment: 75 percent of the lump sum basis with partial payment as a percent of adjusted Contract Amount as used hereafter. 50 percent of demobilization (0) percent of mobilization and demobilization on mobilization and demobilization.

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1.4 UNIT 1 ITEMS

- 1.5 LUMPSUM - Payment made in units shown on Section 00 41 00

A. Lun

- 1.6 BID FORM INCLUDES all work and material for installing lump

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|-----------------------|----------------------------|-----------------|
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PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

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**SECTION 01 25 00 -
SUBSTITUTION PROCEDURES**

**PART 1 -
GENERAL**

1.1 SUMMARY

- Includes:
1. Quality assurance.
 2. Product options.
 3. Product substitution
- B. Related Requirements:
1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 QUALITY ASSURANCE

- A. Contract is based on products and standards established in Contract Documents without
- B. consideration of proposed substitutions.
- C. Products specified define standard of quality, type, function, dimension, appearance, and performance required.

- Substitution Proposals: Permitted for specified products except where specified otherwise. Do not substitute products unless Owner accepts substitution and approval of Division 01 Product Requirements.

1.4 PRODUCT SUBSTITUTION PROCEDURES

- A. Engineer will consider requests for substitutions only within 30 days after date established in
- B. Notice to Proceed.
- C. Substitutions may be considered when product becomes unavailable through no fault of Contractor.
- Documentation request with complete, dated, substantiating information of proposed substitution with the following information:
1. Identification of proposed substitution with specified product.
 2. listing variations in quality, performance, and other pertinent characteristics.
 3. Reference to Article numbers in Specifications.
 4. Change accompanying proposed substitution with identification of manufacturer and source of material to be substituted.
 5. Certified test data to show compliance with performance characteristics specified.
 6. Samples when applicable or requested.

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SUBSTITUTION
PROCEDURES

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-
- D. A request constitutes a representation of proposed product and determined it meets/exceeds quality level of specified product.
2. Will coordinate installation and make changes to other Work required for Work and to comply with any additional cost to Owner.
 3. Will coordinate installation of accepted substitute, making required changes for Work to complete in all respects.
- E. Substitution is considered for review and design services on Shop drawings with Product Data by submitter having preparation written request or acceptance
- F. Substitution of Submittal Contract Documents.
2. Engineer-provided form.
 3. Submit electronic files to Project website of Request for Substitution of Drawings, Product Data, and certified test results attesting to proposed substitution.
 4. product equivalence. Burden of proof is on Contractor. Engineer will notify Contractor in writing of decision to accept/reject request.

PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

**SECTION 01 30 00 -
ADMINISTRATIVE REQUIREMENTS**

**PART 1 -
GENERAL**

1.1

SUMMARY

Section
Includes

1. Project Information
2. Management.
3. Coordination.
4. Preconstruction meeting.
5. Electronic drawing file (digital data) request.
6. Request for information.
7. Related items.

B. Related Items:

1. Other Division 01 Specification Sections apply to Work of this Section.

1.2

**PROJECT INFORMATION
MANAGEMENT**

A. Project

Website: Procore at <https://app.procore.com/login> to send and receive Project information.

B. Project Information includes, but is not limited to:

1. Request for proposal.
2. Request for information.
3. (RFI).
4. Applications for Payment.
5. Schedules.
6. Construction Change Requests (CCRs).
7. Requests for Information.

1.3

COORDINATION

A. Coordinate scheduling, submittals, and Work to assure efficient and orderly sequence of construction.

B. Installation of construction equipment characteristics of operating equipment are compatible with building utilities. Coordinate work of various Sections having

C. interdependent responsibilities for installing, connecting to, and placing such equipment in service.

D. Coordinate space requirements and installation of mechanical and electrical work indicated diagrammatically on Drawings. Follow routing as closely

E. as practicable. Coordinate space clean-up of Work of other Sections minimize responsibility for other installations, Submittal Completion.

F. After Shop building areas of projects, coordinate access to space with Owner for correction of defective construction. Coordinate locations of fixtures and Object of Documents elements in accordance with

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REQUIREMENTS

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- 1

- G. A Construction Safety and Phasing Plan has been submitted to the FAA for construction equipment up to 20 feet in the provided workspace. If Contractor's equipment exceeds 20 feet, Contractor must submit location and height of equipment for approval for use at specified locations to the FAA for approval through the Engineer/FAA School site meeting after
- 1.4 PRECONSTRUCTION MEETING
- A. Notice to Proceed.
- B. Attendance Required:
1. Engineer.
 2. Contractor.
 3. Major subcontractors.
- C. Agenda:
1. Distribute Contract Documents.
 2. Submit lists of subcontractors and products, Schedule of Values, submittal schedule, and progress schedule representing each party in Contract and Engineer.
 3. Procedures and processing field decisions, submittals, substitutions, Applications for Payment, proposals, requests for Change Orders, Request for Information, Completion Dates.
 4. Submittal Procedures and background checks.
 5. Stormwater Pollution Prevention Plan (SWPPP) if necessary.
 6. Scheduling's requirements.
 7. Construction facilities and controls provided by Owner.
 8. Temporary utilities provided by Owner.
 9. Procedures for security and housekeeping record documents.
 10. Requirements for start-up of equipment.
 11. Inspection and acceptance of equipment put into service during construction.
- D. Engineer shall prepare minutes and distribute copies to participants.
- 1.5 ELECTRONIC DRAWING FILE (DIGITAL DATA) REQUEST
- A. 1. Bridge Project Permittee may purchase a Digital Data file. Digital Data file will be provided in software release currently used by Autodesk. Files will be provided upon request. Cost of files \$500.00 plus applicable tax, per sheet.
2. 4 - 6 Sheets: \$400.00 flat fee.
3. 7 - 9 Sheets: \$500.00 flat fee.

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3. Prior to delivery of file(s), purchaser shall sign a Digital Data Licensing Agreement.
 4. Payment for Digital Data file(s) shall occur upon delivery of file to purchaser.
- Digital Data file(s) shall be used only for preparing Bids
- 1.6 REQUEST FOR INFORMATION (RFI) shall be used in any other form, in whole or in part.
- A. RFI requests from subcontractors or material suppliers will not be considered.
 - B. Information indicated on RFI shall be complete before submission. If Engineer determines request can be answered with information provided, Engineer will assign RFI tracking number. If Engineer determines request is not an RFI, Request will be returned to Contractor when items are related. Other questions and related shall Engineer's electronic tracking system with RFI number.
 - C. Responses to each RFI must be submitted to each RFI.
 - D. Response tracking number. A submittal document and Engineer Section 01 53 00 will be submitted.
 - E. Responses from Engineer are not changes unless issued with a change per Section 01 20 00 "Price and Payment Procedures."
- 1.7 PROGRESS MEETINGS
- A. Schedule and administer bi-weekly or as necessary throughout
 - B. Work progress, at minimum.
 - C. Engineer will arrange meetings, prepare agenda with participants, preside at meetings.
 - D. Agenda for each meeting.
 1. Review minutes of previous meetings.
 2. Review of work progress.
 3. Review of work problems, and decisions.
 4. Identify problems which impede planned progress.
 5. Review submittal schedule and status of submittals to regain control of schedule.
 6. Review of schedule and decisions.
 7. Review of schedule during project progress and schedule standards.
 8. Effect of proposed changes on progress.
 9. Schedule and coordination.
 - E. Other participants related to work affected by decisions made.

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PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

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 AIA Document™ C106
Digital Data Transferring
Agreement

AGREEMENT made as of the day
of in the year 2022
*(In words, indicate day, month,
and year.)*
BETWEEN the Party transmitting Digital Data
("Transmitting Party"):
*(Name, address, and contact information,
including electronic addresses)*

and the Party receiving the Digital Data ("Receiving Party"):
(Name, address, and contact information, including electronic addresses)

for the Project:
*(Name, address, and contact information,
including electronic addresses)*

for the following Digital Data ("Digital Data"):
*(Identify below, in detail, the information created or stored
in digital form that the Parties
intend to be subject to this Agreement.)*

[Revit Models (.rvt
files)]
[AutoCAD (.dwg files)]
[Portable Document
Format (.pdf)]

The Transmitting Party and Receiving
Party agree as follows.

**EDITIONS AND
DELETIONS**
The parties agree that this document has been completed by the author. The author may also revise the text of the original report that notes added and information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where a change has been made. The author has added necessary information with an asterisk (*) and has added or deleted text. Deleted text is indicated by a vertical line in the left margin of the original document.

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TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 TRANSMISSION OF DIGITAL DATA
- 3 LICENSE CONDITIONS
- 4 LICENSING FEE OR OTHER COMPENSATION

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The purpose of this Agreement is to grant a license from the Transmitting Party to the Receiving Party for the Receiving Party's use of Digital Data and to set forth the license terms.

§ 1.2 This Agreement is the entire and integrated agreement between the Parties. Except as specifically set forth herein, this Agreement does not create any other contractual relationship between the Parties. Digital Data is Digital Data containing confidential or business proprietary information that the Transmitting Party designates as "confidential."

ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The Transmitting Party grants to the Receiving Party a nonexclusive limited license to use the Digital Data solely and exclusively for the uses, and in accordance with the terms, set forth in the Receiving Party is permitted to access and use the Digital Data. Unlicensed and unauthorized access or use by third parties is strictly prohibited except as set forth in Section 2.4.1.

§ 2.2 The Transmitting Party warrants that the Digital Data is as described in the Receiving Party's request for the Digital Data. The Transmitting Party warrants that the Digital Data is as described in the Receiving Party's request for the Digital Data.

§ 2.3 The transmission of Digital Data constitutes a warranty by the Transmitting Party to the Receiving Party that the Digital Data is as described in the Receiving Party's request for the Digital Data. The Transmitting Party warrants that the Digital Data is as described in the Receiving Party's request for the Digital Data.

§ 2.4 Where the Transmitting Party provides Digital Data to the Receiving Party, the Receiving Party shall keep the Digital Data confidential and shall not disclose it to any other person or entity except as set forth in Section 2.4.1.

§ 2.4.1 The Receiving Party may disclose Confidential Digital Data after seven (7) days' notice to the Transmitting Party in any form of compulsory disclosure, including by court order, subpoena, or other process issued by a court or governmental entity. The Receiving Party shall also disclose Confidential Digital Data to its employees, sub-subcontractors, and other personnel who are necessary to the Receiving Party's use of the Digital Data for the Project and who agree to keep the Digital Data confidential.

§ 2.5 By transmitting Digital Data, the Transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the Receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to the uses and purposes permitted by law, the Receiving Party shall defend, indemnify, and hold the Transmitting Party harmless from and against all claims, damages, and expenses, including reasonable attorneys' fees, arising from the Receiving Party's modification to, or unlicensed use of, the Digital Data.

§ 2.6 The transmission of the Digital Data does not abridge or extinguish the Transmitting Party's rights, including, to the extent applicable, exclusive ownership interest, in such information under all applicable state, federal, and international law.

§ 2.7 The provisions of this Agreement, including without limitation, shall govern the transmission of Digital Data and shall not be subject to the provisions of any other agreement.

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§ 3.1 The Receiving Party may use and rely upon the Digital Data to the extent set forth in this Article 3.

Party's information. Receiving Party acknowledges that any use of the Digital Data shall be at Receiving Party's sole risk. Receiving Party warrants that the Digital Data is accurate, complete, consistent, and reliable, and that it is not being used for any purpose other than that for which it was provided. Receiving Party shall be responsible for verifying the accuracy of the Digital Data.

~~(Paragraph deleted)~~

§ 3.1.3 This Digital Data is not a Construction Document. Differences may exist between this Transmitted Data and the original two-dimensional hard-copy Construction Document. In the event that a conflict arises between the signed/sealed two-dimensional hard-copy Construction Document prepared by Transmitting Party and the Digital Data, the signed/sealed two-dimensional hard-copy Construction Document shall govern. The Receiving Party is responsible for determining if any conflict exists. By the Receiving Party's use of the Digital Data, Receiving Party is not relieved of their duty to be completely diligent in surface documents including, and without limitation, the need to check, confirm and corroborate and/or cross-reference field conditions and conditions of work prior to that deemed a sale of document ownership by Transmitting Party, and no warranties, either express or implied, of merchantability or fitness for any particular purpose is made. In no event shall the

Transmitting Party shall not be responsible for the Digital Data not being able to maintain all the information and images as a result of the Recipient's use of the Digital Data. Of this, there may be data within the Digital Data that is missing, incomplete or even contradictory to the information provided in the original. Should the Recipient's use of the Digital Data not meet the expectations and interpretations in order to use the Digital Data for its intended purpose, Should the Transmitting Party provide revised and updated copies of the Digital Data to the Receiving Party throughout the Project, all terms and conditions of this agreement shall remain in full force and effect.

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ARTICLE 4. LICENSING FEE OR OTHER COMPENSATION

The Receiving Party agrees to pay the Transmitting Party the following fee or other compensation for the Receiving Party's use of the Digital Data. (The Receiving Party will compensate the Transmitting Party for the use of the Digital Data.)

This Agreement is entered into as of the day _____, _____, and year first written above, and shall remain in full force and effect until terminated, if other than one of the following conditions related to termination.)

PARKHI _____ TRANSMITTING _____ <i>(Printed name and title)</i>	[RECEIVING PARTY] _____ RECEIVING PARTY <i>(Signature)</i> _____ <i>(Printed name and title)</i>
---	---

**SECTION 01 32 16 - CONSTRUCTION
PROGRESS SCHEDULE**

**PART 1 -
GENERAL**

1.1

SUMMARY

1. Section Includes:

2. Bar/Gantt chart
3. schedules.
4. Review and
5. evaluation.

B. Related Requirements:

1. schedule Division 01 Specification Sections apply to Work of this Section.

1.2

SUBMIT

ALS

- A. Post as electronic file to Project website.
- B. Submit initial progress schedule for Engineer review within 10 percent established Notice

C. Schedule

1. Submit with each Application for Payment.
2. Projected and actual percent of completion.
3. Completion progress by listed activity and sub-activity within five working days prior
4. Change in Work scope and activities
5. modified since submittal.
6. Delays in submittals or resubmittals,
7. deliveries, or Work.
8. Adjusted or modified sequences of Work.

D. Narrative Progress

1. Submit with each Application for Payment.
2. Summary of Work completed during past period
3. between reports.
4. Work planned during next period.
5. Explanation of differences between summary of Work completed and Work planned
6. completed and Work planned factors and estimated impact on submittal report.
7. completion milestones.
8. Corrective action taken or proposed.

1.3

BAR/GANTT CHART SCHEDULES

A. Format Bar/Gantt chart

- Schedule information at least listing, in chronological order, activities reasonably required to complete Work including:
- b. Major equipment design, fabrication, factory testing, and delivery dates
 - c. Moving and other load-in activities.
 - d. Equipment and equipment system test and startup activities.

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- e. Project closeout and cleanup.
- f. Work sequences, constraints, and interdependencies by Specification
2. List and identify by Specification
3. Section number.
4. Identification of time frame by year, month, and week.
5. Duration, early start, and completion for each activity.
6. Subsystem, location, and whether define critical path or activity.

1.4 REVIEW AND EVALUATION

- A. Participate in joint review and evaluation of schedules with Engineer at each Progress Meeting.
- B. Meeting on Application to Payment Work Items and ahead of schedule.
- C. After review, revise schedules incorporating results of review and resubmit within 10 days.

1.5 UPDATES TO SCHEDULES

- A. Maintain schedules to record actual start and finish dates of completed activities.
- B. Indicate progress of each activity to date of revision, with project completion date of same previous submittal.
- C. Indicate changes in schedule and other current status of Work.
- D. Upon approval of Change Order, include change in next schedule submittal.
- E. Indicate changes required to maintain Date of Substantial Completion.

1.6 DISCUSSION AND IMPACT ON SCHEDULE

- A. Following joint review, provide to Engineer for distribution.
- B. Instruct recipients to promptly report, in writing, problems anticipated by projections shown in schedules.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF
SECTION

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SECTION 01 33 00 -
SUBMITTAL PROCEDURES

PART 1 -
GENERAL

1.1 SUMMARY

- A. 1. Submittal procedures.
Includes Resubmittal requirements.
3. Proposed products list.
4. Requirements for complete
5. Shop Drawings.
6. Product data.
7. Samples.
8. Test reports.
9. Certificates.
10. Manufacturer instructions.
B. field reports.
C. ~~Other Requirements~~: Specification Sections apply
to Work of this Section.

1.2 SUBMITTAL
PROCEDURES

- A. Submit to Procore via procedures provided in
B. Preconstruction Meeting.
C. Identify Project, Contractor, subcontractor, or supplier,
pertinent Drawing sheet and detail
number(s), and Specification Section number appropriate to
submittal.
D. ~~Submit Contractor's stamp, signed Procurement and identify~~
~~relevant information of submittal of~~
E. ~~required items~~ dimensions, adjacent construction Work, and
F. ~~provide pertinent information~~ allow 10 working days
including delivery of Work and from
Contractor.
Identify variations from Contract Documents and product or
system limitations detrimental
to successful performance of completed Work. Information,
G. recognized by processions,
H. ~~responsibilities~~ on submittals marked on submittals by
Contractor shall be a
color only PDF file including transmittal letter. Multiple
2. ~~Submit same submittal format~~ including ZIP files, will
3. ~~be accepted.~~
4. Hard copies not accepted.
To ensure each page is legible, PDF pages of
Drawings shall be same size/scale as
hard copy. When applicable, provide scale symbols
5. ~~Provide website.~~ Illegible
submittals will be rejected.

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SUBMITTAL
PROCEDURES

01 33 00
- 1

-
- I. Submittal procedures described herein apply to construction progress schedule, products list, shop Drawings, product data, samples (actual samples and digital files of same), design data, test reports, certificates, manufacturer's
 - 1.3 RESUBMITTALS and field reports, erection REQUIREMENTS, and other submittals submitted to Engineer.
 - A. Revise submittals as required and resubmit to meet requirements specified and noted on submittal
 - B. Revise
 - C. Resubmit with original transmittal number and supplement with sequential alphabetical or numeric suffix for each resubmittal.
 - 1.4 PROPOSED PRODUCTS LIST
 - A. Within 15 days after date of Notice to Proceed, submit complete list of major products proposed for use, with name of manufacturer, trade name, product model number, and reference standards, give manufacturer, trade name, model number, and reference standards.
 - 1.5 REQUIREMENTS FOR COMPLETE SHOP DRAWINGS
 - A. Printable Image Size: Minimum 8-1/2 by 11 inches,
 - B. maximum 30 by 42 inches.
 - C. Draw details to a noted scale.
 - D. Draw Site Plans to same scale indicated on Contract Drawings.
 - 1.6 PRODUCTS Containing floor, site plans, or layout plans purchased from Engineer may be used as
 - A. Make ready copy of Contract, submittals, products, and drawings to provide data to provide information to Project.
 - B. Information to Project.
 - C. Include recommendations for application and use, and reference to compliance with specified standards of trade associations and testing agencies.
 - 1.7 TESTS After review, distribute per Article 1.2 "Submittal Procedures," and provide copies for
 - A. Record Documents described in Section 0170.00
 - B. of Owner and Closeout Requirements.
- Submit test reports, for information to assess conformance with information given and design concept expressed in Contract Documents.

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- 1.8

CERTIFICATION
- 1.9

MAINTENANCE
- 1.10

FIELD REPORTS
- PART 2

PRODUCTS
- PART 3

EXECUTION
- END OF SECTION

SECTION 01 40 00 - QUALITY
REQUIREMENTS

PART 1 -
GENERAL

1.1

SUMMARY

1. Include quality control.

2. Tolerances.

3. References.

4. Mockup

5. requirements.

6. Testing and

B. Related Requirements.

1. Manufacturer field Specification Sections
apply to Work of this Section.

1.2

QUALITY
CONTROL

A. Monitor quality control over suppliers, manufacturers,
products, services, site conditions.

B. ~~and workmanship to produce Work of specified quality.~~

C. Contract Documents, request clarification from Engineer

D. before proceeding.

E. Perform Work using persons qualified to produce required
and specified quality.

F. ~~Products, materials and equipment may be subject to other
inspections by Engineer at place of
manufacture or fabrication. Such inspections shall not
relieve contractor of complying~~

1.3

TOLERANCES
CES

A. Monitor fabrication and installation tolerance control of
products to produce acceptable

B. Work. Do not permit tolerances to accumulate.

C. Comply with manufacturers' recommended tolerances
and tolerance requirements in

D. reference standards. When tolerances conflict with
Contract Documents, request clarification from Engineer before proceeding.

1.4

REFERENCES
CES

A. For products or workmanship specified by association,
comply with requirements of standard except when more
rigid requirements are specified

B. ~~Comply with applicable standards by date of issue current as
of date of Contract Documents~~

C. ~~When reference standards are established by code when
required by product Specifications.~~

D. When requirements of indicated reference standards
conflict with Contract Documents,
request clarification from Engineer before proceeding.

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QUALITY

REQUIREMENTS

01 40 00

- 1

-
- E. Neither contractual relationships, duties, or responsibilities of parties in Contract, nor those of Engineer, shall be altered from Contract Documents by mention or inference in reference

1.5 TESTING AND INSPECTION SERVICES

- A. Owner will employ and pay for specified services of an independent firm to perform testing and inspection.

1.6 MANUFACTURER'S FIELD SERVICES

- A. When specified in individual Specifications, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, before required observations.
- B. Submit and install on quality of workmanship, before required observations.
- C. Observe necessary subject to Engineer approval. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturer's written instructions.
- D. Refer to Section 01 33 00 "Submittal Procedures,"

PART 2 - PRODUCTS Manufacturer's Field Reports.

PART 3 - EXECUTION (Not Used)

END OF SECTION

**SECTION 01 43 26 - TESTING
LABORATORY SERVICES**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. Section Includes:
 - 1. Selection and payment.
 - 2. Quality Assurance.
 - 3. Contractor submittals.
 - 4. Laboratory responsibilities.
 - 5. Laboratory reports.
 - 6. Limits on testing.
 - 7. Laboratory authority.
- B. Related Sections:
 - 1. Division 01 Specification Sections apply to the work of this section.

1.2 REFERENCES

- A. Concrete and Concrete Aggregates for Use in Construction and Criteria for Testing Agency

1.3 SELECTION AND PAYMENT

- A. Owner shall contract with and pay for services of an independent testing laboratory to perform specified inspection and testing.

1.4 CONTRACTOR RESPONSIBILITIES

- A. Cooperate with laboratory personnel and provide access to work.
- B. Notify Engineer and laboratory 24 hours before expected time for operations requiring inspection and testing services.

1.5 SCHEDULE OF INSPECTIONS AND TESTS

- A. As indicated in individual Specifications.

**PART 2 - PRODUCTS
(Not Used)**

**PART 3 - EXECUTION
(Not Used)**

END OF
SECTION

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**SECTION 01 50 00 - TEMPORARY
FACILITIES AND CONTROLS**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. 1. Section Includes:
 - a. Temporary Utility Water.
 - b. Sanitary Facilities.
 - 2. Construction
 - a. Vehicular access.
 - b. Parking.
 - c. Progress.
 - 3. Temporary Controls
 - a. Barriers.
 - b. Fencing.
 - c. Enclosure.
 - d. Signs.
 - e. Security.
 - f. Dust.
 - 4. Removal of utilities, facilities, and Controls.
- B. Related Sections:
1. Other Divisions 01 Specification Sections apply to Work of this Section.

1.2 WATER

- A. Provide, maintain, and pay for suitable quality water operations required for construction with outlets located so water is available by hoses with threaded connections.
- B. Connected to existing water source for construction operations. Extend and supplement with temporary devices as needed to maintain specified conditions for construction operations.
- C. Provide separate metering and reimburse Owner for cost of water used.

1.3 SANITARY
Provide temporary pipe insulation to prevent freezing.

- A. Provide and maintain required facilities and enclosures.
- B. Do not use existing facilities.

1.4 VEHICULAR ACCESS

- A. Location as indicated on Drawings.

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22	AND CONTROLS	- 1
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-
- 1.5 **PROGRESS CLEANING**
- A. Maintain areas free of waste materials, debris, and rubbish.
 - B. Maintain a clean and orderly site.
 - C. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, before enclosing space.
 - D. Sweep and vacuum materials, debris, and rubbish from surface and dispose of this waste as required to maintain clean site.
- 1.6 **TRAFFIC REGULATION**
- A. 1. Drawings indicate haul routes designated by Owner.
 - 2. Obtain jurisdiction for use of haul routes.
 - 3. Control construction traffic to designated haul routes.
- 1.7 **SECURITY**
- A. Security
 - 1. Protect Work from theft, vandalism, and unauthorized entry.
 - 2. Initiate program at Project mobilization.
 - B. Entry
 - 1. Maintain program throughout construction period.
 - 2. Control entry by persons and vehicles into Project site and existing facilities.
 - 3. Allow entrance only to authorized persons with proper identification.
- 1.8 **WATER CONTROL**
- A. Maintain log of workers and visitors and make available to Owner on request.
 - B. Grade site to drain.
 - C. Maintain excavations free of water.
- 1.9 **DUST CONTROL**
- A. Provide, operate, and maintain pumping equipment.
 - B. Execute Work to minimize raising dust from construction operations.
 - C. Provide positive means to prevent airborne dust from dispersing into atmosphere.

PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

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22	AND CONTROLS	- 2
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**SECTION 01 60 00 - PRODUCT
REQUIREMENTS**

**PART 1 -
GENERAL**

- 1.1 **SUMMARY**
- A. Section Includes:
 - 1. Products.
 - 2. Product delivery requirements.
 - 3. Product storage and handling requirements.
 - B. Related Sections:
 - 1. Division 01 Specification Sections apply to Work of this Section.
- 1.2 **PRODUCTS**
- A. At minimum, comply with specified requirements and reference standards.
 - B. Specified products define standard of quality, type, function, dimension, appearance, and performance required.
 - C. Furnish products of qualified manufacturers suitable for intended use. Furnish products of manufacturer unless specified otherwise.
- 1.3 **PRODUCT DELIVERY REQUIREMENTS**
- A. Transport and handle products sufficient to meet project requirements.
 - B. Promptly inspect shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.
 - C. Own and use equipment and personnel to handle products. Prevent product damage, loss, or theft.
- 1.4 **PRODUCT STORAGE AND HANDLING REQUIREMENTS**
- A. Store and protect products per manufacturer instructions.
 - B. Store products with seals and labels intact and legible.
 - C. Store sensitive products in weathertight, climate-controlled enclosures in an environment suitable to protect products.
 - D. Store fabricated products, place products on sloped supports above ground.
 - E. Cover products subject to deterioration with impervious sheet covering and provide ventilation to prevent condensation and degradation of products.
 - F. Prevent damage to and personnel to store products.
 - G. Prevent soiling, disfigurement, or damage.
 - H. Arrange product storage to permit access for inspection. Periodically inspect to verify products are undamaged and maintained in acceptable condition.

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PART 2 - PRODUCTS
(Not Used)

PART 3 - EXECUTION
(Not Used)

END OF
SECTION

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22	REQUIREMENTS	- 2
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**SECTION 01 70 00 - EXECUTION AND
CLOSEOUT REQUIREMENTS**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. ~~Section~~ **1. Section**
Include closeout procedures.
3. Project record documents.
4. Spare parts and
5. maintenance products.
6. Examination.
7. Preparation.
8. ~~Protection~~ **Protection** installed
9. construction.
B. ~~Related Requirements:~~ **Related Requirements:**
1. Other Division 01 Specification Sections
apply to Work of this Section.

1.2 SURVEYING

- A. Employ land surveyor registered in State of Texas and
B. acceptable to Engineer.
Locate and protect survey control and reference points.
C. Promptly notify for surveyors of
D. ~~discrepancies between~~ **discrepancies between** surveys, and rights of way. Confirm
E. Drawing dimensions and elevations.
F. ~~Submittals and levels~~ **Submittals and levels** Site drawings recognized by land surveyor
G. ~~Work as Work progresses.~~ **Work as Work progresses.** Provide field engineering services. Establish elevations,
H. ~~Protect survey control points before starting Site Work.~~ **Protect survey control points before starting Site Work.** engineering survey and locations of
I. ~~Promptly permit destruction of~~ **Promptly permit destruction of** permanent reference points
J. ~~Replace if changed survey control points based on original~~ **Replace if changed survey control points based on original** survey control. Make no changes
without prior written notice to Engineer.

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22	REQUIREMENTS	- 1
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1.3 CLOSEOUT PROCEDURES

- A. Prerequisites to Substantial Completion. Complete following items before requesting Certificate of Substantial Completion:
 1. Obtain a copy of the Project Manual record
 2. Obtain a copy of the Project Manual record
 3. Obtain a copy of the Project Manual record
 4. Obtain a copy of the Project Manual record
 5. Obtain a copy of the Project Manual record
 6. Obtain a copy of the Project Manual record
- B. Substantial Completion
 1. When Contractor has completed Work and removed temporary facilities and services from Project, Contractor shall submit a written request for Substantial Completion to Engineer and Owner.
 2. Upon receipt of this request, Engineer and Owner will promptly inspect the Work and determine if the Work is substantially complete.
 3. If the Work is not substantially complete, Engineer and Owner will promptly notify Contractor of the deficiencies and the Contractor shall promptly remedy the deficiencies in the Work and send a second written request for Substantial Completion to Engineer and Owner.
 4. When Engineer and Owner finds the Work is substantially complete, they will issue a Certificate of Substantial Completion on EJCDC C-625 - Certificate of Substantial Completion, accompanied by:
 - a. Contractor's list of items to complete or correct as verified and amended by Engineer and Owner (final punch list).
 - b. Substantial Completion Certificate of Substantial Completion to Owner and Contractor.
- C. Prerequisites to Final Completion. Complete following items before requesting final acceptance and final payment:
 1. Work was examined for compliance with Contract Documents.
 2. Work was completed per Contract Documents.
 3. Work is complete and ready for final inspection and closeout.

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INSPECTION AND CLOSEOUT REQUIREMENTS

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- 2

2. Submit
 - a. Final punch list indicating all items are complete or correct
 - b. Final punch list request with final releases and supporting documentation not previously submitted and accepted. Include
 - c. Specified warranty for products and completion operations, when required
 - d. Accounting statement for final documents.
 - e. Change Order Affidavit
 - f. Payment of Debts and Claims on Contractor form.
 - g. Contractor Affidavit of Release of Liens on Project
3. Perform final training for Contractor-soiled areas as per Section 1.4
- D. Final Written Inspection: receipt of request for final inspection, Engineer and Owner
 2. will inspect to determine if Work or designated portion is complete and Owner will promptly notify Contractor and Owner considering work incomplete or defective shall be noted. Work deficiencies and send second written request to
 - c. Engineer and Owner that Work is complete.
 - d. Redo and Inspect Deficient Work: Repeated until
 - e. Work passes inspection.

1.4 PROJECT RECORD DOCUMENTS

- A. Maintain onsite, one set of these Record Documents and record drawings revisions to Work:
 2. Specifications
 3. Orders
 4. Addenda
 5. Contract.
- B. Ensure manufacturer's completion of assembly enabling future installation and adjusting.
- C. Store record documents separate from documents used for construction.
- E. Record information concurrent with construction progress, not less than weekly, product specifications and number, mark and record, at each product Section description in actual record drawings including mark each item to record changes and any modifications such as Addenda, supplementary instructions, change
 2. directives, field orders, minor changes in Work, and
 3. change orders.
- F. Include locations of concealed elements of Work.
 4. Identify depths, buried utility lines and provide dimensions showing distances from permanent facility components parallel to utilities.
 5. Identify and locate existing buried or concealed items encountered during Project.

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6. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 7. Measured locations of internal utilities and appurtenances detailed in construction, referenced on separate documents attached to Work with claim for final Application for Payment.
 8. Submit PDF electronic files of marked-up documents to Engineer with claim for Final Application for Payment.
- 1.5 SPARE PARTS AND MAINTENANCE PRODUCTS
- A. Furnish spare parts, maintenance, and extra products in quantities specified in individual Specifications.
 - B. Deliver to place in location as directed by Owner. Obtain receipt before final payment.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

- A. Verify existing Site conditions and substrate surfaces are acceptable for subsequent Work.
 - B. Beginning new Work means acceptance of existing conditions.
 - C. Verify existing substrate can structurally support or attach new Work applied.
- 3.2 PREPARATION
- A. Clean substrate surfaces before applying next material or substance and in contact for
 - B. Seal cracks or openings of substrate before applying next material or substance.
 - C. Apply manufacturer-required or -recommended substrate primer, sealer, or conditioner
- 3.3 EXHIBIT
- A. Before applying new material or substance in contact or bond.
 - B. Comply with manufacturer installation instructions, determining each of manufacturer installation instructions at Project Site during installation
 - C. If manufacturer installation instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
- Verify field measurements are as indicated on approved Shop Drawings or as instructed by manufacturer.

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- D. Secure products in place with positive anchorage devices designed and sized to withstand stresses without physical distortion, and disfigurement tolerances, or if not specified,
 2. industry-recognized tolerances.
 3. Physically separate products in place, provide electrical insulation, or provide protective coatings to prevent galvanic action or corrosion between dissimilar metals and building movement.
- E. Allow for expansion and contraction of materials.
- F. Climate Seals joints and provide secure fasteners and unit of Work under conditions to ensure best performance.
 2. Coordinate enclosure of Work with required mounting and testing.
 - a. Mounting: Mounting of Work for those purposes. Refer to applicable standards and mounting heights for particular application and make a final decision.
- H. Adjust components and equipment to ensure smooth and unimpeded operation.
- I. Clean and perform maintenance on installed Work as frequently as necessary through
 - 3.4 PROTECTING CONSTRUCTION. Lubricate operable components as recommended by manufacturer.
 - A. Protect installed Work and provide special protection where specified.
 - B. Provide temporary and removable protection for installed products prior to activities at walls, projections, jambs, sills and soffits or openings.
 - C. Use durable sheet materials to protect finished floors, stairs, and other surfaces from traffic on waterproofed or roofed surfaces. Warn area for movement of heavy objects.
 - D. Path providing or no roofing material
 - E. Path providing or no roofing material
 - F. Path providing or no roofing material
- 3.5 FINAL CLEANING
 - A. Clean site. Sweep paved areas and rake landscaped surfaces clean.

END OF
SECTION

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**SECTION 03 20 00 - CONCRETE
REINFORCING**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. Section Includes:
1. Reinforcing bars.
2. Welded wire fabric.
3. Reinforcement fabric.
B. Related Sections:
1. Reinforcement fabric.
2. Section 03 20 00 - Cast-in-Place Concrete" for cast-in-place or in-situ concrete for structural building frame, slabs on grade, and other concrete components associated with building.

**1.2 UNIT PRICE MEASUREMENT
AND PAYMENT**

- A. No separate payment will be made for materials or labor. Item should be considered subsidiary to most appropriate bid item.

**1.3 REFERENCE
STANDARDS**

- A. American Concrete Institute:
1. ACI 301 - Specifications for Structural Concrete.
2. ACI 318 - Building Code Requirements for Structural Concrete.
3. ACI 530/530.1 - Building Code Requirements and Specifications for Masonry.
B. American Welding Society:
1. AWS D1.4 - Structural Welding Code - Reinforcing Steel.
C. ASTM International:
1. Standard Specification for Welded Deformed Steel Bar Mats for Concrete Reinforcement.
2. ASTM A615 - Standard Specification for Deformed and Plain Carbon-Steel Bars for Concrete Reinforcement.
3. ASTM A704 - Standard Specification for Welded Steel Plain Bar or Rod Mats for Concrete Reinforcement.
4. ASTM A706 - Standard Specification for Deformed and Plain Low-Alloy Steel Bars for Concrete Reinforcement.
5. ASTM A751 - Standard Specification for Epoxy-Coated Reinforcing Bars.
6. ASTM A884 - Standard Specification for Zinc-Coated Reinforcing Bars.
7. ASTM A954 - Standard Specification for Epoxy-Coated Reinforcing Bars.
8. ASTM A996 - Standard Specification for Rail-Steel and Axle-Steel Deformed Bars for Concrete Reinforcement.

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CONCRETE
REINFORCING

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10. ASTM A1064 - Standard Specification for Carbon-Steel Wire and Welded Wire
- D. Conforming Plain and Deformed, for Concrete.
- Steel Institute MSP - Manual of
2. Standard Practice.
- CRSI 10PLACE - Placing
- 1.4 SUBMITTALS
- ALS
- A. Refer to Section 01 33 00 "Submittal Procedures" for requirements for submittals.
- B. Shop drawings, sizes, spacings, locations, splice locations, and quantities of reinforcing
2. Indicate bending and
3. cutting schedules.
- C. Manufacturer's Certificate and Certify that products meet or
- D. exceed specified requirements.
- Submit certified copies of mill test report of reinforcement
- 1.5 DELIVERY, STORAGE, AND HANDLING
- A. Refer to Section 01 60 00 "Product Requirements" for requirements for transporting,
- B. handling, storing, and protecting products.
- C. Inspection: Accept materials on Site in manufacturer's
- D. original packaging and inspect for
- Proctor materials from moisture by storing in clean,
- dry location remote from
2. Possible contamination areas according to manufacturer instructions.
- 1.6 EXISTING CONDITIONS
- A. Field
- Measurements: field measurements prior
2. to fabrication.
- Indicate field measurements on
- Shop Drawings.

PART 2 - PRODUCTS

- 2.1 REINFORCEMENT
- A. Reinforcement comply with
- Steel. ASTM A615.
3. Yield Strength: 60
4. Finish:
- Galvanized Plain.
- 2.2 ACCESSORY MATERIALS
- A. Tie Wire:
1. Minimum 16 gauge, annealed type.

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**PART 3 -
EXECUTION**
3.1 INSTALLATION

- A. Place, support, and secure reinforcement
- B. against displacement.
Do not deviate from required position
beyond specified tolerance.

3.2 FIELD QUALITY CONTROL

- A. Materials must be made available for inspection by
Engineer prior to installation.

END OF SECTION

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22	REINFORCING	- 3
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SECTION 03 30 00 - CAST-IN-
PLACE CONCRETE

PART 1 -
GENERAL

1.1 SUMMARY

- A. Provide all materials and labor necessary to complete all concrete, plain and reinforced, as indicated on Drawings or as specified in these specifications and concrete to provide concrete the project work, without limiting the generality thereof, including of fence and gate posts.
- B. Relating of concrete as specified herein or as Requirements. Provisions Sections apply to Work of this
2. Section.
 3. Section 03 20 00 "Concrete Reinforcing" for
 4. Section 31 23 23 for reinforcing steel and
 - Section 31 23 23

1.2 DEFINITIONS

- A. Cementitious Materials: The materials that are subject to such plain Portland cement or in combination with one or more of the following:
- B. blended hydraulic cement, fly ash, slag cement, other pozzolans, and silica fume.

1.3 UNIT OF MEASUREMENT

- A. Refer to Section 01 20 00 "Price and Payment Procedures" for Contract Sum/Price
- B. modification procedures.
- C. Basis of Measurement Strip:
- a. By linear foot.
 2. Basis of Payment: Includes concrete, placement accessories, consolidating, leveling, troweling, and curing.

1.4 REFERENCE STANDARDS

- A. American Concrete
1. ACI 301 - Specifications for Structural
 2. Concrete.
 3. ACI 305R - Guide to Hot Weather
 4. Concreting.
 5. ACI 305.F - Specification for Hot Weather
 6. Concreting.
- B. ASTM C 306.F - Standard Specification for
1. ASTM C 306.F - Standard Specification for
 2. ASTM C 306.F - Standard Specification for
 3. ASTM C 306.F - Standard Specification for
 4. ASTM C 306.F - Standard Specification for
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 67. ASTM C 306.F - Standard Specification for
 68. ASTM C 306.F - Standard Specification for
 69. ASTM C 306.F - Standard Specification for
 70. ASTM C 306.F - Standard Specification for
 71. ASTM C 306.F - Standard Specification for
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 94. ASTM C 306.F - Standard Specification for
 95. ASTM C 306.F - Standard Specification for
 96. ASTM C 306.F - Standard Specification for
 97. ASTM C 306.F - Standard Specification for
 98. ASTM C 306.F - Standard Specification for
 99. ASTM C 306.F - Standard Specification for
 100. ASTM C 306.F - Standard Specification for

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	3.	ASTM C 39 - Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens.	
	4.	ASTM C 94 - Standard Specification for Ready-Mixed Concrete.	
	5.	ASTM C 143 - Standard Test Method for Slump of Hydraulic-Cement Concrete.	
	6.	ASTM C 150 - Standard Specification for Portland Cement.	
	7.	ASTM C 231 - Standard Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method.	
	8.	ASTM C 231 - Standard Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method.	
	9.	ASTM C 260 - Standard Specification for Air-Liquid Membrane-Forming Admixtures for Concrete.	
	10.	ASTM C 494 - Standard Specification for Chemical Admixtures for Concrete.	
	11.	ASTM C 618 - Standard Specification for Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use in Concrete.	
	12.	ASTM C 685 - Standard Specification for Concrete Made by Volumetric Batching and Continuous Mixing.	
	13.	ASTM C 1064 - Standard Test Method for Temperature of Freshly Mixed Hydraulic-Cement Concrete.	
	14.	ASTM C 1074 - Standard Practice for Estimating Concrete Strength by the Maturity Method.	
	15.	ASTM C 1077 - Standard Practice for Agencies Testing Concrete and Concrete Aggregates for Use in Construction and Criteria for Testing Agency Evaluation.	
1.5	COORDINATION	ASTM C 1602 - Standard Specification for Mixing Water Used in the Production of Concrete.	
	A.	Water Used in the Production of Concrete.	
1.6	SUBMITALS	ASTM C 1602 - Standard Specification for Mixing Water Used in the Production of Concrete.	
	1.	Flow of Self-Consolidating Concrete.	
	2.	ASTM E 329 - Standard Specification for Product Data Submit Data on the Following:	
	3.	Hydraulic cement.	
	4.	Blended hydraulic cement.	
	5.	Performance-based hydraulic cement.	
	6.	Aggregates.	
	7.	Limitations of use, such as restrictions on cementitious materials, supplementary cementitious materials, air entrainment, aggregates, temperature at time of concrete placement, relative humidity at time of concrete placement, curing conditions, and use of other admixtures.	
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9. Curing materials:
 - a. Include documentation from color pigment manufacturer, methods that curing are recommended by color pigment manufacturer.
 - B. Design Mixtures. For each concrete mixture, include the following:
 2. Minimum 28-day compressive strength.
 3. Durability exposure class.
 4. Maximum water-cementitious materials ratio.
 6. Calculated equilibrium unit weight for lightweight concrete.
 7. Actual maximum aggregate size.
 8. Indicate amounts of mixing water to be withheld for later addition at Project Site, if permitted.
 10. Submit separate mix designs if admixtures are required for the following:
 - b. concrete Work.
 - c. Air-entrained concrete
- 1.7 SUSTAINABLE DESIGN
SUBMITTALS
- A. Refer to Section 01 81 13 "Sustainable Design Requirements" for requirements for sustainable design submittals.
 - B. Manufacturer's Certifications. Products meet or exceed specified sustainable design requirements:
 - b. cement.
 - c. Fly ash.
 - d. Blast furnace slag.
 - e. Aggregates.
- 1.8 CLOSEOUT
SUBMITTALS
- A. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for submittals.
 - B. Project Record Documents: Record actual locations of embedded utilities and components concealed from view in finished construction.
- 1.9 QUALITY ASSURANCE
- A. Ready-Mixed Concrete Manufacturer Qualifications: A firm experienced in manufacturing ready-mixed concrete products that complies with ASTM requirements in accordance with NRMCA's production facilities and Ready Mix Concrete Production Facilities."

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- B. Laboratory Testing Agency Qualifications: A testing agency qualified in accordance with ASTM C 1077 and ASTM E329 for testing indicated and personnel performing laboratory tests are required to obtain a Quality Control Technical Manager, Concrete Strength Testing Technician and Concrete Laboratory Testing Technician, Grade I.
- Testing agency laboratory supervisors are required to be ACI-certified Concrete Laboratory Testing Technician, Grade II.
- 1.10 AMBIENT AND COLD WEATHER PLACEMENT
- A. Refer to Section 01 50 00 "Temporary Facilities and Controls" for requirements for
- B. ambient condition control facilities for product storage and installation. concrete Work from physical damage or Cold Weather Placements. Comply with ACI 301, ACI 306, freezing saturation, or low temperatures.
- When average high and low temperature is expected to fall below 40 degrees F for
3. Do not use frozen materials maintain delivered concrete mixture temperature within the
4. temperature range required on ACI 301. surfaces less than 60 degrees F, other than salt, or other materials containing anti-freeze agents or
5. Do not use materials unless otherwise specified and approved by the Engineer.
- C. Hot Weather Placements Comply with ACI 301 and ACI 306 and maintain temperature at time of discharge not to exceed 95 degrees F.
- Fog-spray forms, steel reinforcement, and subgrade just before placing concrete.
- Keep subgrade uniformly moist without standing water, soft spots, or dry areas.

PART 2 - PRODUCTS

- 2.1 CONCRETE, GENERAL
- A. ACI Publications; Comply with ACI 301 unless modified by requirements in the Contract Documents.
- 2.2 CONCRETE MATERIALS
- A. Concrete Source
- Obtain all concrete mixtures from a single ready-mixed concrete manufacturer for
2. Obtain each type or class of cementitious material of the same brand from the same
3. manufacturer and from single source.
4. Obtain each type of admixture from single source from single manufacturer.
- B. Concrete Components:
- a. Comply with ASTM C 150, Type I/II.
2. Fly Ash or P. Pozzolan: Comply with ASTM C 618, Class C or F.

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3. Normal Weight Aggregate with ASTM C 33 coarse aggregate or better, graded. Provide
 a. Fine Aggregate: Maximum Size: 1-1/2 inches or
 c. 1-inch nominal.
 Fine Aggregate: Free of materials with
 4. Chemical Admixtures: Certified by manufacturer to be compatible with other admixtures that do not contribute water-soluble chloride ions exceeding those permitted in hardened concrete. Do not use
 a. Water-Reducing Admixture: ASTM C 494, Type A.
 b. Retarding Admixture: ASTM C 494, Type B.
 c. Water-Reducing and -Retarding Admixture: ASTM C 494, Type D.
 d. High-Range, Water-Reducing Admixture: ASTM C 494, Type F.
 e. Plasticizer and Water-Reducing and -Retarding Admixture with MSCTM 494, Type G.
 f. Type G Plasticizing and Retarding Admixture
 g. GCP Applied Technologies Inc.

2.3 CURING MATERIALS

- A. Evaporation Retarder: Waterborne, monomolecular film forming, manufactured for application to fresh concrete.

2.4 CONCRETE MIXTURES, GENERAL

- A. Prepare design mixtures for each type and strength of concrete, proportioned on the basis of laboratory test data or field data, in accordance with proposed mixture designs, and use the following proportions:
 B. Cementitious Materials: minimum percentage, by weight, of cementitious materials other than
 1. Portland Cement or Other Pozzolans: 25 percent by mass.
 2. Slag Cement: 50 percent by mass.
 3. Silica Fume: 10 percent by mass.
 4. Total of Fly Ash or Other Pozzolans, Slag Cement, and Silica Fume: 50 percent by mass, with fly ash or pozzolans not exceeding 25 percent by mass and Other Pozzolans and Silica Fume: not exceeding 10 percent by mass.
 5. Total of Fly Ash or Other Pozzolans, Slag Cement, and Silica Fume: 50 percent by mass, with fly ash or pozzolans not exceeding 25 percent by mass, and Other Pozzolans and Silica Fume: not exceeding 10 percent by mass.
 C. Admixtures: Use as specified with the following restrictions:
 1. water-reducing plasticizing admixture in concrete, as required, for placement and workability.
 2. Use water-reducing and -retarding admixture when required by high temperatures in concrete or high humidity, or other adverse placement conditions.

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4. Use corrosion-inhibiting admixture in concrete mixtures where indicated.
 5. Cold-Seasonability reducing admixture in accordance with manufacturer's written instructions and to result in hardened concrete color consistent with approved mockup.
- 2.5 CONCRETE MIXTURES
- A. Select proportions for concrete according to ACI 318 without trial mixtures or field test data if approved by Engineer.
 - B. Performance and Design Criteria:
 2. psi at 7 days.
 3. Compressive Strength: 4,000
 - C. Ready-Mix Concrete: Mix and deliver concrete according to ASTM C 150.
- 2.6 CONCRETE MIXING
- A. Ready-Mix Concrete: Comply with requirements of ASTM C 94 and do not allow additional water to be added to batch for material with insufficient slump. Addition of water to the batch will not be permitted. During setting of concrete, a shorter mixing time than specified in ASTM C 94 may be required. When air temperature is between 85 degrees F and 90 degrees F, reduce mixing and delivery time from 90 minutes to 75 minutes, and when air temperature is above 90 degrees F, reduce mixing and delivery time to 60 minutes. During cold weather, concrete shall not be mixed while the temperature is below 40 degrees F without the permission of the Construction Manager. If permission is granted for mixing under such conditions, aggregates or water, or both, shall be heated and the concrete shall be placed at a temperature between 50 degrees F and 60 degrees F.
 - B. Conditions: placing concrete, verify that installation of concrete forms, accessories, and reinforcement, and embedded items is complete and that required inspections satisfactory.
 2. Verify that equipment has been corrected over reinforcement.
 - C. Verify that anchors, seats, plates, reinforcement, and other items to be cast into concrete are accurately placed, positioned securely, and will not interfere with placing concrete.
- PART 3 - EXECUTION**
- 3.1 EXAMINATION

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3.2 PREPARATION

- A. Previously Placed Concrete:
 1. Prepare previously placed concrete by cleaning with steel brush and applying
 2. Remove any old concrete, coatings, and
- B. In locations where new concrete is doweled to existing work, drill holes in existing
- C. Remove, clean and do not use old concrete, and
- D. concrete substrates.
- E. Remove water from areas receiving concrete before concrete is placed.
- F. Provide reasonable auxiliary services to accommodate field testing and inspections necessary to facilitate tests acceptable to testing agency, including the following:
 1. Secure space for storage, initial curing, and field curing of test samples, including
 2. Security of water for continuous curing and power testing and inspection during curing
 3. Project site test samples.

3.3 INSTALLATION

- A. Placing Concrete:
 1. Place concrete according
 2. to ACI Testing Engineer, minimum 24 hours prior to
 3. commencement of operations.
 4. Ensure that reinforcement, is not disturbed during
 5. concrete placement.
 6. Deposit concrete at final position, preventing
 7. segregation of concrete.
 8. Make concrete records continuous operation for, including
 9. date, location, and determined by
 10. field inspection and test samples taken between
 11. predetermined expansion, control, and
 12. construction joints.
- B. Concrete Curing:
 1. Broom Finish: Apply a broom finish to exterior concrete platforms, steps, ramps, and located as indicated on Drawings.
 2. roughen trafficked surface by
 3. brooming with fiber-bristle broom perpendicular to
 4. and in traffic route.
- C. Protection of concrete:
 1. Protect concrete by replace final finish with Engineer from
 2. mechanical finishing Curing Compound: Apply
 3. uniformly in continuous operation
 4. by power sprayer or roller at accordance with fall within
 5. manufacturer's written instructions.
 6. Apply in continuity of coating and repair
 7. damage during curing period.

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3.4 FIELD QUALITY

CONTROL

- A. Refer to Section 01 40 00 "Quality Requirements" for requirements for inspecting and testing.
- B. Refer to Section 01 70 00 "Execution and Closeout Requirements" for requirements for laboratory testing, curing, and balancing.
- C. Provide unrestricted access to Work and cooperate with appointed testing firm.
- D. Submit proposed Place design to testing firm for proper prior to start of concrete work.
- E. Sampling and curing inspection: Inspect for specified curing procedures.
- F. Sampling and curing procedures: Comply with ASTM C 172.
- G. Cylinders: Molding and Curing Procedures:
 1. Test one cylinder per sample concrete and make one set of field cured cylinders at the field.
 2. Test Acceptance: According to ACI 308.
 3. Test one cylinder at seven days.
 4. Test one cylinder at 28 days.
 5. Retain one cylinder for testing when requested by Engineer.
 6. Dispose of remaining cylinders if testing is not required.
- H. Cylinders: Compressing:
 1. Test Method: Comply with ASTM C 39.
 2. Test Acceptance: According to ACI 308.
 3. Test one cylinder at seven days.
 4. Test one cylinder at 28 days.
 5. Retain one cylinder for testing when requested by Engineer.
 6. Dispose of remaining cylinders if testing is not required.

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SECTION 31 10 00 - SITE
CLEARING

PART 1 -
GENERAL

1.1

SUMMARY

- 1. Protecting existing vegetation to remain.
- 2. Removing existing vegetation.
- 3. Clearing and grubbing.
- 4. Removing and stockpiling low-grade soil improvements.
- 5. Relocating and stockpiling Section 01 50 00 "Temporary Facilities and Controls" for temporary erosion- and sedimentation-control measures.

1.2 DEFINITIONS

- A. Subsoil: Soil beneath the level of subgrade; soil beneath the topsoil layers profile, naturally by less than 1 percent organic matter and few soil
- B. Surface soil: Soil that is present at the top layer of the existing soil profile. In undisturbed areas, surface soil is typically called "topsoil," but in disturbed areas such as a shrub profile consisting of existing in-place surface soil; the zone where plant roots grow. Its appearance is generally friable, pervious, and black or a darker shade of brown, gray, or red than underlying subsoil; reasonably free of subsoil, clay lumps, gravel, and other objects larger than 2 inches in diameter; and free of weeds, roots, toxic materials, vegetation, shrubs, groundcovers, grass, and other plants.
- C. Plant Protection Zone: Area surrounding individual trees, groups of trees, shrubs, or other vegetation to be protected during construction and indicated on drawings.
- D. Stockpiling materials indicated to be stockpiled or otherwise maintained on the contractor's property and shall be removed from project during construction.

1.3 MATERIALS

- A. Stockpiling materials indicated to be stockpiled or otherwise maintained on the contractor's property and shall be removed from project during construction.

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- 1.4 INFORMATIONAL SUBMITTALS
- A. Existing Conditions: Documentation of existing trees and plantings, adjoining construction, and site improvements that establishes precise conditions. photographs or video recordings as damage caused by site clearing. Include plans and notations to indicate specific voids and damage conditions accurately. showing locations of proposed plantings slated to remain.

B. Record of other subsurface structural, electrical, and mechanical conditions.

C. Burning: Documentation of compliance with burning requirements and permitting of authorities having jurisdiction. Identify location(s) and conditions under which burning will be performed.

D. Interference with adjoining roads, streets, walks, and other adjacent occupied or used facilities.

E. without permission from Owner and authorities having jurisdiction.

F. Impairment to adjoining property: Authority for performing site clearing indicated on property. Owner's approval of proposed clearing indicated by Owner's signature on the permit.

G. Owner's location on the permit. Texas 811 for area where Project is located before site clearing.

H. Tree- and Plant-Protection Zones: Protect according to requirements in Section 01 56 39 "Temporary Tree and Plant Protection."

I. Soil Stripping, Handling, and Stockpiling: Perform only when the soil is dry or slightly moist.
- PART 2 PRODUCTS
- 2.1 MATERIALS
- A. Satisfactory Soil Material: Requirements for satisfactory soil material are specified in Section 01 20 00 "Earth Moving."

B. Satisfactory soil material is not available on-site.

PART 3 - EXECUTION

- 3.1 PREPARATION and maintain benchmarks and survey control points from disturbance during construction.
- B. Verify that trees, shrubs, and other vegetation to remain or to be relocated have been
- C. flagged and that protection zones have been identified and restored damaged improvements to their original requirements in Section 01 56 39 Temporary Tree and Plant Protection.
- 3.2 TEMPORARY EROSION AND SEDIMENTATION CONTROL
- A. Protect construction erosion- and sedimentation-control measures to prevent soil erosion and discharge of soil-bearing water runoff or airborne dust to adjacent properties and
- B. Work that allows for water erosion and sedimentation control drawings and requirements of
- C. authorities having jurisdiction protection zones. Inspect, maintain, and repair erosion- and
- D. sedimentation-control measures during construction until permanent vegetation has been established.
- 3.3 TREE AND PLANT PROTECTION and sedimentation controls, and restore and stabilize areas disturbed
- A. Protect trees and plants remaining on-site according to requirements in Section 01 56 39
- B. "Temporary Tree and Plant Protection." Repair or replace trees, shrubs, and other vegetation indicated to remain or be relocated that are damaged by construction operations according to requirements in Section 01 56 39
- 3.4 EXISTING UTILITIES
- A. Locate, identify, and disconnect utilities indicated
- B. in accompanying plans. Do not interrupt utilities serving facilities occupied by Owner or others, unless permitted under the following conditions and then not less than two days in advance of proposed utility interruptions
- C. Arrange to provide temporary utility services according to requirements with utility interruptions without
- 3.5 SITE IMPROVEMENT
- A. Remove existing fence, posts, foundations, and fill post holes with material removed from construction of new fence.

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3.6 DISPOSAL OF SURPLUS AND
WASTE MATERIALS

- A. Remove surplus soil material, unsuitable topsoil, obstructions, demolished materials, and waste materials including trash and debris, and legally dispose of them off Owner's property.

END OF
SECTION

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**SECTION 31 23 16 -
EXCAVATION**

**PART 1 -
GENERAL**

1.1 SUMMARY

- A. Section Includes:
1. Soil densification.
2. Excavating for slabs and
B. Related Items:
1. Requirements 01 Specification Sections apply to Work of this Section.
2. Section 31 23 23 "Fill" for backfilling at building perimeter and Site structures, and
3. Section 31 23 23 "Pavement" for pavement, and landscaped

1.2 UNIT PRICE MEASUREMENT AND PAYMENT

- A. No separate payment will be made for materials or labor. Item should be considered subsidiary to most appropriate bid item.

1.3 REFERENCE STANDARDS

- A. Local utility standards when working within 24 inches of utility lines.

**PART 2 - PRODUCTS
(Not Used)**

**PART 3 -
EXECUTION**

- A. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for installation preparation.
B. Existing Utilities:
1. Notify Engineer 811 to locate and
2. remove existing utilities.
Protect from damage utilities indicated to remain.

3.2 EXCAVATION

- A. Underpin adjacent structures which may be damaged by excavation work.
B. Damage to adjacent building foundations, slabs on grade.
C. Notify Engineer of unexpected subsurface conditions.
D. Remove excavated material from Site.

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- 3.3 FIELD QUALITY CONTROL
- A. Refer to Section 01 40 00 "Quality Requirements" for requirements for inspecting and
 - B. testing.
 - C. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for testing, adjusting, and balancing.
- 3.4 PROME Engineer before installing subsequent Work.
- A. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for
 - B. ~~brushed~~ ^{brushed} ~~work~~ ^{work} placement or loose soil from falling into excavation, and maintain soil stability.
 - C. Protect bottom of excavations and soil adjacent to and beneath foundation from freezing.
 - D. Protect structures, utilities, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards that may be created by earth operations.
- SECTION

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SECTION 31 23
23 - FILL

PART 1 -
GENERAL

1.1 SUMMA
RY

- A. Section
1. Backfilling site structures to
2. subgrade elevations.
- B. Related under slabs on grade.
Requirements) Specification Sections apply to
2. Section 01 30 00 "Cast-in-Place Concrete" for concrete
3. materials.
Section 31 23 16 "Excavation" for backfilling of
building foundations and utilities

1.2 UNIT PRICE AND PAYMENT

- A. No separate payment will be made for materials or
labor. Item should be considered
subsidiary to most appropriate bid item.

1.3 REFERENCE
STANDARDS

- A. ASTM International:
 - 1. ASTM D698 - Standard Test Methods for Laboratory
Compaction Characteristics of
Soil Using Standard Effort (12,400 ft-lbf/ft³).

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Subsoil Fill: Obtained from
on-site excavation.

PART 3 -
EXECUTION

3.1 PREPARAT
ION

- A. Refer to Section 01 70 00 "Execution and Closeout
Requirements" for requirements for
B. installation preparation.
Compact subgrade to specified density requirements for
Subsequent backfill materials.

3.2 BACKFILL
ING

- A. Backfill areas to contours
- B. Systematically backfill to allow maximum time for natural
C. settlement.
Do not backfill over porous, wet, frozen, or spongy
D. Subgrade surfaces, and do not backfill
layer from compacts.

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- E. Make gradual grade changes and blend
 - F. slope into level areas.
 - G. Remove surplus backfill materials from Site.
- 3.3 FIELD QUALITY CONTROL
- A. Refer to Section 01 40 00 "Quality Requirements" for requirements for inspecting and testing.
 - B. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for testing and inspection.
 - C. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for testing and inspection.
1. Testing Methods and Procedures: Comply with ASTM D698.
2. In-Place Compaction Testing with
- a. ASTM D6938.
 - b. ASTM D6938.
3. If test indicates that Compaction does not meet specified requirements, remove Work, reshape, recompact, and direct by
- 4. Testing, Frequency, and direct by
 - 5. Engineer.
- Proof-roll compacted fill surfaces
- 3.4 PROTECTION
- A. Refer to Section 01 70.00 "Execution and Closeout Requirements" for requirements for protecting finished Work.
 - B. Reshape and recompact fills subjected to vehicular traffic during construction.
- 3.5 ATTACHMENTS
- A. Fill Under Concrete Compact subsoil to 95 percent of maximum density.

END OF
SECTION

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**SECTION 33 31 13.53 – HIGH-SECURITY
FENCES AND GATES**

**PART 1 -
GENERAL**

1.1 SUMMARY

- Section Includes: Specification covers material requirements and installation of security fences.
2. ~~Install security fences~~ selection of metallic fence systems to delay unwanted access into facilities. Security fence shall conform to applicable standards, sizes and dimensions (to be confirmed by the Division) to Work of this Section.
- B. Related Sections: See Division 05 for details.

1.2 REFERENCED STANDARDS

- A. ASTM A123 - Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products.
- B. ASTM A307 - Specification for Carbon Steel Bolts, Studs, and Nuts - Minimum Property Class 8.
- C. ASTM D155 - Specification for Colors for Polymer-Coated Fabrics.
- D. ASTM F1043 - Specification for Strength and Protective Coatings for Steel Production Fences, Steel, Hot-Dipped Frame-Coated (Galvanized) Welded, As Fabricated.
- E. ASTM F1667 - Specification for Metal, Expanded, Steel.
- F. ASTM F2453 - Standard Specification for Welded Wire Mesh Fence Fabric.

1.3 PERFORMANCE REQUIREMENTS

- A. Delegated-Design Submittal: For fences framework indicated to comply with performance requirements and design criteria, including analysis data signed and sealed by the qualified Professional Engineer responsible for their preparation.
- B. Structural Performance: Fences framework shall withstand the following loads and stresses within limits and under the following conditions:
- C. Members of Security Fences shall follow the following loads and stresses within limits and under the following conditions:

1.4 INFORMATION SUBMITTALS

- A. Qualification Data: For qualified factory-authorized service representative.
- B. Product Certificates: For each type of fence, operator, and gate, from manufacturer.

1.5 SPARE MATERIALS

- A. Provide 10 spare fence panels and 3 percent spare materials for all fence components panels, posts, and hardware for equipment that is damaged during shipping, storage, installation, or after the construction is completed.

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- 1.6 PROJECT CONDITIONS
 - A. Field Measurements: Verify layout information for fences and gates shown on Drawings in relation to property survey and existing structures. Verify dimensions by field measurements.
- 1.7 SCHEDULE OF DELIVERIES TO THE SITE
 - A. Provide 24-hour advance notice of all deliveries to the site so that appropriate arrangements can be made for unloading the materials.
- 1.8 WARRANTY
 - A. Special Warranty: Manufacturer's standard form in which manufacturer agrees to repair or replace security fences and gates that fail in materials or workmanship within specified warranty period are not limited to, the following:
 2. Deflection of fence material beyond design limits.
 3. Deterioration of metals, metal finishes, and other materials beyond normal weathering.
 4. Failure of operation of gate.
 5. Warranty period of 10 years from date of Substantial Completion.

PART 2 - PRODUCTS

- 2.1 GENERAL
 - A. All steel material shall be good commercial quality, galvanized steel.
 - B. All pipes shall be galvanized, one piece without joints.
 - C. Fences and gates shall be essentially free of rust, lumps, globs, or points.
 - D. Miscellaneous materials shall be galvanized then Cochrane Union Bond coated.
- 2.2 SUGGESTED BRANDS
 - A. Cochrane.
- 2.3 DESCRIPTION OF FENCE SYSTEM
 1. Post shall be 12 feet long Cochrane Taper Locking Post.
 2. Post width shall be 3-11/32 inches - tapering to 1-49/64 inches with a depth of 3-1/2 inches.
 3. Post shall include 'Locking Recess Mechanism' to secure panel edge.
 4. Panel material shall be galvanized then Structural Steel.
 5. Panel shall be 10 feet - 10-1/8 inch width and 7 feet in height.
 6. Panel aperture size (centers) shall be 3 inches by 2 inches.
 7. Coated wire diameter will be 9/64 inches.
 8. The panel shall be reinforced with 4 by 1-31/32 deep 'V' formation horizontal recessed bands (security).

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5. Panel shall have 2 by 70-inch flanges along sides (internal fixtures - all fixtures shall be on the inside of fence line).
6. Panel shall have 1 by 90-inch flange along top and 1 by 30-inch flange along bottom (all flanges shall be welded to panel finish with no chipping or anti-scale locking device).
7. Panel shall be affixed to post over 48 line wires using Panel double bolts shall be galvanized then
8. Add 1/2 inch diameter Bond coated
9. Posts 5/16-inch high toughened steel Shark Tooth spike shall be affixed to panels at intervals using
10. Anti-vandal bolts.
11. Fence material shall be galvanized then
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100. Fence material shall be galvanized then

2.4 GATE

- A. Swing Gate Size: 10 feet wide by 7 feet high Single Leaf.
2. Gate Size: 40 feet wide by 7 feet high Double Leaf.
3. All connections and joints shall be welded to form rigid frames or assembled with
4. hinges shall not twist or turn under the action of the gate, shall be so arranged that a
- B. Swing Gate Size: 10 feet wide by 7 feet high Single Leaf.
2. Gate frame fabrication and miscellaneous items shall be similar to Swing Gates.
3. All fittings, brackets, and rear wheel tracks shall be standard manufactured products
4. Gate shall be intended application.

2.5 TEMPORARY FENCE

- A. Fence material, Posts, Rails, Caps, Barbed Wire Security Top: To match or exceed existing
- B. fence.
- Height: To match or exceed existing fence height.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine areas and conditions, with Installer present, for compliance with requirements for
- conditions affecting performance of the
- Work. Do not begin installation before final grading is completed unless otherwise permitted
2. By the Owner's Representative after unsatisfactory conditions have been corrected.

016184	HIGH-SECURITY FENCES	33 31
22	AND GATES	13.53 - 3
11/23		

A.

- [illegible]

016184	HIGH-SECURITY FENCES	33 31
22	AND GATES	13.53 - 4
11/23		

-
- H. Where the ground cannot be satisfactorily excavated to neat lines, forms shall be used to place concrete for footings. Under these conditions the earth and forms coming in contact with the concrete shall be moistened and all ponded water shall be removed from the hole prior to placing concrete. When forms are removed, the footing shall be backfilled with moistened material, and thoroughly tamped. Curing compound to be applied as stated in Section 403.00.
- 3.5 SIGNAGE. Contractor to coordinate with existing signage and install new signage as required by Owner. A. Section 403.00 shall be used for all signage. B. A single layer of high-security fence used for installation shall be disposed of as directed additional signage as required by Owner.
- 3.6 TEMPORARY FENCE
- A. Contractor to erect temporary fence prior to the removal of existing fence to length determined by Contractor and their ability to maintain determined length of fence around Work area. Contractor to move temporary fence to new Work area after completion and acceptance of Work completed in previous workspace. Temporary fence to be secured to either new or existing fence.
- B. Contractor to erect temporary fence to erect temporary fence temporary fence to erect temporary fence. Temporary fence to be secured to either new or existing fence. Any damage to existing fence and/or other weather phenomenon repaired by Contractor at Contractor's expense. Method of securing fence to existing or new fence must be able to withstand occasional heavy winds.
- C. Contractor to erect temporary fence to erect temporary fence. Temporary fence to be secured to either new or existing fence. Any damage to existing fence and/or other weather phenomenon repaired by Contractor at Contractor's expense. Method of securing fence to existing or new fence must be able to withstand occasional heavy winds.

016184	HIGH-SECURITY FENCES	33 31
22	AND GATES	13.53 - 5
11/23		



Midland International
Air & Space Port

**CONSTRUCTION SAFETY AND
PHASING PLAN (CSPP)**

**MIDLAND AIRPARK
NORTH FENCE
REPLACEMENT**

Midland,
Texas

Parkhill
11700 W Wall St,
Suite 100
Midland, TX
79701
432.697.1447

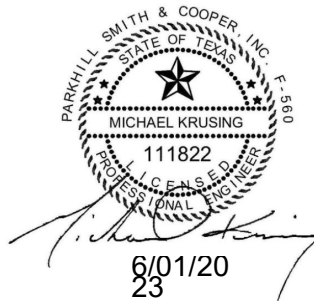
June 1, 2023
Parkhill Project
#01618422



**CONSTRUCTION SAFETY AND
PHASING PLAN (CSPP)**

**MIDLAND AIRPARK
(MDD)**

**MIDLAND,
Texas
NORTH FENCE
REPLACEMENT**



June 1, 2023
Parkhill Project
#01618422

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01618422 MDD North Fence Replacement
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Project Name: North Fence Replacement
Sponsor's Agent: Ms. Justine Ruff, Director of Airports, Midland Airpark (MDD)
 432.697.1447
Consultant/Engineer: Mr. Michael Krusing, PE
 432.697.1447
 806.473.2799
 Mr. Sean Ellis, PE
 PARKHILL
 1700 West Wall Street
 Midland, Texas 79701
Engineer's Project No.: 222.697.1447

1. COORDINATION

A. PROJECT PREBID CONFERENCE

Prebid Conference was held on November 30, 2022. Items discussed included Project scope, phasing, design, schedule, survey, unique Project elements/areas of potential concern, and unique concerns. Prebid Conference will be held for Consulting Engineer and City of Midland to go over Project details and allow contractors to ask Project-specific questions. Prebid conference will be held by the City of Midland and Parkhill in accordance with FAA AC 150/5370-12B. At minimum, required attendees will be Airport Manager, Consulting Engineer, Resident Project Representative (RPR). Prime Contractor progress meetings will be held throughout Project duration, typically at monthly intervals. At minimum, required attendees will be Airport administrative staff, Consulting Engineer, RPR, Prime Contractor and all subcontractors performing work during the current period. Construction phasing and safety will be a standing item at all construction progress meetings. Other ongoing agenda items will include:

- Project Status
- Regulatory Information
- Construction Review
- Change Orders Review
- Environmental Issues
- Quality Assurance (Test Reports)

01618422 | MDD North Fence Replacement

- 1 -

- Record
- Drawings
- Pay Application
- Review

General Engineer will prepare and distribute meeting minutes for all meetings.

B. SCOPE

Removal of existing 6-foot chain-link fence and installation of 8-foot security fencing, and 4-foot wide concrete mow strip.

Any changes in Project Scope will require a revision to the CSPP, which must be approved by MDD.

C. FAA AIR TRAFFIC CONTROL TOWER (ATCT) COORDINATION

MDD does not have an active air traffic control tower; therefore, Contractor shall coordinate all communication with MDD, Parkhill, and/or FAA.

2. PHASI

Refer to Phasing Plans included in Appendix A for limits of each phase.

A. BID PACKAGE (90 CALENDAR DAYS)

Project to be completed in single phase. Construction Phasing Drawings may be reviewed in Appendix A.

B. PROJECT SCHEDULE

Contractor must submit a Project Schedule and Phasing Plan at/before the preconstruction meeting. Any changes made to Project Schedule or Phasing will require a revision to the CSPP, which must be approved by MDD and the FAA.

3. AREAS/OPERATIONS AFFECTED BY CONSTRUCTION

No protected surfaces will be affected by construction on this Project.

4. NAVIGATION AID (NAVAID)

A. PROTECTED WORK AREA

No NAVAIDS are near work area; therefore, no physical impact to any NAVAIDS is anticipated.

5. CONTRACTOR ACCESS

A. GENERAL

MDD to provide Airport visitor/contractor access procedures.

B. AIRPORT OPERATIONS AREA

Airport Operations Area (AOA) is defined as any portion of Airport property normally secured against unauthorized entry. AOA includes all areas specifically reserved for operations of aircraft, aircraft support equipment, and personnel. Generally, AOA is defined by the Airport's outer security fencing and any building forming part of secured perimeter. When necessary to cross

C. FENCE FACTORS

Contractor shall inspect all paved surfaces for holes or objects. Contractor shall inspect and repair pavement surface to meet MDD standards. Contractor shall inspect and repair parking area by MDD contractor. Contractor shall not save equipment or materials at any limits of parking/storage area.

D. RESTORATION OF PLANT SITE

Contractor shall be responsible for any damage or deterioration in areas allowed for Contractor use as well as maintenance of areas and dust control for Project duration. Direct negotiation may be conducted with Airport Manager for areas needed by Contractor. Areas occupied by Contractor forces must be completely restored to original state and fees as identified by Airport Manager. Including but not limited to regrading disturbed areas, complete removal of debris or any other material brought onto site by Contractor, and complete replacement of topsoil, turf, asphalt pavement, concrete slabs, or drives, etc. that is worn, deteriorated, or damaged. Contractor shall clear and remove Contractor and forces occupy the area. All restoration shall be to original condition of existing topsoil. After Project completion and clearing site of materials, equipment, and debris, Contractor shall replace, spread, and grade salvaged topsoil in accordance with MDD standards. Contractor shall be responsible for preparing or restoring plant site haul routes, storage, or office areas. For all projects with on-site concrete or hot-mix asphalt batch plant as well as projects involving pug-mill produced material, a concrete or asphalt-paved material stockpile area is required. All materials to be incorporated into concrete, hot mix, CTB, or other similar material, must be stockpiled on a specially prepared concrete or asphalt pad so stockpile contamination does not occur. Restore stockpile area to pre-Project conditions.

E. VEHICLE

All vehicles (such as supplier vehicles), responsible to Contractor, entering AOA, shall be escorted by an approved Contractor escort vehicle from point of AOA entry to construction site. Escort vehicle shall be responsible for leading supply, delivery, or other vehicles across airport or name airfield to facilitate safe movement of escort and escorted vehicles. Escort vehicle driver shall be familiar with airport security and safety procedures. Escort vehicle shall be equipped with FAA

F. COMMUNICATION RADIO

Contractor must provide a radio for each worker on tower. Project with radio receiver/transmitters for maintaining direct communication with Airport personnel. Contractor will provide minimum two radios, as specified, consisting of Two Icom America Model ICRA5 (or latest equivalent model), with AC charger, belt mount, earpiece, 122.700 MHz frequency for MDD and Airport use. Contractor shall provide a radio, headset, desk charger, multi-charger, and tower construction operations are in the heavy repairable class and active runway, taxiway, or apron, or as directed by MDD. Contractor must provide enough radios to maintain communication in all areas of work.

G. CONTRACTOR'S CSP

Contractor shall submit a Contractor's Safety Plan (CSP) as part of the submittal process before starting construction that must always be followed. MDD reserves the right to have Contractor amend CSP any time if concerns arise.

6. WILDLIFE MANAGEMENT

A. TRASH

Contractor must dispose all trash in a covered trash can or other method, not allowing trash to become a hazard or animal attractant.

B. STANDING WATER

Contractor shall minimize standing water.

C. POORLY MAINTAINED FENCING AND GATES

Contractor shall maintain any fencing or gates in good condition, proper working order, and gap under fence or gate shall not exceed 3 inches.

D. DISRUPTION OF WILDLIFE HABITAT

In event of wildlife habitat, Contractor will notify MDD and Engineer immediately.

7. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT

Contractor shall train and emphasize to construction site employees the need for continuous construction debris checks before and after each construction shift, at a minimum, and monitor nearby active pavements throughout construction shift.

8. HAZARDOUS MATERIALS (HAZMAT) MANAGEMENT

Hazardous materials will be handled and stored per latest revision to FAA Advisory Circular 150/5370-2G - Operational Safety on Airports during Construction. Contractor must be prepared to immediately contain and clean spills resulting from fuel, oil, petroleum products, or hydraulic fluid leaks. Transportation and handling of other hazardous materials on the Airport requires additional special procedures as addressed in latest revisions to FAA Advisory Circular 150/5320-16 - Management of Airport Industrial Waste. All spills must be immediately reported to MDD at 432.560.2200.

9. A. REPRESENTATIVES / POINTS OF CONTACT

Name	MD Position	Phone
Aaron Easton	Airport Manager	432.560.2200

Name	Parkhill, Engineer/Consultant Position	Phone
Michael Krusing, P.E.	Project Manager	806.473.2200
Sean Ellis, P.E.	Project Engineer	432.697.1447

TBD Resident Engineer Name	Position	Phone

TBD, Quality Assurance Testing		
Name	Position	Phone

*** Insert Contractor and subcontractor personnel information upon Project award. ***

Name	Position/Trade	Contractor Phone

Subcontractor	Position/Trade	Phone

Subcontractor	Position/Trade	Phone

B. NOTICES TO AIRMEN

MDD is responsible for issuing any Notice to Airmen (NOTAM) required before Project begins, as Project progresses, and will cancel NOTAMs at completion of intermediate construction phases of Project, as required. Contractor shall closely coordinate anticipated and required NOTAMs with MDD and provide MDD at least 72 hours notice of necessary NOTAMs.

C. MDD AND MDD NOTIFICATION PROCEDURES

- D. In case of emergency, Contractor shall immediately call 911 first then MDD at 432.560.2200.
- Contractor will notify Consulting Engineer and MDD 72 hours in advance of any workaround NAVAIDS or shutdowns affecting NAVAIDS owned by FAA. Contractor shall notify NAVAIDS owned by a separate party 72 hours in advance of any work around or shutdowns of NAVAIDS.

01618422 | MDD North Fence Replacement

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10. INSPECTION REQUIREMENTS

- A. DAILY INSPECTION**
Contractor shall perform daily safety, security, and phasing inspections to ensure CSPP compliance. Document inspections in Contractor's Daily Construction Report Log as Quality Control Plan (QCP) for Owner or designated representative review before any construction. QCP will address specific requirements for inspection of individual specification/pay items including test method, sampling point, testing frequency for each item, and proposed remediation action for each item if it does not meet Specification requirements. QCP will also provide direction on developing inspection reports and what to include in likely safety inspection where opening with exposed pavement to air traffic.
B. INSPECTION
QCP shall include and address Construction Management Plan (CMP) requirement.

11. UNDERGROUND UTILITIES

Contractor shall locate, mark, and protect all utilities and infrastructure during construction. Location of utilities shall include notification of Texas One Call 811 system, as well as coordination with MDD.

- 12. PENALTY**
Contractor pays all penalty fines associated with any safety violation.

13. SPECIAL CONDITIONS

- A. FAA FORM 7460-1**
Consulting Engineer will prepare and submit FAA Form 7460-1 for Project scope and proposed Construction Safety and Phasing Plan over 20 feet high.
A blank Form 7460-1 - Notice of Proposed Construction or Alteration, is included in Appendix D. Contractor shall submit supplemental FAA Form 7460-1 to ONA at least 45 days prior to utilization of equipment more than 20 feet in height.
B. ON-SITE BURNING AND BLASTING
Onsite burning and blasting are prohibited.
C. GUN PROHIBITION ON MDD PROPERTY
No firearms or guns are allowed on MDD property.

14. RUNWAY AND TAXIWAY VISUAL AIDS

Airport marking, lighting, signs, and visual NAVAIDs must be clearly visible to pilots, not misleading, confusing, or deceptive. All must be secured in place to prevent movement by prop wash, jet blast, wind vortices, or other wind currents and constructed of materials to minimize damage to aircraft in the event of inadvertent contact.

15. MARKING AND SIGNS

A. ACCESS

Contractor required to mark access routes and haul routes with lathes and flag tape.

B. APPROVED WORK AREAS

Contractor must mark approved work areas with lathes and flag tape to ensure construction personnel and equipment remain in approved areas.

16. HAZARD MARKING AND LIGHTING

Contractor vehicles shall be clearly identified with Contractor name and address. Rotating amber beacons are required for all nighttime work.

Contractor shall submit 7460s on all equipment over 20 feet in height.

Any request to use nighttime lighting will be provided in writing two weeks prior to requested start time.

B. WORK AREAS

Contractor shall provide temporary, low-profile barricades to delineate safe operating areas.

Barricades shall have flashing red lights.

Contractor must inspect lights each evening and immediately replace any lights not operating.

Contractor will be fined for non-working lights as indicated in Project Specifications.

Line perimeter construction area with low-profile aviation barricades spaced at 5 feet.

17.

PROTECTIVE ON RUNWAY

No construction or material stockpile shall occur within an active RSA. Contractor shall mark out RSA before construction. RSA is 150 feet wide and extends 300 feet beyond runway end for Runway 07/25. The Runway 16/34 RSA is 150 feet wide and extends 240 feet beyond runway end.

B. RUNWAY OBJECT

No material stockpile will occur within an active ROFA. ROFA is 500 feet wide and 300 feet beyond runway end for Runway 07/25. The Runway 16/34 ROFA is 500 feet wide and 300 feet beyond runway end.

C. TAXIWAY SAFETY AREA (TSA)

No construction or material stockpile shall occur within an active TSA. TSA is 79 feet wide.

D. TAXIWAY OBJECT FREE AREA (TOFA)

No material stockpile shall occur within an active TOFA. TOFA is 124 feet wide.

E. OBSTACLE FREE ZONE (OFZ)

No construction activity or material stockpile will penetrate OFZ.

F. RUNWAY APPROACH/DEPARTURE SURFACES

No construction activities will penetrate approach/departure surfaces or TSA of an open runway or TSA of an open taxiway. Contractor shall prominently mark any open trench or excavation at construction site with lighted barricades.

H. SAFETY INFORMATION

Refer to Appendix B - Safety Details, for safety information.

I. JET

Contractor shall take precautions to minimize effects of jet blast, particularly in areas near runway threshold.

J. ELECTRICAL LOCK

Contractor shall prepare lockout/tag out plan and communicate procedures to all staff.

K. REQUIREMENTS

Where shown on Construction/Safety Plan, Contractor shall denote unusable runway pavement using low-profile aviation barricades. Refer to Plans for details.

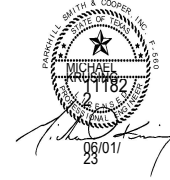
19. OTHER CONSTRUCTION LIMITATIONS

- No use of tall equipment over 20 feet unless a 7460-1 determination letter is issued for such
- No use of open-flame welding or torches.
- No use of electrical blasting caps.
- No use of flare pots.

B. RESTRICTIONS

- Any construction suspension required during specific airport operations will be coordinated by
- Engineer, Owner, and Contractor simultaneously, will be coordinated by Engineer, Owner, and Contractor during construction.
- Contractor will coordinate construction Marking and Lighting, for night construction requirements.
- Seasonal construction restrictions will be coordinated by Engineer, Owner, and Contractor during construction.

**APPENDIX A: CONSTRUCTION
SAFETY AND PHASING PLAN**



MDD NORTH FENCE
REPLACEMENT

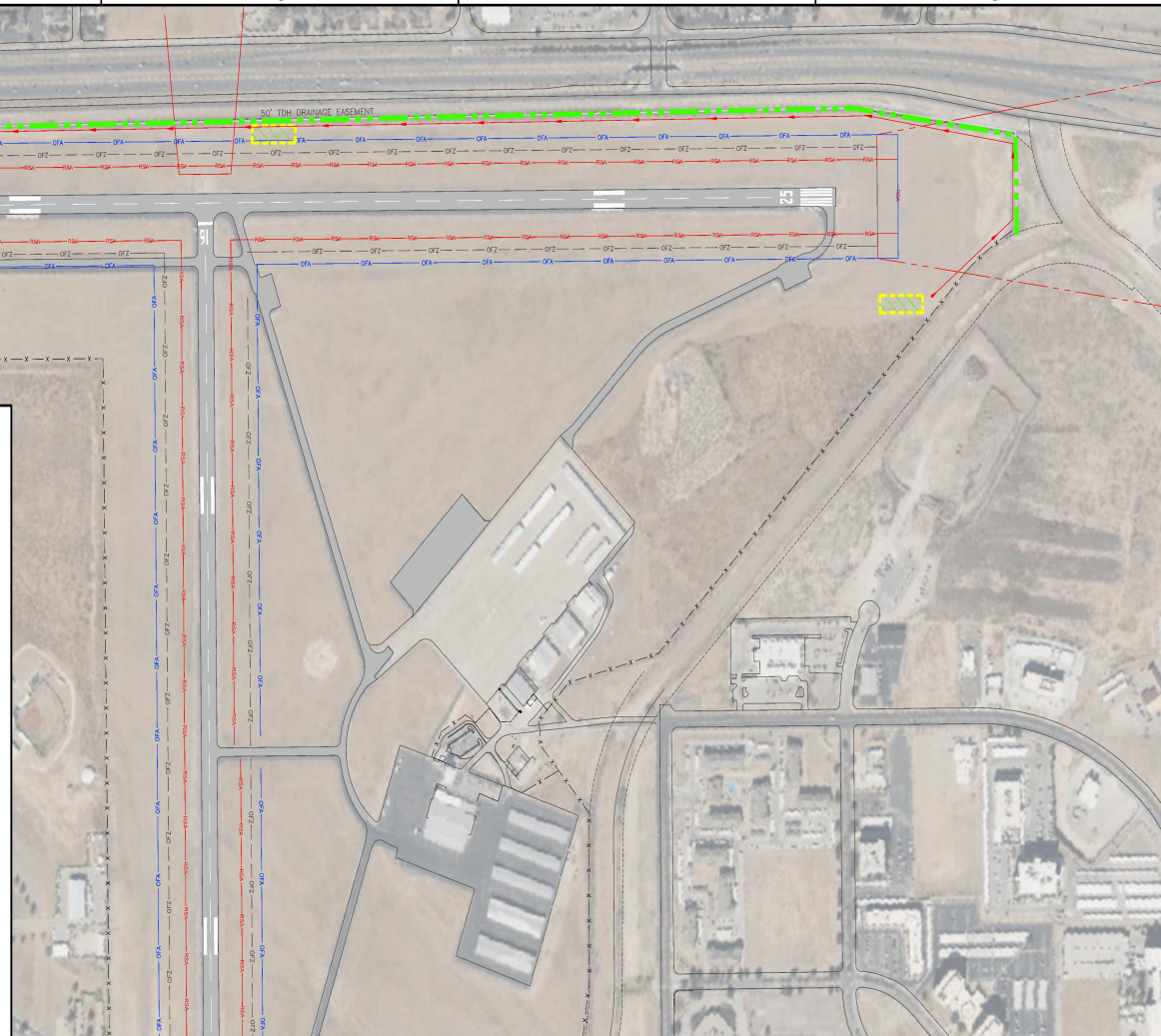


CLIENT
MIDLAND
AIRPORT
CITY OF
MIDLAND

PROJECT
#184.2

1 06/01/2023 BID
DATE OF ISSUE
DESCRIPTION

CONSTRUCTION
PHASING &
PLAN
G-
005



- LEGEND**
- CONTRACTOR'S STAGING AREA
 - PROPOSED HAUL ROUTE APPROACH SURFACE (20:1)
 - RSA RUNWAY SAFETY AREA
 - OFA RUNWAY OBJECT FREE AREA
 - OFZ RUNWAY OBSTACLE FREE ZONE

GENERAL PHASING NOTES

A. WORK AREA WILL BE COMPLETED IN ONE PHASE. CONSTRUCTION OF NEW FENCE WILL BE COMPLETED BEFORE REMOVAL OF EXISTING FENCE MATERIAL.

GENERAL CONSTRUCTION SAFETY AND INFORMATION

1. NO CONSTRUCTION HAS BEEN PERMITTED WITHIN THE RUNWAY OBSTACLE FREE ZONE (OFZ) OR RUNWAY SAFETY AREA (RSA) WITHOUT THE NECESSARY PERMITS AND APPROVALS FROM THE FAA. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS BEFORE BEGINNING CONSTRUCTION.

2. THE CONTRACTOR SHALL MAINTAIN CLEAR ACCESS TO ALL ADJACENT PROPERTIES AND ROADS AT ALL TIMES. ANY OBSTRUCTIONS TO ACCESS SHALL BE REMOVED IMMEDIATELY.

3. THE CONTRACTOR SHALL MAINTAIN CLEAR ACCESS TO ALL ADJACENT PROPERTIES AND ROADS AT ALL TIMES. ANY OBSTRUCTIONS TO ACCESS SHALL BE REMOVED IMMEDIATELY.

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10. THE CONTRACTOR SHALL MAINTAIN CLEAR ACCESS TO ALL ADJACENT PROPERTIES AND ROADS AT ALL TIMES. ANY OBSTRUCTIONS TO ACCESS SHALL BE REMOVED IMMEDIATELY.

SUMMARY OF PROJECT TIME AND LIQUIDATED DAMAGES		
PHASE	TIME (CALENDAR DAYS)	LIQUIDATED DAMAGES
1	90	\$1,000 PER CALENDAR DAY
TOTAL PROJECT	90	N/A

PACKET

9.163

January 23, 2024

**APPENDIX B:
SAFETY DETAILS**

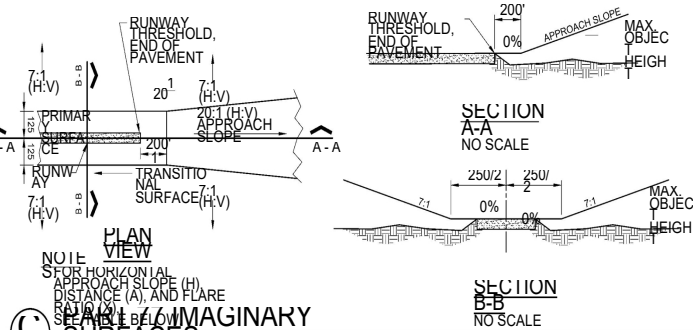
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D

C

B

A



APPROACH SURFACE				
RUNWAY	SLOPE (H)	A	B	X
7	20	200	500	0.10
25	20	200	500	0.10
16	20	200	500	0.10

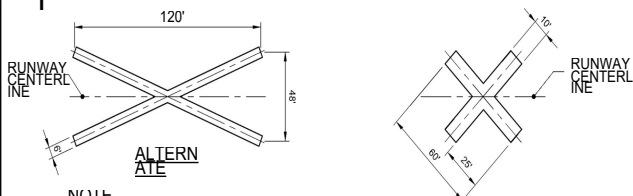
THRESHOLD SITING SURFACE				
RUNWAY	SLOPE (H)	A	B	X
7	20	200	500	0.10
25	20	200	500	0.10
16	20	200	500	0.10

RUNWAY SAFETY AREA		
RUNWAY	WIDTH	LENGTH BEYOND END OF RUNWAY
7-25	150'	300'

RUNWAY OBJECT FREE AREA		
RUNWAY	WIDTH	LENGTH BEYOND END OF RUNWAY
7-25	500'	200'

THRESHOLD SITING SURFACE

(FIGURE 3-2) AC 150/5300-13



NOTE
1. CROSSES SHALL BE PLACED ON ALL RUNWAYS TO BE TEMPORARILY CLOSED.
2. CROSSES SHALL BE PLACED AT EACH END OF RUNWAY ON TOP OF RUNWAY NUMERALS OR AS DIRECTED BY THE ENGINEER.
3. CROSSES SHALL BE CONSTRUCTED OF FABRIC, PLYWOOD OR SIMILAR MATERIAL AND WEIGHED TO BE SECURE IN THE WIND.
4. CROSSES SHALL BE AVIATION YELLOW COLOR.
5. LIGHTED BARRICADES SHALL BE PLACED ON EACH END OF TEMPORARILY CLOSED TAXIWAYS AS DIRECTED BY THE ENGINEER.

CLOSED RUNWAY CROSSES

GENERAL SAFETY/NOTES

1. INSPECT MARKINGS AND BARRICADES DAILY AND MAINTAIN IN A TIMELY MANNER. PROVIDE INSPECTION LOGS TO ENGINEER.
2. EMPLOY AREA SHOWING ON THE AIRPORT CHART SHALL BE WITHIN THE STANDING AREA SHOWING ON THE AIRPORT CHART.
3. TEMPORARILY CLOSED RUNWAYS SHALL BE MARKED WITH RED CROSSES AND LIGHTED BARRICADES AS SHOWN IN B1 AND/OR C1. MATERIAL STOCKPILES SHALL NOT PENETRATE THE PRIMARY, SECONDARY OR TRANSITIONAL SURFACES OR OTHER OBJECTS THAT PENETRATE ANY OF THE IMAGINARY SURFACES MUST BE ENGINEERED WITH THE ENGINEER IN ADVANCE. OBSTRUCTIONS TO SURFACES MUST BE MARKED AND/OR LIGHTED IN ACCORDANCE WITH FAA GUIDELINES.
4. THE CONTRACTOR SHALL PREPARE AND SUBMIT A DETAILED SAFETY CONVERSION TO PREPARE CONSTRUCTION DETAIL PLACEMENT OF SAFETY DEVICES, MARKING LIGHTING ETC DURING EACH PHASE OF THE PROJECT AS EDITION OF AC 150/5370.
5. THE CONTRACTOR SHALL PROVIDE A 24-HOUR POINT OF CONTACT WHO WILL BE RESPONSIBLE FOR IMMEDIATE CORRECTION OF SAFETY CONCERNS.
6. THE CONTRACTOR IS RESPONSIBLE FOR ADHERING TO THE REQUIREMENTS OF LATEST EDITION OF AC 150/5370-2 OPERATIONAL SAFETY ON AIRPORTS DURING CONSTRUCTION.
7. CONTINUALLY CLEAR TAXIWAY, APRONS, AND RUNWAYS OF FOREIGN OBJECTS AND DEBRIS. REMOVAL OF FOREIGN OBJECTS SHALL BE PERMITTED WITHIN 60 FEET OF THE RUNWAY OR SHALLOWS 240 FT BEYOND THE RUNWAY. THE CONTRACTOR SHALL PROVIDE A SAFETY OFFICER TO SUPERVISE OPEN TRENCHES WITH RED DISC AND FLAG BANDS WITH AIRPORT SAFETY TO DISCONTINUE WORK TO CORRECT THE HAZARD.
8. CONTINUOUSLY MAINTAIN THE ORIGINAL VERIFICATION OF THE LENGTH MARKS ALL CHANGES TO THE MARKS SHALL BE APPROVED BY THE ENGINEER.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING THE RUNWAY SAFETY AREA AND RUNWAY OBJECT FREE AREA.
10. NO CONSTRUCTION SHALL OCCUR WITHIN 300 FEET OF THE RUNWAY OR SHALLOWS 240 FT BEYOND THE RUNWAY.
11. PERSONNEL, MATERIAL AND OR EQUIPMENT MUST NOT PENETRATE THE OFZ OR INNER APPROACH OFZ AS DEFINED IN 150/5300-13 (PARAGRAPH 308).

Parkhill



MDD NORTH FENCE REPLACEMENT



CLIENT
Midland International Air & Space Port
City of Midland

PROJECT
#184.2

1 06/01/2023 - BID
DATE DESCRIPTION

CONSTRUCTION SAFETY DETAILS
G-006

9.165

January 23, 2024

**APPENDIX C: ADVISORY CIRCULAR
150/5370-2G, OPERATIONAL SAFETY
ON AIRPORTS DURING
CONSTRUCTION**

All contractors and subcontractors responsible for implementation of this CSPP must review all relevant sections of the FAA AC 150/5370-2G, Operating Safety on Airports During Construction
See here for the full Advisory Circular
PDF:
<https://www.faa.gov/documentLibrary/media/AdvisoryCircular/150-5370-2G.pdf>

**APPENDIX D: FAA FORM 7460-1, NOTICE
OF PROPOSED CONSTRUCTION
OR ALTERATION (BLANK)**

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.13. If you are required to file notice under § 77.13, you must submit to the FAA a completed FAA Form 7460-1, Notice of Proposed Construction or Alteration, with forms 7460-1a and 7460-1b, if applicable, before the start date of the proposed construction or alteration or the date an application for construction or alteration permit is filed, also covering the licensing requirements of the Federal Communications Commission (FCC). You must submit construction or alteration notice to the FAA at least 30 days before the date that the application exceeds 200 ft. above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include advance notice stating both why the proposed construction or alteration is a hazard to air navigation and why it is an essential public service, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must:

- (a) File a Notice of Proposed Construction or Alteration (Form 7460-1) with the FAA, Outside Regional Office, not less than 30 days before the start date of the proposed construction or alteration, and any proposed construction or alteration that is more than 200 ft. AGL at its site;
- (b) Any construction or alteration that exceeds an imaginary surface extending outward and upward a quantity from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length; or
- (c) Any construction or alteration that exceeds an imaginary surface extending outward and upward a quantity from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

Main Processing Center
Federal Aviation Administration
Ogilvie Regional
90104 Hillwood
Parkway
202-30200, TX
76177
website:
<https://oeaaa.faa.gov>

a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each airport, runway, railroad, or other facility described in paragraph (d) of this section; of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, 23 feet following airports and heliports; and for a railway or any other adverse way mentioned, an amount equal to that Supplement of the height of the highest mobile object that would normally traverse it, would exceed a standard airport under paragraph (a)(2)(b) of this section; or an airport under construction that will be available for public use;

- (3) In an airport operated by (e) You have not need to file notice for construction or alteration of DOD.
- (4) An airport that will be one that is approved instrument permanent and structural nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or airport where the structure or landing aid, aircraft lighting, adverse device, or meteorological device is located on FAA-approved siting criteria or an appropriate military service siting criteria on military airport alteration for location where required by any Federal law.
- (5) Any structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

INSTRUCTIONS FOR COMPLETING
FAA FORM 7460-1

PLEASE TYPE or
PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

Alteration is a change to an existing structure such as the addition of a side mounted antenna; a change to the marking and lighting that has not yet been built; change to power and/or frequency; or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposed". The reason for the notice shall be included in ITEM #21 "Complete Description of Proposed", so indicate if temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #3. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #5. Please indicate the type of structure. **DO NOT LEAVE BLANK.** ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference." **DO NOT LEAVE BLANK.** NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the case of structures over 500' AGL, marking is also required.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second, rounded down to the nearest minute. A hand-held GPS is not accurate enough for this purpose (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred, however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. **DO NOT LEAVE BLANK.**

ITEM #12. Enter the full name of nearest airport and use of the site. If the structure is or will be in a city, name the name of the city and state.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.

ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include any antenna, such as antennas, obstruction lights, lightning.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "http://store.usgs.gov". If available, attach a copy of a commissioned site survey with the survey dated and indicating the amount of vertical and horizontal accuracy in feet.

- For antennas, include the type of antenna and center of radiation
- For each antenna, include size and configuration of wires and the support structure extra truth relative to true north.
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. and construction materials or previous study, etc.)

Fill in or alterations explain the interference and how you believe the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation and zoning authorities.

Paperwork Reduction Work Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information.

All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or

alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, Texas 76155-0001. Previous Edition

NSN: 0052-00-012-0009

[illegible]

**APPENDIX E: FAA CSPP
REVIEW CHECKLIST**

Effective Date:
December 13, 2017
Checklist for FAA
CSPP Review

ARP SOP
No. 1.00

Airport
Name: _____
Associate
City/Project
No. _____
Project
Name: _____

LOCID MD
: D

Midland,
Texas
6184-22
MDU North Fence
Replacement Project

F.1.1. AC
150/5370-2G

This checklist identifies the main elements and sub-elements established under Chapter 2 of Advisory Circular 150/5370-2G. Project Managers (PM) are encouraged to use this checklist as an aid when reviewing a Sponsor's CSPP for conformance to the safety standards. Because the PM's

CSPP Element	Element Addressed				Remarks
	Yes	No	N/A	Unsign or are	
Coordination (Section 2.5)					
Contractor	✓				
Progress Meetings					
Addresses necessary actions when changes are proposed for CSPP	✓				
Provisions for FAA ATO Coordination	✓				
Phasing (Section 2.6)					
Phase	✓				
Elements	✓				
Construction					
Safety Drawings					
Area and Operations Affected by Construction Activity (Section 2.7)					
Identification of affected Areas	✓				
Mitigation Afforts	✓				
Navigation Aid Protection (Section 2.8)					
Operational NAVAID	✓				
Critical areas					
Contractor Access (Section 2.9)					
Location of Stockpiles	✓				
Construction Material	✓				
Vehicle and	✓				
Regressional Operations	✓				
Water	✓				
Wildlife Management (Section 2.10)					
Disruption of Wildlife	✓				
Habitat					
Foreign Object Debris (Section 2.11)					
Foreign Object Debris	✓				
Hazardous Material Management (Section 2.12)					
Hazardous Material Controls	✓				

CSPP Element	Element Addressed		Remarks
	Yes	No	
Notification of Construction Activities (Section 2.13)	N/A		
– List of Responsible Representatives	✓		
– NOTAMS	✓		
– Emergency Notification Procedures	✓		
– Coordination with ARFF (Part 77, NAVAIDs....)	✓	✓	
Inspection Requirements (Section 2.14)	✓		
– Final	✓		
– Daily Inspections	✓		
Underground Utilities (Section 2.15)	✓		
– Procedures for protecting underground utilities	✓		
Penalty provisions for non-compliance with CSPP (Section 2.16)	✓		
Special Conditions (Section 2.17)	✓		
– Conditions that may affect airport operations	✓		
Runway and Taxiway Visual Aids (Section 2.18)	✓		
– General – Convey Clear Meaning; Secured from movement; Frangible	✓		
– Markings	✓		
– Lighting and Visual NAVAIDs	✓		
Signage			
Access Routes - Marking and Signage (Section 2.19)	✓		
– Haul Road Demarcation	✓		
Hazard Marking, Lighting and Signage (Section 2.20)	✓		
– Areas Impacted by Construction Operations	✓		
Work Zone Lighting for Nighttime Construction (Section 2.21)	✓		
– Proper Illumination of Construction Area/Equipment	✓		
Runway Safety Area (RSA) and Surfaces (Section 2.22)	✓		
– (ROFA)	✓		
– Taxiway Safety Area (TSA)	✓		
– Taxiway Object Free Area (TOFA)	✓		
– Obstacle Free Zone (OFZ)	✓		
Approach and Departure Surfaces	✓		
Other Limitations on Construction (Section 2.23)	✓		

§ Prohibitions

MIDLAND AIRPARK (MDD)

NORTH FENCE REPLACEMENT

Midland, Texas

2:30pm, Wednesday, December 20, 2023

Parkhill Project No. 01618422

City Project No. 900414

BIDDER	BID BOND	ADDENDUM 1	TOTAL BID
Construction Rent-A-Fence, Inc.	X	X	\$1,634,856.00
Delta Specialty Contractors	X	X	\$1,233,900.00
Swift Corporation LLC	X	X	\$1,788,000.00



City Council Meeting

Item Number: 10
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: MOTION AUTHORIZING THE INTENT OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ESTABLISH THE SCHEDULE FOR PROGRAM YEAR 2024 CDBG GRANT APPLICATION CYCLE (DISTRICT: ALL) (DEVELOPMENT SERVICES)

Purpose:

Motion authorizing the intent of the Community Development Department to establish the schedule for the HUD PY2024 CDBG Grant application cycle.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No fiscal Impact.

Strategic Priority:

Transparent & Consistent Communication

Discussion:

The CDBG office is the responsible group for establishing priorities, guidance, and timelines for grant processes according to HUD guidelines and the 2020-2024 Action Plan/Consolidated Plan. The schedule is for the public and possible applicants to be able to understand how and when the CDBG grant process will begin. The city council members from Districts 2 and 4 will be the lead in reviewing, and recommending applications for funding.

Pre t. Out

City Manager's Office

Schedule for HUD PY2024 CDBG Application Cycle, PY2024 Action Plan

DESCRIPTION OF EVENT	DATE
Inform public of schedule	January 23
Application training to prospective applicants	As needed
Community meetings –TBD	March 2024
Community Development Week	March 25–March 29
Project applications / Proposals due date	April 1-April 26
Public Hearing #1 (City Hall) – Review past performance; present CDBG proposals.	May 28, 10:00 am.
CDBG Committee Meeting. Review Action Plan recommendations and develop recommendations on fund distribution	To be determined
Public Hearing #2 (City Hall) – Review Action Plan recommendations and draft Action Plan.	June 11, 10:00 am.
Publish Draft Action Plan; allow 30-Days for public review and comment	June 12 to July 12
Final Approval (City Hall) – Council considers approval of Action Plan.	July 23
Submit Action Plan to HUD.	By August 16
Conduct environmental reviews and provide training to new subrecipients.	As needed
Receive grant agreement from HUD and begin projects that are authorized by individual contracts.	October 1, 2024

Prepared 01/08/24



City Council Meeting

Item Number: 11
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Natalie Burgard, Administrative Assistant
Subject: MOTION APPROPRIATING THE SUM OF \$188,500.00 FROM THE GENERAL FUND TO THE CIP OPERATING BUDGET FOR THE DESIGN OF AVALON DRIVE (DISTRICT 4) (ENGINEERING SERVICES)

Purpose:

Motion appropriating the sum of \$188,500 from the General Fund to the CIP Operating Budget.

Recommended City Council Action:

Approve

Fiscal Impact:

\$188,500

Strategic Priority:

Strengthen and Sustain our Infrastructure

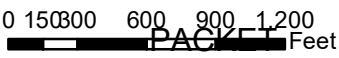
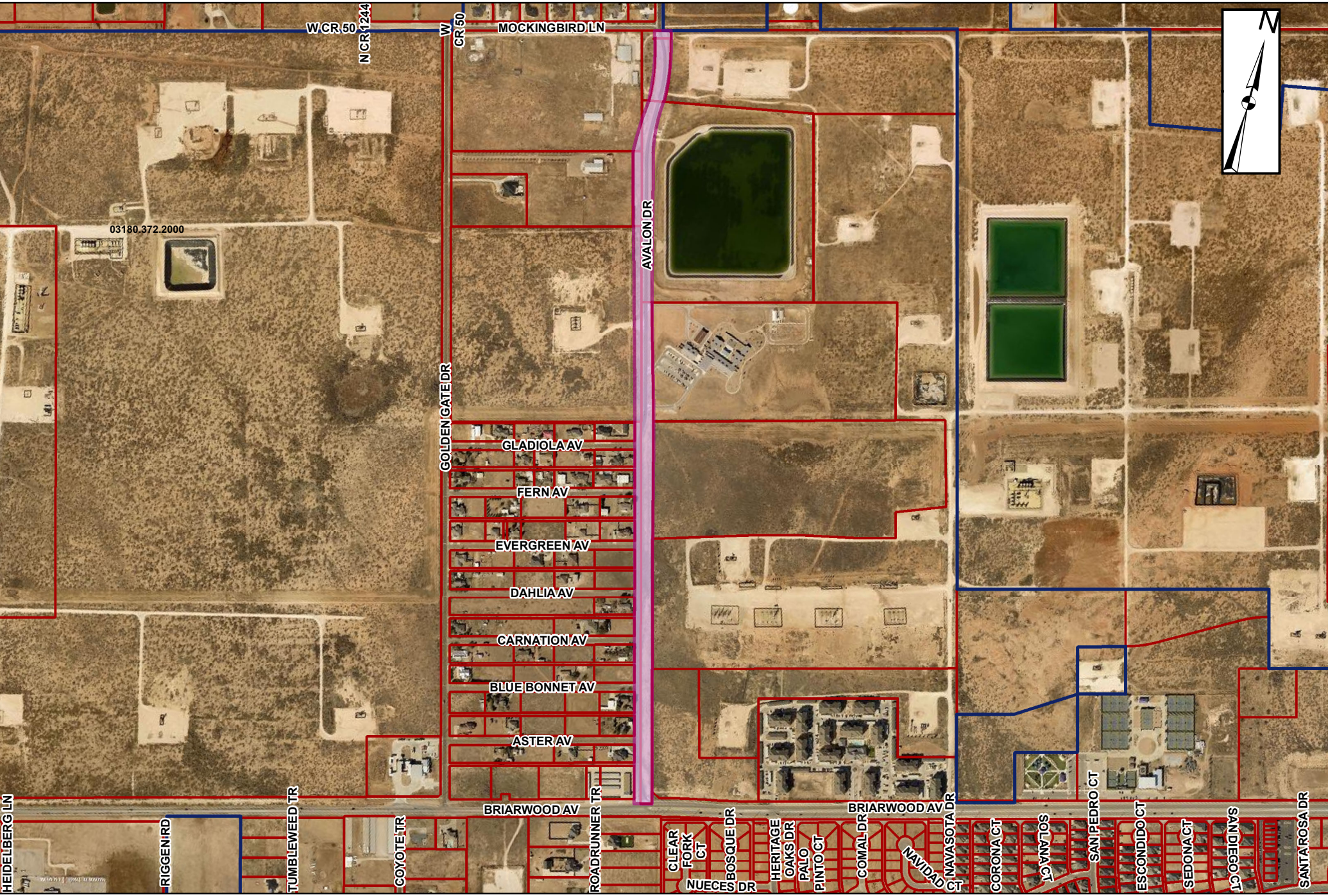
Discussion:

A motion is needed to appropriate funds from the General Fund to the CIP (Capital Improvement Program) Budget Line 001050-53450 for the design of a 1-mile section of Avalon Road from Briarwood Ave to Mockingbird Lane. Where alignment issues previously existed, the design and construction of Avalon Road was not considered with the 2023 Budget. There is now a need due to proposed and existing development in the area. The design, and subsequent construction, of Avalon Road is necessary to accommodate the increased traffic and will address existing alignment issues. Moving unallocated funds expedites the infrastructure design allowing the CIP Department to bring a resolution requesting approval to advertise for bids to Council as soon as possible.

Maverick Engineering, an approved on-call engineer (Resolution 2023-069) has provided a Task Order for the required surveying and design services. The total estimated fee is \$188,500. Funding for Construction of Avalon Road is to be brought to City Council at a later date.

Frederick D. Out

City Manager's Office



MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: January 23, 2024

To: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney
Nicholas Toulet, Sr. Assistant City Attorney

SUBJECT: *Resolution authorizing the execution of a development agreement and lease agreement with Midland Athletic Syndicate, Inc., for the design, construction, maintenance, and operation of an indoor multi-purpose athletic facility at the Scharbauer Sports Complex*

The proposed resolution approves a development agreement and lease agreement (the “Agreements”) between the City of Midland (“City”) and Midland Athletic Syndicate, Inc. (“MAS”). The Agreements provide a framework for the development of a high quality indoor multi-purpose athletic facility on City-owned property located at the Scharbauer Sports Complex.

MAS’s material obligations under the Agreements are as follows:

- Undertake and complete a capital campaign to raise a minimum of \$30,000,000.00 by January 31, 2026;
- Contract with an architect to produce plans and specifications for the construction of the facility that is approximately 90,000 sq. ft. in size;
- Enter into a construction contract for the construction of the facility;
- Operate and maintain the facility for the term of the lease agreement;
- Pay all operating costs associated with the facility; and
- Establish reasonable rules, reservation process, and non-discriminatory fee schedules for activities and events at the facility.

The Agreement also provide MAS the right to (i) obtain corporate sponsorships, (ii) develop signage regulations, (iii) name the facility, and (iv) contract for the management of the facility (subject to the City’s advance approval).

The City’s material obligations under the Agreements are as follows:

- Providing \$275,000.00 towards the development of the facility;
- Charging MAS the same water rates paid by the City of Midland Parks Division; and
- Lease the City-owned property to MAS for an annual lease payment of \$1.00 (49-year term with two 25-year options to extend).

If you have any questions regarding this matter, please do not hesitate to contact our office.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
DEVELOPMENT AGREEMENT AND LEASE
AGREEMENT WITH MIDLAND ATHLETIC
SYNDICATE, INC., FOR THE DESIGN,
CONSTRUCTION, MAINTENANCE, AND OPERATION
OF AN INDOOR MULTI-PURPOSE ATHLETIC
FACILITY AT THE SCHARBAUER SPORTS COMPLEX**

WHEREAS, the City of Midland (the “*City*”) is the owner of Lot 5, Block 5, Westridge Park Addition, Section 54, City and County of Midland, Texas (the “*Property*”) located at the Scharbauer Sports Complex; and

WHEREAS, the City and Midland Athletic Syndicate, Inc. (“*MAS*”), desire to cause the Property to be developed as a high quality indoor multi-purpose athletic facility with related facilities and amenities (the “*Project*”) that will attract persons and organized sports tournaments from around the West Texas region and contribute to the use and enjoyment of residents and visitors of the City for recreational purposes; and

WHEREAS, the City and MAS desire for the Project to be developed, operated and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the City and MAS propose that private and public funds and resources be used to provide for the Project; and

WHEREAS, the City Council finds and determines that the development agreement and lease agreement referenced herein (the “*Agreements*”) constitute a program for making a grant of public funds to promote local economic development in accordance with Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City Council finds and determines that the City expenditures provided for under the Agreements will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve and promote the City; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of the Agreements for the purposes stated herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
PACKET 12.3 January 23, 2024

CITY OF MIDLAND, TEXAS:

SECTION ONE. That the above recitals are hereby adopted and approved for all purposes.

SECTION TWO. 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 development agreement and a lease agreement for the Project between the City of Midland and Midland Athletic Syndicate, Inc. The Agreements shall be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION THREE. That the City Manager, or his designee, is hereby authorized and directed, on behalf of the City of Midland, to administer and enforce the terms of the Agreements.

SECTION FOUR. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, any and all related agreements, amendments, easements, legal instruments, or documents necessary and appropriate to carry out the intent of the Agreements.

SECTION FIVE. That the City Comptroller is hereby authorized and directed to make payments to MAS in accordance with the terms of the Agreements, and all related agreements, amendments, easements, legal instruments, or documents necessary and appropriate to carry out the intent of the Agreements, from funds available in the appropriate budget account(s) in the fiscal year in which the payment is to be made upon receipt of proper invoice or statement approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of January 24, 2024 (the “*Effective Date*”), by and between the **CITY OF MIDLAND, TEXAS**, a municipal corporation and home-rule city (the “*City*”), and the **MIDLAND ATHLETIC SYNDICATE, INC.**, a Texas non-profit corporation (“*MAS*”). The City and MAS are collectively referred to herein as the “*Parties*,” or individually as a “*Party*.”

RECITALS:

WHEREAS, the City is the owner of the Property (as defined herein), which is situated within its corporate limits, and more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, the Parties desire to cause the Property to be developed as a high quality indoor multi-purpose athletic facility with related facilities and amenities, for the use and enjoyment of residents and visitors of the City, and for the beautification of the City; and

WHEREAS, due to the location of the Property, the Parties desire for the Property to be developed, operated and maintained at high standards in order to reflect positively on the City and the Permian Basin as a whole; and

WHEREAS, the Parties propose that private funds and resources be used to develop the Property as the Project (as defined herein); and

WHEREAS, the City Council for the City finds and determines that the multi-purpose athletic facility will directly enhance and promote tourism and the hotel industry, and will benefit, improve and promote the quality of life in the Permian Basin (the “*Economic Benefits*”); and

WHEREAS, the City Council for the City finds and determines that this Agreement constitutes a program for making a grant of public funds to promote local economic development in accordance with Article III, Section 52-a, of the Texas Constitution and Chapter 380 of the Texas Local Government Code; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the Parties’ respective rights, obligations and undertakings regarding the funding, development and operation of the proposed Project.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties, it is agreed as follows:

ARTICLE I. DEFINITIONS

As used herein, the following terms have the meanings set forth below:

“*Applicable Laws*” means all codes, ordinances, rules, statutes and regulations applicable in the jurisdiction where the Project is located, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, and specifically including, without limitation, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and the Texas Architectural Barriers Act (Art. 9102, Tex. Civ. Stat. Ann. (1994)).

“*Architect*” means Jacob Martin, LLC.

“*Capital Contribution*” is defined in Section 2.3 below.

“*Change Order*” means a document signed by MAS and the Contractor issued on or after the date of the Construction Contract authorizing an addition, deletion or revision in the Work, price, or schedule of the Construction Contract.

“*City Representative*” means the City Manager of the City or the City Manager’s designee.

“*City Funds*” is defined in Section 2.3(a) below.

“*City Use Days*” is defined in Section 3.2(k) below.

“*Construction Commencement Date*” means the date on which the Contractor is authorized and directed by MAS to commence the Work.

“*Construction Contract*” means the construction contract(s) by and between MAS and Contractor, as the same may be amended from time to time, providing for the performance of the Work by the Contractor.

“*Construction Documents*” means the Project Site Plan, Working Drawings, the Construction Contract and all other documents governing Contractor’s performance of the Work.

“*Contractor*” means the general contractor selected by MAS to construct all Improvements and perform all other Work for the Project.

“*Development Costs*” means all expenses and capital costs for developing the Project (excluding Operating Costs), including, all consulting fees for programming and other Project-related professional services, and all soft costs and hard costs for the design, engineering, permitting and construction of the Project.

“*Effective Date*” is defined in the Preamble above.

“*Improvements*” means all infrastructure and structures (including, without limitation, athletic fields, play areas, shaded areas, stage(s), signage, restrooms, fences, benches and seating), lighting, pavement, parking facilities, paths, walks, steps, walls, bridges, fountains, fixtures, furnishings, equipment and other systems and facilities comprising the Project.

“*Lease*” is defined in Section 2.1 below.

“*Operating Costs*” means all operating expenses and capital costs incurred in connection with the operation, management, maintenance and improvement of the Project following Substantial Completion including, without limitation, expenses related to water, electricity, landscaping, mowing, fertilization, and trash removal and pick-up.

“*Permits*” means all permits, licenses, approvals or other actions of or by governmental authorities or governmental officials required for the design, construction, or operation of the Project or any part thereof.

“*Person*” means any natural person, foundation, company, corporation, partnership, business, trust, governmental authority or other entity.

“*Private Donors*” means those individuals, companies, corporations, private foundations, businesses and other non-government entities who pledge to donate funds to be applied to the development of the Project.

“*Project*” means the Improvements to be developed to achieve a high quality indoor multi-purpose athletic facility with related facilities and amenities, containing approximately 90,000 square feet of space.

“*Project Rules*” is defined in Section 3.2(d) below.

“*Project Site Plan*” means the Project site plan attached hereto as **Exhibit C** and herein incorporated for all purposes.

“*Property*” means that certain tract of land located at 5501 Deauville, Midland, Texas, which is further legally described and depicted on **Exhibit A** attached hereto and incorporated herein for all purposes.

“*Substantial Completion*” means the date on which (i) the Architect has certified, and MAS has reasonably and in good faith agreed with the Architect’s certification, that all Work is sufficiently complete in accordance with the Construction Documents so that the Project may be used for the purposes for which it is intended; and (ii) all final Permits with respect to the construction of the Work and use of the Project have been issued.

“*Term*” is defined in Section 2.2 below.

“*User Fees*” is defined in Section 3.2(e) below.

“*Work*” means the performance of the construction and installation, or the various separately identifiable parts of the construction and installation, of the Project required to be completed substantially in accordance with the Working Drawings.

“*Working Drawings*” means the construction drawings and specifications for the Improvements, prepared by the Architect and other Project consultants in accordance with the Project Site Plan.

ARTICLE II. DESIGN AND DEVELOPMENT PHASE

2.1 Occupancy. Contemporaneously with the execution of this Agreement, the Parties have executed a lease with respect to the Property (the “*Lease*”), for forty-nine (49) years with two (2) options to extend the Lease for an additional twenty-five (25) years each (subject to renewal as set forth therein), a copy of which is attached hereto as **Exhibit B**. Notwithstanding anything contained in this Agreement to the contrary, upon the expiration or earlier termination of the Lease, this Agreement shall also terminate and neither Party shall have any further rights, duties or obligations hereunder, except as may otherwise be expressly set forth herein. Prior to the Construction Commencement Date, MAS shall have the right to occupy and use the Property for planning and design activities, and for testing, surveying, and other investigations consistent with planning, design and fundraising activities.

2.2 Term. Provided that Substantial Completion of the Work has occurred in accordance with the terms of this Agreement, the term of this Agreement shall be effective for the Term (as such term is defined in the Lease) of the Lease, as such may be renewed or extended.

2.3 Development Costs. The Parties hereby agree that the Development Costs shall be subject to the following terms and conditions:

(a) As consideration for MAS obtaining written commitments from Private Donors for a minimum of Thirty Million and No/100 Dollars (\$30,000,000.00) for the Development Costs attributable to the Project (the “*Capital Contribution*”), the City agrees to provide MAS with funds in the amount of Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00) (the “*City Funds*”) to be used for the Development Costs for the Project. The City Funds shall become due and payable upon (i) MAS providing the City with a determination letter issued from the United States Internal Revenue Service concluding that MAS is a section 501(c)(3) organization under the United States Internal Revenue Code, and (ii) MAS’s completion of its obligations contained in Section 2.3(b) below. All other Development Costs shall be borne solely by MAS.

(b) MAS shall (i) undertake and complete a capital campaign to raise the Capital Contribution on or before January 31, 2026, and (ii) provide the City satisfactory documentation, in a form reasonably acceptable to the City, evidencing that MAS has obtained written commitments from Private Donors for the Capital Contribution. If MAS has not obtained commitments from Private Donors for the Capital Contribution by January 31, 2026, MAS may terminate this Agreement by providing written notice to the City prior to such date, at which point this Agreement shall be of no further force and effect and the parties shall have no further rights or obligations under this Agreement.

2.4 Project Design and Construction. MAS is hereby granted the exclusive right and duty to plan, design, and construct the Improvements pursuant to the terms of this Section.

(a) MAS shall contract with the Architect and any other consultants as it deems reasonably necessary in order to produce the Working Drawings. MAS shall use reasonable efforts to design the façades of the Improvements in a manner that generally conforms to the aesthetic of the other structures located at the Scharbauer Sports Complex. The Parties agree that the foregoing is not intended to restrict MAS in its design of the Improvements, but rather to ensure the façades of the Improvements complement the existing structures located at the Scharbauer Sports Complex.

(b) MAS shall contract with the Contractor for the performance of the Work. MAS shall have the right to approve Change Orders; provided, however, that any proposed Change Order that would result in a material change to the Improvements shall be subject to the advance written approval of the City Representative, which shall not be unreasonably withheld, conditioned, or delayed.

(c) MAS shall have the right, at its sole expense, to manage and supervise (i) all consultants, including the Architect, in all aspects of preparing the Working Drawings, and (ii) the Contractor in all aspects of the Work.

(d) MAS shall (i) hold all funds donated for Development Costs, (ii) have the right to approve all draw requests by the Contractor, and (iii) disburse such funds for Development Costs including progress payments to the Contractor for Work performed pursuant to the Construction Contract.

(e) The City and its employees and agents shall have the right, during reasonable hours, to confirm that all work performed on the Project is being completed in accordance with the terms of this Agreement.

2.5 No Developer Fee. MAS shall not be entitled to any developer fee or other compensation from the City for its development services in connection with the design and construction of the Project. The City stipulates, acknowledges and agrees that the value of such services and related expenses constitute additional consideration given to the City and donated by MAS in support of the Project.

ARTICLE III. OPERATING PHASE

3.1 Maintenance and Operating Standards.

(a) Following Substantial Completion, MAS covenants to operate, manage, maintain and preserve the Project for the Term of the Lease.

(b) The Property is located within the corporate limits of the City of Midland, Texas. The Project will be highly visible to, and visited by, tourists, visitors and residents of the greater Midland area including, without limitation, existing and future residents of the City. Accordingly, the Improvements shall at all times be maintained at high standards of cleanliness, safety and natural beauty. The City and

MAS stipulate, acknowledge and agree that maintaining the Project in such manner provides a benefit to the City in encouraging expansion of the hotel and tourism industry in the City generally.

3.2 Operation.

(a) The initial term of MAS's duty to operate the Project in accordance with this Article IV shall begin on the date of Substantial Completion and continue for the remainder of the Term of the Lease.

(b) MAS shall be required to operate, manage, maintain and preserve the Project in a manner consistent with Section 3.1(b) above.

(c) MAS shall be required to pay all Operating Costs of the Project.

(d) MAS shall have the exclusive right to establish such reasonable rules and regulations as it may deem necessary or desirable for the Project from time to time, including, but not limited, to rules and regulations relating to the use of, and the types and sizes of activities and events at the Project (collectively, the "*Project Rules*"). The Project Rules shall comply with all Applicable Laws and shall be non-discriminatory to the full extent required by Applicable Laws.

(e) MAS shall have the exclusive right to establish non-discriminatory fee structures and/or rate schedules from time to time, and to charge such fees and rates according to such structures and schedules (the "*User Fees*") for uses of and activities and events located at the Project and occurring after Substantial Completion, including use of any portion of the Project for public or private events.

(f) MAS shall have the exclusive right to establish a reservation process for advance scheduling of activities and events at the Project and for advance bookings of the right to use or occupy particular Improvements or areas for such activities and events at the Project, including use of any portion of the Project for public or private events, and to charge User Fees and rental rates for the foregoing. MAS shall schedule, organize, promote and conduct activities and events at and uses of the Project on its own initiative in accordance with its annual operating plans and annual budgets, consistent, however, with the development, maintenance and use of the Project as a multi-use sports facility and with high standards of natural beauty.

(g) MAS shall have the exclusive right to and duty to market and promote the Project and the events and activities organized or sponsored by MAS.

(h) MAS shall have the exclusive right to obtain corporate sponsorships of events, to develop signage regulations, and to name the Project as a whole.

(i) MAS shall have the right to subcontract and/or delegate all or any part of its rights and obligations under this Agreement as MAS deems necessary or

desirable for the efficient and cost-effective performance of such rights and obligations; provided, however, that MAS's subcontracting and/or delegation of the management of the Project as a whole (excluding subcontracting and delegation of rights relating to construction, landscaping, design work, general maintenance, janitorial, marketing and advertising services) shall be subject to the advance written approval of the City Representative, which shall not be unreasonably withheld, conditioned, or delayed.

(j) Notwithstanding anything contained in this Agreement to the contrary, with respect to MAS's use of water at the Project, the City agrees to abstain from increasing water rates charged to MAS for such water usage at the Project above the lowest rate, as amended, charged to the City of Midland Parks Division. For the avoidance of doubt, the City agrees to abstain from increasing water rates charged to MAS for water usage at the Project based on the volume of water used at the Project.

(k) Notwithstanding any contrary provision contained herein, the City (which includes all its departments and affiliated entities) shall be permitted to conduct events at the Project without owing any daily or event rental fees on up to four (4) dates (the "*City Use Days*") each calendar year during the Term, provided that (i) in no event will the City Use Days interfere with events scheduled or in the process of being scheduled by MAS, (ii) the City shall specify the designated areas within the Project to be used in connection with such City Use Days, which designated areas shall be subject to the MAS's reasonable approval, (iii) the City shall comply with, and be subject to, the Project Rules in connection with the City's use of the Project during the City Use Days, and (iv) the City Use Days shall include periods of time necessary for set up and tear down related to events organized by the City; provided, however, if the set up and tear down related to events organized by the City does not materially interfere with the MAS's use of the Project (or any applicable portion thereof) or other events scheduled by MAS for the Project, then the time required for such set up and tear down shall not be included as City Use Days. A process shall be established by the Parties for scheduling the City Use Days and all City Use Days must be scheduled at least sixty (60) days in advance. With the exception of daily or event rental fees, the City shall be responsible for paying any other costs and expenses associated with events held on any of the City Use Days, including, without limitation, costs and expenses associated with set up and tear down, and any additional services required to accommodate the City's event.

TO THE EXTENT PERMITTED BY LAW, THE CITY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MAS, AND ALL MAS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OR INTENTIONAL ACT OF CITY OR CITY'S AGENTS OR EMPLOYEES ARISING OUT OF, OR RESULTING FROM, CITY'S ACTIVITIES OR OPERATIONS AT THE PROJECT DURING CITY USE DAYS, AND THE CITY SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST MAS OR ANY MAS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING

REASONABLE ATTORNEY FEES, AS A RESULT THEREOF; PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR INTENTIONAL ACT OF MAS, OR MAS'S OFFICERS, AGENTS OR EMPLOYEES, AND IN THE EVENT OF ANY SUCH NEGLIGENCE OR INTENTIONAL ACT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY.

In connection with the foregoing indemnification obligation, the City agrees to maintain, at its sole cost and expense, sufficient liability coverage through the Texas Municipal League Intergovernmental Risk Pool; provided, however, the City reserves the right, at any time and in its sole discretion, to self-insure and retain such risk.

(l) Notwithstanding any contrary provision contained herein, and to the extent MAS events at the Project require the utilization of City-owned parking lots located at the Scharbauer Sports Complex, the Parties shall establish a process for the coordination of MAS events at the Project and City events at Astound Stadium when such events are held at the same time in order to limit parking conflicts. The Parties agree that priority shall be given to City events held at Astound Stadium that require substantial parking capacity such as football games, Band of the Americas, graduations, and other such events similar in size.

ARTICLE IV. DEFAULTS AND REMEDIES

If any Party hereto defaults under the terms of this Agreement, the non-defaulting Party must send written notice detailing the nature of the default of the alleged defaulting Party. The alleged defaulting Party shall have a reasonable period, not to exceed sixty (60) days for any monetary default, or ninety (90) days for any non-monetary default, after receipt of such notice to cure such alleged default to the reasonable satisfaction of the non-defaulting Party. Upon the failure of the alleged defaulting Party to cure the alleged default as set out above, the non-defaulting Party will have the right to pursue all remedies available at law or equity.

Notwithstanding any contrary provision contained herein, a breach or default by MAS or the City of any material representation, warranty, covenant, term, condition, duty, or obligation contained in the Lease, after passage of the applicable notice and cure periods (if any), shall, at the option of MAS or the City (as applicable), be a default under this Agreement, in which event MAS or the City (as applicable) shall be entitled (but not required) to apply all rights and remedies of MAS or the City (as applicable) under the terms of this Agreement by reason of a party default under the Lease. The Parties acknowledge and agree that the terms of the Lease are incorporated herein by reference for all legal purposes.

ARTICLE V. NOTICES

Any notice, consent, approval or other communication required or permitted to be given under this Agreement (a "notice"), in order to be effective, must be in writing and must be served by delivering such notice addressed to the Party to be notified (i) effective

two (2) days after depositing the notice with the U.S. Postal Service, postage prepaid, sent certified, return receipt requested; or (ii) effective upon receipt if delivered in person, by commercial messenger or by reputable overnight courier to the office of such Party to be notified. For purposes of giving effective notice, the addresses of the Parties are as follows (provided that any such address may be changed from time to time by the changing party giving not less than thirty (30) days' prior written notice thereof to the other Party hereto as provided above):

If to the City:

City of Midland
300 N. Loraine
Midland, Texas 79701
Attn: City Manager

With a copy to:

City Attorney's Office
300 N. Loraine
Midland, Texas 79701
Attn: City Attorney

If to MAS:

Midland Athletic Syndicate, Inc.
P.O. Box 11086
Midland, Texas 79702
Attn: Austen S. Campbell

With a copy to:

Lynch, Chappell & Alsup PC
300 N. Marienfeld, Suite 700
Midland, Texas 79701
Attn: Austin L. Ramsey

ARTICLE VI. GENERAL PROVISIONS

6.1 Independent Contractor. It is understood and agreed that the relationship among the City and MAS will be that of an independent contractor. Nothing contained in this Agreement will be deemed or construed to (i) make the City the agent, servant or employee of MAS, (ii) make MAS the agent, servant or employee of either the City, or (iii) create any partnership, joint venture, or other association between the City and MAS. It is understood and agreed that MAS is a separate entity from the City, and the City will not be held responsible for actions or obligations of MAS.

6.2 Waiver of Performance. The failure of any Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights under this Agreement, will not be construed as a waiver or relinquishment by such Party of such term, covenant, condition or right with respect to further performance.

6.3 Governing Law. This Agreement will be governed, construed and enforced in accordance with the laws of the State of Texas and venue for any action concerning this Agreement shall be in a State District Court of Midland County, Texas.

6.4 Dates. If a day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend day or non-holiday shall be applicable.

6.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby, and this Agreement will be liberally construed so as to carry out the intent of the Parties to it.

6.6 Parties in Interest. The terms of this Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, will be construed to give any person or entity (other than the Parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement.

6.7 Assignments. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

6.8 Amendments. This Agreement will not be modified or amended in any manner except by a writing signed by the Parties hereto.

6.9 Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof. All prior negotiations, representations or agreements not expressly incorporated into this Agreement are hereby superseded and canceled.

6.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties hereto may execute this Agreement by signing any such counterpart.

6.11 Captions. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

6.12 Interpretation. The Parties acknowledge and represent that this Agreement

has been jointly drafted by the Parties, that no provision of this Agreement will be interpreted or construed against any Party solely because the Party or its legal counsel drafted such provision and that each of them has read, understood, and approved the language and terms set forth herein.

6.13 Limited Waiver of Sovereign Immunity. To the extent allowed by law, the City waives its rights to sovereign or governmental immunity as to an action in equity by MAS for a writ of mandamus or specific performance to enforce all the terms of this Agreement.

[Remainder of this page intentionally left blank; signature pages follow]

EXECUTED by the duly authorized representatives of the Parties hereto to be effective as of the Effective Date.

CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared TOMMY GONZALEZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the CITY OF MIDLAND, TEXAS, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____
2024.

Seal:

Notary Public, State of Texas

January 23, 2024

EXHIBIT B

Lease Agreement

[ATTACHED]

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “*Lease*”), effective this 24th day of January 2024 (the “*Effective Date*”), is made by and between the **CITY OF MIDLAND, TEXAS**, a home-rule municipal corporation (“*Lessor*” or “*the City*”), and **MIDLAND ATHLETIC SYNDICATE, INC.**, a Texas non-profit corporation, (“*Lessee*”). Lessee and Lessor are sometimes collectively referred to herein as the “*Parties*” or individually as a “*Party*”.

RECITALS:

WHEREAS, Lessor is the owner of a certain tract of land within its corporate limits (the “*Land*”), and more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. The Land and all improvements thereon, if any, being hereinafter referred to as, the “*Property*”; and

WHEREAS, the Parties desire to cause the Property to be developed, pursuant to the MAS Development Agreement, by and between Lessor and Lessee dated of even date herewith (the “*Development Agreement*”), as a high-quality indoor multi-purpose athletic facility with related facilities and amenities, for the use and enjoyment of residents and visitors of the City, for the beautification of the City, to promote tourism and the hotel industry in the City and to benefit, improve and promote the quality of life in the Permian Basin; and

WHEREAS, due to the location of the Property in Midland, Texas, the Parties desire for the Property to be developed, operated and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the Parties have, contemporaneously herewith, entered into the Development Agreement, which sets forth the Parties’ respective rights, obligations and undertakings concerning the improvement of the Property and whereby Lessor agrees to lease the Property to Lessee for the purposes of designing, developing, managing, maintaining, operating and occupying the Project (as defined in the Development Agreement); and

WHEREAS, Lessor desires to lease the Property to Lessee in order to allow Lessee to design, develop, manage, maintain and operate the Project pursuant to the Development Agreement for the benefit of the residents of and visitors to the City and the Permian Basin; and

WHEREAS, Lessee desires to lease the Property in order to design, develop, manage, maintain, operate and occupy the Project pursuant to, and in accordance with the Development Agreement; and

WHEREAS, the Midland City Council has determined that the Project satisfies a public purpose by providing athletic and educational opportunities for the benefit of the general public of the City of Midland, Texas, and the Permian Basin.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties, it is agreed to as follows:

ARTICLE I. GRANTING CLAUSE

Lessor, in consideration of the covenants and agreements to be performed by Lessee and upon the terms and conditions hereinafter stated, does hereby lease, demise and let unto Lessee the Property, in its as-is, where-is condition, to have and to hold for the Term (hereinafter defined).

ARTICLE II. TERM

- 2.1 Initial Term.** The initial term of this Lease (the “*Initial Term*”) shall commence on the Effective Date and shall expire on the forty-ninth (49th) anniversary of the date of Substantial Completion (as such term is defined in the Development Agreement) (the “*Expiration Date*”). Upon establishment of the date of Substantial Completion under the Development Agreement, Lessor or Lessee, upon the written request of the other, shall promptly execute and deliver to the requesting Party a certificate acknowledging the Expiration Date calculated as set forth above. Notwithstanding anything herein to the contrary, if Lessee has not obtained commitments from donors for the Capital Contribution (as defined in the Development Agreement) by January 31, 2026, Lessee may terminate this Lease by providing written notice to Lessor prior to such date, at which point this Lease shall be of no further force and effect and the parties shall have no further rights or obligations under this Lease.
- 2.2 Renewal Terms.** Lessee shall have the option to renew the Initial Term for two (2) consecutive additional twenty-five (25) year terms (each, a “*Renewal Term*,” and the Initial Term and any Renewal Terms exercised by Lessee being, the “*Term*”); provided that notwithstanding anything contained in this Lease to the contrary, in no event shall the cumulative Term be greater than ninety-nine (99) years. Each Renewal Term, if exercised, shall be upon the same terms and conditions as the Initial Term. Lessee may exercise each option to renew the Term for the applicable Renewal Term by providing written notice to Lessor of its intention to do so at least ninety (90) days prior to the end of the Initial Term or the prior Renewal Term, as applicable. It is the intention of Lessor and Lessee to avoid a forfeiture of Lessee’s right to extend the Term under the extension option set forth in this paragraph through Lessee’s failure to give notice of exercise within the time prescribed. Accordingly, if Lessee shall fail to give such notice on or prior to the foregoing 90-day period, then the time to give such notice shall be deemed to be extended for an additional period commencing on the last day on which such notice by Lessee may be timely given and ending thirty (30) days after the date Lessor gives Lessee written notice of Lessee’s failure to exercise such option within the time prescribed. If Lessee exercises such option less than ninety (90) days prior to the end of the then existing Term, but within the extended time permitted by this paragraph, the extended Term shall commence, or shall be deemed to have commenced, at the time it would have commenced if such notice had been given within the original time prescribed and, if necessary, the then-current Term shall be extended on a month-to-month basis in order to allow Lessee to exercise any such option.

ARTICLE III. RENT

In consideration of Lessee’s obligations to design, construct, fund, develop, manage, maintain and operate the Project, Lessee shall pay the sum of One and 0/100 Dollar (\$1.00) per year, which

shall become due and payable on January 1 of each year, as rent during the Term.

ARTICLE IV. USE OF PROPERTY

- 4.1 Occupancy and Expenses.** During the Term, Lessee shall have the right to occupy and use the Property, to undertake its obligations and rights under, and in accordance with, the Development Agreement. All costs and expenses related to the Project shall be paid in accordance with the terms of the Development Agreement.
- 4.2 Improvements.** Subject to the terms, conditions, limitations, and exclusions contained in the Development Agreement, Lessee shall have the exclusive right, from the Effective Date until the end of the Term, to design, construct, install, remove or alter the Improvements (as defined in the Development Agreement) within the Property. The Improvements placed on the Property by Lessee, or in place on the Effective date of this Lease, shall remain the property of Lessor (subject to Lessee's rights pursuant to this Lease) and may not be removed by Lessee at the expiration or earlier termination of this Lease.
- 4.3 Compliance.** Lessee shall comply and shall use reasonable efforts to cause Lessee's contractor(s) to comply, in all material respects with applicable federal, state, and local laws regarding Lessee's work, services and activities under this Lease and the Development Agreement, including but not limited to all applicable sections of the City of Midland Municipal Code, as amended.
- 4.4 Independent Contractor.** It is expressly understood and agreed that Lessee shall perform all work and services described in this Lease and in the Development Agreement as an independent contractor and not as an officer, agent, servant or employee of Lessor. Lessee shall control the details of the work and services performed under this Lease and the Development Agreement, and all persons performing the same; and Lessee shall be solely responsible for the acts and omissions of its officers, employees, agents, contractors and subcontractors. The doctrine of *respondeat superior* shall not apply as between Lessor and Lessee or Lessee's officers, employees, agents, contractors and subcontractors. Lessee shall be an independent contractor under this Lease and the Development Agreement and shall assume all rights, obligations and liabilities applicable to it as such independent contractor. Lessee shall assume exclusive responsibility for the work and services performed pursuant to this Lease and the Development Agreement.
- 4.5 Taxes and Liens.** Lessee shall be responsible for the payment of all ad valorem taxes assessed against the Property, if any. Lessee hereby agrees and acknowledges that Lessee shall have no right to place any liens or encumbrances upon Lessor's fee simple interest in the Property.
- 4.6 Plat Requirements/Restrictions; Development Fees.** Lessee hereby agrees and acknowledges that Lessee shall construct the Improvements (i) in accordance with the Development Agreement, and (ii) subject to any applicable plat or replat requirements and/or restrictions. Lessor agrees to plat or replat the Property, at Lessor's expense, as necessary and appropriate for (i) development of the Project, and (ii) Lessee to obtain a 911 address for the

Project. Lessor, and Lessor's representatives, shall cooperate with Lessee, and Lessee's representatives, in good faith in connection with any platting or replatting requirements and/or restrictions and shall not unreasonably withhold, condition or delay any approval or consent related to the construction of the Improvements in accordance with Lessee's development of the Project (as defined in the Development Agreement). Lessor hereby waives the following fees in connection with Lessee's construction of the Improvements: (i) platting fees; (ii) building permit fees, including fees associated with electrical, mechanical, gas, and plumbing systems; (iii) demolition permit fees; (iv) sign permit fees; (v) water meter fees; and (vi) tap fees.

ARTICLE V. STANDARD OF MAINTENANCE

At all times during the Term, Lessee shall operate, repair and maintain the Project in accordance with the terms of the Development Agreement.

ARTICLE VI. INSURANCE

- 6.1 Policy Requirements.** Lessee shall, at its own expense, procure, maintain and keep in full force during the Term, and prior to any construction, installation, work or services at the Property as provided in this Lease or the Development Agreement, the stipulated minimum insurance set out herein with one or more companies duly authorized to do business in the State of Texas.

Comprehensive General Liability (including contractual liability):

- Personal Injury: \$1,000,000 per person
 \$1,000,000 per occurrence
- Property Damage: \$1,000,000 per occurrence
- General Aggregate \$2,000,000

Business Automobile Liability: \$1,000,000

Workers' Compensation: Statutory limits, if required by law

- 6.2 Business Automobile Liability.** The Business Automobile Liability insurance shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership.
- 6.3 Workers' Compensation.** If required by law, the Workers' Compensation insurance shall inure to the benefit of employees injured during the course and scope of their employment by Lessee pursuant to this Lease or the Development Agreement.
- 6.4 Additional Insureds; Waiver of Subrogation.** All insurance, except for Workers' Compensation insurance, shall name Lessor, its council members, officers, employees, agents, successors and assigns as additional insureds. All insurance, including Workers'

Compensation insurance, shall provide for a waiver of subrogation in favor of Lessor.

- 6.5 Certificates.** All insurance, including Lessor's status as an additional insured, as appropriate, as well as a waiver of subrogation in favor of Lessor, shall be evidenced by one or more certificates of insurance provided to Lessor prior to commencement of the Term or any construction, installation, work or services at the Property pursuant to this Lease or the Development Agreement.
- 6.6 Contractors.** Lessee shall contractually require all contractors and subcontractors that perform any work on any portion of the Project or perform any work at the Property to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors and subcontractors shall obtain insurance policies that name Lessor as an additional insured (except for Workers' Compensation insurance) and that provide blanket waivers of subrogation in favor of Lessor.
- 6.7 Builder's All-Risk.** Lessee shall contractually require the general construction contractor for the Project to procure and maintain at its sole cost and expense Builder's All-Risk insurance (in an amount equal to One Hundred Percent (100%) of the replacement cost value of the Improvements). The general construction contractor shall contractually require all subcontractors that work on any portion of the Project or perform any work at the Property to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts described herein or insurance coverage that is appropriate for such subcontractors' scope of work.

ARTICLE VII. INDEMNITY

LESSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LIABILITIES, PERSONAL INJURIES, LOSSES, OBLIGATIONS, PROPERTY DAMAGE, PENALTIES, COURT COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEYS' FEES ("CLAIMS"), BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE OR LESSEE'S OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, OR ANY CONTRACTOR OR SUBCONTRACTOR OF LESSEE, IN CONNECTION WITH LESSEE'S USE OF THE PROPERTY OR IN ANY WAY ARISING OUT OF, OR RESULTING FROM, LESSEE'S WORK, SERVICES OR ACTIVITIES UNDER THE LEASE OR THE DEVELOPMENT AGREEMENT, PROVIDED THAT LESSEE SHALL NOT BE LIABLE FOR ANY SUCH CLAIMS TO THE EXTENT CAUSED BY LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. LESSEE SHALL PAY ANY JUDGMENT WITH COSTS OBTAINED AGAINST LESSOR OR ANY OF LESSOR'S OFFICERS, EMPLOYEES OR AGENTS, INCLUDING ATTORNEYS' FEES. TO THE EXTENT ALLOWED BY LAW, LESSOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSEE AND LESSEE'S OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ALL CLAIMS BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSOR OR LESSOR'S OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, OR ANY CONTRACTOR OR SUBCONTRACTOR OF LESSOR, IN CONNECTION WITH LESSOR'S OWNERSHIP OF THE PROPERTY.

**ARTICLE VIII.
PEACEFUL POSSESSION**

Lessor covenants that Lessee, on performing and observing the covenants and agreements herein contained and provided to be performed by Lessee, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Property during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Lease and the Development Agreement and applicable governmental laws, rules and regulations. Lessor agrees to warrant and forever defend Lessee's right to such occupancy, use and enjoyment of and Lessee's leasehold interest in the Property against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, subject only to provisions of this Lease, all matters of record in Midland County, Texas and all applicable governmental laws, rules and regulations.

**ARTICLE IX.
DEFAULT OR BREACH**

If any Party hereto has defaulted under the terms of this Lease, the non-defaulting Party must send written notice detailing the nature of the default of the alleged defaulting Party. The alleged defaulting Party shall have ninety (90) days after receipt of such notice to cure such alleged default to the reasonable satisfaction of the non-defaulting Party. Upon the failure of the alleged defaulting Party to cure the alleged default as set out above, the non-defaulting Party shall have the right to pursue all remedies available at law or equity. Notwithstanding anything to the contrary contained in this Lease or the Development Agreement, a breach or default by Lessee or Lessor of any material representation, warranty, covenant, term, condition, duty or obligation contained in the Development Agreement, after passage of the applicable notice and cure periods (if any), shall, at the option of Lessor or Lessee (as applicable), be a default under this Lease and the Development Agreement, in which event Lessor or Lessee (as applicable) shall be entitled (but not required) to apply all rights and remedies of Lessor or Lessee (as applicable) under the terms of this Lease and the Development Agreement by reason of a default under said Development Agreement or hereunder. The Parties acknowledge and agree that the terms of the Development Agreement are incorporated herein by reference for all legal purposes.

**ARTICLE X.
WAIVER OF ATTORNEYS' FEES**

EACH PARTY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THIS LEASE OR THE DEVELOPMENT AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS LEASE OR THE DEVELOPMENT AGREEMENT. EACH PARTY AGREES THAT IF IT BRINGS OR COMMENCES ANY LEGAL ACTION, SUIT OR PROCEEDING RELATED

TO THIS LEASE OR THE DEVELOPMENT AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LEASE OR THE DEVELOPMENT 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), THEN SUCH PARTY COVENANTS AND AGREES TO WAIVE AND RELINQUISH, AND DOES HEREBY WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH SUCH PARTY MIGHT OTHERWISE BE ENTITLED.

**ARTICLE XI.
DELIVERY OF NOTICE**

Any notice, consent, approval or other communication required or permitted to be given under this Lease (a "*notice*"), in order to be effective, must be in writing and must be served by delivering such notice addressed to the Party to be notified (i) effective two (2) days after depositing the notice with the U.S. Postal Service, postage prepaid, sent certified, return receipt requested; or (ii) effective upon receipt if delivered in person, by commercial messenger or by reputable overnight courier to the office of such Party to be notified. For purposes of giving effective notice, the addresses of the Parties are as follows (provided that any such address may be changed from time to time by the changing Party giving not less than thirty (30) days' prior written notice thereof to the other party hereto as provided above):

If to the City:

City of Midland
300 N. Loraine
Midland, Texas 79701
Attn: City Manager

With a copy to:

City Attorney's Office
300 N. Loraine, Suite 320
Midland, Texas 79701
Attn: City Attorney

If to Lessee:

Midland Athletic Syndicate, Inc.
P.O. Box 11086
Midland, Texas 79702
Attn: Austen S. Campbell

With a copy to:

Lynch, Chappell & Alsup PC

PACKET

12.27

January 23, 2024

300 N. Marienfeld, Suite 700
Midland, Texas 79701
Attn: Austin L. Ramsey

**ARTICLE XII.
GENERAL PROVISIONS**

- 12.1 Assignments.** No Party may assign its rights or obligations under this Lease without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 12.2 Governing Law and Venue.** This Lease shall be governed, construed and enforced in accordance with the laws of the State of Texas and venue for any action concerning this Lease shall be in a State District Court of Midland County, Texas.
- 12.3 Exhibits.** Any exhibits to this Lease are incorporated herein by reference for all purposes wherever reference is made to the same.
- 12.4 Dates and Terms.** If a day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend day or non-holiday shall be applicable. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement.
- 12.5 Severability.** If any provision of this Lease is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, this Lease shall be liberally construed so as to carry out the intent of the Parties and the Parties shall enter into an amendment to this Lease to amend such illegal, invalid or unenforceable provision to ensure compliance with applicable laws taking into account the intent of the Parties.
- 12.6 Parties in Interest.** The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Lease, whether express or implied, shall be construed to give any person or entity (other than the Parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Lease or any standing or authority to enforce the terms and provisions of this Lease.
- 12.7 Amendments.** This Lease shall not be modified or amended in any manner except by a writing signed by the Parties hereto.
- 12.8 Entire Agreement.** This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof. All prior negotiations representations or agreements not expressly incorporated into this Lease are hereby superseded and canceled.
- 12.9 Counterparts.** This Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties hereto may execute this Lease by signing any such counterpart.

- 12.10 Captions.** Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Lease.
- 12.11 Interpretation.** The Parties acknowledge and represent that this Lease has been jointly drafted by the Parties, that no provision of this Lease shall be interpreted or construed against any Party solely because the Party or its legal counsel drafted such provision and that each of them has read, understood, and approved the language and terms set forth herein.
- 12.12 Approval of Parties.** Whenever this Lease requires or permits the approval or consent to be given by a Party, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.
- 12.13 Further Assurances.** Each Party hereby agrees that it shall take all actions and execute all documents necessary to fully carry out the purposes and intent of this Lease.
- 12.14 Legal Relationship.** The Parties are not, and shall not be considered as, joint ventures, partners, or agents of each other, and neither shall have the power to bind nor obligate the other, except as set forth in this Lease. Each Party agrees not to represent to any person or entity that it has any authority to act on behalf of the other Party. It is mutually understood and agreed that nothing in this Lease is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between Lessor and Lessee.
- 12.15 Time of Essence.** Time is of the essence in all provisions of this Lease.
- 12.16 Limited Waiver of Sovereign Immunity.** To the extent allowed by law, the City waives its rights to sovereign or governmental immunity as to an action in equity by Lessee for a writ of mandamus or specific performance to enforce all the terms of this Lease. Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and is duly authorized to execute and deliver this Lease.

[Remainder of this page intentionally left blank; signature pages follow]

EXECUTED by the duly authorized representatives of the Parties hereto, to be effective as of the Effective Date.

CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared TOMMY GONZALEZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the CITY OF MIDLAND, TEXAS, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____
2024.

Seal:

Notary Public, State of Texas

By: _____
Austen S. Campbell, President

Notary Public, State of Texas

EXHIBIT C

Project Site Plan



LEASE AGREEMENT

THIS LEASE AGREEMENT (this “*Lease*”), effective this 24th day of January 2024 (the “*Effective Date*”), is made by and between the **CITY OF MIDLAND, TEXAS**, a home-rule municipal corporation (“*Lessor*” or “*the City*”), and **MIDLAND ATHLETIC SYNDICATE, INC.**, a Texas non-profit corporation, (“*Lessee*”). Lessee and Lessor are sometimes collectively referred to herein as the “*Parties*” or individually as a “*Party*”.

RECITALS:

WHEREAS, Lessor is the owner of a certain tract of land within its corporate limits (the “*Land*”), and more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. The Land and all improvements thereon, if any, being hereinafter referred to as, the “*Property*”; and

WHEREAS, the Parties desire to cause the Property to be developed, pursuant to the MAS Development Agreement, by and between Lessor and Lessee dated of even date herewith (the “*Development Agreement*”), as a high-quality indoor multi-purpose athletic facility with related facilities and amenities, for the use and enjoyment of residents and visitors of the City, for the beautification of the City, to promote tourism and the hotel industry in the City and to benefit, improve and promote the quality of life in the Permian Basin; and

WHEREAS, due to the location of the Property in Midland, Texas, the Parties desire for the Property to be developed, operated and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the Parties have, contemporaneously herewith, entered into the Development Agreement, which sets forth the Parties’ respective rights, obligations and undertakings concerning the improvement of the Property and whereby Lessor agrees to lease the Property to Lessee for the purposes of designing, developing, managing, maintaining, operating and occupying the Project (as defined in the Development Agreement); and

WHEREAS, Lessor desires to lease the Property to Lessee in order to allow Lessee to design, develop, manage, maintain and operate the Project pursuant to the Development Agreement for the benefit of the residents of and visitors to the City and the Permian Basin; and

WHEREAS, Lessee desires to lease the Property in order to design, develop, manage, maintain, operate and occupy the Project pursuant to, and in accordance with the Development Agreement; and

WHEREAS, the Midland City Council has determined that the Project satisfies a public purpose by providing athletic and educational opportunities for the benefit of the general public of the City of Midland, Texas, and the Permian Basin.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties, it is agreed to as follows:

ARTICLE I. GRANTING CLAUSE

Lessor, in consideration of the covenants and agreements to be performed by Lessee and upon the terms and conditions hereinafter stated, does hereby lease, demise and let unto Lessee the Property, in its as-is, where-is condition, to have and to hold for the Term (hereinafter defined).

ARTICLE II. TERM

- 2.1 Initial Term.** The initial term of this Lease (the “*Initial Term*”) shall commence on the Effective Date and shall expire on the forty-ninth (49th) anniversary of the date of Substantial Completion (as such term is defined in the Development Agreement) (the “*Expiration Date*”). Upon establishment of the date of Substantial Completion under the Development Agreement, Lessor or Lessee, upon the written request of the other, shall promptly execute and deliver to the requesting Party a certificate acknowledging the Expiration Date calculated as set forth above. Notwithstanding anything herein to the contrary, if Lessee has not obtained commitments from donors for the Capital Contribution (as defined in the Development Agreement) by January 31, 2026, Lessee may terminate this Lease by providing written notice to Lessor prior to such date, at which point this Lease shall be of no further force and effect and the parties shall have no further rights or obligations under this Lease.
- 2.2 Renewal Terms.** Lessee shall have the option to renew the Initial Term for two (2) consecutive additional twenty-five (25) year terms (each, a “*Renewal Term*,” and the Initial Term and any Renewal Terms exercised by Lessee being, the “*Term*”); provided that notwithstanding anything contained in this Lease to the contrary, in no event shall the cumulative Term be greater than ninety-nine (99) years. Each Renewal Term, if exercised, shall be upon the same terms and conditions as the Initial Term. Lessee may exercise each option to renew the Term for the applicable Renewal Term by providing written notice to Lessor of its intention to do so at least ninety (90) days prior to the end of the Initial Term or the prior Renewal Term, as applicable. It is the intention of Lessor and Lessee to avoid a forfeiture of Lessee’s right to extend the Term under the extension option set forth in this paragraph through Lessee’s failure to give notice of exercise within the time prescribed. Accordingly, if Lessee shall fail to give such notice on or prior to the foregoing 90-day period, then the time to give such notice shall be deemed to be extended for an additional period commencing on the last day on which such notice by Lessee may be timely given and ending thirty (30) days after the date Lessor gives Lessee written notice of Lessee’s failure to exercise such option within the time prescribed. If Lessee exercises such option less than ninety (90) days prior to the end of the then existing Term, but within the extended time permitted by this paragraph, the extended Term shall commence, or shall be deemed to have commenced, at the time it would have commenced if such notice had been given within the original time prescribed and, if necessary, the then-current Term shall be extended on a month-to-month basis in order to allow Lessee to exercise any such option.

ARTICLE III. RENT

In consideration of Lessee’s obligations to design, construct, fund, develop, manage, maintain and operate the Project, Lessee shall pay the sum of One and 0/100 Dollar (\$1.00) per year, which

shall become due and payable on January 1 of each year, as rent during the Term.

ARTICLE IV. USE OF PROPERTY

- 4.1 Occupancy and Expenses.** During the Term, Lessee shall have the right to occupy and use the Property, to undertake its obligations and rights under, and in accordance with, the Development Agreement. All costs and expenses related to the Project shall be paid in accordance with the terms of the Development Agreement.
- 4.2 Improvements.** Subject to the terms, conditions, limitations, and exclusions contained in the Development Agreement, Lessee shall have the exclusive right, from the Effective Date until the end of the Term, to design, construct, install, remove or alter the Improvements (as defined in the Development Agreement) within the Property. The Improvements placed on the Property by Lessee, or in place on the Effective date of this Lease, shall remain the property of Lessor (subject to Lessee's rights pursuant to this Lease) and may not be removed by Lessee at the expiration or earlier termination of this Lease.
- 4.3 Compliance.** Lessee shall comply and shall use reasonable efforts to cause Lessee's contractor(s) to comply, in all material respects with applicable federal, state, and local laws regarding Lessee's work, services and activities under this Lease and the Development Agreement, including but not limited to all applicable sections of the City of Midland Municipal Code, as amended.
- 4.4 Independent Contractor.** It is expressly understood and agreed that Lessee shall perform all work and services described in this Lease and in the Development Agreement as an independent contractor and not as an officer, agent, servant or employee of Lessor. Lessee shall control the details of the work and services performed under this Lease and the Development Agreement, and all persons performing the same; and Lessee shall be solely responsible for the acts and omissions of its officers, employees, agents, contractors and subcontractors. The doctrine of *respondeat superior* shall not apply as between Lessor and Lessee or Lessee's officers, employees, agents, contractors and subcontractors. Lessee shall be an independent contractor under this Lease and the Development Agreement and shall assume all rights, obligations and liabilities applicable to it as such independent contractor. Lessee shall assume exclusive responsibility for the work and services performed pursuant to this Lease and the Development Agreement.
- 4.5 Taxes and Liens.** Lessee shall be responsible for the payment of all ad valorem taxes assessed against the Property, if any. Lessee hereby agrees and acknowledges that Lessee shall have no right to place any liens or encumbrances upon Lessor's fee simple interest in the Property.
- 4.6 Plat Requirements/Restrictions; Development Fees.** Lessee hereby agrees and acknowledges that Lessee shall construct the Improvements (i) in accordance with the Development Agreement, and (ii) subject to any applicable plat or replat requirements and/or restrictions. Lessor agrees to plat or replat the Property, at Lessor's expense, as necessary and appropriate for (i) development of the Project, and (ii) Lessee to obtain a 911 address for the

Project. Lessor, and Lessor's representatives, shall cooperate with Lessee, and Lessee's representatives, in good faith in connection with any platting or replatting requirements and/or restrictions and shall not unreasonably withhold, condition or delay any approval or consent related to the construction of the Improvements in accordance with Lessee's development of the Project (as defined in the Development Agreement). Lessor hereby waives the following fees in connection with Lessee's construction of the Improvements: (i) platting fees; (ii) building permit fees, including fees associated with electrical, mechanical, gas, and plumbing systems; (iii) demolition permit fees; (iv) sign permit fees; (v) water meter fees; and (vi) tap fees.

ARTICLE V. STANDARD OF MAINTENANCE

At all times during the Term, Lessee shall operate, repair and maintain the Project in accordance with the terms of the Development Agreement.

ARTICLE VI. INSURANCE

- 6.1 Policy Requirements.** Lessee shall, at its own expense, procure, maintain and keep in full force during the Term, and prior to any construction, installation, work or services at the Property as provided in this Lease or the Development Agreement, the stipulated minimum insurance set out herein with one or more companies duly authorized to do business in the State of Texas.

Comprehensive General Liability (including contractual liability):

- Personal Injury: \$1,000,000 per person
\$1,000,000 per occurrence
- Property Damage: \$1,000,000 per occurrence
- General Aggregate \$2,000,000

Business Automobile Liability: \$1,000,000

Workers' Compensation: Statutory limits, if required by law

- 6.2 Business Automobile Liability.** The Business Automobile Liability insurance shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership.
- 6.3 Workers' Compensation.** If required by law, the Workers' Compensation insurance shall inure to the benefit of employees injured during the course and scope of their employment by Lessee pursuant to this Lease or the Development Agreement.
- 6.4 Additional Insureds; Waiver of Subrogation.** All insurance, except for Workers' Compensation insurance, shall name Lessor, its council members, officers, employees, agents, successors and assigns as additional insureds. All insurance, including Workers'

Compensation insurance, shall provide for a waiver of subrogation in favor of Lessor.

- 6.5 **Certificates.** All insurance, including Lessor's status as an additional insured, as appropriate, as well as a waiver of subrogation in favor of Lessor, shall be evidenced by one or more certificates of insurance provided to Lessor prior to commencement of the Term or any construction, installation, work or services at the Property pursuant to this Lease or the Development Agreement.
- 6.6 **Contractors.** Lessee shall contractually require all contractors and subcontractors that perform any work on any portion of the Project or perform any work at the Property to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors and subcontractors shall obtain insurance policies that name Lessor as an additional insured (except for Workers' Compensation insurance) and that provide blanket waivers of subrogation in favor of Lessor.
- 6.7 **Builder's All-Risk.** Lessee shall contractually require the general construction contractor for the Project to procure and maintain at its sole cost and expense Builder's All-Risk insurance (in an amount equal to One Hundred Percent (100%) of the replacement cost value of the Improvements). The general construction contractor shall contractually require all subcontractors that work on any portion of the Project or perform any work at the Property to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts described herein or insurance coverage that is appropriate for such subcontractors' scope of work.

ARTICLE VII. INDEMNITY

LESSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LIABILITIES, PERSONAL INJURIES, LOSSES, OBLIGATIONS, PROPERTY DAMAGE, PENALTIES, COURT COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEYS' FEES ("CLAIMS"), BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE OR LESSEE'S OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, OR ANY CONTRACTOR OR SUBCONTRACTOR OF LESSEE, IN CONNECTION WITH LESSEE'S USE OF THE PROPERTY OR IN ANY WAY ARISING OUT OF, OR RESULTING FROM, LESSEE'S WORK, SERVICES OR ACTIVITIES UNDER THE LEASE OR THE DEVELOPMENT AGREEMENT, PROVIDED THAT LESSEE SHALL NOT BE LIABLE FOR ANY SUCH CLAIMS TO THE EXTENT CAUSED BY LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. LESSEE SHALL PAY ANY JUDGMENT WITH COSTS OBTAINED AGAINST LESSOR OR ANY OF LESSOR'S OFFICERS, EMPLOYEES OR AGENTS, INCLUDING ATTORNEYS' FEES. TO THE EXTENT ALLOWED BY LAW, LESSOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSEE AND LESSEE'S OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ALL CLAIMS BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

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**ARTICLE VIII.
PEACEFUL POSSESSION**

Lessor covenants that Lessee, on performing and observing the covenants and agreements herein contained and provided to be performed by Lessee, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Property during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Lease and the Development Agreement and applicable governmental laws, rules and regulations. Lessor agrees to warrant and forever defend Lessee's right to such occupancy, use and enjoyment of and Lessee's leasehold interest in the Property against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, subject only to provisions of this Lease, all matters of record in Midland County, Texas and all applicable governmental laws, rules and regulations.

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DEFAULT OR BREACH**

If any Party hereto has defaulted under the terms of this Lease, the non-defaulting Party must send written notice detailing the nature of the default of the alleged defaulting Party. The alleged defaulting Party shall have ninety (90) days after receipt of such notice to cure such alleged default to the reasonable satisfaction of the non-defaulting Party. Upon the failure of the alleged defaulting Party to cure the alleged default as set out above, the non-defaulting Party shall have the right to pursue all remedies available at law or equity. Notwithstanding anything to the contrary contained in this Lease or the Development Agreement, a breach or default by Lessee or Lessor of any material representation, warranty, covenant, term, condition, duty or obligation contained in the Development Agreement, after passage of the applicable notice and cure periods (if any), shall, at the option of Lessor or Lessee (as applicable), be a default under this Lease and the Development Agreement, in which event Lessor or Lessee (as applicable) shall be entitled (but not required) to apply all rights and remedies of Lessor or Lessee (as applicable) under the terms of this Lease and the Development Agreement by reason of a default under said Development Agreement or hereunder. The Parties acknowledge and agree that the terms of the Development Agreement are incorporated herein by reference for all legal purposes.

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TO THIS LEASE OR THE DEVELOPMENT AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LEASE OR THE DEVELOPMENT 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), THEN SUCH PARTY COVENANTS AND AGREES TO WAIVE AND RELINQUISH, AND DOES HEREBY WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH SUCH PARTY MIGHT OTHERWISE BE ENTITLED.

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DELIVERY OF NOTICE**

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If to the City:

City of Midland
300 N. Loraine
Midland, Texas 79701
Attn: City Manager

With a copy to:

City Attorney’s Office
300 N. Loraine, Suite 320
Midland, Texas 79701
Attn: City Attorney

If to Lessee:

Midland Athletic Syndicate, Inc.
P.O. Box 11086
Midland, Texas 79702
Attn: Austen S. Campbell

With a copy to:

Lynch, Chappell & Alsup PC

300 N. Marienfeld, Suite 700
Midland, Texas 79701
Attn: Austin L. Ramsey

**ARTICLE XII.
GENERAL PROVISIONS**

- 12.1 Assignments.** No Party may assign its rights or obligations under this Lease without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 12.2 Governing Law and Venue.** This Lease shall be governed, construed and enforced in accordance with the laws of the State of Texas and venue for any action concerning this Lease shall be in a State District Court of Midland County, Texas.
- 12.3 Exhibits.** Any exhibits to this Lease are incorporated herein by reference for all purposes wherever reference is made to the same.
- 12.4 Dates and Terms.** If a day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend day or non-holiday shall be applicable. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement.
- 12.5 Severability.** If any provision of this Lease is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, this Lease shall be liberally construed so as to carry out the intent of the Parties and the Parties shall enter into an amendment to this Lease to amend such illegal, invalid or unenforceable provision to ensure compliance with applicable laws taking into account the intent of the Parties.
- 12.6 Parties in Interest.** The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Lease, whether express or implied, shall be construed to give any person or entity (other than the Parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Lease or any standing or authority to enforce the terms and provisions of this Lease.
- 12.7 Amendments.** This Lease shall not be modified or amended in any manner except by a writing signed by the Parties hereto.
- 12.8 Entire Agreement.** This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof. All prior negotiations representations or agreements not expressly incorporated into this Lease are hereby superseded and canceled.
- 12.9 Counterparts.** This Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties hereto may execute this Lease by signing any such counterpart.

- 12.10 Captions.** Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Lease.
- 12.11 Interpretation.** The Parties acknowledge and represent that this Lease has been jointly drafted by the Parties, that no provision of this Lease shall be interpreted or construed against any Party solely because the Party or its legal counsel drafted such provision and that each of them has read, understood, and approved the language and terms set forth herein.
- 12.12 Approval of Parties.** Whenever this Lease requires or permits the approval or consent to be given by a Party, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.
- 12.13 Further Assurances.** Each Party hereby agrees that it shall take all actions and execute all documents necessary to fully carry out the purposes and intent of this Lease.
- 12.14 Legal Relationship.** The Parties are not, and shall not be considered as, joint ventures, partners, or agents of each other, and neither shall have the power to bind nor obligate the other, except as set forth in this Lease. Each Party agrees not to represent to any person or entity that it has any authority to act on behalf of the other Party. It is mutually understood and agreed that nothing in this Lease is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between Lessor and Lessee.
- 12.15 Time of Essence.** Time is of the essence in all provisions of this Lease.
- 12.16 Limited Waiver of Sovereign Immunity.** To the extent allowed by law, the City waives its rights to sovereign or governmental immunity as to an action in equity by Lessee for a writ of mandamus or specific performance to enforce all the terms of this Lease. Lessor represents and warrants that it has all requisite power and authority to enter into this Lease and is duly authorized to execute and deliver this Lease.

[Remainder of this page intentionally left blank; signature pages follow]

EXECUTED by the duly authorized representatives of the Parties hereto, to be effective as of the Effective Date.

CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared TOMMY GONZALEZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the CITY OF MIDLAND, TEXAS, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____
2024.

Seal:

Notary Public, State of Texas

By: _____
Austen S. Campbell, President

Notary Public, State of Texas



City Council Meeting

Item Number: 13
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Michele Hagemann, Accountant
Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE FOR THE FISCAL YEAR 2025 RIFLE-RESISTANT BODY ARMOR GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF "GRANT WRITER" AND "COMPLIANCE MANAGER" TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING (DISTRICT: ALL) (POLICE)

Purpose:

To allow Grant Writer and Compliance Manager the authorization to submit and manage the Rifle- Resistant Armor for All Field Operation Officers project application for the Rifle-Resistant Body Armor Grant Program FY2025. The Rifle- Resistant Armor for All Field Operation Officers Project proposes the purchase and distribution of 100 Angel Armor units to ensure 100% of sworn-in field officers are adequately protected in the line of duty with well-fitting and efficient gear.

There is no match required. Total project cost is \$171,641.00. We are requesting the full amount in the grant.

Recommended City Council Action:

Approve

Fiscal Impact:

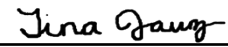
Due to no required local match, we will be saving a total of \$171,641.00 if the grant is awarded.

Strategic Priority:

Set the Standard for a Safe and Secure City

Discussion:

Grant deadline is 2/8/2024. Resolution is needed per application requirements.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE SUBMISSION OF
AN APPLICATION TO THE OFFICE OF THE
GOVERNOR - PUBLIC SAFETY OFFICE FOR THE
FISCAL YEAR 2025 RIFLE-RESISTANT BODY ARMOR
GRANT PROGRAM; AUTHORIZING THOSE HOLDING
THE TITLE OF “GRANT WRITER” AND
“COMPLIANCE MANAGER” TO ACCEPT, REJECT,
ALTER, OR TERMINATE SAID GRANT FUNDING;
AND AUTHORIZING THE EXECUTION OF ALL
NECESSARY DOCUMENTS FOR THE ACCEPTANCE
OF SAID GRANT FUNDING**

WHEREAS, the Office of the Governor - Public Safety Office has announced the availability of grant funds through the Fiscal Year 2025 Rifle-Resistant Body Armor Grant Program; and

WHEREAS, the Midland Police Department wishes to submit an application for said grant funds in order to purchase 100 Angel Armor units to ensure all field operation officers are adequately protected in the line of duty; and

WHEREAS, the City Council finds it to be in the public interest to authorize the submission of an application for said grant funds, and to authorize those holding the title of “Grant Writer” and “Compliance Manager” (the “*Grant Designees*”) to accept, reject, alter, or terminate said grant funding on behalf of the City of Midland; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Grant Designees to execute all necessary documents to provide for the acceptance of said grant funds; and

WHEREAS, the City of Midland shall not use the existence of said grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded; and

WHEREAS, in the event of loss or misuse of said grant funds, the City of Midland assures that the grant funds shall be returned to the Office of the Governor - Public Safety Office in full;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE

CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City of Midland is hereby authorized to submit a grant application to the Office of the Governor - Public Safety Office in order to receive grant funds through the Fiscal Year 2025 Rifle-Resistant Body Armor Grant Program. Said grant funds to be used for the purchase of 100 Angel Armor units to ensure all field operation officers are adequately protected in the line of duty.

SECTION TWO. That the City of Midland shall not use said grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded.

SECTION THREE. That in the event of loss or misuse of the grant funds from the Office of the Governor - Public Safety Office, the City of Midland assures that the grant funds shall be returned to the Office of the Governor - Public Safety Office in full.

SECTION FOUR. That those holding the title of “Grant Writer” and “Compliance Manager” are hereby designated as the City of Midland’s authorized signatories and are hereby authorized to accept, reject, alter, or terminate said grant funding on behalf of the City of Midland.

SECTION FIVE. That upon the approval of the City of Midland’s application for grant funds through the Fiscal Year 2025 Rifle-Resistant Body Armor Grant Program, the Grant Designees are hereby authorized and directed to execute all necessary documents to provide for the acceptance of said grant funds.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Seth Herman, Chief of Police

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 14
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Michele Hagemann, Accountant
Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2025 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF "GRANT WRITER" AND "COMPLIANCE MANAGER" TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING (DISTRICT: ALL) (POLICE)

Purpose:

Authorization for Midland Police Department to submit an application to the Criminal Justice Grant Program FY2025 if approved to apply by the Council of Governments (Permian Basin Regional Planning Commission). If approved, an application for the funding of a ROOK Tactical Solution Armored Vehicle will be created and submitted. The ROOK will provide armored assistance in critical incident situations for Midland and the surrounding area.

Recommended City Council Action:

Approve

Fiscal Impact:

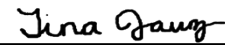
If approved to apply for the ROOK and awarded, an estimated \$468,640.00 can be saved while obtaining this piece of crucial armored equipment.

Strategic Priority:

Set the Standard for a Safe and Secure City

Discussion:

Application and project must first go through our regional Council of Governments known as the Permian Basin Regional Planning Commission. If the project is approved, Midland Police Department will submit the electronic application and present the project to the Permian Basin Regional Planning Commission as part of the application process. A resolution is required for Midland Police Department, as a local law enforcement agency, to submit an application.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2025 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF “GRANT WRITER” AND “COMPLIANCE MANAGER” TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING

WHEREAS, the Office of the Governor, Texas Criminal Justice Division, has announced the availability of funds through the Fiscal Year 2025 Edward Byrne Memorial Justice Assistance Grant Program; and

WHEREAS, the Midland Police Department wishes to submit an application for grant funds in order to purchase a ROOK Tactical Solution Armored Vehicle; and

WHEREAS, the City Council finds it to be in the public interest to authorize the submission of an application for said grant funds, and to authorize those holding the title of “Grant Writer” and “Compliance Manager” (the “*Grant Designees*”) to accept, reject, alter, or terminate said grant funding on behalf of the City of Midland; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Grant Designees to execute all necessary documents to provide for the acceptance of said grant funds; and

WHEREAS, the City of Midland shall not use the existence of an Office of the Governor, Texas Criminal Justice Division grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded; and

WHEREAS, in the event of loss or misuse of the Office of the Governor, Texas Criminal Justice Division grant funds, the City of Midland assures that the grant funds shall be returned to the Office of the Governor, Texas Criminal Justice Division in full;

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

SECTION ONE. That the City of Midland is hereby authorized to submit a grant application to the Office of the Governor, Texas Criminal Justice Division, in order to purchase a ROOK Tactical Solution Armored Vehicle for the Police Department.

SECTION TWO. That the City of Midland shall not use said grant funds from Office of the Governor, Texas Criminal Justice Division to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded.

SECTION THREE. That in the event of loss or misuse of the grant funds from the Office of the Governor, Texas Criminal Justice Division, the City of Midland assures that the grant funds shall be returned to the Office of the Governor of Texas Criminal Justice Division in full.

SECTION FOUR. That those holding the title of “Grant Writer” and “Compliance Manager” are hereby designated as the City of Midland’s authorized signatories and are hereby authorized to apply, accept, reject, alter or terminate the grant on behalf of the City of Midland.

SECTION FIVE. That upon the approval of the City of Midland’s application for grant funds through the Fiscal Year 2025 Edward Byrne Memorial Justice Assistance Grant Program, the Grant Designees are hereby authorized and directed to execute all necessary documents to provide for the acceptance of said grant funds.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Seth Herman, Chief of Police

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 15
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Michele Hagemann, Accountant
Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE FOR THE FISCAL YEAR 2025 BODY-WORN CAMERA GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF "GRANT WRITER" AND "COMPLIANCE MANAGER" TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING; AND AUTHORIZING THE APPROPRIATION OF MATCHING FUNDS IN THE AMOUNT OF \$6,536.25 AS REQUIRED BY THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE (DISTRICT: ALL) (POLICE)

Purpose:

The Police Department is requesting authorization to apply for the Body-Worn Camera Grant Program, FY2025 through the Public Safety Office for the proposed Midland Police Department- 100% Body-Worn Camera Initiative. The application is for 30 body worn camera units and the licenses for a project total of \$26,145. There is an 75/25 cost share so \$19,608.75 is being requested with \$6,536.25 being Midland Police Department's share available in Police General Funds account. This will ensure all field officers are equipped with functioning body-cameras and trained in Midland PD's Body-Worn Camera policy and procedure.

Recommended City Council Action:

Approve

Fiscal Impact:

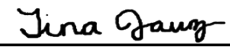
If awarded, \$19,608.75 will be saved from Police General Fund account with grant funding to provide all 30 Body-Worn Cameras and licensing.

Strategic Priority:

Set the Standard for a Safe and Secure City

Discussion:

By ensuring 100% of field officers have Body-Worn cameras, we can better ensure officers are equipped while on duty. These body-worn cameras help access information and evidence, and maintain officer accountability and transparency.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE FOR THE FISCAL YEAR 2025 BODY-WORN CAMERA GRANT PROGRAM; AUTHORIZING THOSE HOLDING THE TITLE OF “GRANT WRITER” AND “COMPLIANCE MANAGER” TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING; AND AUTHORIZING THE APPROPRIATION OF MATCHING FUNDS IN THE AMOUNT OF \$6,536.25 AS REQUIRED BY THE OFFICE OF THE GOVERNOR - PUBLIC SAFETY OFFICE

WHEREAS, the Office of the Governor - Public Safety Office has announced the availability of grant funds through the Fiscal Year 2025 Body-Worn Camera Grant Program; and

WHEREAS, the Midland Police Department wishes to submit an application to receive \$19,608.75 in grant funds to be used for the purchase of 30 body-worn camera units and associated software licenses; and

WHEREAS, the City Council finds it to be in the public interest to authorize the submission of an application for said grant funds, and to authorize those holding the title of “Grant Writer” and “Compliance Manager” (the “*Grant Designees*”) to accept, reject, alter, or terminate said grant funding on behalf of the City of Midland; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Grant Designees to execute all necessary documents to provide for the acceptance of said grant funds; and

WHEREAS, the City of Midland shall not use the existence of said grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded; and

WHEREAS, in the event of loss or misuse of said grant funds, the City of Midland assures that the grant funds shall be returned to the Office of the Governor - Public Safety Office in full; and

WHEREAS, the City Council finds it to be in the public interest to authorize the appropriation of matching funds in the amount of \$6,536.25 out of the Police General Fund to be used for the purchase of said body-worn camera units and associated software licenses, as required by the Office of the Governor - Public Safety Office;

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

SECTION ONE. That the City of Midland is hereby authorized to submit a grant application to the Office of the Governor - Public Safety Office in order to receive grant funds in the amount of \$19,608.75 through the Fiscal Year 2025 Body-Worn Camera Grant Program. Said grant funds to be used for the purchase of 30 body-worn camera units and associated software licenses.

SECTION TWO. That the City of Midland shall not use said grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from its governing body at or after the time the grant funds are awarded.

SECTION THREE. That in the event of loss or misuse of the grant funds from the Office of the Governor - Public Safety Office, the City of Midland assures that the grant funds shall be returned to the Office of the Governor - Public Safety Office in full.

SECTION FOUR. That those holding the title of “Grant Writer” and “Compliance Manager” are hereby designated as the City of Midland’s authorized signatories and are hereby authorized to accept, reject, alter, or terminate said grant funding on behalf of the City of Midland.

SECTION FIVE. That upon the approval of the City of Midland’s application for grant funds through the Fiscal Year 2025 Body-Worn Camera Grant Program, the Grant Designees are hereby authorized and directed to execute all necessary documents to provide for the acceptance of said grant funds.

SECTION SIX. That the amount of \$6,536.25 is hereby appropriated in the Police

General Fund, which shall be used for the purchase of 30 body-worn camera units and associated software licenses upon the City of Midland's receipt of the grant funds from the Office of the Governor - Public Safety Office.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Seth Herman, Chief of Police

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 16
Meeting Date: January 9, 2024, January 23, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.86-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 230 FEET NORTH OF CASTLEWOOD DRIVE AND APPROXIMATELY 620 FEET WEST OF HOMELAND 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) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Robert Graham, is requesting a Zone Change from RR, Regional Retail District to SF-1, Single-Family Dwelling District to prepare the property for housing development.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Strategic Priority:

Quality of Life and Place

Discussion:**Surrounding Zoning and Land Use:**

The properties to the east, south, and west are zoned SF-1, Single-Family District and are the locations of residences and vacant land. The property to the north is zoned CE, Country Estate District and is the location of vacant land.

Analysis:

The applicant is proposing lot sizes for residential uses. These lot sizes do not meet the standards of the RR, Regional Retail District. Additionally, the use would not be allowed in the RR. Therefore, the applicant is requesting this zone change.

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)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

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, oil and gas considerations, 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 zone change. [For Applicant's Information Only.]

Code Compliance: (Approved)

No Oil & Gas well concerns. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified. No structure shall be built over an abandoned well.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

The Future Land Use Map in Chapter 3 of the *Tall City Tomorrow Comprehensive Plan* designates this area as Urban Residential-Low (UR-L) which calls for restrictive land use, emphasizing single-family detached development. Therefore, the request for a residential zoning for this property is consistent with the Comprehensive Plan.

Staff recommends approval of this request for a zone change subject to condition A.

Conditions:

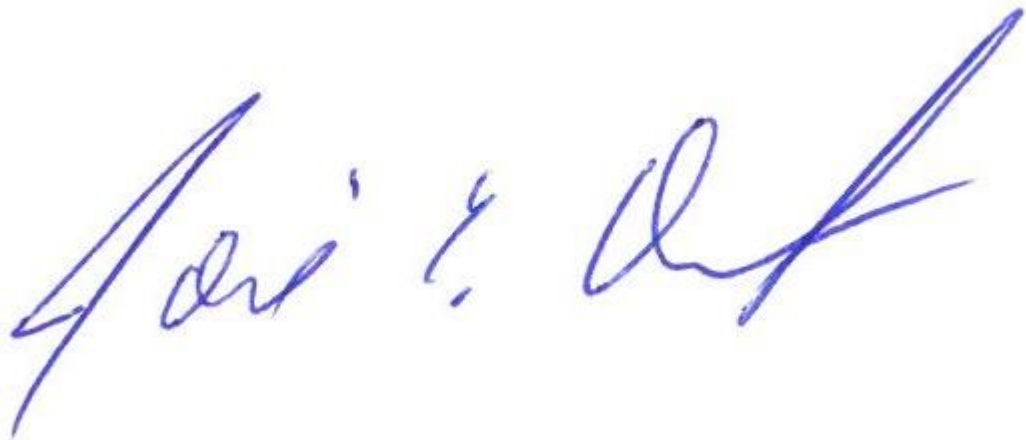
- A. That the use and development of the property shall conform to the regulations of the SF-1, Single-Family Dwelling District**

Letters of Objection:

Staff has not received any letters of objection as of December 6, 2023.

Attachments:

Survey (Exhibit A)
Application
Maps

A handwritten signature in blue ink, appearing to read "David L. [unclear]", is written across the page.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT
MAP OF THE CITY OF MIDLAND TO REZONE A
3.86-ACRE TRACT OF LAND OUT OF SECTION 35,
BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND
COUNTY OF MIDLAND, TEXAS, FROM RR,

WHEREAS the City Planning and Zoning Commission and the Governing Body
of

REGIONAL RETAIL DISTRICT TO SF-1,
SINGLE-FAMILY DWELLING DISTRICT

the City of Midland in compliance with the City Charter, the City Code, and State law,
have

(GENERALLY LOCATED APPROXIMATELY 230 FEET
NORTH OF CASTLEWOOD DRIVE AND

given the request submitted by United States Fertilizer and otherwise; and after
a full

APPROXIMATELY 620 FEET WEST OF HOWARD
DRIVE); CONTAINING A CUMULATIVE CLAUSE;

and fair hearing to all of the property owners generally and particularly to those
interested

CONTAINING A SAVINGS AND SEVERABILITY
CLAUSE; PROVIDING FOR A MAXIMUM PENALTY

OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00);
persons situated in the affected area and in the vicinity thereof, the Governing Body
finds

AND ORDERING PUBLICATION

that the public health, safety and general welfare will be best served by rezoning a
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
3.86-acre
CITY OF MIDLAND, TEXAS:

SECTION ONE That the Zoning District Map of the City of Midland, Texas
tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County
of

hereby amended to rezone the Property from RR, Regional Retail District to
SINGLE-FAMILY DWELLING DISTRICT, and the definition is specifically detailed by regulations contained
Exhibit in

Single-Family Dwelling District.

the City Code of the City of Midland, Texas, shall be applicable to such "Property" terms

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

this

that covered herein; provided, however, that all prior ordinances or parts of ordinances, for any reason, held to be unconstitutional or invalid, such holding shall not

inconsistent with or in conflict with any of the provisions of this ordinance are hereby affect the validity of the remaining portions of this ordinance. The Council of the City of

expressly repealed to the extent of any such inconsistency or conflict.

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 above and foregoing ordinance was duly proposed, read in full and adopted on

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, on the _____ day of _____, A.D., 2024, and passed to second reading,

Council members voting "AYE":

on motion of Council member _____, seconded by Council member _____, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

Council members voting "NAY":

SECTION SIX. The City Secretary is hereby authorized and directed to publish

the _____ by the following vote:

_____ The above and foregoing ordinance was read in full and finally adopted following vote upon motion of Council member _____, seconded by _____, descriptive caption of this ordinance in the manner and for the length of time prescribed by

Council member _____

16.5

January 23, 2024

member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

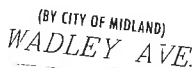
Landon Ochoa, Senior Planner

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

ZONE CHANGE EXHIBIT - TRACT 'Z1'

23, 2024



REGISTERED PROFESSIONAL LAND SURVEYOR #4562
2713 Cantrell St | Irving, TX 75062

GRASSLANDS ESTATES WEST, SECTION 14

SEPTEMBER 2023



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: ROBERT GRAHAM

Phone (432) 697-9866
Email

Address
5908 HOMESTEAD BLVD.

City
MIDLAND

State
TX

Zip
79707-2215

Property Owner

Printed Name: GRASSLANDS IV, LTD.

Phone (432) 697-9866
Email

Address
5908 HOMESTEAD BLVD.

City
MIDLAND

State
TX

Zip
79707-2215

Representative (if different from Applicant or Property Owner)

Firm: WA CIVIL, LLC.

Printed Name: LARRY H. WALKER, PE, PMP

Phone (432) 901-2060
Email lwalker@wacivil.com

Address
223 WEST WALL ST., SUITE 226 (8th FLOOR) Midland Towers

City
MIDLAND

State
TX

Zip
79701

Street Address: Elkwoodway

Legal Description

Lot: 21-31 Block: 19 Subdivision: GRASSLANDS ESTATES WEST, SECTION 14

Current Zoning: GR

Proposed Zone: SF1

(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Downgrading from General Retail (GR) to Single Family 1 (SF1) to add more lots to the subdivision.

Present Use of Property: Undeveloped land

Proposed Use of Property: Residential (SF1)

How would this zone change affect the public health, safety and welfare? _____

It will not have any adverse affect on the public health, safety, or welfare.

Describe how conditions affecting the property have changed since present zoning designation: _____

No physical conditions have changed, owner owns both pieces of property and decided to add more lots to subdivision.

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: 9-12-23

Applicant (printed): ROBERT GRAHAM

Property Owner (signature):

Date: 9-17-23

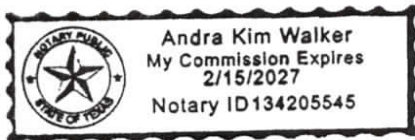
Property Owner (printed): ROBERT GRAHAM

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 LARRY H. WALKER who, being by me duly sworn, upon oath says: That (s)he is the owner of GRASSLANDS IV, LTD. or authorized by ROBERT GRAHAM, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.



[Signature]
Authorized Agent (signature)

Subscribed and sworn to before me, this 14 day of September, 2023, to certify which witness my hand and seal of office.

[Signature]

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

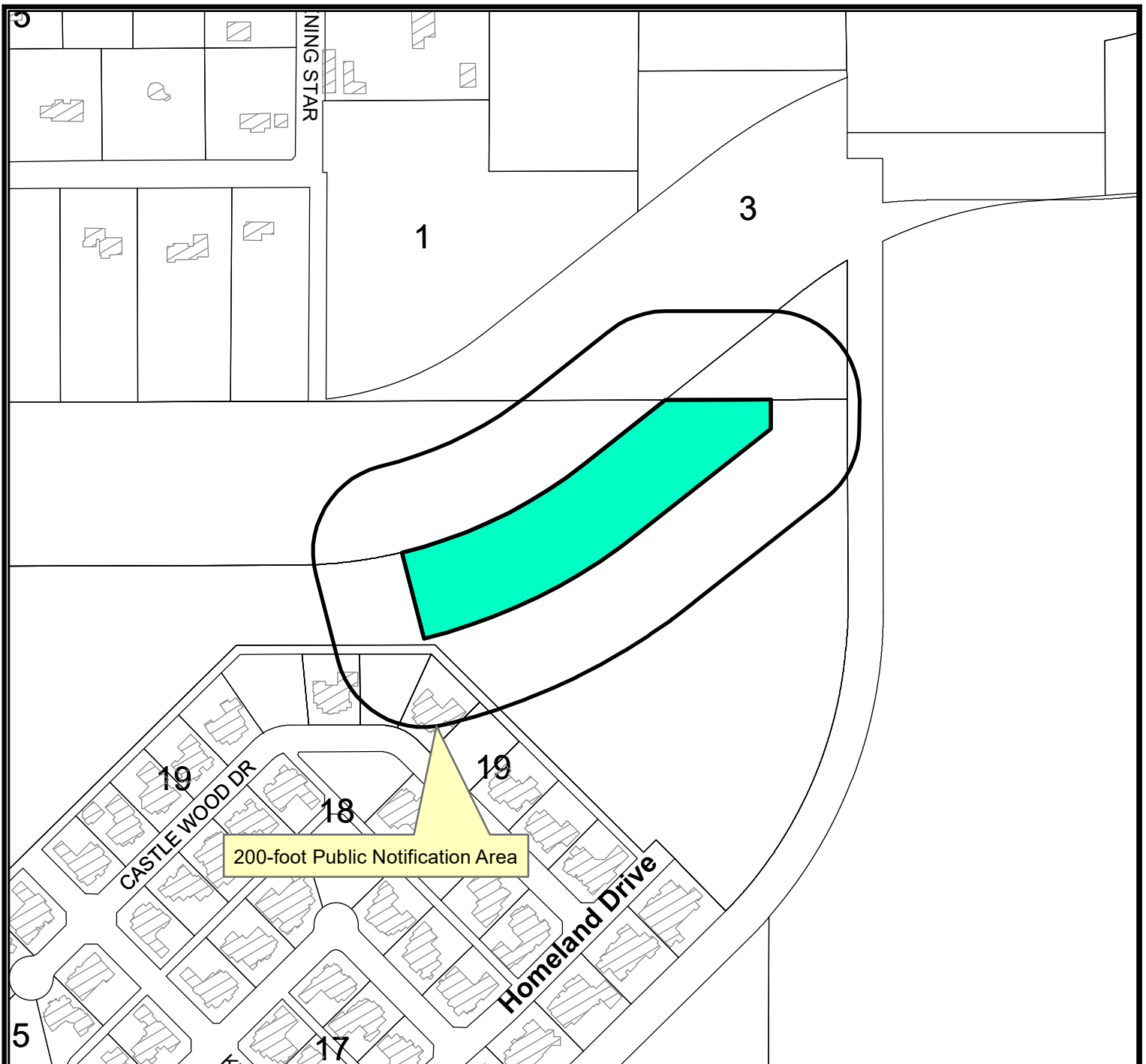
☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 1497

Received By: Daniel Humbert

Date:



LOCATION MAP

Z-23-0351

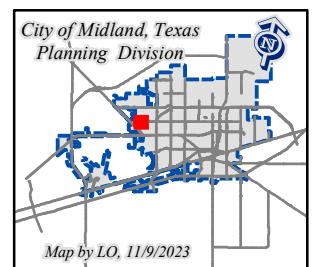
Scale: 1" = 325'

Consider a request by Robert Graham for a zone change from, RR, Regional Retail District to SF-1, Single-Family Dwelling District for a 3.86-acre tract of land, located out of Section 35, Block 40, T-I-S, T&P RR. CO. Survey, City and County of Midland, Texas.

Generally located approximately 230-feet north of Castlewood Drive, and approximately 620-feet west of Homeland Drive (Council District 4)

LEGEND

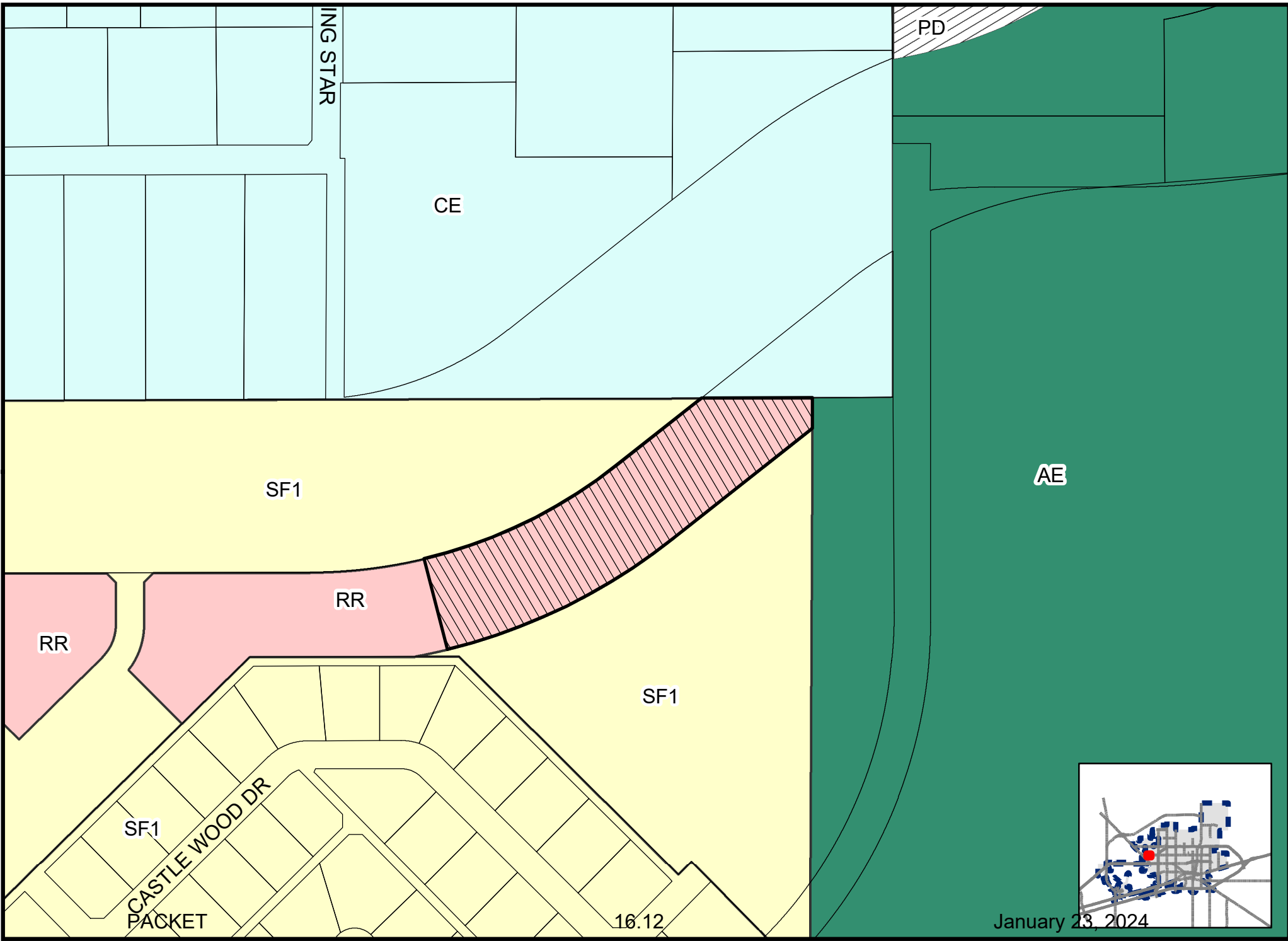
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

January 23, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND NOR IS IT DESIGNED TO BE USED AS A PERMISSIVE TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 17
Meeting Date: January 9, 2024, January 23, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Midland Community Healthcare Services, is requesting an annexation of a 9.36-acre tract of land out of Tract 5, City View Acres, Midland County, Texas to allow for the future development of a Medical Clinic.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Strategic Priority:

Quality of Life and Place

Discussion:

On November 30, 2023, the service agreement between the City and the property was executed. This is the next step in the annexation process.

This project has been circulated to all respective departments for internal review and received no objections.

Engineering: (Approved)

No objections. [For the Applicant's information only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Fire: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

Building Code: (Approved)

No objections.

Oil and Gas: (Approved)

No Oil and Gas Issues.

GIS: (Approved)

No comments.

Planning:

The Future Land Use Map in the Tall City Tomorrow Comprehensive designates this area as Employment Reserve (ER). Although the ER doesn't support an LR Zoning. The property is close to a large residential area. One of the purposes of the Local Retail Zoning is to support uses that will serve surrounding neighborhoods. The use of a medical clinic fulfills this purpose and would benefit the surrounding residential area.

Letters of Objection:

As of December 28, 2023, staff has received no letters of objection to this request.

Attachments:

Petition for Annexation
Service Agreement
Application
Maps

A handwritten signature in blue ink, appearing to read "Doris L. [unclear]", is written across the middle of the page.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE BOUNDARIES OF
THE CITY OF MIDLAND, TEXAS, BY ADDING
THERETO A CERTAIN AREA ADJOINING THE
PRESENT CITY LIMITS, BEING A 9.36-ACRE TRACT
OF LAND OUT OF TRACT 5, CITY VIEW ACRES,

MIDLAND COUNTY, TEXAS (GENERALLY LOCATED
WHEREAS, a public hearing before the City Council of the City of Midland, Te
xas, ON THE EAST SIDE OF SOUTH JACKSON STREET,

APPROXIMATELY 170 FEET SOUTH OF
a home rule municipal corporation, was held in the City Council Chamber on J
anuary 9, CLOVERDALE ROAD); ORDERING PUBLICATION;

WHEREAS, notice of the public hearing was published on the City of
2024, AND ORDERING RECORDATION BY THE CITY
Midland, during which all interested persons were provided an opportunity to be heard
on the SECRETARY

Texas' Internet website on December 20, 2023, and the notice remained posted until
the date of the proposed annexation of the hereinafter described territory; and
WHEREAS, notice of the public hearing was published in a newspaper
having

of the public hearing; and
general circulation in the City of Midland, Texas, and in the below described
territory, on
WHEREAS, all required notices of the proposed annexation and the public
hearing
were given in accordance with applicable laws;

December 22, 2023; and
WHEREAS, the City of Midland has entered into a written agreement with
the

owner(s) of the hereinafter described territory for the provision of services in said
area;

SECTION ONE. That the following described property adjoining the
present boundary of the City of Midland, Texas, be and the same is hereby annexed
to and being a 9.36-acre tract of land out of Tract 5, City View Acres,

Midland
PACKET 17.4 January 23, 2024

incorporated within the boundary of the City of Midland, Texas:

County, Texas, and being more fully described by metes and bounds in the

petition for annexation attached hereto as Exhibit "A" and incorporated herein
SECTION TWO. That this ordinance shall be published in the official newspaper

by reference for all legal purposes.
in the City of Midland, Texas, and the same shall not be effective until after the publication
SECTION THREE. That the City Secretary is hereby authorized and directed to file

thereof.
a certified copy of this ordinance with the County Clerk of Midland County, Texas, for the

purpose of recording in the Deed Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and
Council members voting "AYE":
adopted on

first reading, the _____ day of _____, A.D., 2024; and passed to second
Council members voting "NAY":
reading

The above and foregoing ordinance was read in full and finally adopted
on motion of Council member _____, seconded by Council
member _____

following vote upon motion of Council member _____, seconded by
Council _____, by the following vote:

Council members voting "AYE":
member _____, on the _____ day of _____, A.D., 2024, at a regular

Council members voting "NAY":
meeting of the City Council:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

Landon Ochoa, Senior Planner

APPROVED ONLY AS TO FORM:

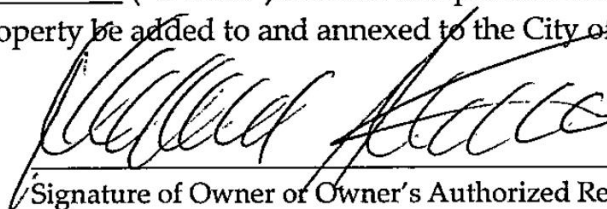
John Ohnemiller, City Attorney

EXHIBIT "A"

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Midland Community Healthcare Services ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.



Signature of Owner or Owner's Authorized Representative

Michael J. Austin

Printed Name

Chief Executive Officer, MCHS

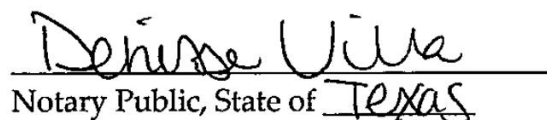
Title

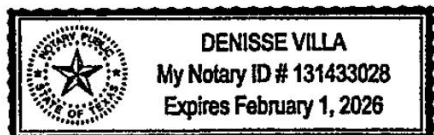
THE STATE OF TX §
COUNTY OF Midland §

This instrument was acknowledged before me on the 19th day of October 2023, by Michael J. Austin in the capacity herein stated.

MY COMMISSION EXPIRES

02/01/2026


Notary Public, State of Texas



MIDLAND COMMUNITY HEALTHCARE
SERVICES

TS/PS LAND TITLE

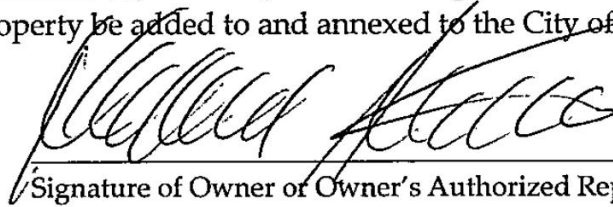
January 28, 2024

AS RETURNED TO THE DEED RECORDS OF MIDLAND COUNTY, TEXAS.

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Midland Community Healthcare Services ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.



Signature of Owner or Owner's Authorized Representative

Michael J. Austin

Printed Name

Chief Executive Officer, MCHS

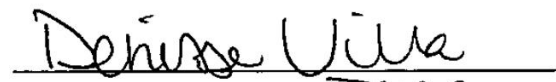
Title

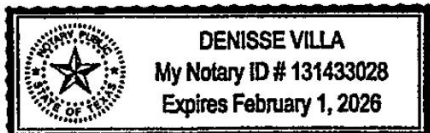
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02/01/2026


Notary Public, State of Texas



MIDLAND COMMUNITY HEALTHCARE
SERVICES

TS/ S LAND TITLE

January 28, 2024

BY ORDER OF TRACT OF LAND,
BEING A PART OF TRACT 5, CITY VIEW
ACRES,
AS RETURNED TO MIDLAND PAGE 88
OF THE DEED RECORDS OF MIDLAND COUNTY,
TEXAS.

SERVICE AGREEMENT

THIS AGREEMENT is made and effective the 30th day of November, 2013, by and between the CITY OF MIDLAND, TEXAS, hereinafter called "CITY," and MIDLAND COMMUNITY HEALTHCARE SERVICES, hereinafter referred to as "PETITIONER" whether one or more.

WHEREAS, a petition for annexation of a 9.36-acre tract of land out of Tract 5, City View Acres, Midland County, Texas, said tract being more fully described by metes and bounds therein (the "Area"), has been submitted to CITY by PETITIONER, the owner(s) of the land located in the Area, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, before CITY annexes the Area, CITY and PETITIONER must enter into a written agreement for the provision of services in the Area in accordance with Section 43.0672 of the Local Government Code;

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

ARTICLE I. PURPOSE

The purpose of this Agreement is (1) to list each service CITY will provide in the Area on the effective date of the annexation, (2) to establish a schedule that includes the period within which CITY will provide each service in the Area that is not provided on the effective date of the annexation, if any, and (3) to establish the duty of PETITIONER to pay fees similar to impact fees in the event that CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees. PETITIONER understands and agrees that CITY is not required to provide a service that is not included in this Agreement. PETITIONER further understands and agrees that the execution of this Agreement does not constitute a promise by CITY to annex the Area and that this Agreement is not a permit for purposes of Chapter 245 of the Local Government Code.

ARTICLE II. TERM

The term of this Agreement shall be one year; provided, however, that if CITY annexes the Area within one year from the effective date, the term of this Agreement shall continue until such time when all services described in this Agreement are provided in the Area, and at such time, the Agreement shall terminate and shall be of no further force or effect except for those provisions that expressly survive termination. If CITY does not annex the Area during the term of this Agreement, this Agreement shall terminate and shall be of no further force or effect, and CITY shall have no duty to provide services to

the Area.

ARTICLE III. SERVICES TO BE PROVIDED UPON ANNEXATION

CITY will provide the following services in the Area on the date that the ordinance annexing the Area becomes effective:

- A. Engineering:** CITY's Engineering Services Department will maintain streets, drainage facilities, and rights-of-way in accordance with CITY policies, procedures, and ordinances and applicable laws. PETITIONER understands and agrees that PETITIONER may be required to construct public improvements, including but not limited to (i) roadways adjacent to property located in the Area upon platting and (ii) roadway connections to existing facilities in the Area upon issuance of building permits in accordance with applicable laws and ordinances. PETITIONER understands and agrees that the Area will be included in CITY's service area of CITY's drainage utility.
- B. Utilities:** CITY will provide water services and wastewater collection services, upon platting property in the Area, in accordance with the City Code at rates established by ordinances for such services; provided, however, that no such service shall be provided until the public improvements necessary therefor have been constructed and CITY has approved said improvements. PETITIONER understands and agrees that CITY may require PETITIONER to construct such public improvements in accordance with applicable laws and ordinances.
- C. Development:** CITY's Development Services Department will provide planning, land development, land use, building review and inspection, and code enforcement services in accordance with applicable laws, rules, regulations, and ordinances.
- D. Police:** CITY's Police Department will provide emergency and routine call response, traffic enforcement, and law enforcement services in the Area.
- E. Fire:** CITY's Fire Department will provide emergency service for fire protection services and emergency medical services.
- F. Community Services:** CITY's Community Services Department will provide access to services and programs that may be offered by the Health and Senior Services Division, services and programs that may be offered by Animal Services Division, and access to City-owned parks.
- G. Solid Waste:** CITY's Solid Waste Department will provide residential garbage pickup service only. PETITIONER understands and agrees that CITY will not provide garbage pickup services to new commercial developments.

Regarding the services described above, PETITIONER understands and agrees that CITY will provide a level of services that is comparable to the level of services available in other parts of the City of Midland with topography, land use, and population density similar to those reasonably contemplated or projected for the Area. PETITIONER understands and acknowledges that any CITY departments or divisions identified above may change names or be reorganized. Any reference to a specific CITY department or division also includes any

subsequent CITY department or division that will provide the same or similar services.

ARTICLE IV. IMPACT FEES

- A. **Fees to be assessed and collected.** Except as otherwise described herein, if CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees in accordance with Chapter 395 of the Local Government Code, CITY shall assess and collect fees associated with the development of the Area as described for impact fees in the applicable impact fee ordinance(s) (the "Fees").
- B. **Service areas.** For purposes of assessing and collecting Fees for water and wastewater under this Agreement, the Area is deemed to be located within CITY's capital improvements plan service area therefor. For the purpose of assessing and collecting Fees for roadways under this Agreement, the Area is deemed to be located in CITY's capital improvements plan roadway service area(s) immediately adjacent thereto; provided, however, that if the Area is not located immediately adjacent to a roadway service area and is located immediately adjacent to a tract of land that is associated with an agreement regarding fees similar to the Fees in this Agreement, the Area is deemed to be located in the roadway service area(s) specified in such similar agreement associated with the adjacent tract of land.
- C. **Capital improvements and facility expansions.** For purposes of this Agreement, a capital improvement or facility expansion that will serve the Area shall be deemed to be included in CITY's capital improvements plan if:
- a. said capital improvement or facility expansion is substantially similar to a type of capital improvement or facility expansion identified in CITY's capital improvements plan; or
 - b. said capital improvement or facility expansion is an extension of a capital improvement or facility expansion identified in CITY's capital improvements plan.
- D. **Time of assessment.** Fees shall be assessed at the time of recordation of a final plat of any portion of the Area, at the time the Area is annexed, or on the effective date(s) of the applicable impact fee ordinance(s), whichever is later.
- E. **Time of collection.** CITY shall collect the Fees from PETITIONER at the time of issuance of a building permit. PETITIONER acknowledges and agrees that no building permit or certificate of occupancy shall be issued until PETITIONER has paid the applicable Fees.
- F. **Amendment to land use assumptions, capital improvements plan, or impact fees.** Notwithstanding any provision in this Agreement to the contrary, if CITY amends its land use assumptions, capital improvements plan, or impact fees such that PETITIONER would be required to pay impact fees, CITY shall assess and PETITIONER shall pay the applicable impact fees in accordance with the applicable impact fee ordinance(s), as amended; provided, however, that to the extent CITY assesses applicable Fees for service units under this Agreement, PETITIONER shall pay such Fees in accordance with this Agreement and shall not be required to pay the applicable impact fees for the same service units.

G. Article to survive termination. If CITY annexes the Area within one year from the effective date, the provisions of this Article shall survive termination of this Agreement.

ARTICLE V. GOVERNMENTAL IMMUNITY

By executing this Agreement CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VI. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, PETITIONER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PETITIONER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, CITY'S NEGLIGENCE, OR CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VII. ATTORNEYS' FEES

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code §37.001, et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys' fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY, SPECIFICALLY AND SOLELY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT

IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PARTY BRINGING THE ACTION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH THE PARTY MIGHT OTHERWISE BE ENTITLED.

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

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT. PETITIONER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE VIII. GENERAL PROVISIONS

A. **Governing law and venue.** This Agreement shall be governed by the laws of the State of Texas. All performance made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. The provisions of this Article VIII.A. shall survive termination of this Agreement.

B. **Notice.** Any notice or demand that shall be made regarding this Agreement, shall be made

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

If to CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to PETITIONER: Midland Community Healthcare Services
 5001 Andrews Highway
 Midland, Texas 79703

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

- C. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- D. **Use of language.** Words in the singular shall be held to include the plural, unless the context otherwise requires.
- E. **Amendments, modifications, alterations.** No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- F. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- G. **Notice of alleged breach; statutory prerequisites.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, PETITIONER or PETITIONER'S legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which PETITIONER will settle, the physical and mailing addresses of PETITIONER at the time and date the claim was presented and the physical and mailing addresses of PETITIONER for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom PETITIONER relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to PETITIONER

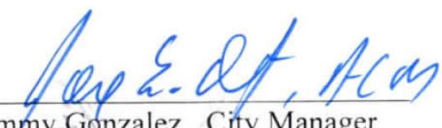
that PETITIONER'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, PETITIONER'S failure to comply with the requirements herein shall perpetually bar PETITIONER'S claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless of whether CITY has actual or constructive notice or knowledge of said claim or alleged damages. The provisions of this Article VIII.G. shall survive termination of this agreement. **PETITIONER AGREES THAT THE REQUIREMENTS OF THIS ENTIRE AGREEMENT ARE REASONABLE.**

- H. **Covenants run with the land.** The provisions of this Agreement are covenants that run with the land located in the Area. CITY and PETITIONER agree that this Agreement may be recorded in the deed records of the county in which the Area is located. CITY and PETITIONER acknowledge and agree that this Agreement is binding upon CITY and PETITIONER and their respective successors, executors, heirs, and assigns, as applicable. The provisions of this Article VIII.H. shall survive termination of this Agreement.

EXECUTED the day and year first above mentioned.

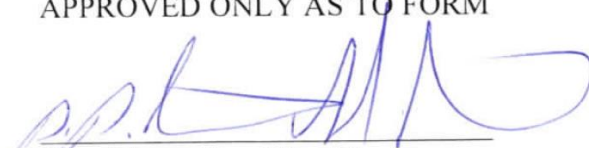
THE CITY OF MIDLAND, TEXAS

By: 
FOR Tommy Gonzalez, City Manager

ATTEST


Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM


John Ohnemiller, City Attorney

PETITIONER:

By: Michael Austin

Name: Michael Austin

Title: CEO/MCHS

STATE OF Texas §

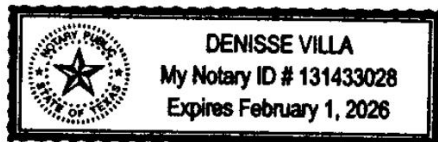
§
COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this 29th day of November 2023, personally appeared Michael Austin, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29th day of November, 2023.

Denisse Villa

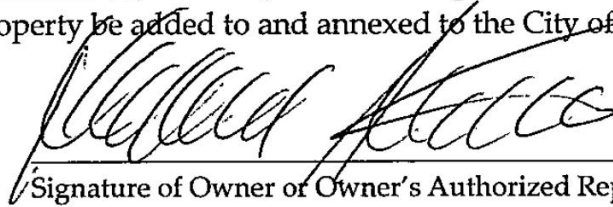
Notary Public, State of Texas



PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Midland Community Healthcare Services ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.



Signature of Owner or Owner's Authorized Representative

Michael J. Austin

Printed Name

Chief Executive Officer, MCHS

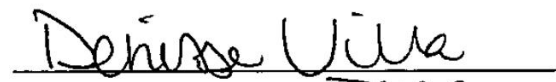
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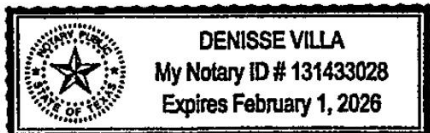
THE STATE OF TX §
COUNTY OF Midland §

This instrument was acknowledged before me on the 19th day of October 2023, by Michael J. Austin in the capacity herein stated.

MY COMMISSION EXPIRES

02/01/2026


Notary Public, State of Texas



MIDLAND COMMUNITY HEALTHCARE
SERVICES

TSPS LAND TITLE

January 28, 2024

AS RETURNED TO THE DEED RECORDS OF MIDLAND COUNTY, TEXAS.



Annexation/Initial Zoning Application

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Michael J. Austin

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Property Owner

Printed Name: Midland Community Healthcare Services

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Representative (if different from Applicant or Property Owner)

Firm: Midland Community Healthcare Services

Printed Name: Michael J. Austin

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Street Address: 1009 S. Jackson St., Midland, TX 79701**Legal Description**

Lot: 3 Block: 7 Subdivision: City View Acres (tract of land out of tract 5)

Current Zoning:

County

Proposed Zone: LR

(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: _____

Construction of non-profit primary care medical clinic and a co-located in-house pharmacy.

Access needed to municipal utilities.

Present Use of Property: _____

Vacant, previously used as a oil field trucking & heavy equipment operations and maintenance yard.

Proposed Use of Property: _____

Construction of non-profit primary care medical clinic and a co-located in-house pharmacy.

How would this annexation/zone change affect the public health, safety and welfare? _____

Improved access to medical care; no impact (possible improvement) with regards to traffic.

Will significantly improve quality of life on south side, which currently has no such facilities except our existing one which we have outgrown.

Describe how this annexation/zone change will affect adjacent properties: _____

Minimal impact. Project as proposed would be an improvement overall to a trucking yard.

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): <u>[Signature]</u>	Date: <u>10-19-23</u>
Applicant (printed): <u>Michael J. Austin</u>	
Property Owner (signature): <u>[Signature]</u>	Date: <u>10-19-23</u>
Property Owner (printed): <u>Midland Community Healthcare Services</u>	
The Annexation/Initial Zoning shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> 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 Michael Austin who, being by me duly sworn, upon oath says: That (s)he is authorized by Midland Community Healthcare Services the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

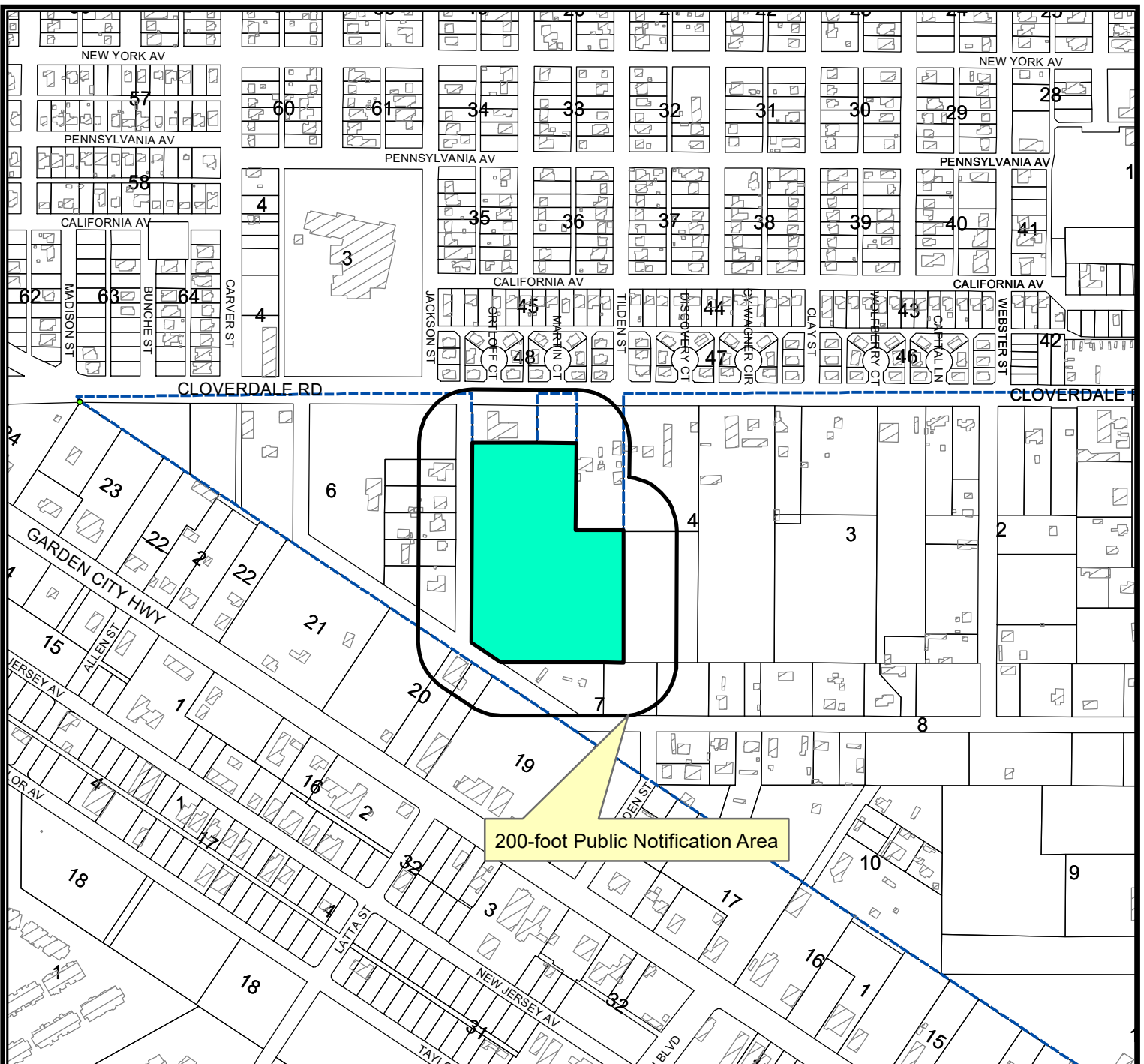
Subscribed and sworn to before me, this 19th day of October, 2023, to certify which witness my hand and seal of office.



DENISSE VILLA
My Notary ID # 131433028
Expires February 1, 2026

Denisse Villa
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Metes and Bounds (Sealed by Surveyor)
☒ Application Fee	☒ Files in Digital Format (PDF/JPEG)
Check # <u>1001</u>	☒ Petition
Received By: <u>[Signature]</u>	Date: <u>OCT 19 2023</u>



LOCATION MAP

A-23-0044

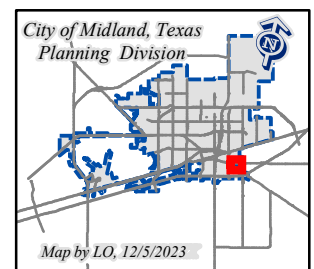
Scale: 1" = 542'

An ordinance on a request by Midland Community Healthcare Services for an annexation of a 9.36-acre tract of land out of Tract 5, City View Acres, Midland County, Texas.

Generally located on the east side of South Jackson Street approximately 170 feet south of Cloverdale Road. (ETJ)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

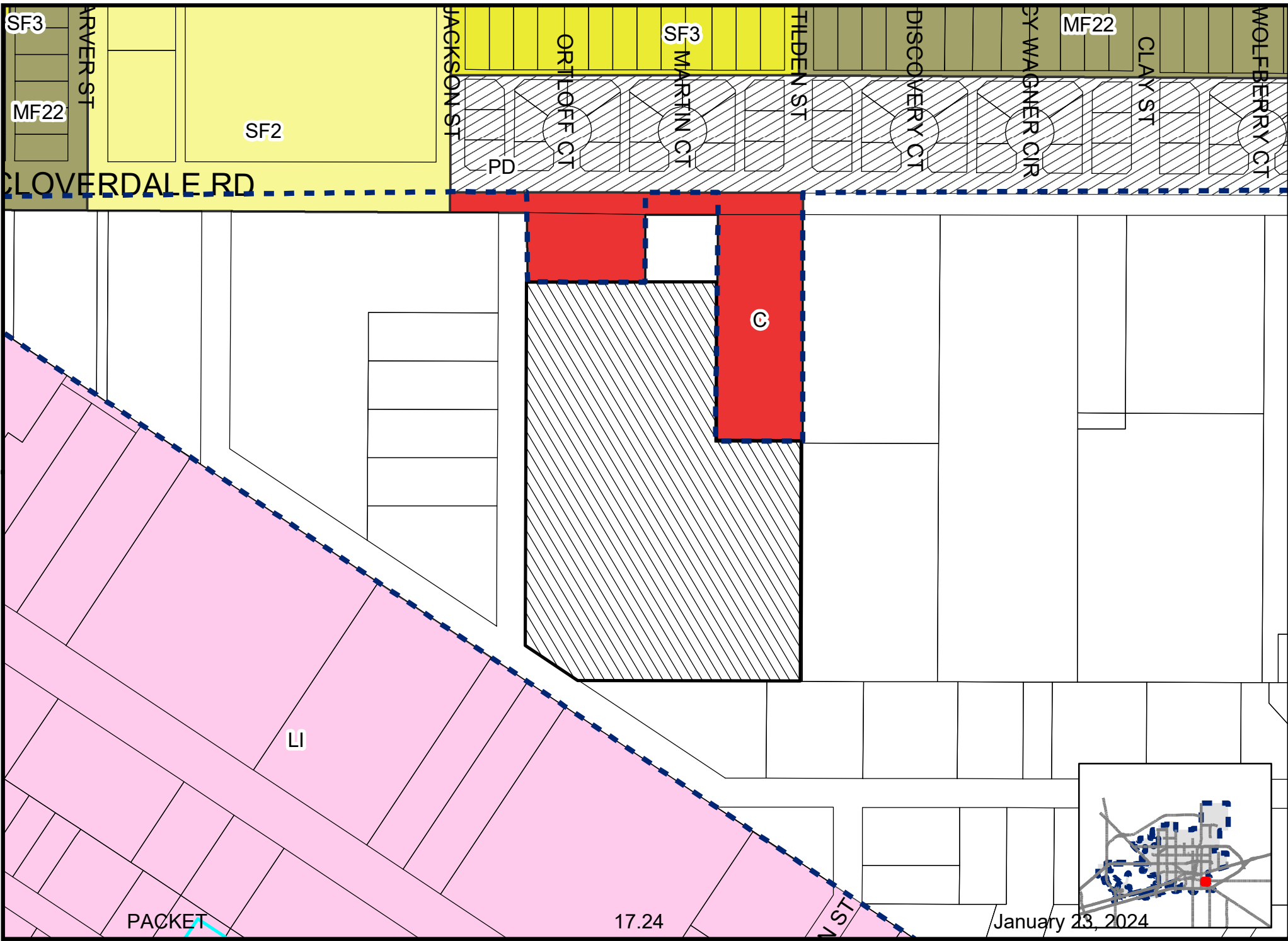


©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING 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 23, 2024













City Council Meeting

Item Number: 18
Meeting Date: January 9, 2024, January 23, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 9.36-ACRE TRACT OF LAND OUT OF TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JACKSON STREET, APPROXIMATELY 170 FEET SOUTH OF CLOVERDALE ROAD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Midland Community Healthcare Services, is requesting an initial zoning of a property to be annexed at 1009 S. Jackson Street for the future use of a medical clinic.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Quality of Life and Place

Discussion:

Surrounding Zoning and Land Use:

The properties to the north are zoned C, Commercial District and are the locations of a Church and a residence. The properties to the east, south and west are located outside city limits in the ETJ and have no zoning. They are the locations of residences and businesses.

Analysis:

The site is currently in the process of being annexed into City Limits. A replat of the property will be required, but the Planning Division has not received any sketch plat applications for this property as of December 17, 2023.

The associated annexation request is scheduled for the January 9, 2024 City Council meeting.

This case has been circulated to and reviewed by all pertinent City departments for internal review and has received no objections. Their comments are as follows.

Engineering: (Approved)

No objections to zoning/zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

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.]

Fire: (Approved)

No objections.

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, oil and gas considerations, 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.

Oil and Gas: (Approved)

No Oil and Gas issues.

Planning:

The Future Land Use Map in the Tall City Tomorrow Comprehensive designates this area as Employment Reserve (ER). Although the ER doesn't support an LR Zoning. The property is close to a large residential area. One of the purposes of the Local Retail Zoning is to support uses that will serve surrounding neighborhoods. The use of a medical clinic fulfills this purpose and would benefit the surrounding residential area.

The Planning and Zoning Commission recommended approval of this request on December 18, 2023.

Therefore, staff recommends approval of this request subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the LR, Local Retail District.**

Letters of Objection:

As of January 3, 2023, staff has not received any objection letters.

Attachments:

Petition & Survey (Exhibit A)
Application
Maps

David L. [Signature]

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE INITIAL
ZONING CLASSIFICATION OF THE AREA INDICATED
AS BEING A 9.36-ACRE TRACT OF LAND OUT OF
TRACT 5, CITY VIEW ACRES, MIDLAND COUNTY,
TEXAS, AS AN LR, LOCAL RETAIL DISTRICT; SAID
TRACT BEING GENERALLY LOCATED ON THE EAST

WHEREAS notice has been given to all persons interested, citizens by
publication

APPROXIMATELY 170 FEET SOUTH OF

in the official newspaper and otherwise of a public hearing to be held before the City
Council

CLAUSE; CONTAINING A SAVINGS AND

on January 9, 2024 (the "Hearing Date"), to consider an amendment to the Zoning
District

WHEREAS, such a public hearing was held in the Council Chambers on the

Date as advertised; AND ORDERING PUBLICATION
Map of the City of Midland, Texas; so as to establish the initial zoning classification of
the
given an opportunity to be heard; and after considering among other things, the
character of
property described in Section One hereof as an LR, Local Retail District, as set out in
Title
the property involved and the surrounding area and its peculiar suitability for particular
uses;

XI, Chapter 1 of the City Code of Midland, Texas; and

and with a view to conserving the value of buildings and encouraging the most
appropriate

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
use of land throughout such municipality, the Council finds it to be in the best interest
of the CITY OF MIDLAND, TEXAS:

SECTION ONE. That the initial zoning classification of the area indicated
health, safety, morals and general welfare of the City of Midland to amend the
Exhibit "A", attached hereto and incorporated herein by reference, is hereby
Zoning District established as
RACKET
18.5
January 23, 2024

District Map accordingly;

an LR, Local Retail District, and the Zoning District Map of the City of Midland, Texas, is

hereby amended to reflect the establishment of this initial zoning classification.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this

SECTION TWO. The provisions of this ordinance are to be cumulative of all ordinances, other than this, for any reason, held to be unconstitutional or invalid, such holding shall not

ordinances or parts of ordinances governing or regulating the same subject matter as that affect the validity of the remaining portions of this ordinance. The Council of the City of

covered herein; provided, however, that all prior ordinances or parts of ordinances Midland hereby declares that it would have passed this ordinance and each section,

inconsistent with or in conflict with any of the provisions of this ordinance are hereby subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

expressly repealed to the extent of any such inconsistency or conflict.

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance

The above and foregoing ordinance was duly proposed, read in full and with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, adopted on

first reading, the _____ day of _____, A.D. 2024; and passed to second reading Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00). on

Council members voting "AYE":
SECTION FIVE. The City Secretary is hereby authorized and directed to motion of Council member _____, seconded by Council member _____, publish

Council members voting "NAY":
by the following vote:
the descriptive caption of this ordinance in the manner and for the length of time

prescribed **PACKET**

186

January 23, 2024

by the law as an alternative method of publication.

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council

Council members voting "AYE":
member _____, on the ____ day of _____, A.D., 2024, at a regular meeting

Council members voting "NAY":
of the City Council:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary
APPROVED AS TO CONTENT

AND COMPLETENESS:

Landon Ochoa, Senior Planner
APPROVED ONLY AS TO FORM:

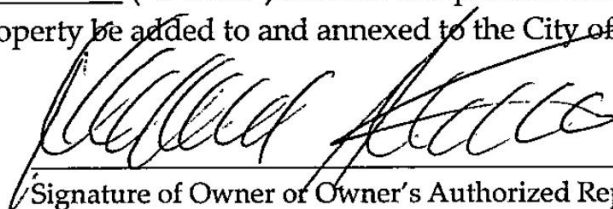
John Ohnemiller, City Attorney

EXHIBIT "A"

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Midland Community Healthcare Services ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.



Signature of Owner or Owner's Authorized Representative

Michael J. Austin

Printed Name

Chief Executive Officer, MCHS

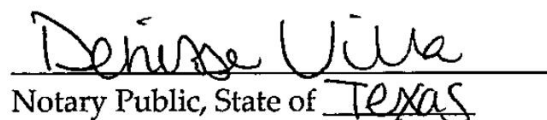
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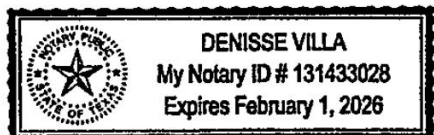
THE STATE OF TX §
COUNTY OF Midland §

This instrument was acknowledged before me on the 19th day of October 2023, by Michael J. Austin in the capacity herein stated.

MY COMMISSION EXPIRES

02/01/2026


Notary Public, State of Texas



MIDLAND COMMUNITY HEALTHCARE
SERVICES

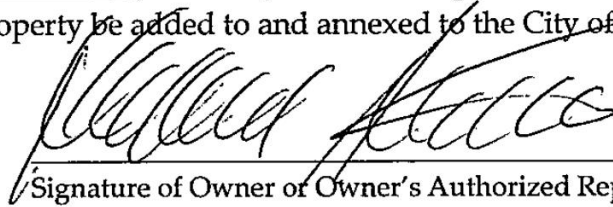
TSPS LAND TITLE
February 23, 2024

2.12 ACRES, MORE OR LESS, BEING A PART OF TRACT 5, CITY VIEW ACRES,
AS RECORDED IN VOLUME 100, PAGE 408
OF THE DEED RECORDS OF MIDLAND COUNTY,
TEXAS.

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Midland Community Healthcare Services ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.



Signature of Owner or Owner's Authorized Representative

Michael J. Austin

Printed Name

Chief Executive Officer, MCHS

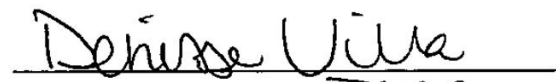
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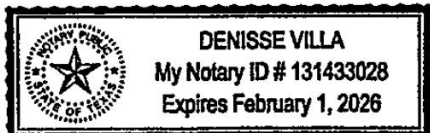
THE STATE OF TX §
COUNTY OF Midland §

This instrument was acknowledged before me on the 19th day of October 2023, by Michael J. Austin in the capacity herein stated.

MY COMMISSION EXPIRES

02/01/2026


Notary Public, State of Texas



MIDLAND COMMUNITY HEALTHCARE
SERVICES

TS/ S LAND TITLE

January 28, 2024

BY ORDER OF TRACT OF LAND,
BEING A PART OF TRACT 5, CITY VIEW
ACRES,
AS RETURNED TO MIDLAND PAGE 88
OF THE DEED RECORDS OF MIDLAND COUNTY,
TEXAS.



Annexation/Initial Zoning Application

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Michael J. Austin

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Property Owner

Printed Name: Midland Community Healthcare Services

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Representative (if different from Applicant or Property Owner)

Firm: Midland Community Healthcare Services

Printed Name: Michael J. Austin

Phone (432-570-0238

Email
michael.austin@midlandchs.org

Address

5001 Andrews Highway

City

Midland

State

TX

Zip

79703

Street Address: 1009 S. Jackson St., Midland, TX 79701**Legal Description**

Lot: 3

Block: 7

Subdivision: City View Acres (tract of land out of tract 5)

Current Zoning:

County

Proposed Zone: LR

(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: _____

Construction of non-profit primary care medical clinic and a co-located in-house pharmacy.

Access needed to municipal utilities.

Present Use of Property: _____

Vacant, previously used as a oil field trucking & heavy equipment operations and maintenance yard.

Proposed Use of Property: _____

Construction of non-profit primary care medical clinic and a co-located in-house pharmacy.

How would this annexation/zone change affect the public health, safety and welfare? _____

Improved access to medical care; no impact (possible improvement) with regards to traffic.

Will significantly improve quality of life on south side, which currently has no such facilities except our existing one which we have outgrown.

Describe how this annexation/zone change will affect adjacent properties: _____

Minimal impact. Project as proposed would be an improvement overall to a trucking yard.

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): <u>[Signature]</u>	Date: <u>10-19-23</u>
Applicant (printed): <u>Michael J. Austin</u>	
Property Owner (signature): <u>[Signature]</u>	Date: <u>10-19-23</u>
Property Owner (printed): <u>Midland Community Healthcare Services</u>	
<i>The Annexation/Initial Zoning shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> 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.</i> <i>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.</i>	

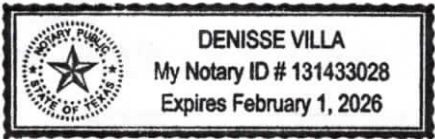
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Michael Austin who, being by me duly sworn, upon oath says: That (s)he is authorized by Midland Community Healthcare Services, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

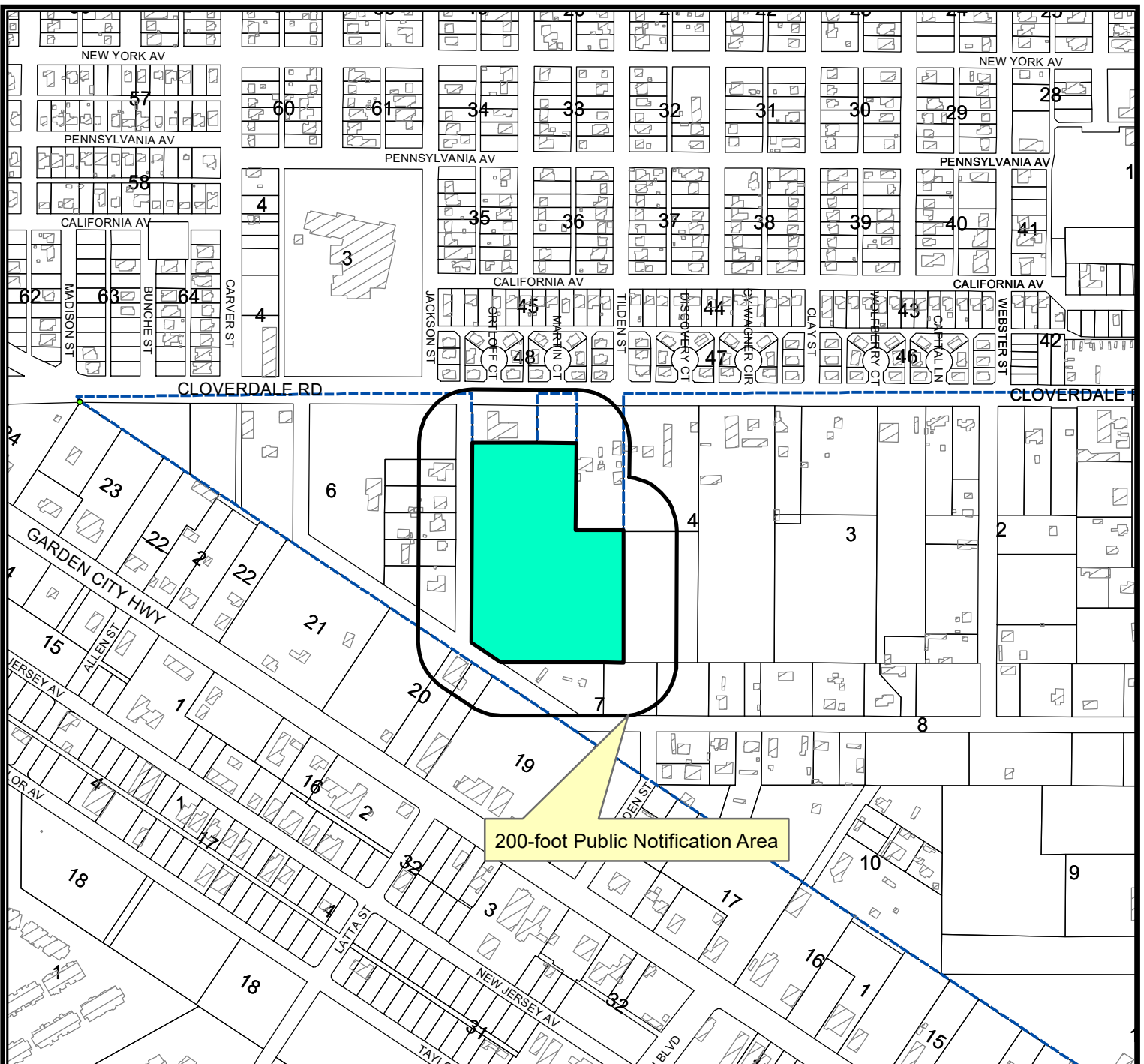
Subscribed and sworn to before me, this 19th day of October, 2023, to certify which witness my hand and seal of office.



DENISE VILLA
My Notary ID # 131433028
Expires February 1, 2026

Denise Villa
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization ☒ Application Fee Check # <u>1001</u>	☒ Metes and Bounds (Sealed by Surveyor) ☒ Files in Digital Format (PDF/JPEG) ☒ Petition
Received By: <u>[Signature]</u>	Date: <u>OCT 19 2023</u>



LOCATION MAP

Z-23-0350

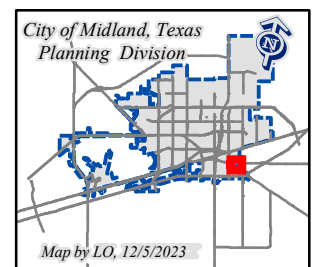
Scale: 1" = 542'

Consider a request by Midland Community Healthcare Services for an initial zoning of LR, Local Retail District for a 9.36-acre tract of land out of Tract 5, City View Acres, Midland County, Texas.

Generally located on the east side of South Jackson Street, approximately 170 feet south of 18.14 Tract 5, approximately 170 feet south of 18.14 Cloverdale Road. (ETJ)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

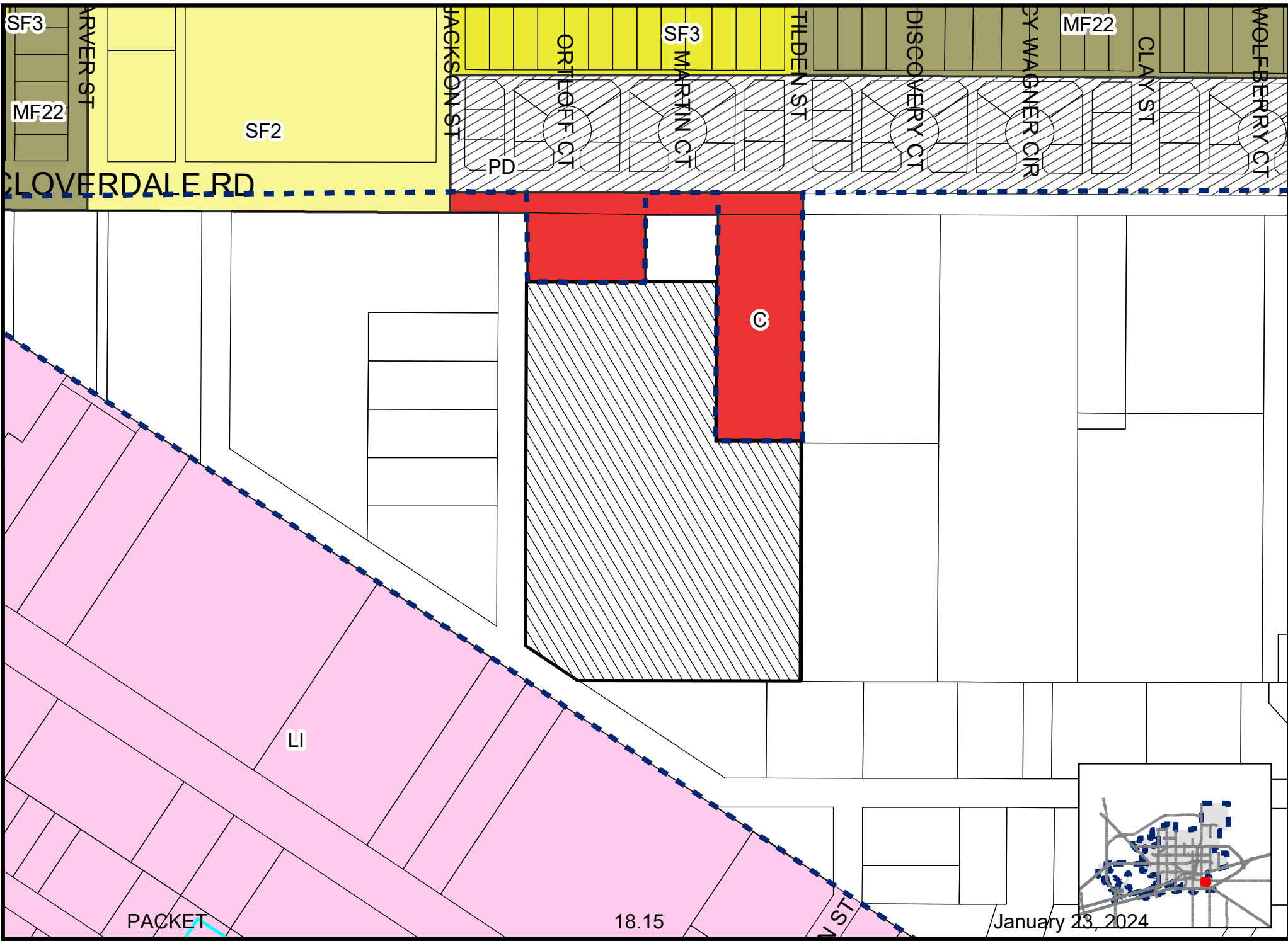


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January 23, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND IS NOT RESPONSIBLE FOR ANY DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 19
Meeting Date: January 9, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, OF THE CRESTLAWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT. (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COWDEN AVENUE, APPROXIMATELY 215 FEET WEST OF NORTH PECOS 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 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, April Marion, is requesting a Zone Change from MF-16, Multiple-Family Dwelling District, to SF-3, Single Family Dwelling District, for the property located at 607 West Cowden Avenue to construct a rear entry garage.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

MF-16, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

All adjacent properties are zoned MF-16, Multiple-Family Dwelling District. These properties are all used as single-family dwelling units.

Analysis:

The subject property is currently zoned MF-16, Multiple-Family Dwelling District. April Cowden is seeking this zone change in order to construct a rear entry garage. The addition of the rear entry garage forces the entire property to adhere to the current code, because it is an improvement, and since this is zoned MF-16, the property will need to be zoned to a single-family district to be able to construct this addition. Staff is recommending SF-3 for similar zoning in the area.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No 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, oil and gas considerations, 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 zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code Compliance: (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 falls into line with the Tall City Tomorrow Comprehensive Plan, Chapter 3; This area is designated as Urban Low, U-L. While Multiple-Family Dwelling Districts are not allowed in this designation, Single-Family Dwelling Districts are allowed. This area is already being used as single-family dwellings and this would allow the applicant to improve the property and also bring the property up to compliance with the current zoning code.

The Planning and Zoning Commission recommended approval of this request on December 4, 2023.

Therefore, staff recommends approval of this zone change from MF-16, Multiple Family Dwelling District, to SF-3, Single Family Dwelling District.

Condition:

- A. That the use and development of this property shall conform to the regulations of the SF-3, Single Family Dwelling District**

Letters of Objection:

As of January 1, 2023, staff has not received any objection letters.

Attachments:

Survey
Application
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, CRESTLAWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COWDEN AVENUE, APPROXIMATELY 215 FEET WEST OF NORTH PECOS STREET) ; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 11, Block 3, Crestlawn Addition, City and County of Midland, Texas (the “Property”) to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-16, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

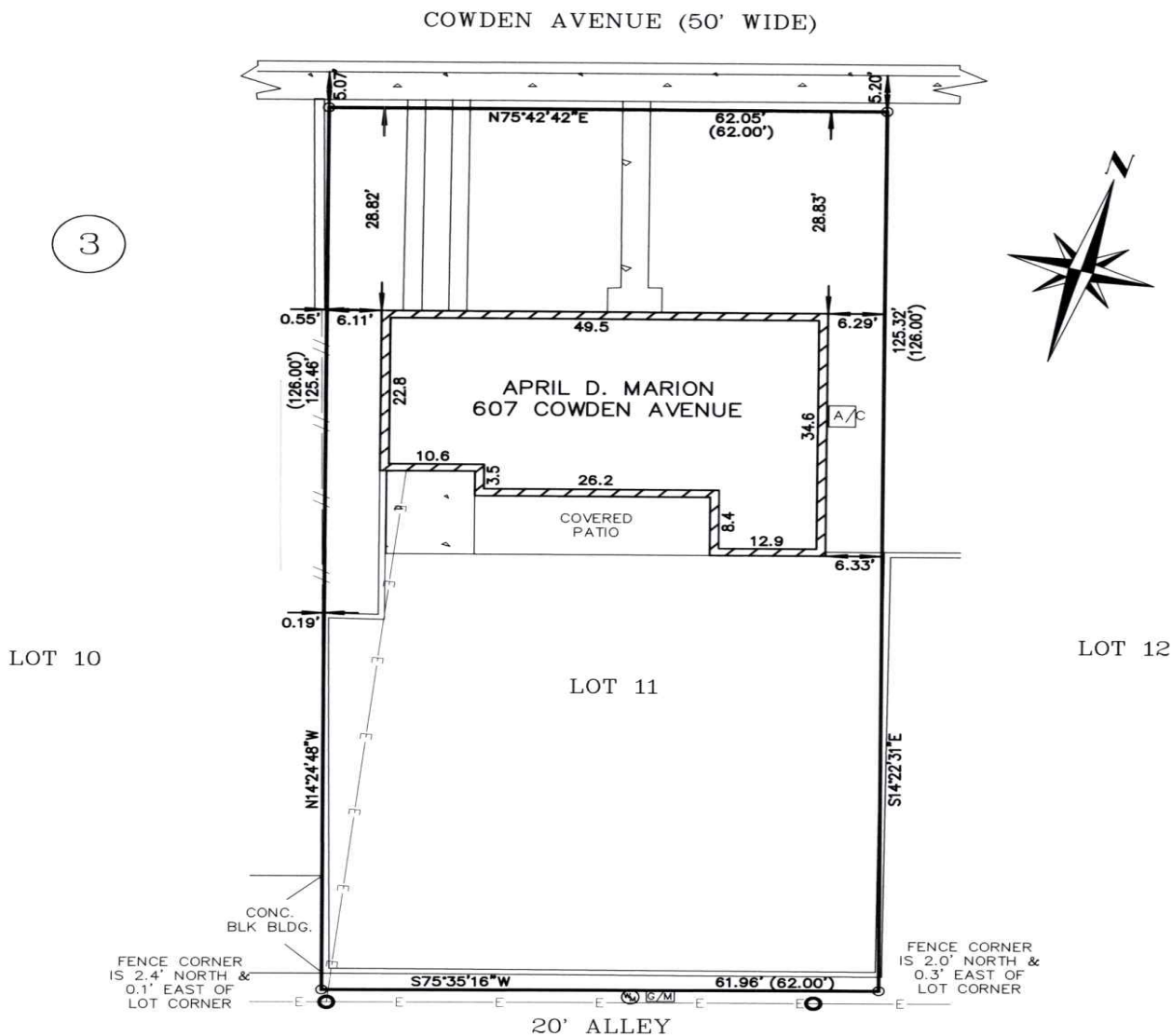
Landon Ochoa, Senior Planner

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

* COPYRIGHT 2023

This survey plat is being provided solely for the use of: April D. Marion
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 October 31, 2023,
which shall take place within 90 days after the survey was provided.



SURVEY OF
LOT ELEVEN (11), BLOCK THREE (3),
RE-PLAT OF CRESTLAWN ADDITION,
AN ADDITION TO THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS
ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN
VOLUME 96, PAGE 357, PLAT RECORDS, MIDLAND COUNTY, TEXAS

Census Tract: 6

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0089 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 31st day of October 2023.

Bruce R. Pennell

Registered Professional Land Surveyor No. 4170
Date: 10/31/2023

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL LAND SURVEYING
PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432) 570-6256 FAX: (432) 682-3262 MOBILE: (432) 528-1027

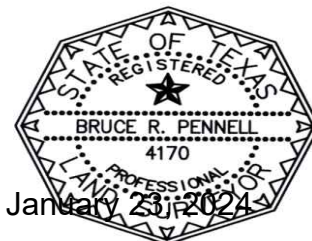
ABSTRACT OFFICE: N/A	G.F. #: N/A	COMMITMENT EFFECTIVE DATE: N/A
CAD FILE: BRP24557	DATA FILE: 607COWDEN	DRAWN BY: DURYN H. FIRM NO.: 10193978

Basis of Bearings:
NAD 83 Lambert Grid

Bearings and Distances Shown
Inside () Indicate Record Information



SCALE: 1" = 20'



January 23, 2024



Zone Change/Planned District
Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: April Marion

Phone (432) 212 9500

Email a.biggs1976@yahoo.com

Address 607 W. Cowden

City Midland

State TX

Zip 79701

Property Owner

Printed Name: April Marion

Phone (432) 212 9500

Email a.biggs1976@yahoo.com

Address 607 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 _____

Street Address: 607 W Cowden

Legal Description

Lot: 011 Block: 003 Subdivision: Crestlawn

Current Zoning: Multi Family

Proposed Zone: Single Family
(List by tracts if more than one district is requested)

Reason for Zone Change Request: planning to build a rear entry garage

Present Use of Property: residence

Proposed Use of Property: residence

How would this zone change affect the public health, safety and welfare? No affect

Describe how conditions affecting the property have changed since present zoning designation: this would be an upgrade to the property

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): <u>Amel Marion</u>	Date: <u>September 26, 2023</u>
Applicant (printed): <u>Amel Marion</u>	
Property Owner (signature): <u>Amel Marion</u>	Date: <u>September 26, 2023</u>
Property Owner (printed): <u>Amel Marion</u>	

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 Amel Marion who, being by me duly sworn, upon oath says: That (s)he is the owner of 607 W. Cowden 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)

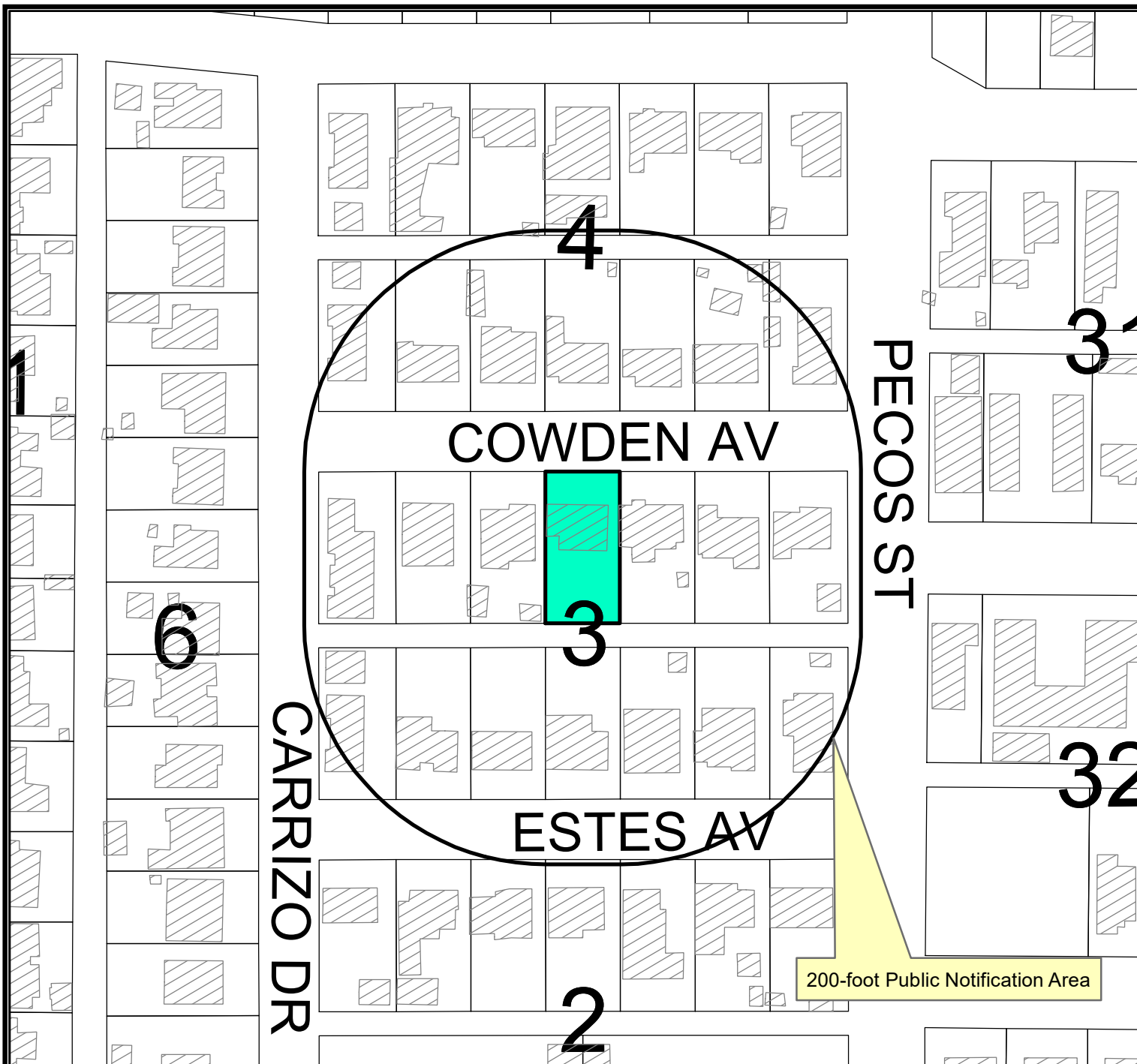
Subscribed and sworn to before me, this 26th day of September, 2023, to certify which witness my hand and seal of office.



NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # <u>1806</u>	
Received By: <u>[Signature]</u>	Date: <u>NOV 06 2023</u>
	BY:

PACKET 19.9 January 23, 2024
Application will not be considered for scheduling until reviewed by a planner.



LOCATION MAP

Z-23-0354

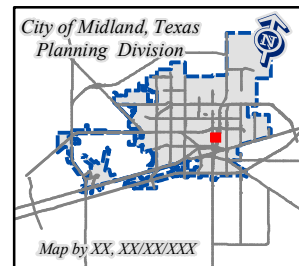
Scale: 1" = 120'

Consider a request by April Marion for a zone change from, MF-16, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District on Lot 11, Block 3, Crestlawn Addition, City and County of Midland, Texas.

Generally located on the south side of West Cowden Avenue, approximately 215 feet west of North Pecos Street. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

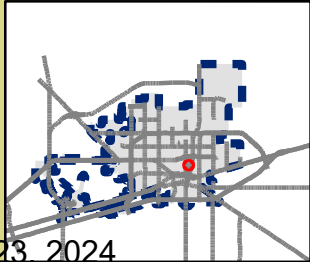
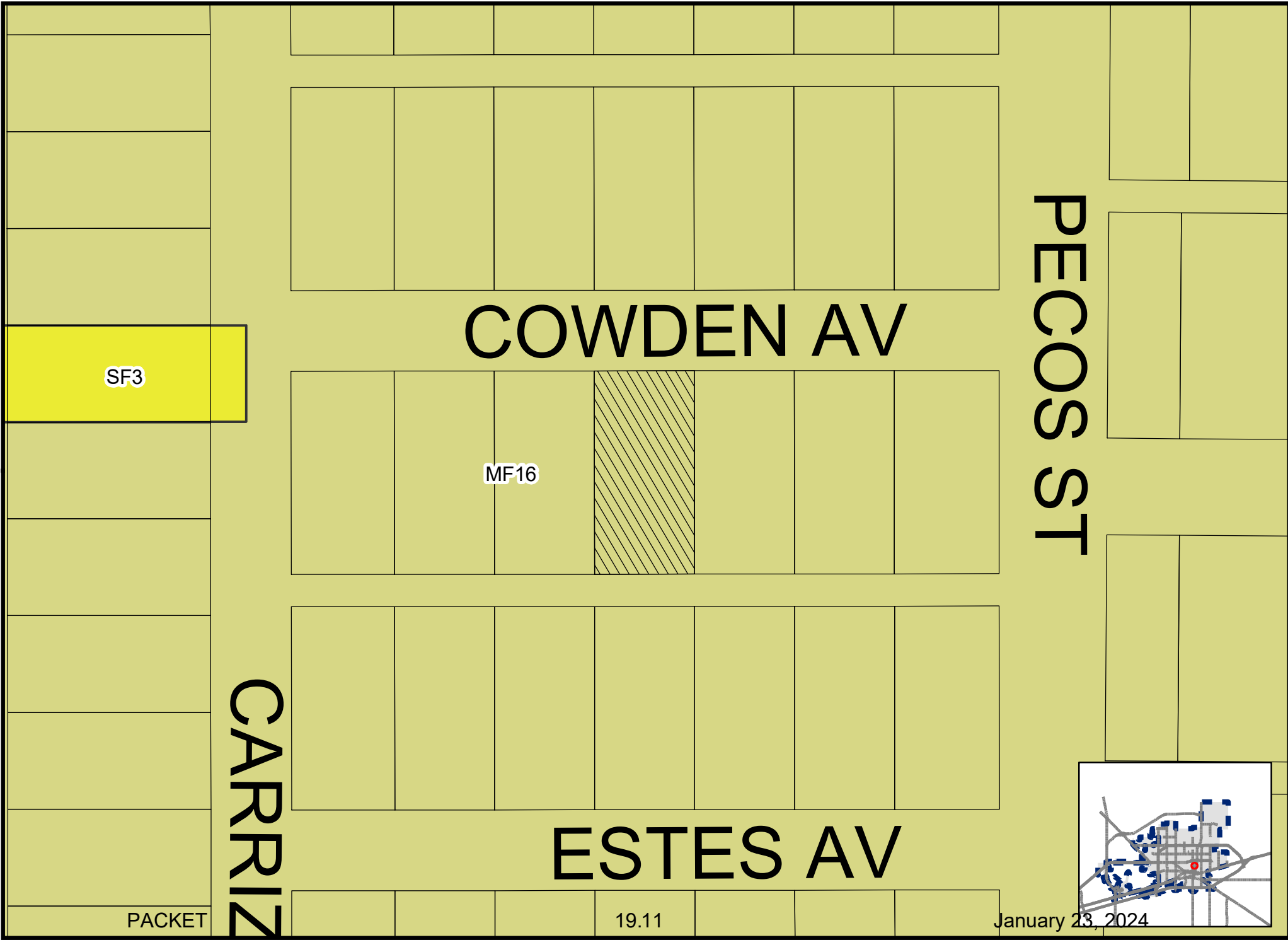


©THE CITY OF MIDLAND - 2021

January 23, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 20
Meeting Date: January 9, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 1, LEGION ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF VETERANS AIRPARK LANE, APPROXIMATELY 1,110 FEET WEST OF NORTH BIG SPRING STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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

Purpose:

The applicant, American Legion Post No. 19, is requesting a Specific Use Designation (SUD) with Term for Alcoholic Beverages Sales for On-Premises Consumption in a Bar at 501 Veterans Airpark Lane.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

Strong Economy with More Quality Jobs

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north, south and west are zoned PD, Planned Development District, for an Office District and Office Centers respectively. The properties to the east are zoned O-2, Office District. This property is surrounded by office buildings.

Analysis:

The property is zoned RR, Regional Retail District, which allows the sale of alcohol for on premise consumption. The property currently has an existing Special Use Permit from 1977, which allows for the sale of beer for on premises consumption. (Ordinance number 5200.) The building has a total of 15,015 square feet with a serviceable area of 10,035 square feet. The applicant is now requesting to amend the SUP to allow for the sale of all alcoholic beverages.

The proposed hours of operation:

Sunday through Thursday from 11 a.m. to 12 a.m. (the next day)
Friday and Saturday from 11 a.m. to 1 a.m. (the next day)

The proposed hours of alcohol service:

Monday through Sunday from 11 a.m. to 2 a.m. (the next day)

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

Adequate parking has been provided on site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objection. [For the Applicant's information only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Building Code: (Approved)

The SUD for American Legion Post 19 is acceptable. The property must adhere to the maximum occupant load of 669 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

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." The American Legion is a destination where Midland residents will gather and socialize.

The Planning and Zoning Commission recommended approval of this request on December 4, 2023.

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to Condition A through F.

Conditions:

- A. That the serviceable area of the Establishment shall be limited to approximately 10,035 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 applicable state and local laws.**
- C. That the days and hours of alcoholic beverages sales and consumption shall be limited to**

Monday through Sunday from 11 a.m. to 2 a.m. (the next 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 all requirements of the Fire Department and Code Administration.**
- 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.**

Letters of Objection:

As of January 3, 2024, staff has not received any letters of objections.

Attachments:

Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Application
Maps
Ordinance (No. 5200)

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 1, LEGION ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF VETERANS AIRPARK LANE, APPROXIMATELY 1,110 FEET WEST OF NORTH BIG SPRING STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for Lot 2, Block 1, Legion 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 bar (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 10,035 square feet as shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 11:00 a.m. to 2:00 a.m. 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.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

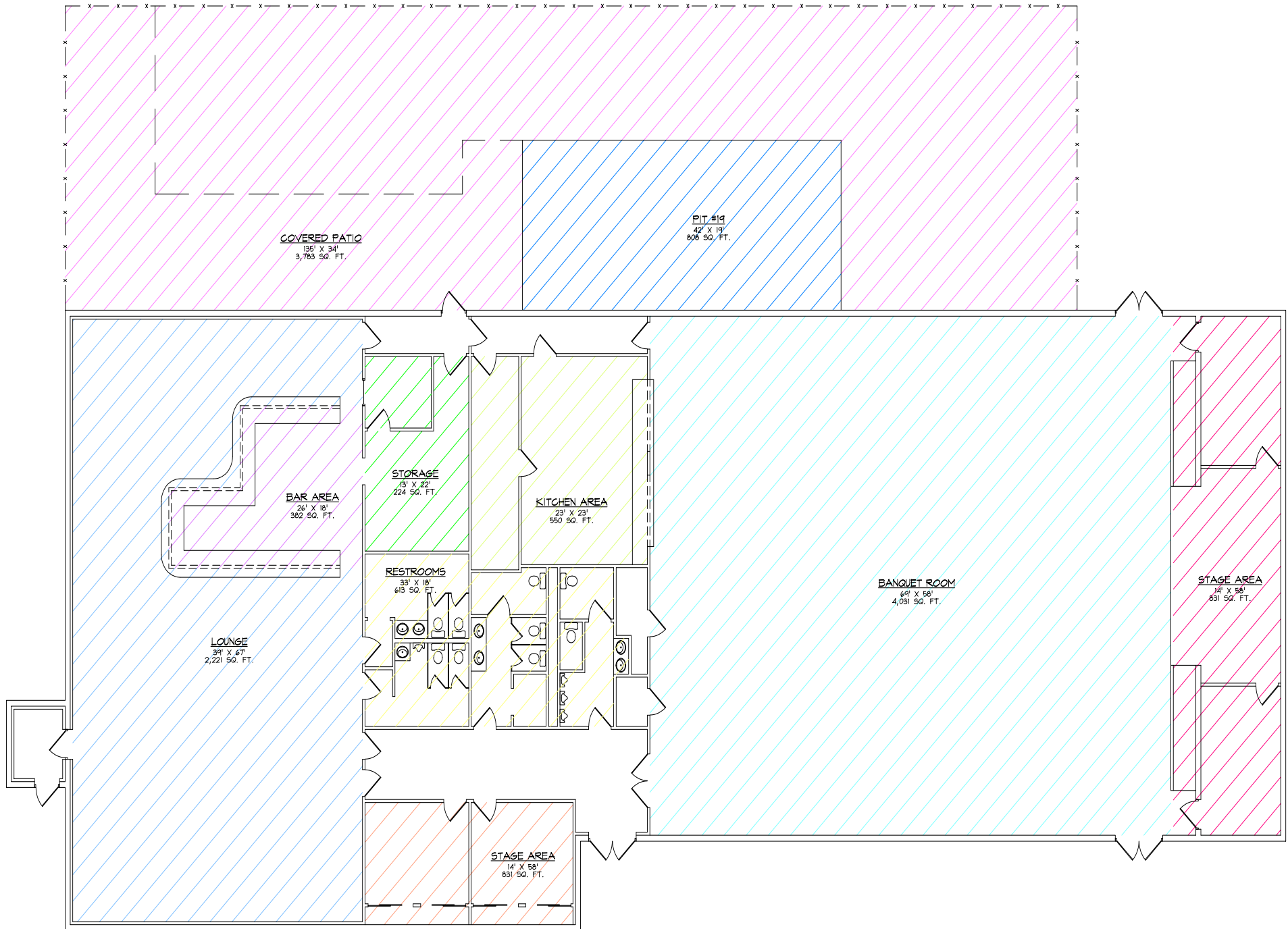
Marcia Bentley-German, City Secretary

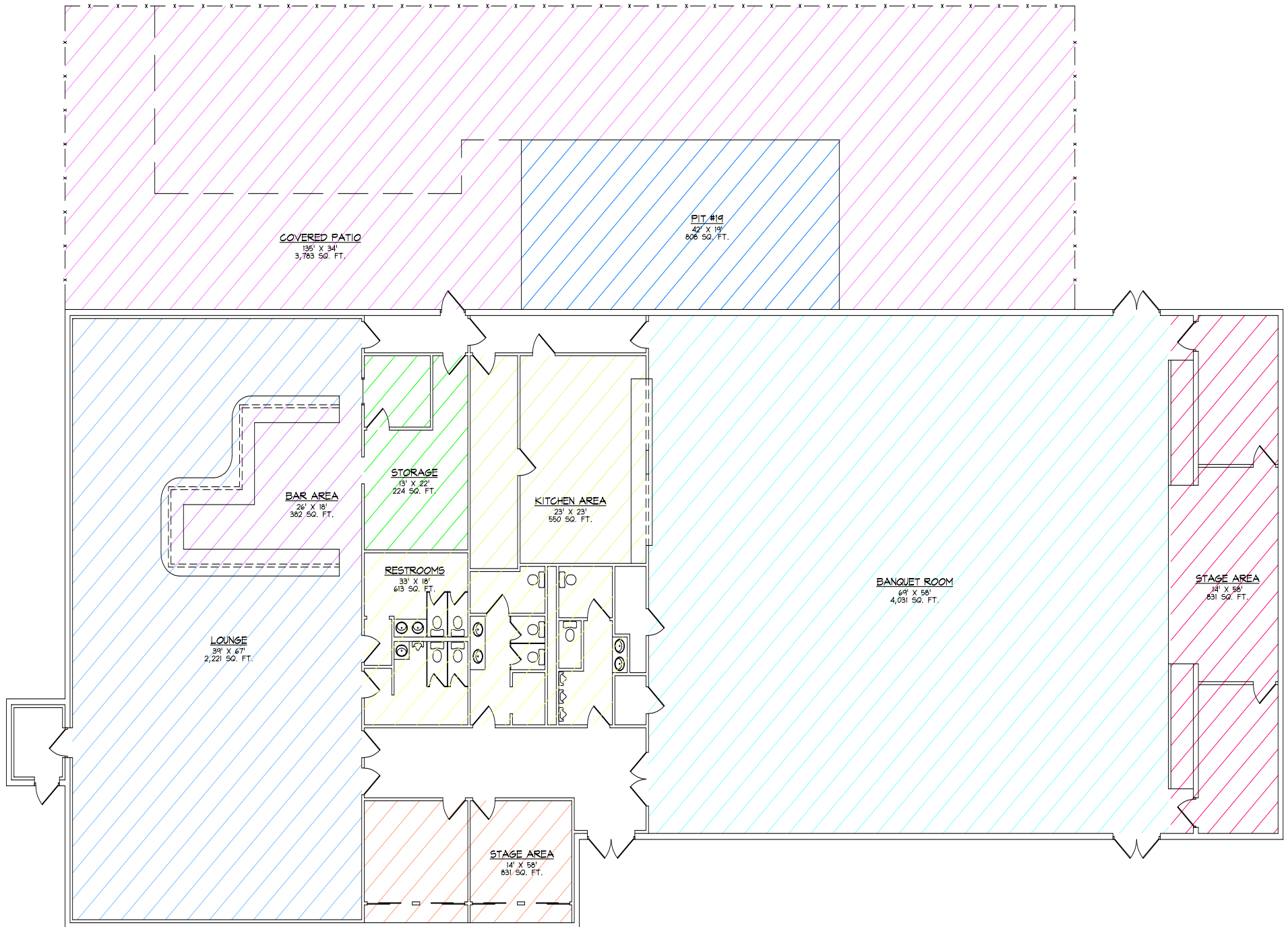
APPROVED AS TO CONTENT
AND COMPLETENESS:

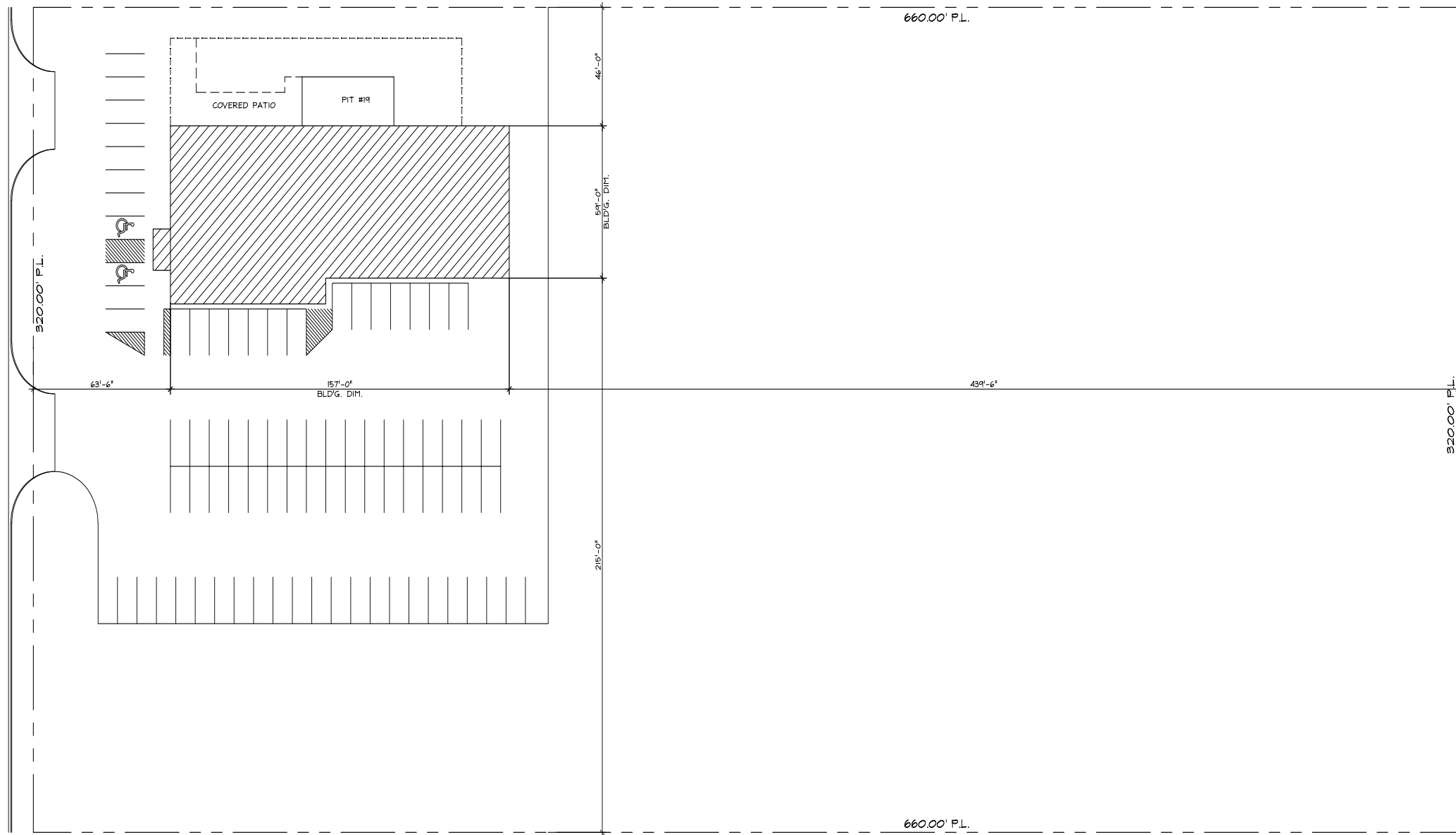
Landon Ochoa, Senior Planner

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney









**Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: American Legion Post No. 19

Phone (432) 682-5511

Email: american.legion19@yahoo

Address

501 Veterans Airpark Ln

City

Midland

State

TX

Zip

79705

Property Owner

Printed Name: American Legion Post No. 19

Phone (432) 682-5511

Email: american.legion19@yahoo

Address

501 Veterans Airpark Ln.

City

Midland

State

TX

Zip

79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email

Address

City

State

Zip

Street Address: 501 Veterans Airpark Ln. Midland, TX 79705

Business Name: Woods W. Lynch Post No. 19 American Legion

Legal Description

Lot: 14 Block: 39 Subdivision: T-1-S

Current Zoning: LR-2

Reason for Request: update permit and apply late hours

Type of Business (restaurant, bar, lounge, nightclub, etc.): Bar/Lounge

Proposed/Current Days and Hours of Operation: Sun - Thurs 11am to 12am

Friday and Saturday 11am to 1am

Proposed Days and Hours of Alcohol Service: Monday - Sunday 11am to 2am

Total Square Footage of Business: 15,015

Square Footage of Alcohol Serviceable Area: 10,035

Restroom Fixtures:

Men

Toilets/Urinals: 414

Bathroom Sinks: 3

Women

Toilets: 5

Bathroom Sinks: 3

Submittal and Fees Items to be submitted with this application form:

- Application Fee - Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
 - Seati
 - Exits
 - Restr
- Dimensioned Site Plan showing:
 - Parking
 - Kitchen (if applicable)
 - Total Square Footage
 - Serviceable Square Footage
 - Business Footprint

January 23, 2024

Signatures	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): <u><i>Michael Dunlap</i></u>	Date: <u>11/6/23</u>
Property Owner (printed) : <u>MICHAEL DUNLAP</u>	
<i>The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> 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.</i> <i>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.</i>	

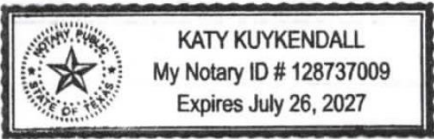
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Michael Dunlap who, being by me duly sworn, upon oath says: That (s)he is authorized by American Legion / Todd Wanta, 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.

Michael Dunlap
 Authorized Agent (signature)

Subscribed and sworn to before me, this 7th day of November, 2023, to certify which witness my hand and seal of office.

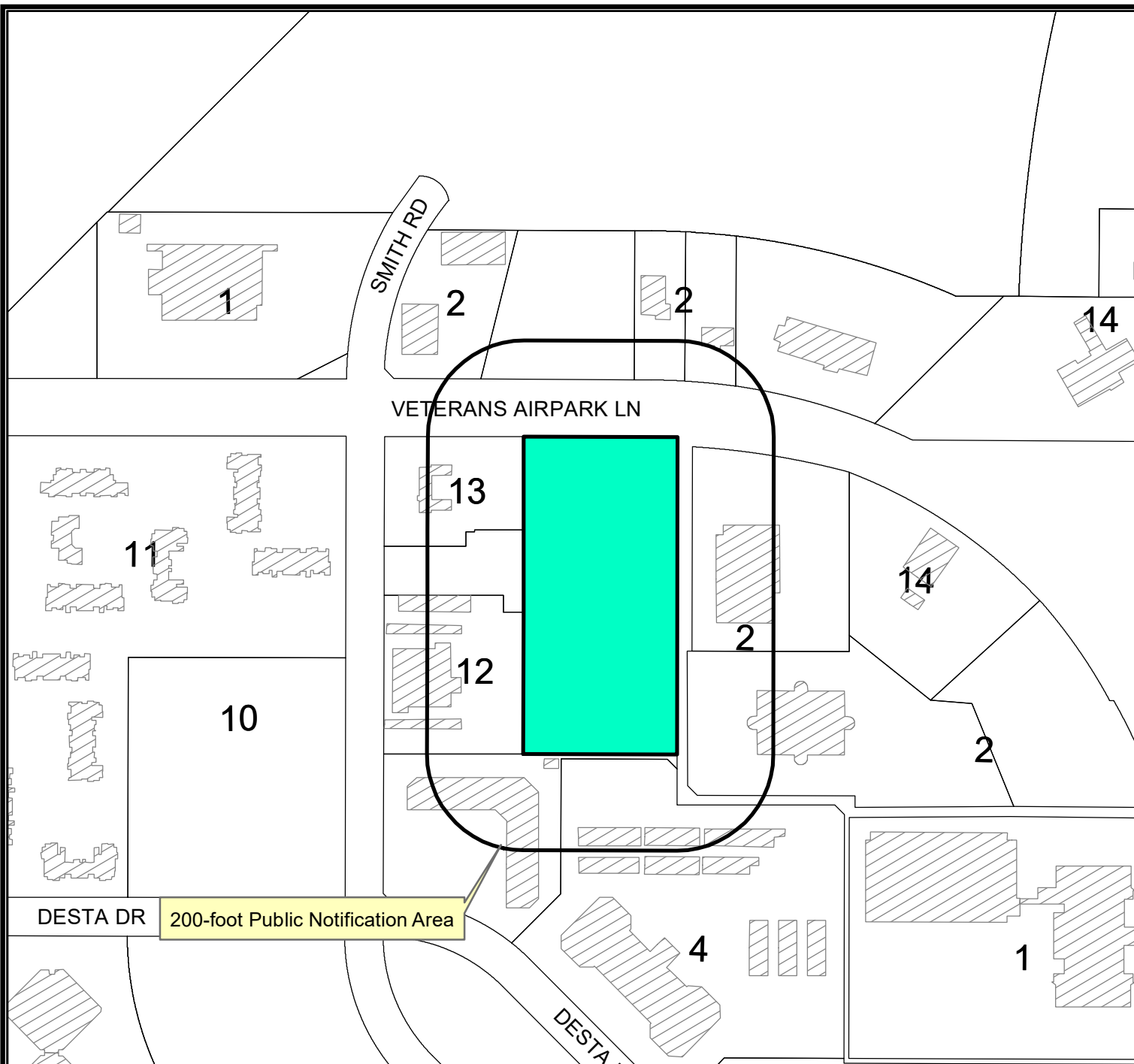


KATY KUYKENDALL
My Notary ID # 128737009
Expires July 26, 2027

Katy Kuykendall
 NOTARY PUBLIC, MIDLAND COUNTY, TEXA

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check # <u>7363</u>	☐ Plans in Digital Format (PDF/JPEG)
Received By: <u><i>Daniel Humbare</i></u>	Date: <u>NOV 07 2023</u>

PACKET 20 13 January 23, 2024
 Application will not be considered for scheduling until reviewed by a planner.



LOCATION MAP

SUB-23-0170

Scale: 1" = 300'

Consider a request by American Legion Post No. 19 for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages for on Premises consumption in a bar Lot 2, Block 1, Legion Addition, City and County of Midland, Texas.

Generally located on the south side of Veterans Airpark Lane approximately 1,110 feet west of North Big Spring Street. (Council District 3)

LEGEND

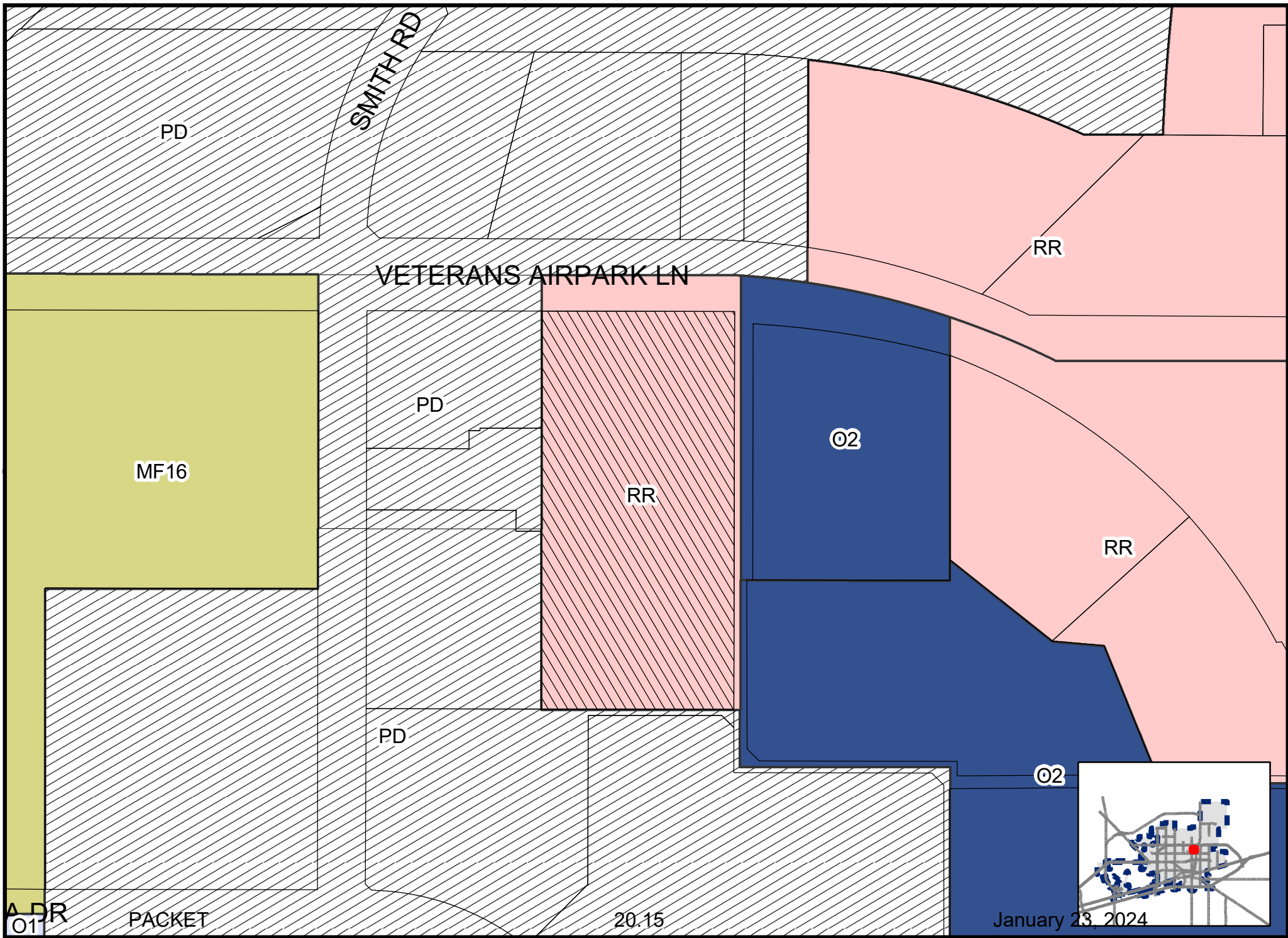
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

January 23, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



ORDINANCE NO. 5200

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF CERTAIN PROPERTY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED "LR-2" (LOCAL RETAIL DISTRICT), BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT FOR THE SALE OF BEER ONLY FOR ON-PREMISES CONSUMPTION; 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, 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 on the following described property, which is presently zoned "LR-2" (Local Retail District), to wit:

A 5.0 acre tract of land out of the SW part of Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, described more fully by metes and bounds as follows:

BEGINNING at a 1" iron rod for the NW corner of said 5 acre tract in the S. ROW line of Midland Air Park Road, from which the SW corner of Section 14 bears S. 74° 52' W. 1205.9 feet and S. 15° 05' E. 2691.0 feet; January 23, 2024
PACKET 20.16
THENCE N. 74° 52' E. with the S. ROW line of said Road 330.0 feet to a 5/8" iron rod set for the NE corner of

together with the uses permitted in an "LR-2" Zone, subject to the following condition:

That no signs, symbols or displays or any other type of advertising matter advertising the sale of alcoholic beverages in any way be located anywhere on the premises outside of the building.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 9th day of August, A.D., 1977; and passed to second reading on motion of Councilman Martin, seconded by Councilman Thomas, by the following vote:

Councilmen voting "AYE": Martin, Thomas, Howbert,
Marcum, and Angelo

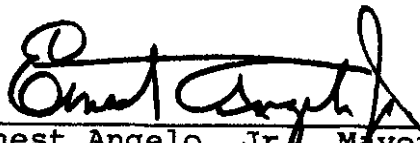
Councilmen voting "NAY": Akins

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Councilman Marcum, seconded by Councilman Howbert, on the 23rd day of August, A.D., 1977, at a regular meeting of the City Council:

Councilmen voting "AYE": Marcum, Howbert, Thomas,
Martin, and Angelo

Councilmen voting "NAY": Akins

PASSED AND APPROVED THIS 23rd day of August, A.D., 1977.


Ernest Angelo, Jr., Mayor

ATTEST:

PACKET

20.17

January 23, 2024


J. W. McCullough











City Council Meeting

Item Number: 21
Meeting Date: January 9, 2024, January 23, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 2, BLOCK 1, WESTERN MESA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF NEELY AVENUE, APPROXIMATELY 165 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; 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) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Joshua Brewster, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart*, to allow for a reduced rear yard setback and a reduced side yard setback to accommodate an addition of a garage.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is zoned SF-1, Single-Family Dwelling District. *Section 5.04 – Residential Zoning Regulations Dimensional Regulations Chart* lists the rear yard setback for this zoning as five feet since the structure will have alley access. It also lists the side yard setback as five feet. The applicant is proposing a rear setback of zero and a side yard setback of one foot. Therefore, they are requesting this special exception to proceed.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Fire: (Approved)

No comments at this time.

Building: (Approved)

No issues. All future structures must adhere to the .2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections. [For the Applicant's information only.]

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No additions or changes to site access are approved. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

Planning (Denied):

There is no hardship that would warrant this request. Additionally, the house has a garage large enough for two vehicles.

Staff is recommending denial of this special exception, however, should it be approved, staff recommends that it be subject to conditions A through C.

Condition:

A. That the minimum rear yard setback shall be zero feet (0').

- B. That the minimum side yard setback on the east side of the Property shall be 1 foot (1').**
- C. That the locations of all structures on the Property shall significantly conform to the site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes.**

Letters of Objection:

Staff has not received any letters of objection as of December 28, 2023.

Attachments:

Site Plan (Exhibit A)
Application
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 2, BLOCK 1, WESTERN MESA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF NEELY AVENUE, APPROXIMATELY 165 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; 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 Ordinance, 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 2, Block 1, Western Mesa Addition, City and County of Midland, Texas (the “Property”). Said special exception shall allow a reduced minimum rear yard setback and a reduced minimum side yard setback on the east side of the Property.

SECTION TWO. Said special exception is subject to the following special conditions:

- A. That the minimum rear yard setback shall be zero feet (0').
- B. That the minimum side yard setback on the east side of the Property shall be one foot (1').
- C. That the locations of all structures on the Property shall significantly conform to the site plan, which is attached hereto as Exhibit “A” 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., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

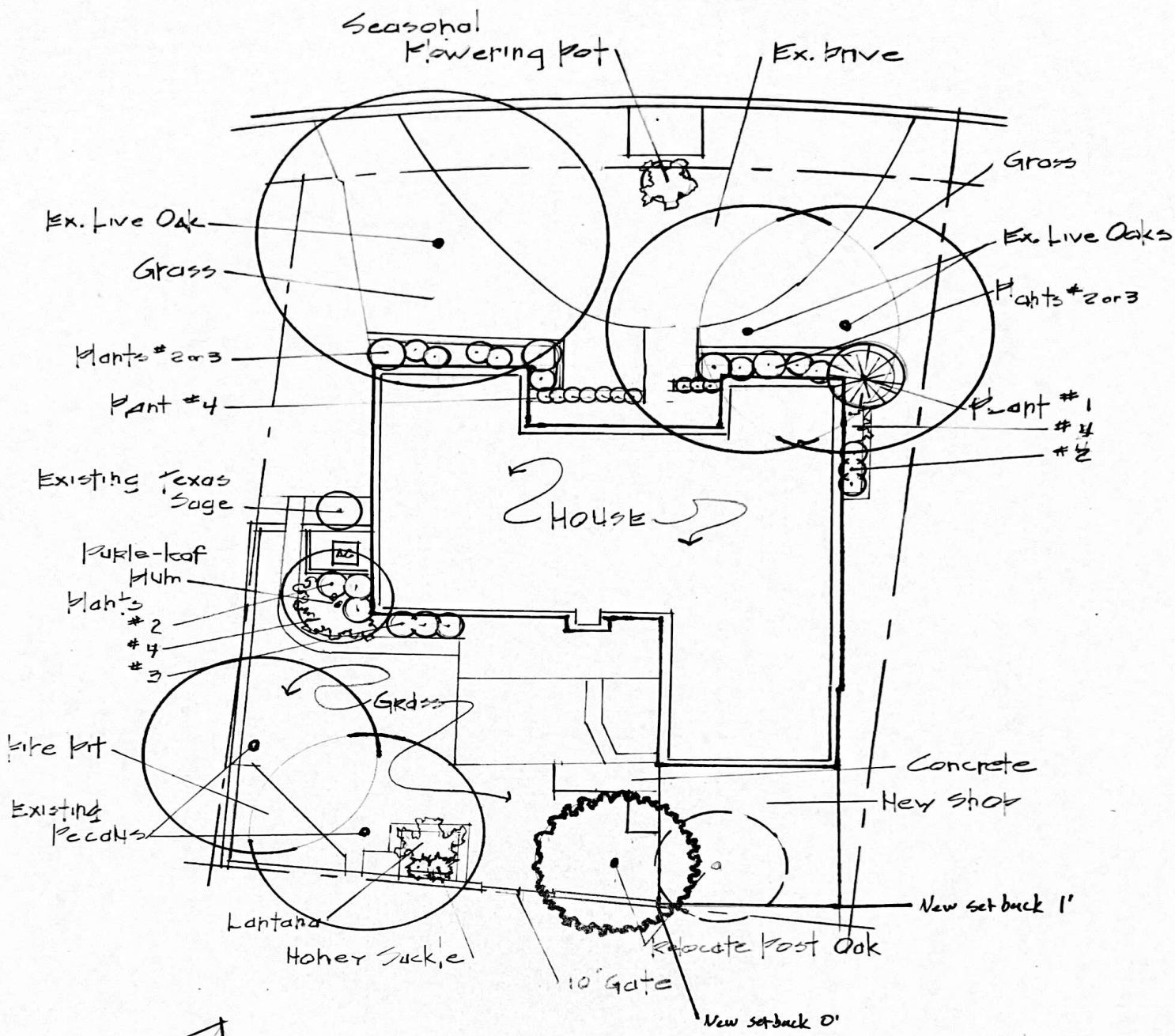
APPROVED AS TO CONTENT
AND COMPLETENESS:

Landon Ochoa, Senior Planner

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

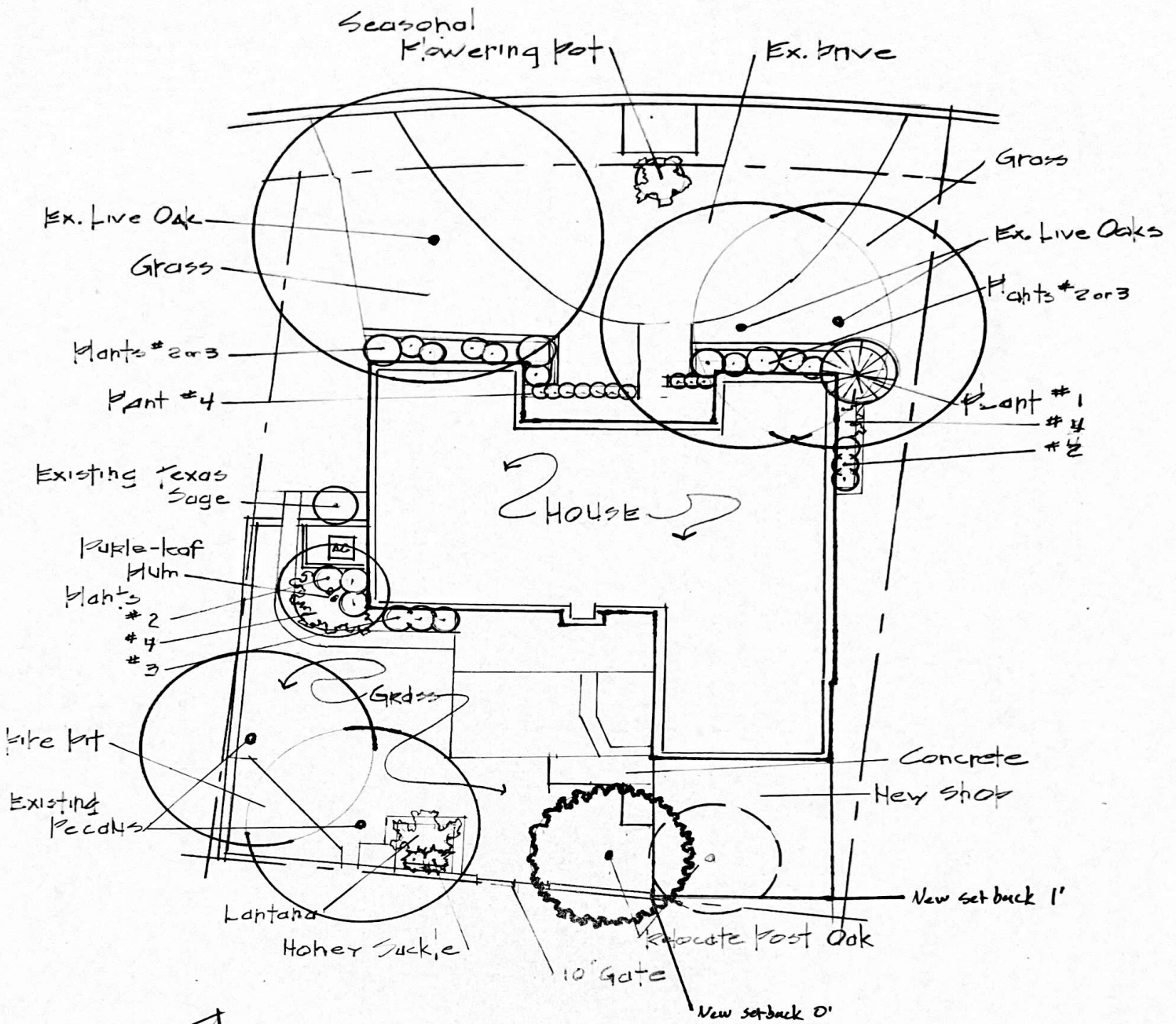


NORTH

Scale: 1/16" = 1' (approx.)

PLAN FOR LOU & MANDY BREWSTER

1613 NEELY AVENUE



NORTH

Scale: 1/16" = 1' (approx.)

PLAN FOR LOU & MANDY BREWSTER

1613 NEELY AVENUE



Special Exception Application

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Joshua Brewster

Phone (432) 288-5650

Email jjbrew@gmail.com

Address 1613 Neely Ave.

City Midland

State TX

Zip 79705

Property Owner

Printed Name: Joshua Brewster

Phone (432) 288-5650

Email jjbrew@gmail.com

Address 1613 Neely Ave

City Midland

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email _____

Address _____

City _____

State _____

Zip _____

Street Address: 1613 Neely Ave. Midland TX 79705**Legal Description**

Lot: 2 Block: 1 Subdivision: Western Mesa

Current Zoning:**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: Extension/addition to house for a garage that will extend to the property line on the south and east side.**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):

Joshua Brewster

Date: 10/19/23

Applicant (printed):

Joshua Brewster

Property Owner (signature):

Joshua Brewster

Date: 10/19/23

Property Owner (printed):

Joshua Brewster

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.

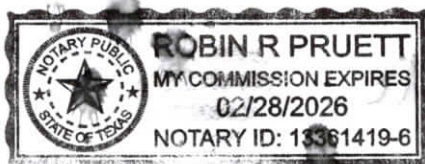
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared JOSHUA BREWSTER who, being by me duly sworn, upon oath says: That (s)he is authorized by OWNER, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Joshua Brewster
Authorized Agent (signature)

Subscribed and sworn to before me, this 20 day of OCTOBER, 2023, to certify which witness my hand and seal of office.



Robin R. Pruett

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # _____

Received By: *Christina*

Date:

NOV 20 2023

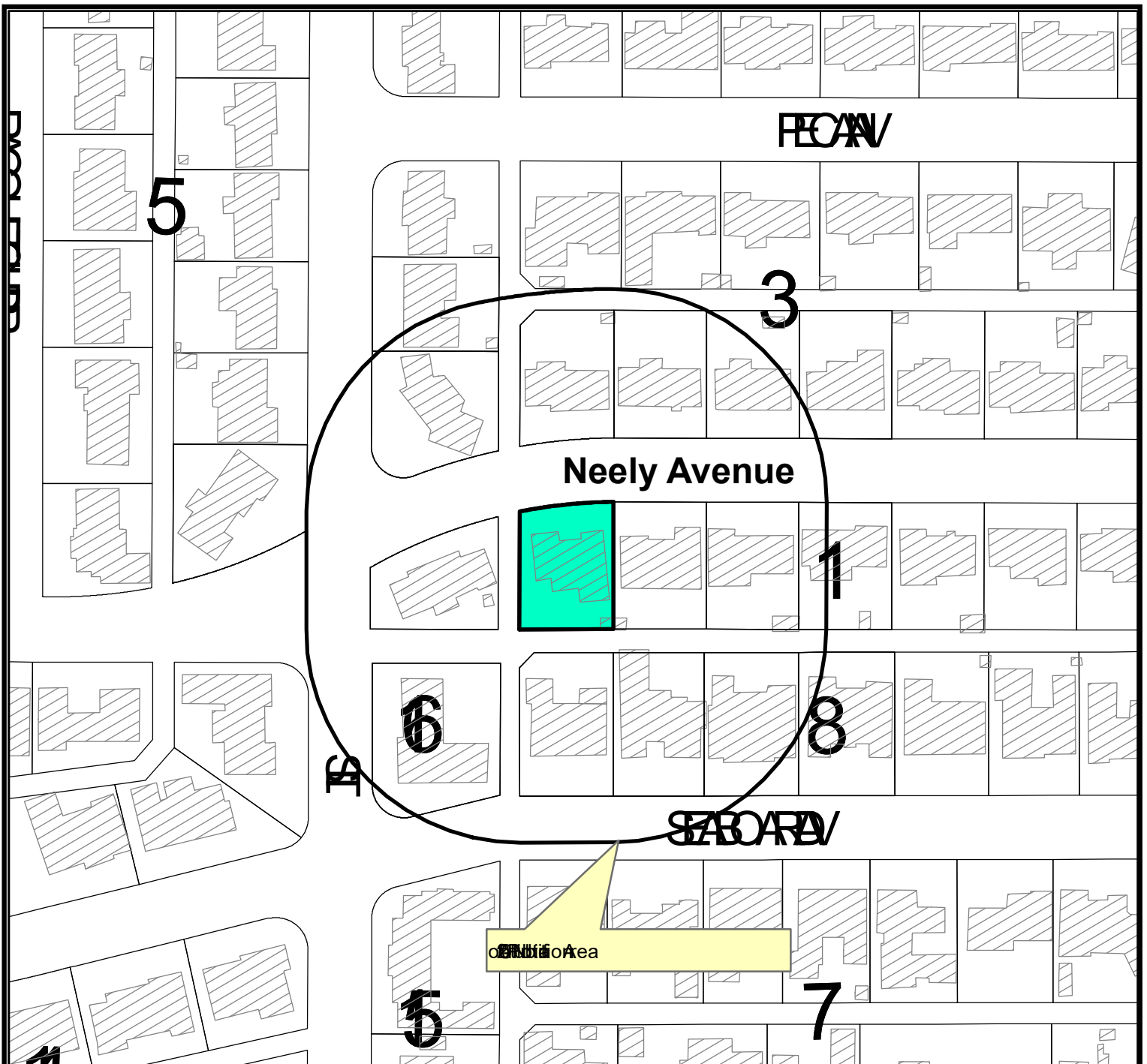
BY:

****Application will not be considered for scheduling until reviewed by a planner.****

PACKET
Special Exception Application

21.11
2

January 23, 2024
Revised 08/19/20



LOCATION MAP

E-23-0114

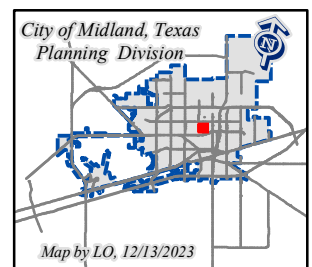
Scale: 1" = 135'

Consider a request by Joshua Brewster for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, to allow a reduced minimum rear yard setback and a reduced minimum side yard setback, Lot 2, Block 1, Western Mesa Addition, City and County of Midland, Texas.

Generally located on the south side of Neely Avenue, approximately 100 feet east of North L Street. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

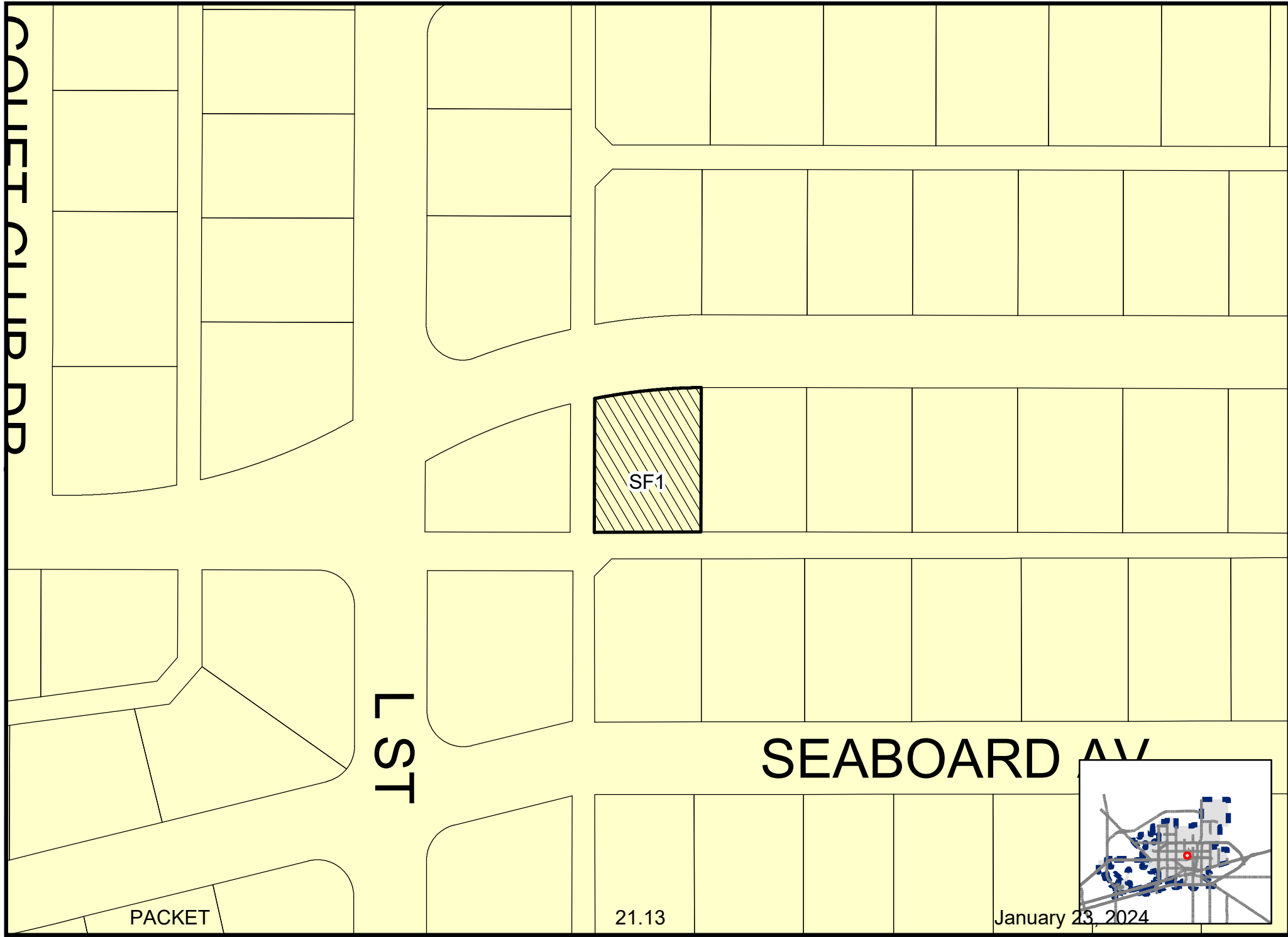


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING DRAWING. IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

January 23, 2024











PACKET

21.17

January 23, 2024



City Council Meeting

Item Number: 22
Meeting Date: January 9, 2024, January 23, 2024
To: City Council / City Manager
From: Daniel Humbert, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,360-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, LONE STAR BUSINESS PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND MAVERICK LANE), WHICH IS PRESENTLY ZONED LR, LOCAL 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, Ledgens Pizza, is requesting a Specific Use Designation (SUD) with Term for the Sales of Alcoholic Beverages for On-Premises Consumption in a Restaurant at 6900 North State Highway 349.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant financial impact to the City.

Strategic Priority:

Strong Economy with More Quality Jobs

Current Zoning:

LR, Local Retail District

Surrounding Zoning and Land Use:

The property adjacent to the north is zoned LR, Local Retail District and is the location of a gas station. The five abutting properties to the east are zoned PD, Planned Development District (Ordinance 9223) is for a Housing Development and the location of residences. The property adjacent to the south is zoned O-1, Office District and is the location of a real estate sales office for the previously mentioned neighborhood. Across North State Highway 349 to the west is located outside of City limits.

Analysis:

The property is zoned LR, Local Retail District. The LR zoning allows for the sale of Alcoholic Beverages for On-Premises Consumption in a Restaurant with the approval of an SUD. The total area of the restaurant, Ledgens Pizza, is 1360-square feet and the proposed alcohol serviceable area is 600-square feet. This SUD is required because the restaurant would like to sell alcohol on premises for patrons to enjoy with their meal.

The restaurant parking requirement, per the cities' ordinance, is one space for every four seats under maximum seating arrangements, minimum of five spaces, plus one space for every 100 square feet of kitchen area. There are the following 50 parking spaces provided for the shopping center, which is more than adequate.

The proposed hours of operation are the following:

Monday through Sunday from 11 a.m. to 9 p.m.

The proposed hours of alcohol service are the following:

Monday through Sunday from 11 a.m. to 9 p.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objection to zone change.

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

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.]

Building Code: (Approved)

The SUD for Ledgens Pizza is acceptable. The property must adhere to the maximum occupant load of 40 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

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." Ledgens Pizza is a destination where Midland residents will gather and socialize.

This request was recommended for approval at the December 4, 2023, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to Condition A through G.

Conditions:

- A. That the serviceable area of the establishment shall be limited to approximately 600 square feet as shown in Exhibit "A".**

- B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**
- C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:**

Monday through Sunday from 11 a.m. to 9 p.m.
- D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**
- E. That the establishment shall meet all requirements of the Fire Department and Code Administration.**
- 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 3, 2024, staff has not received any letters of objection.

Attachments:

Ordinance
Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps

For: [Signature]

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
1,360-SQUARE FOOT PORTION OF LOT 8, BLOCK 2,
LONE STAR BUSINESS PARK, SECTION 3, CITY AND
COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED AT THE NORTHEAST CORNER OF THE

WHEREAS, the City Planning and Zoning Commission and the Governing Body
of

AND MAVERICK LANE), WHICH IS PRESENTLY

the City of Midland, Texas, is in compliance with the City Charter, the City Code, and
State

SAID PROPERTY TO BE USED FOR THE SALE OF ALL

law, have given the requisite notices by United States mail, publication and
otherwise; and

ON-PREMISES CONSUMPTION; MAKING SAID

after holding due hearings affording a full and fair hearing to all of the property
owners

AND RESTRICTIONS CONTAINED HEREIN;

generally, and particularly to those interested persons situated in the affected area
and in the

CONTAINING A SAVINGS AND SEVERABILITY

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
vicinity thereof, the Governing Body of the City of Midland finds that the public
CITY OF MIDLAND, TEXAS:
SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is
converted to OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00),

AND ORDERING PUBLICATION
will be based on the granting of a specific use designation with term for the 1,360 square
foot of

portion of Lot 8, Block 2, Lone Star Business Park, Section 3, City and County of
Midland, Texas, to be used for the sale of alcoholic beverages for on-premises consumption,
BASKET, SECTION TWO. That the Property shall be subject to the following conditions
and

To each of the Property, as permitted in the present LR, Local Retail District.

restrictions:

- A. That the serviceable area of the Establishment shall be limited to
- B. approximately 600 square feet as shown in Exhibit "A" which is attached
- C. That the days and hours of alcoholic beverage sales and consumption shall be
- D. That the occupancy of the Establishment shall not exceed the limited to Monday through Sunday from 11:00 a.m. to 9:00 p.m. maximum
- E. That the Establishment shall meet the requirements of the Fire occupancy determined by the Building Code and Fire Code. Department and
- E. That the operator of the Establishment shall obtain a Certificate of the Code Administration Division. Occupancy

- F. prior to the commencement of the sale of alcoholic beverages for on-premises
- F. That, in accordance with Section 11-1-9.07.E.3 of the City Code, the

consumption to ensure that the conditions of this Specific Use Establishment shall be in operation within 120 days from the final adoption of this ordinance. 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 shall not

that covered herein; provided, however, that all prior ordinances or parts of ordinances, City of

inconsistent with or in conflict with any of the provisions of this ordinance are hereby repealed to the extent of any such inconsistency or conflict.

expressly repealed to the extent of any such inconsistency or conflict.

subsections, sentences, clauses, or phrases hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or with the general penalty provisions contained in Section 1-3-1 of the City Code of

invalid.

Midland
PACKET

22.7

January 23, 2024

SECTION FIVE. The penalty for violation of this ordinance shall be in

accordance

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

first reading the day of publication A.D., 2024; and passed to second reading

Council members voting "NAY":

following vote upon motion of Council member _____, seconded by
Council

Council members voting "AYE":
member _____, on the _____ day of _____, A.D., 2024, at a regular

Council members voting "NAY":
meeting of the City Council:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

Landon Ochoa, Senior Planner
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption

Project Number:

Case Number:

SUD-23-0171

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Ledgens Pizza / Lorna Cookie Miedema

Phone (432) 897-1400

Email cookie.ledgenspizza@gmail.com

Address 6700 N SH 349 Suite 4 Midland, TX

City Midland

State TX

Zip 79705

Property Owner

Printed Name: John Smart

Phone (432) 682-6002

Email ana3114@aol.com

Address P.O. Box 8610

City Midland

State TX

Zip 79708

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email _____

Address _____

City _____

State _____

Zip _____

Street Address: 6700 North SH 349 Suite 4 Midland, TX 79705

Business Name: Ledgens Pizza

Legal Description

Lot: _____ Block: _____ Subdivision: _____

Current Zoning: _____

Reason for Request: application for F/B license (B/G)

Type of Business (restaurant, bar, lounge, nightclub, etc.): Restaurant

Proposed/Current Days and Hours of Operation: 365 11-9 daily

Proposed Days and Hours of Alcohol Service: 365 11-9 daily

Total Square Footage of Business: 1360

Square Footage of Alcohol Serviceable Area: 600

Restroom Fixtures: Men

Toilets/Urinals: 1 1 0

Bathroom Sinks: 1

Women

Toilets: 1

Bathroom Sinks: 1

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
 - Seating
 - Exits
 - Restrooms
 - Kitchen (if applicable)
 - Total Square Footage
 - Serviceable Square Footage
- Dimensioned Site Plan showing: *Parking *Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):

Date: 11/8/2023

Applicant (printed): Lorna 'Cookie' Miedema

Property Owner (signature):

Date: 11/8/2023

Property Owner (printed): John Smart

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, 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 application on behalf of property owner, 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.

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

Notary Public

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Floor Plan

☒ Application Fee

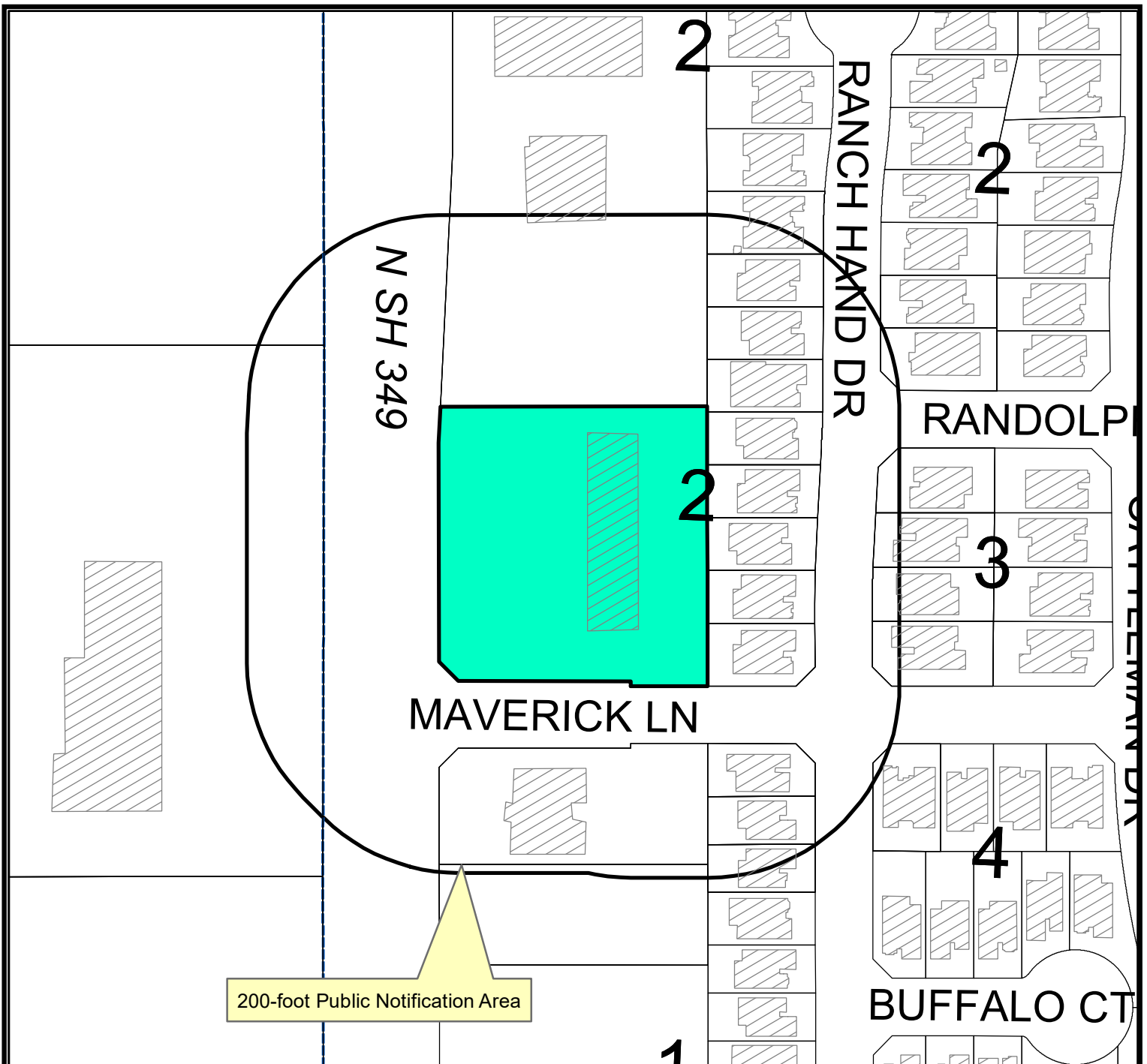
☒ Site Plan

Check # 1018

☒ Plans in Digital Format (PDF/JPEG)

Received By: Lorna Miedema

Date: NOV 08 2023



LOCATION MAP

SUD-23-0171

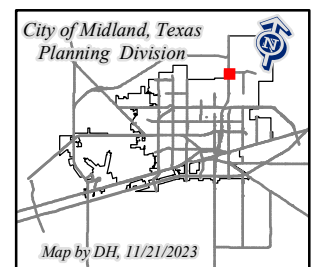
Scale: 1" = 150'

Consider a request by Ledgens Pizza for a Specific Use Designation with Term for the sale of alcoholic beverages for on-premises consumption in a restaurant on a 1,360 square foot portion of Lot 8, Block 2, Lone Star Business Park, Section 3, City and County of Midland, Texas.

Generally located northeast of the intersection of North State Highway 349 and Maverick Lane. (District 1)

LEGEND

- CITY LIMITS
- PARCEL
- ▨ PRIVATE BLDGS

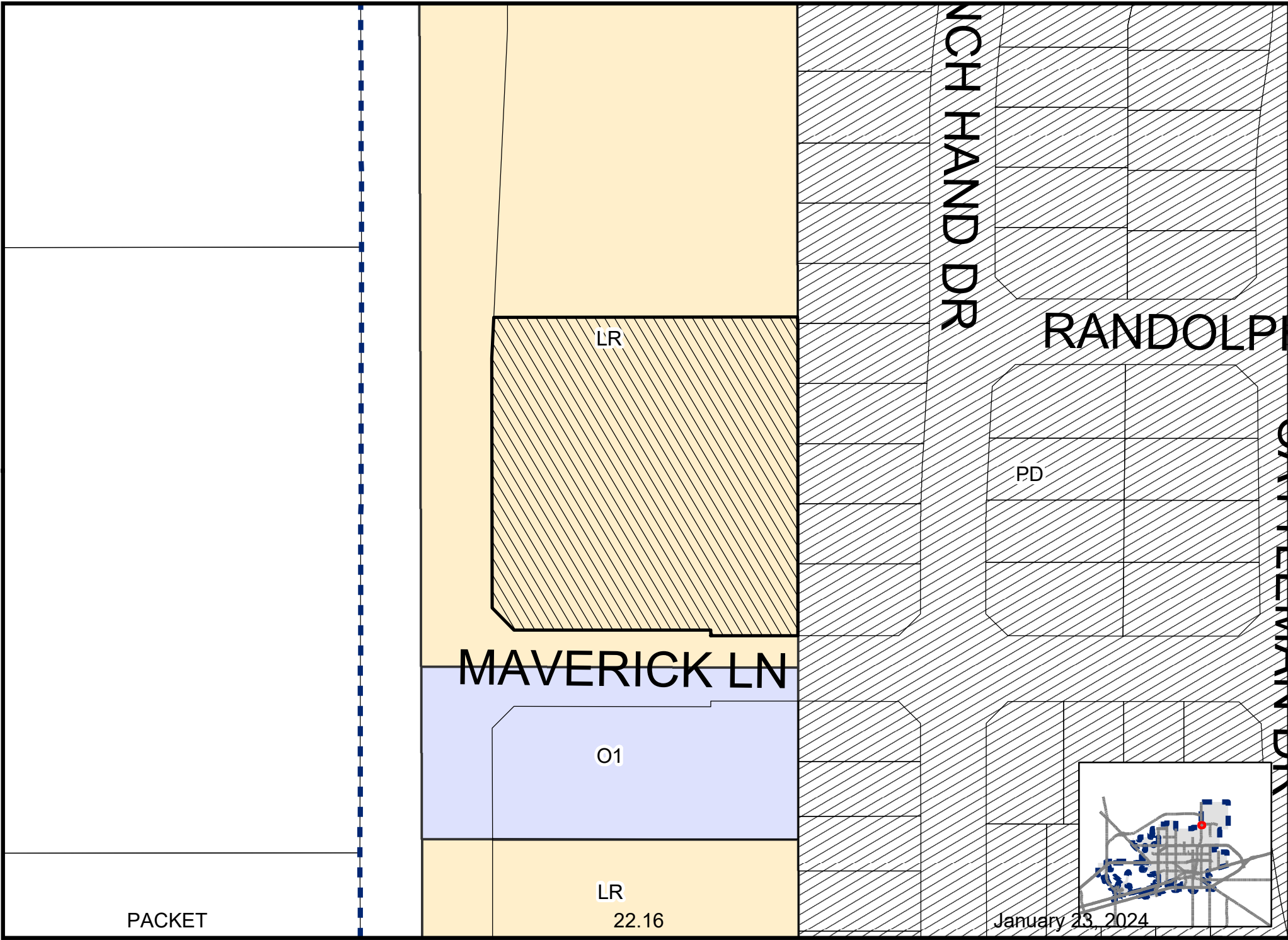


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING DRAWING. IT IS DESIGNED TO PROVIDE A GENERAL OVERVIEW OF THE CITY OF MIDLAND AND IS NOT TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

January 23, 2024













City Council Meeting

Item Number: 23
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 8, LESS THE NORTH 30 FEET, AND LOT 9, BLOCK 4, STOCKARD ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOODE STREET, APPROXIMATELY 315 FEET NORTH OF CARTER 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) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Justin Smith, is requesting a Specific Use Designation without Term to operate a Car Dealership at 1016 Goode Street.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Surrounding Zoning and Land Use:

This property is currently zoned C, Commercial District. All of the surrounding properties are zoned C, Commercial District. These properties are used as industrial shops and an auto parts store.

Strategic Priority:

Strong Economy with More Quality Jobs

Discussion:

The applicant is proposing to use the former Pleasures Detail and Mobile Wash as a Car Dealership. The property is currently vacant and is zoned C, Commercial District. Per section 4.03 Use Chart of the zoning ordinance, an automobile or other motorized vehicle sales and service use is allowed in the C, Commercial District, with a Specific Use Designation without Term.

The site plan (Exhibit A) provided shows an overview of the property that will be used for car sales. There will be no outside display of cars and six (6) parking spots will be available for patrons. There is an existing 5,000 square feet of building space. Of the 5,000 square feet, 4,633 will be showroom space; this would be classified as a Commercial Use (Not Listed) and thus will require one space for each two employees per maximum shift or one space per each 1,000 square feet of floor area, whichever is greater. 367 spare feet will be classified as Office Space which will require one space for each 400 square feet of Floor Area, minimum of five spaces. This property will require six (6) spaces and provides six (6) spaces.

The proposed hours of operation are the following:

Monday through Friday from 9:00 a.m. through 4:00 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)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances. I recommend the applicant contact the Fire Marshal's office for code requirements specific to auto sales and repair.

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Building Code: (Approved)

No objection.

Planning: (Approved)

No objections.

This area is already an established commercial district with a plethora of current commercial uses, so this fits well.

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 C.

Conditions:

- A. That the use and development of the property 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. The days and hours of operation of the automobile or other motorized vehicle sales and services shall be limited to: Monday through Friday from 9:00 a.m. to 4:00 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 12, 2024, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Frederick D. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 8, LESS THE NORTH 30 FEET, AND LOT 9, BLOCK 4, STOCKARD ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOODE STREET, APPROXIMATELY 315 FEET NORTH OF CARTER 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 Lot 8, less the north 30 feet, and Lot 9, Block 4, Stockard Acres 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 standards set forth in 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 Friday 9:00 a.m. to 4:00 p.m.
- D. That the operator of the Specific Use 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 With Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

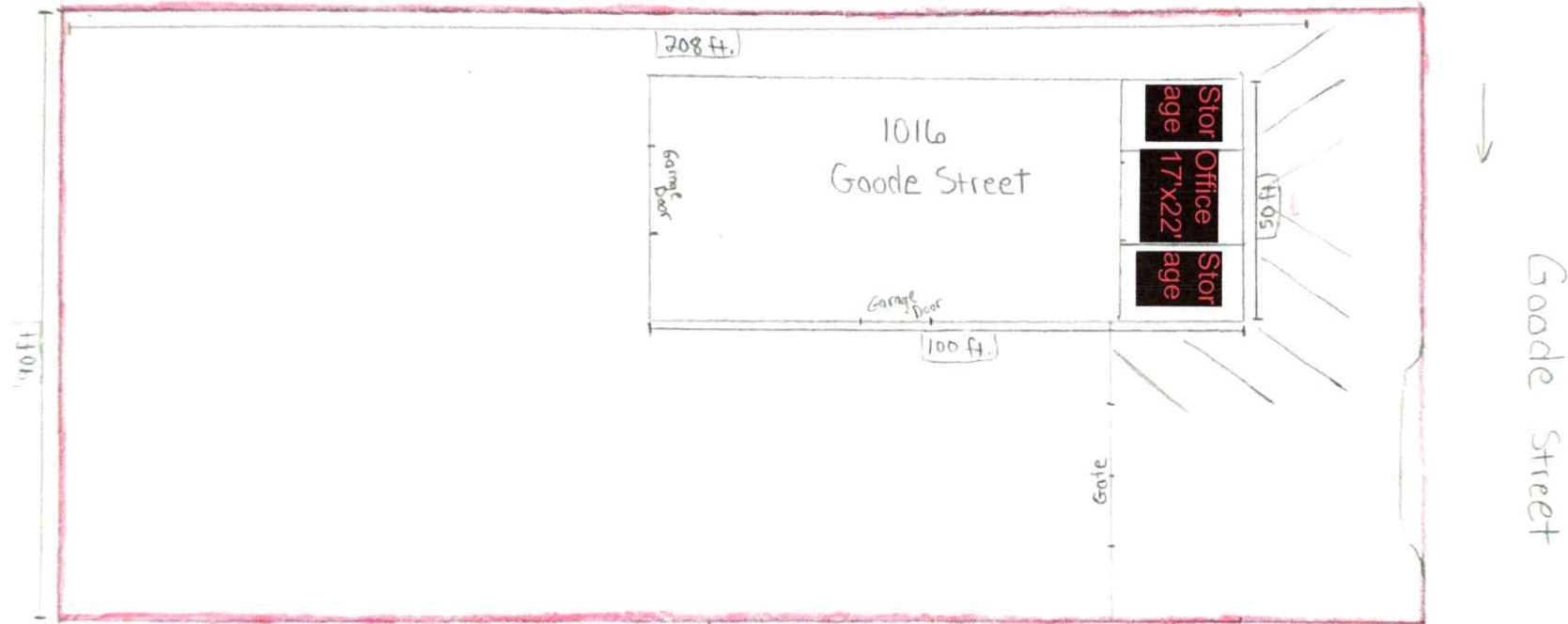
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

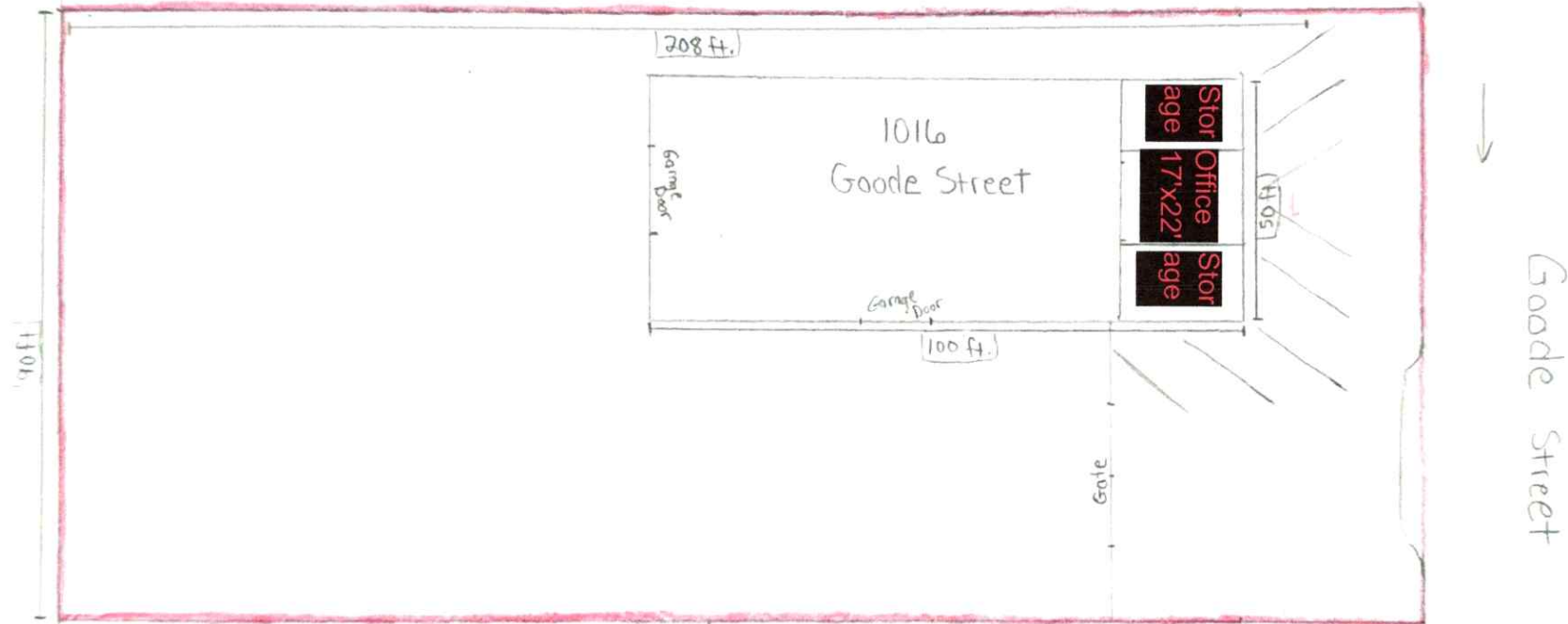
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



*
Site Plan
1016 Goode St.
Justin Smith - SUD Application



*
Site Plan
1016 Goode St.
Justin Smith - SUD Application



**Specific Use Designation
Application (Non-Alcohol)**

Case Number: _____

Ord. Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Justin Smith

Phone ()

Email jdsbiz2@gmail.com

Address 6709 Cactus Trail

City Midland

State TX

Zip 79707

Property Owner

Printed Name: Renee Runkel

Phone ()

Email jdsbiz2@gmail.com

Address 1104 Silverton

City Midland

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: Justin Smith

Phone ()

Email

jdsbiz2@gmail.com

Address 6709 Cactus Trail

City Midland

State TX

Zip 79707

Type of Permit: Special Use (Auto Dealer)

For Office Use Only

☐ with Term

☐ without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☐ No

Street Address: 1016 Goode St.

Legal Description

Lot: 9 part of 8 Block: 4 Subdivision: Stockard Acres

Current Zoning: C, Commercial

Maximum Floor Area: 5,000

Maximum Occupancy: N/A

Proposed hours and days of use or operation: 9 AM to 4 PM. Monday through Friday

Reason for request: Want to open an indoor Classic Car dealership. Need approval for this specific use in order to obtain dealers license.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Business will be conducted inside the building, with little to no impact on traffic, parking, neighborhood, surrounding businesses, etc. I want to bring a new and exciting purchasing option to the local community who like owning classic cars.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing
 - Parking (if applicable)
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature):	Date:
Applicant (printed): Justin Smith	
Property Owner (signature):	Date:
Property Owner (printed) : Renee Runkel	
<i>The Specific Use Designation shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> 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.</i> <i>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.</i>	

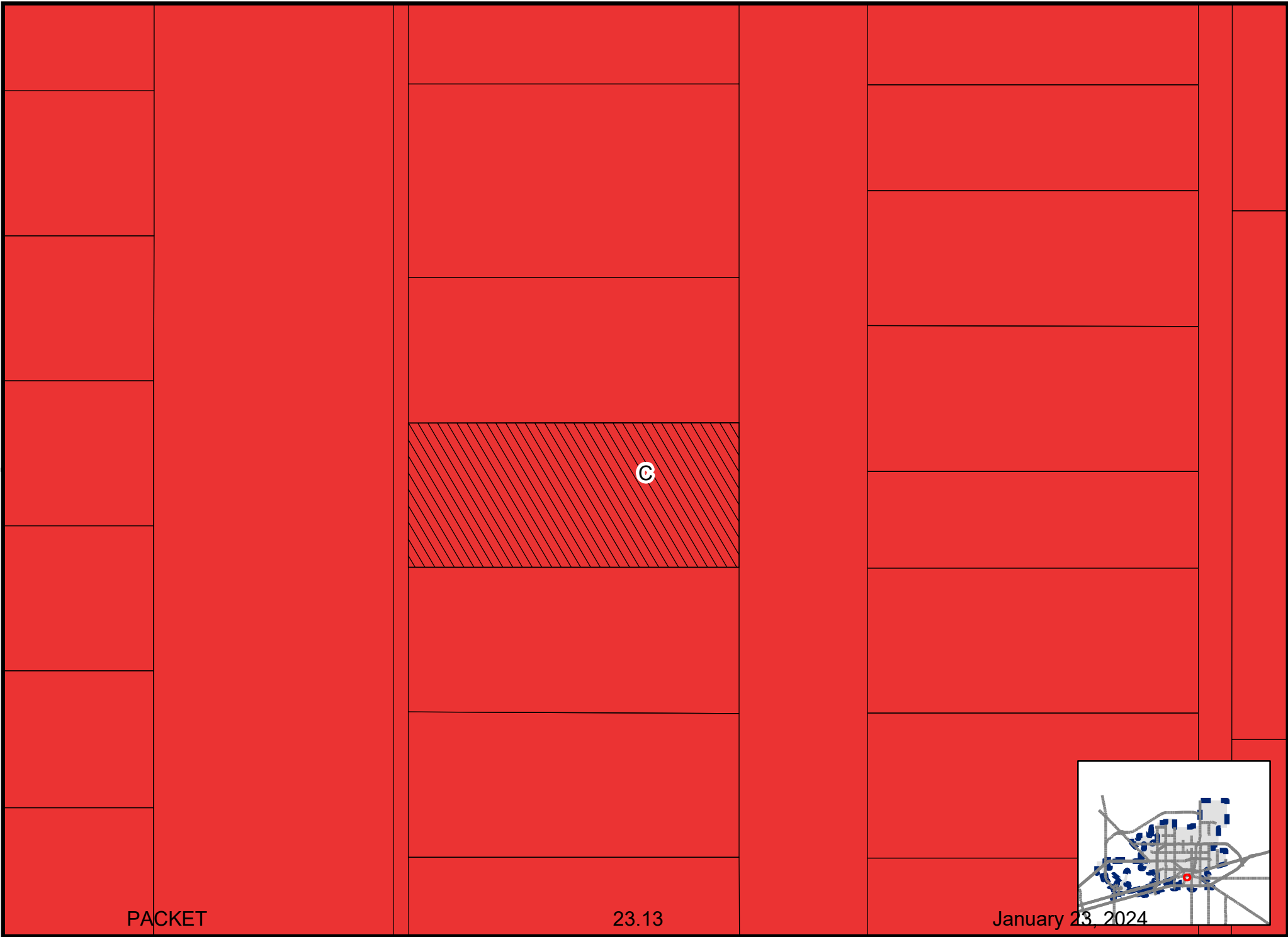
STATE OF TEXAS
COUNTY OF MIDLAND

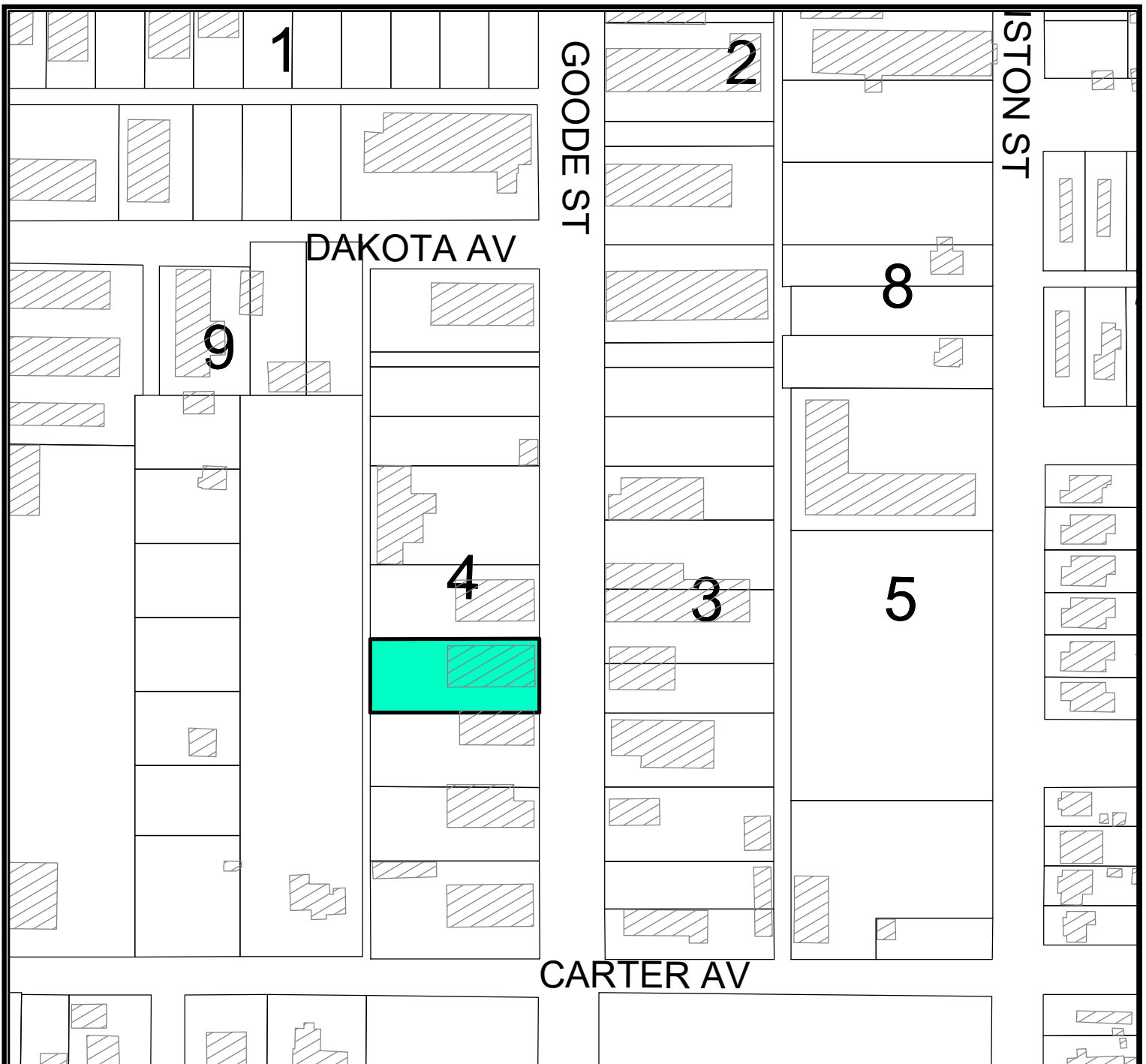
Authorized Agent (*signature*)

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization ☐ Application Fee Check # _____	☐ Dimensioned Site Plan ☐ Site Plan in Digital Format (PDF/JPEG)
Received By:	Date:

SUD Application





LOCATION MAP

SUDwo-23-0040

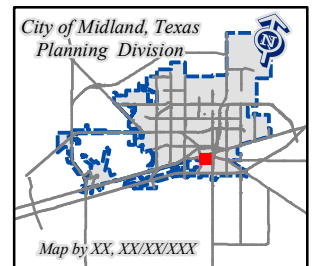
Scale: 1" = 175'

Consider a request by Justin Smith for a Specific Use Designation without Term for an automobile or other motorized vehicle sales and service on Lot 8 less the north 30 feet and Lot 9, Block 4, Stockard Acres, City and County of Midland, Texas.

Generally located on the west side of Goode Street, approximately 315 feet north of Carter Avenue. (District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND NOR IS IT DESIGNED TO BE USED AS A 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 23, 2024











City Council Meeting

Item Number: 24
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE VACATING AND ABANDONING A 0.25-ACRE PORTION OF SINCLAIR AVENUE RIGHT-OF-WAY AND A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BOTH LOCATED ADJACENT TO THE NORTH 380 FEET OF THE EAST HALF OF THE SOUTH HALF OF TRACT 2, SUNSET ACRES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$7,623.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Community and Senior Services of Midland, is requesting to vacate a 0.25-acre portion of the Sinclair Avenue right-of-way, and a 0.08-acre portion of alley right-of-way, both located adjacent to the north 380 feet of the east half of the south half of Tract 2, Sunset Acres, City and County of Midland, Texas for future development.

Recommended City Council Action:

Approve

Fiscal Impact:

The 2023 appraised value of the right-of-way is a total value of \$7,623.00.

Discussion:

The Midland Central Appraisal District's appraisal of this land at a total of \$7,623.00 using the formula of 10,890 sq ft X .70. There is also an associated replat in process that includes the

vacated portions.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Code Compliance: (Approved)

No oil and gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed. [For Applicant's Information Only.]

Fire: (Approved)

No objections.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

No comment.

AT&T: (Approved)

AT&T is okay with the vacation as long as a utility easement is retained, and the relocation of utilities is at the cost of the developer.

Atmos: (Approved)

Atmos Energy has no objection to the above referenced changes to the street and alley right of way located west of Midkiff Road. We currently have no gas lines or facilities located within this section of right of way proposed to be vacated.

Astound: (Approved)

The only services Astound has are along Midkiff Road going North and South from looking at their maps. They do not have utilities in the proposed area.

Oncor: (Approved)

Oncor has underground facilities with an easement on the property that serves the WTX Food Bank and another. Oncor will work with the developer to relocate these facilities as needed. Note that new easements may be needed as well as appropriate relocations costs, these topics will be discussed with the site developer.

Altice USA: (Approved)

Altice USA has identified utilities in the area. They have an aerial & coax plant on the poles on the west side off of N Midkiff Road. The developer will need to pay to relocate those utilities.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved of the request. Since some of the franchise utility companies have utilities in the proposed area, a utility easement will need to be retained until all utilities have been relocated. Additionally, in order for the replat to be approved, an access easement will need to be provided to give the property to the north access.

Therefore, staff recommends approval of this vacation subject to conditions A and B.

Conditions:

A. That the value of the property shall be \$7,623.00.

B. 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 11, staff has not received any letters of objection to this request.

Attachments:

Vacation Survey (Exhibit A)

Application

Maps

Responses from Franchise Utility Companies

Pre t. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.25-ACRE PORTION OF SINCLAIR AVENUE RIGHT-OF-WAY AND A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BOTH LOCATED ADJACENT TO THE NORTH 380 FEET OF THE EAST HALF OF THE SOUTH HALF OF TRACT 2, SUNSET ACRES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$7,623.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.25-acre portion of Sinclair Avenue right-of-way and a 0.08-acre portion of alley right-of-way, both located adjacent to the north 380 feet of the east half of the south half of Tract 2, Sunset Acres, 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 Assistant City Manager has appraised the value of the City’s property interest in the Property at \$7,623.00, 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 \$7,623.00; 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., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

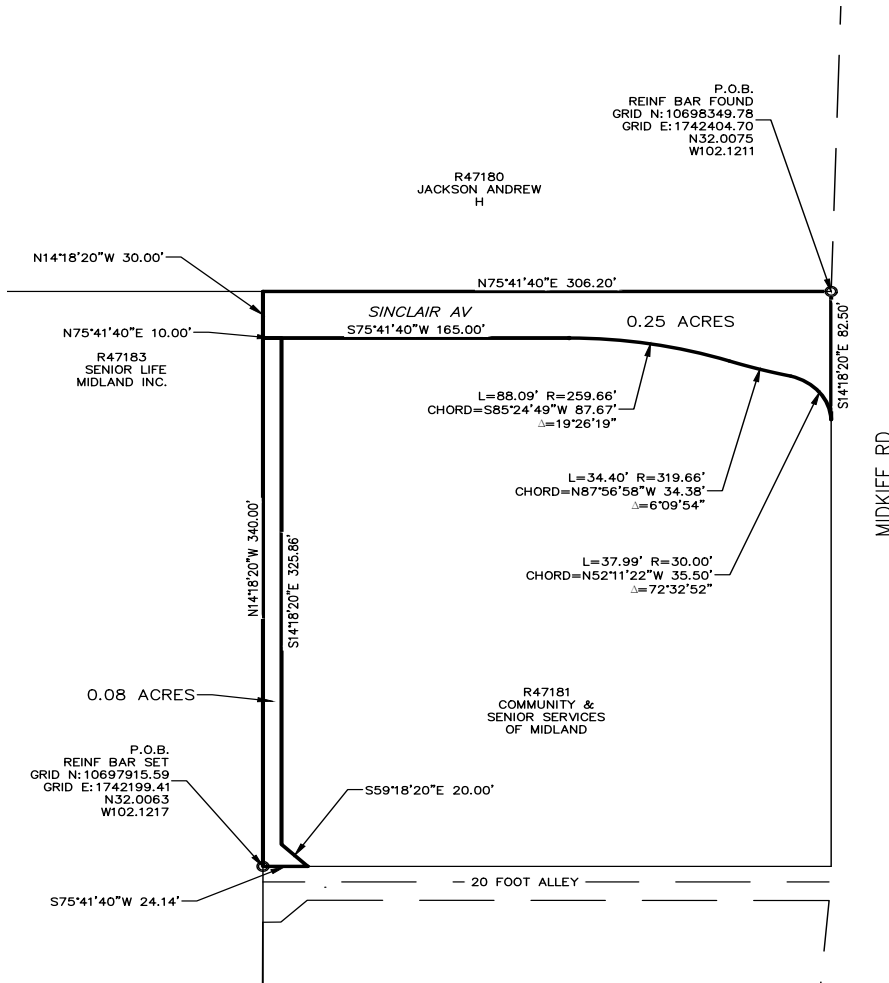
APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



FIELD NOTE DESCRIPTION OF A 0.08 ACRE TRACT OF LAND, OFF THE WEST SIDE OF THE NORTH 380 FEET OF THE E/2 OF THE S/2 OF TRACT 2, SUNSET ACRES, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.08 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR SET (N:10697915.59, E:1742199.41) FOR THE SOUTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 14°18'20" WEST 340.00 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 75°41'40" EAST 10.00 FEET TO A POINT FOR THE NORTHEAST CORNER OF THIS TRACT;
 THENCE SOUTH 14°18'20" EAST 325.86 FEET TO A POINT FOR CORNER OF THIS TRACT;
 HENCE SOUTH 59°18'20" EAST 20.00 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°41'40" WEST 24.14 FEET TO THE PLACE OF BEGINNING.

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

FIELD NOTE DESCRIPTION OF A 0.25 ACRE TRACT OF LAND, ALSO KNOWN AS SINCLAIR AVENUE, OUT OF THE NORTH 380 FEET OF THE E/2 OF THE S/2 OF TRACT 2, SUNSET ACRES, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND OUT OF THE SOUTHEAST PART OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.25 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR FOUND (N:10698349.78, E:1742404.70) IN THE WEST RIGHT OF WAY LINE OF MIDKIFF ROAD FOR THE NORTHEAST CORNER OF THIS TRACT, ALSO BEING THE SOUTHEAST CORNER OF SUNSET ACRES, BLOCK 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS;
 THENCE SOUTH 14°18'20" EAST 82.50 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT AND THE BEGINNING OF A CURVE TO THE LEFT;
 THENCE 37.99 FEET ALONG A CURVE WITH A RADIUS OF 30.00 FEET AND A DELTA ANGLE OF 72°32'52", AND A CHORD BEARING OF NORTH 52°11'22" WEST 35.50 FEET TO A POINT FOR AN INTERIOR CORNER OF THIS TRACT AND CONTINUING WITH THE CURVE RIGHT;
 THENCE 34.40 FEET ALONG A CURVE WITH A RADIUS OF 319.66 FEET AND A DELTA ANGLE OF 06°09'54", AND A CHORD BEARING OF NORTH 87°56'58" WEST 34.38 FEET TO A POINT FOR AN INTERIOR CORNER OF THIS TRACT AND CONTINUING WITH THE CURVE RIGHT;
 THENCE 88.09 FEET ALONG A CURVE WITH A RADIUS OF 259.66 FEET AND A DELTA ANGLE OF 19°26'19", AND A CHORD BEARING OF SOUTH 85°24'49" WEST 87.67 FEET TO A POINT FOR AN EXTERIOR CORNER OF THIS TRACT;
 THENCE SOUTH 75°41'40" WEST 165.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 14°18'20" WEST 30.00 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 75°41'40" EAST, ALONG THE NORTH RIGHT OF WAY LINE OF SAID SINCLAIR AVENUE, 306.20 FEET TO THE PLACE OF BEGINNING.

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

Surveyor Certification

TO THE LIENHOLDERS, COMMUNITY AND SENIOR SERVICES OF MIDLAND

(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 14TH DAY OF DECEMBER, 2023

RJ DAUM
TEXAS RPLS 4826



EXHIBIT A

A 0.08 TRACT OF LAND
 &
 A 0.25 TRACT OF LAND

OUT OF SUNSET ACRES,
 AN ADDITION TO THE CITY OF
 MIDLAND, MIDLAND COUNTY, TEXAS
 AS PER THE MAP OR PLAT
 RECORDED IN COUNTY CLERKS OFFICE
 MIDLAND COUNTY, TEXAS

SCALE: 1" = 80' REV 1-12-24

PROJECT: 79394
 JOB NO: 79,394

LEGEND:

MONUMENT AS DESCRIBED
 PROPERTY LINE
 ADJOINING PROPERTIES

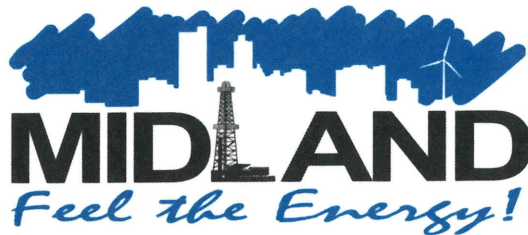


SCHUMANN
SUPACORP, INC.
 A LATERAL LAND COMPANY

800 N. MARLENFELD STREET
 SUITE 100
 MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500

Office (432) 684-5548



Office of the City Manager

January 12, 2024

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.25-acre portion of Sinclair Avenue right-of-way and a 0.08-acre portion of alley right-of-way, both located adjacent to the north 380 feet of the east half of the south half of Tract 2, Sunset Acres, 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 \$7,623.00. Upon the City's receipt of this sum from the adjoining property owner(s), the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jose Ortiz".

Jose Ortiz
Assistant City Manager



**Vacate Right-of-Way/Public Utility
Easement/Land/Street Application**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: **COMMUNITY AND SENIOR SERVICES OF MIDLAND**

Phone (432) 254 0327

Email *kl.hogan@seniorlifemidland.org*

Address
3301 SINCLAIR AVENUE

City
MIDLAND

State
TX

Zip
79705

Application is hereby made to the City Council to vacate the following:

- ☐ Right-of-Way
- ☒ Public Utility Easement
- ☐ Land
- ☒ Street

Description of Address: 10 FOOT ALLEY AND SINCLAIR AVENUE

Reason for Request: TO JOIN 2 PROPERTIES INTO ONE CONTINUOUS PROPERTY

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: APPLICANT OWNS PROPERTY SURROUNDING THE 10 FOOT ALLEY ON EAST AND WEST SIDE. APPLICANT HAS ACCESSES TO PROPERTY THROUGH MIDKIFF ROAD.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Survey (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- Atmos Energy
- Oncor Electric
- AT&T
- Suddenlink Cable TV Co.
- Grande Communications

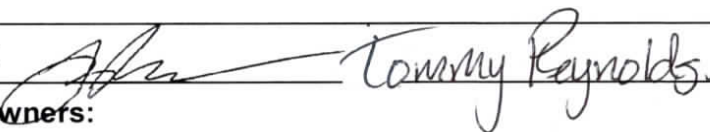
The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Planning Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures

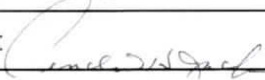
Applicant (signature):

 Tommy Reynolds

Date: 11/5/2023

Affected Property Owners:

Signature:



Print: Andrew Jackson

Date: 11/15/2023

Signature:

Print:

Date

Signature:

Print:

Date

Signature:

Print:

Date

The Vacation of right-of-way/public utility easement/land/street shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

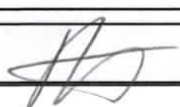
FOR OFFICE USE ONLY

☒ 1 FOLDED Copy of Survey

☒ Survey in Digital Format (PDF/JPEG)

☐ Application Fee

Check # _____

Received By: 

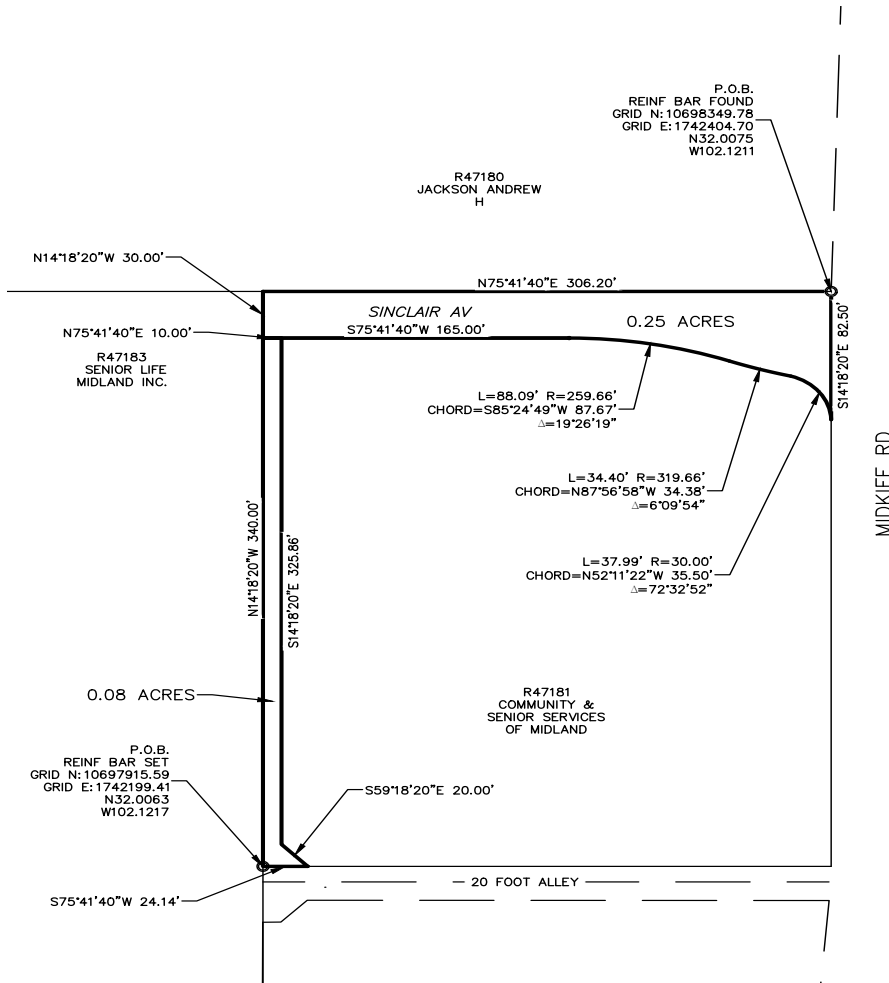
Date:



BY: _____

PACKET

Application will not be considered for scheduling until reviewed by a planner. **



FIELD NOTE DESCRIPTION OF A 0.08 ACRE TRACT OF LAND, OFF THE WEST SIDE OF THE NORTH 380 FEET OF THE E/2 OF THE S/2 OF TRACT 2, SUNSET ACRES, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.08 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR SET (N:10697915.59, E:1742199.41) FOR THE SOUTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 14°18'20" WEST 340.00 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 75°41'40" EAST 10.00 FEET TO A POINT FOR THE NORTHEAST CORNER OF THIS TRACT;
 THENCE SOUTH 14°18'20" EAST 325.86 FEET TO A POINT FOR CORNER OF THIS TRACT;
 HENCE SOUTH 59°18'20" EAST 20.00 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°41'40" WEST 24.14 FEET TO THE PLACE OF BEGINNING.

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

FIELD NOTE DESCRIPTION OF A 0.25 ACRE TRACT OF LAND, ALSO KNOWN AS SINCLAIR AVENUE, OUT OF THE NORTH 380 FEET OF THE E/2 OF THE S/2 OF TRACT 2, SUNSET ACRES, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND OUT OF THE SOUTHEAST PART OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.25 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR FOUND (N:10698349.78, E:1742404.70) IN THE WEST RIGHT OF WAY LINE OF MIDKIFF ROAD FOR THE NORTHEAST CORNER OF THIS TRACT, ALSO BEING THE SOUTHEAST CORNER OF SUNSET ACRES, BLOCK 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS;
 THENCE SOUTH 14°18'20" EAST 82.50 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT AND THE BEGINNING OF A CURVE TO THE LEFT;
 THENCE 37.99 FEET ALONG A CURVE WITH A RADIUS OF 30.00 FEET AND A DELTA ANGLE OF 72°32'52", AND A CHORD BEARING OF NORTH 52°11'22" WEST 35.50 FEET TO A POINT FOR AN INTERIOR CORNER OF THIS TRACT AND CONTINUING WITH THE CURVE RIGHT;
 THENCE 34.40 FEET ALONG A CURVE WITH A RADIUS OF 319.66 FEET AND A DELTA ANGLE OF 06°09'54", AND A CHORD BEARING OF SOUTH 87°56'58" WEST 34.38 FEET TO A POINT FOR AN INTERIOR CORNER OF THIS TRACT AND CONTINUING WITH THE CURVE RIGHT;
 THENCE 88.09 FEET ALONG A CURVE WITH A RADIUS OF 259.66 FEET AND A DELTA ANGLE OF 19°26'19", AND A CHORD BEARING OF SOUTH 85°24'49" WEST 87.67 FEET TO A POINT FOR AN EXTERIOR CORNER OF THIS TRACT;
 THENCE SOUTH 75°41'40" WEST 165.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 14°18'20" WEST 30.00 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 75°41'40" EAST, ALONG THE NORTH RIGHT OF WAY LINE OF SAID SINCLAIR AVENUE, 306.20 FEET TO THE PLACE OF BEGINNING.

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Surveyor Certification

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(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 14TH DAY OF DECEMBER, 2023

[Signature]
 RJ DAUM
 TEXAS RPLS 4826

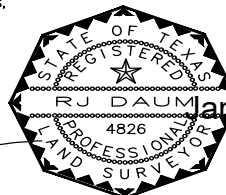


EXHIBIT A

A 0.08 TRACT OF LAND
 &
 A 0.25 TRACT OF LAND

OUT OF SUNSET ACRES,
 AN ADDITION TO THE CITY OF
 MIDLAND, MIDLAND COUNTY, TEXAS
 AS PER THE MAP OR PLAT
 RECORDED IN COUNTY CLERKS OFFICE
 MIDLAND COUNTY, TEXAS

SCALE: 1" = 80' REV 1-12-24

PROJECT: 79394
 JOB NO: 79,394

LEGEND:

○ MONUMENT AS DESCRIBED
 — PROPERTY LINE
 — ADJOINING PROPERTIES

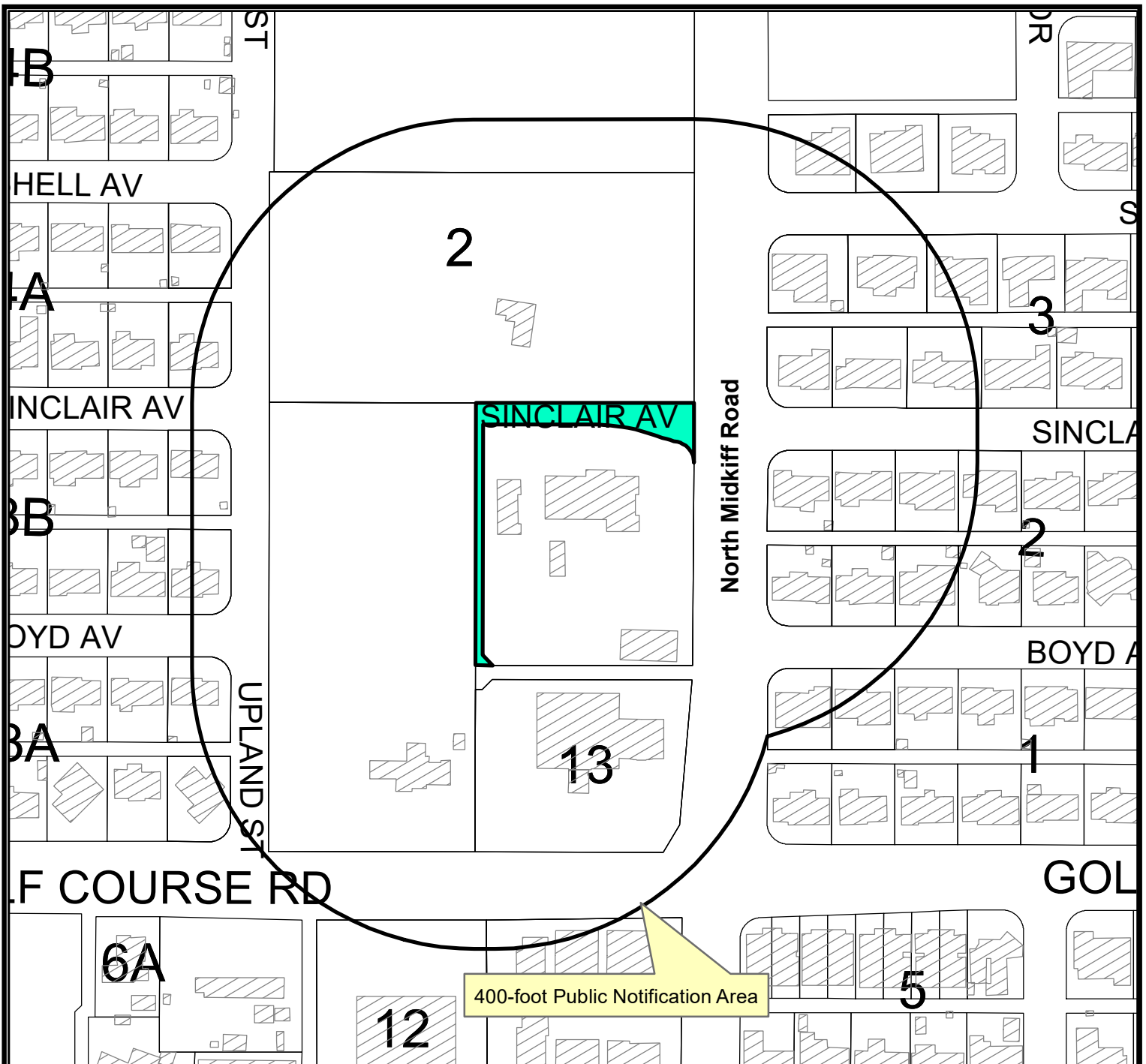


SCHUMANN
SUPACKET, INC.
 A LATERAL LAND COMPANY

800 N. MARLENFELD STREET
 SUITE 100
 MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500

Office (432) 684-5548



LOCATION MAP

V-23-0058

Scale: 1" = 203'

Consider a request for a vacation of a 0.25-acre portion of Sinclair Avenue right-of-way, and a 0.08-acre portion of alley right-of-way, both located adjacent to the north 380 feet of the east half of the south half of Tract 2, Sunset Acres, City and County of Midland, Texas.

Generally located on the west side of North Midkiff Road, approximately 300 feet north of Boyd Avenue.
(Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

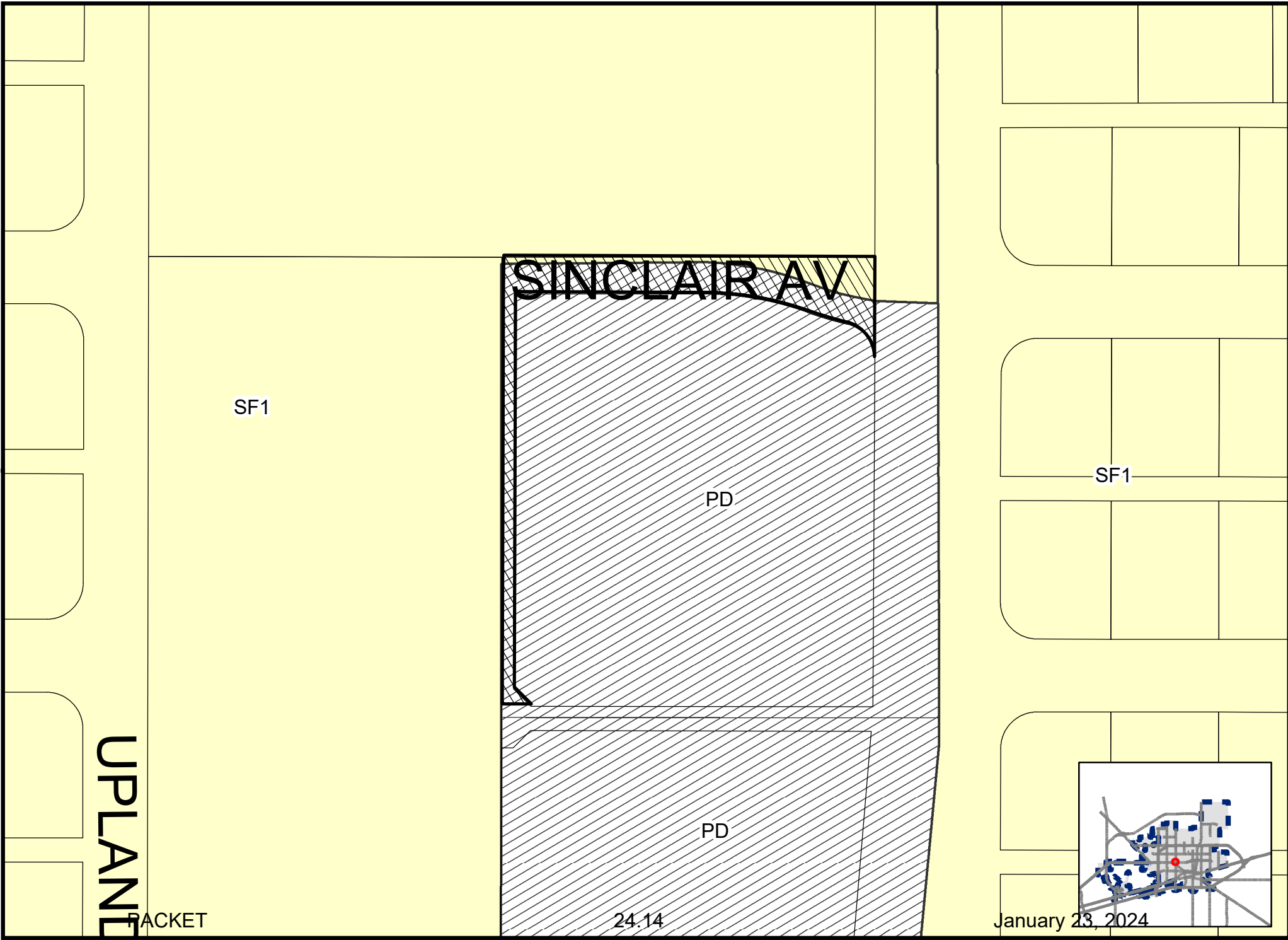


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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

January 23, 2024



Landon J. Ochoa

From: LReyna@midcad.org
Sent: Friday, January 5, 2024 12:39 PM
To: Landon J. Ochoa
Subject: Re: Community & Senior Services Vacation
Attachments: V-23-0058, TaxVacMCAD vac ltr.pdf; V-23-0058, Location Map.pdf; V-23-0058, Revised Survey.pdf

Importance: High



Use R47181 to map

Market value .25 ac

10,890 sq ft X .70 = \$ 7623

Here ya go Sir!

Thank you,

Lisa Reyna, RPA
Assistant Chief Appraiser
Midland Central Appraisal District
4631 Andrews Hwy
Midland, TX 79703
Phone (432) 699-4991
Fax (432) 689-7185

From: "Landon J. Ochoa" <ljochoa@midlandtexas.gov>
To: Lisa Reyna <lreyna@midcad.org>
Date: 01/04/2024 04:35 PM
Subject: Community & Senior Services Vacation

Good afternoon, Lisa.

I hope you enjoyed the holidays and are well. Can you please provide me a valuation on property described in the attached documents? A request to vacate it has been submitted.

Respectfully,

Landon Ochoa
Senior Planner
Planning Division

PACKET

24.15
1

January 23, 2024

Development Services
O. 432-685-7405
ljochoa@midlandtexas.gov



300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Landon J. Ochoa

From: Luis Montez <Luis.Montez@AlticeUSA.com>
Sent: Thursday, January 4, 2024 5:11 PM
To: Landon J. Ochoa; Eron Zapata
Subject: RE: External E-mail - Community & Senior Services Vacation
Attachments: Screenshot 2024-01-04 170354.png



Landon,

Optimum has aerial fiber & coax plant on the poles on the west side poles off of, N Midkiff Rd.

I have attached a GoogleEarth Picture on here.

The vacated area I highlighted in purple shows the vacated area that our plant is on the pole.

Is the developer removing that pole or relocating it? If it is going to be removed there will be a cost for us to relocate our plant at their cost.

From: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Sent: Thursday, January 4, 2024 4:26 PM
To: Luis Montez <Luis.Montez@AlticeUSA.com>; Eron Zapata <Eron.Zapata@AlticeUSA.com>
Subject: External E-mail - Community & Senior Services Vacation

[External Email]

Caution: This email originated outside of Altice USA. Please do not click links or attachments unless you recognize the sender and know the content is safe.

Good morning, Luis and Eron.

Please see the attached letter and supporting documents and provide comments by January 12, 2024 as this request will be going to the January 23, 2024 City Council meeting. Thank you!

Respectfully,

Landon Ochoa
Senior Planner
Planning Division
Development Services
O. 432-685-7405
ljochoa@midlandtexas.gov



300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Landon J. Ochoa

From: Ruben Guerra <ruben.guerra@astound.com>
Sent: Tuesday, January 16, 2024 9:11 AM
To: Landon J. Ochoa
Subject: Re: Community & Senior Services Vacation



The only services Astound has is along Midkiff Rd going North and South from looking at our maps.

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

Powered by RCN | Grande | Wave

astound.com

On Thu, Jan 4, 2024 at 4:26 PM Landon J. Ochoa <ljochoa@midlandtexas.gov> wrote:

Good morning, Ruben.

Please see the attached letter and supporting documents and provide comments by January 12, 2023 as this request will be going to the January 23 City Council meeting. Thank you!

Respectfully,

Landon Ochoa

Senior Planner

Planning Division

Development Services

O. 432-685-7405

ljochoa@midlandtexas.gov



300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Landon Ochoa
Senior Planner/Planning Div.
300 N. Loraine
Midland, Texas 79701

January 5, 2023

Re: Case Name: Community & Senior Services
Case Number: V-23-0058

Mr. Ochoa,

Atmos Energy has no objection to the above referenced changes to the street and alley right of way located west of Midkiff Road. We currently have no gas lines or facilities located within this section of right of way proposed to be vacated.
Please let me know if you have any further questions.

Sincerely,

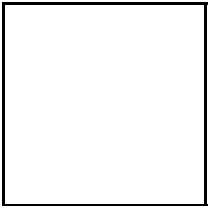
A handwritten signature in black ink that reads "Mark Lieb".

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
mark.lieb@atmosenergy.com

Landon J. Ochoa

From: Landon J. Ochoa
Sent: Tuesday, January 16, 2024 11:41 AM
To: Landon J. Ochoa
Subject: FW: Community & Senior Services Vacation

From: Molina, Sergio <Sergio.Molina@oncor.com>
Sent: Friday, January 12, 2024 7:09 PM
To: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Cc: Arguello, Martin <Martin.Arguello@oncor.com>; Hamilton, Hannah <Hannah.Hamilton@oncor.com>
Subject: RE: Community & Senior Services Vacation



Landon,

Oncor has underground facilities with an easement on the property that serves the WTX Food Bank and another. Oncor will work with the developer to relocate these facilities as needed. Note that new easements may be needed as well as appropriate relocations costs, these topics will be discussed with the site developer.

Let me know if further information is needed.

Sergio Molina, P.E.

Oncor | NCM Manager WTX

Cell: 214.970.4143

My Manager: Hannah Hamilton

Cell: 432.894.4601 email: Hannah.Hamilton@oncor.com

From: Landon J. Ochoa <ljchoa@midlandtexas.gov>
Sent: Friday, January 12, 2024 3:36 PM
To: Arguello, Martin <Martin.Arguello@oncor.com>; Hamilton, Hannah <Hannah.Hamilton@oncor.com>; Molina, Sergio <Sergio.Molina@oncor.com>
Subject: RE: Community & Senior Services Vacation

WARNING: This email message did not originate from Oncor and is from an external organization. **DO NOT CLICK** links or attachments unless you recognize the sender and are certain the content is safe.

Good afternoon, All.

We urgently need comments from Oncor on this. Do y'all have anything?

From: Landon J. Ochoa
Sent: Thursday, January 4, 2024 4:29 PM
To: Martin Arguello <martin.arguello@oncor.com>; Hamilton, Hannah <Hannah.Hamilton@oncor.com>; Molina, Sergio <Sergio.Molina@oncor.com>
Subject: Community & Senior Services Vacation

Good afternoon,

Please see the attached letter and supporting documents and provide comments by January 12, 2024 as this request will be going to the January 23, 2024 City Council meeting. Thank you!

Respectfully,

Landon Ochoa

Senior Planner
PACKET

Planning Division

Development Services

O. 432-685-7405

ljochoa@midlandtexas.gov

<image001.png>

<image002.png>

<image003.png>

<image004.png>

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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Landon J. Ochoa

From: GONZALEZ, VINCENT <vg064q@att.com>
Sent: Wednesday, January 17, 2024 10:58 AM
To: Landon J. Ochoa
Subject: RE: Community & Senior Services Vacation



Yes I'll be okay with this vacation with the condition that a utility access easement be retained until all utilities have been relocated at the cost of the developer.

VINCENT GONZALEZ

SR SPECIALIST-OSP DESIGN ENGINEER
MIDLAND
North Texas Market, Access Construction & Engineering

AT&T Technology Operations

410 W Missouri, 2ND Flr, Midland, TX 79701
m 432.559.2890 | VG064Q@att.com

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From: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Sent: Wednesday, January 17, 2024 8:41 AM
To: GONZALEZ, VINCENT <vg064q@att.com>
Subject: RE: Community & Senior Services Vacation

Good morning, Vincent.

I hope Ed gets you the answers you need. But unfortunately, we are very low on time as this vacation request will need to be finalized on the City Council agenda today. With your current information, would you be able tell me if you'd be okay with this vacation with the condition that a utility access easement be retained until all utilities have been relocated at the cost of the developer?

If you can tell me this, then that would help me move forward.

From: GONZALEZ, VINCENT <vg064q@att.com>
Sent: Tuesday, January 16, 2024 1:02 PM
To: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Subject: RE: Community & Senior Services Vacation

Ok I'll have to look into this a little more. I do show that we do have copper cable and fiber cable in that easement. We did have fiber going to the old building that was demolished and fiber equipment that belongs to AT&T do you happen to know if they still have this? Can please have a contact to see if they still have the equipment. I'll have if we can vacate this easement and maybe we can retire in place the copper if there is no customers to the pedestal in the rear of that alley.

VINCENT GONZALEZ

SR SPECIALIST-OSP DESIGN ENGINEER

MIDLAND

North Texas Market, Access Construction & Engineering

AT&T Technology Operations

410 W Missouri, 2ND Flr, Midland, TX 79701

m 432.559.2890 | VG064Q@att.com

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From: Landon J. Ochoa <ljochoa@midlandtexas.gov>

Sent: Tuesday, January 16, 2024 10:45 AM

To: GONZALEZ, VINCENT <vg064q@att.com>

Subject: RE: Community & Senior Services Vacation

Here you go Vincent. The property owner is requesting to vacate the portion shown in the survey. Please let me know if y'all have utilities in the area. If you do, please let me know if you are okay with the vacation as long as the applicant pays to relocate them.

From: GONZALEZ, VINCENT <vg064q@att.com>

Sent: Tuesday, January 16, 2024 8:41 AM

To: Landon J. Ochoa <ljochoa@midlandtexas.gov>

Subject: RE: Community & Senior Services Vacation

This is in my area of Midland could you please send the attachment. I didn't see that Jerry added it. Thanks.

VINCENT GONZALEZ

SR SPECIALIST-OSP DESIGN ENGINEER

MIDLAND

North Texas Market, Access Construction & Engineering

AT&T Technology Operations

410 W Missouri, 2ND Flr, Midland, TX 79701

m 432.559.2890 | VG064Q@att.com

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From: UNDERWOOD, JERRY <ju1659@att.com>
Sent: Tuesday, January 16, 2024 6:07 AM
To: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Cc: GONZALEZ, VINCENT <vg064q@att.com>
Subject: RE: Community & Senior Services Vacation

Vincent,

This one is yours off of Midkiff and Sinclair.

Thanks,
Jerry

Jerry Underwood
Sr. Specialist OSP Design Engineer
Midland Engineering
AT&T

AT&T Technology Operations
410 W Missouri, Midland, TX 79701
m 432-296-2821 / ju1659@att.com

From: Landon J. Ochoa <ljochoa@midlandtexas.gov>
Sent: Friday, January 12, 2024 3:33 PM
To: UNDERWOOD, JERRY <ju1659@att.com>
Subject: RE: Community & Senior Services Vacation

Jerry,

We urgently need comments from you on this.

From: Landon J. Ochoa
Sent: Thursday, January 4, 2024 4:30 PM
To: Jerry Underwood <ju1659@att.com>
Subject: Community & Senior Services Vacation

Good afternoon, Jerry.

Please see the attached letter and supporting documents and provide comments by January 12, 2024 as this request will be going to the January 23, 2024 City Council meeting. Thank you!

Respectfully,

Landon Ochoa
Senior Planner
Planning Division
Development Services
O. 432-685-7405
ljochoa@midlandtexas.gov



300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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ORDINANCE NO. 10243

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.273-ACRE TRACT OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 2.273-acre tract of land out of Section 20, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein (the “Property”) to PD, Planned Development District for an Office Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is
PACKET 24.33 January 23, 2024
hereby amended to rezone the Property from SF-1, Single-Family Dwelling District to PD,

Planned Development District for an Office Center.

O-1, Office District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit “B” and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

- A. That the Property shall significantly conform to the site plan and elevations attached hereto as Exhibit “B”.
- B. That the landscaping shown in Exhibit “B” shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provided in Section 1-24.04 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars

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 28th day of September, A.D., 2021; and passed to second reading on motion of Council member Trost, seconded by Council member Norman, by the following vote:

Council members voting "AYE": Blong, Trost, Robnett, Dufford, Ladd, Norman

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Ladd, seconded by Council member Norman, on the 12th day of October, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE": Blong, Trost, Robnett, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None

PASSED AND APPROVED THIS 12th day of October, A.D., 2021.



Patrick N. Payton, Mayor

ATTEST
SECRET

24.35

January 23, 2024

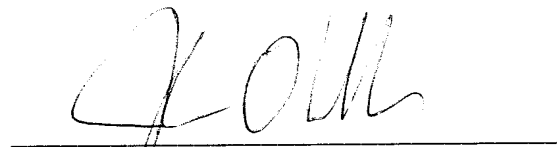


APPROVED AS TO CONTENT
AND COMPLETENESS:



Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:



John Ohnemiller, City Attorney

EXHIBIT "A"

SURVEY PLAT

(4.78 ACRES)
1443/06 M.C.D.R.

SEE DETAIL E

SEE DETAIL D

SEE DETAIL B

SEE DETAIL A

SINCLAIR AVENUE (VARIABLE R.O.W.)

2.273 ACRES
BEING ALL OF
913/525 M.C.D.R.

SEE DETAIL I

SEE DETAIL C

SEE DETAIL F

SEE DETAIL H

N 59°24'23" W
20.00'
(N 60°00'00" W)
(20.00')

S 75°00'00" W 282.06'
S 75°35'37" W 282.06'
345/141&143 M.C.D.R.

LOT 1
SUNSET ACRES
FILE NO: 2011-17424 M.C.O.P.R.

LEGAL DESCRIPTION: Being 2.273 acres of land out of Section 20, Block 39, T.1 S.7. & P.3E. Co. Survey, Abstract No. 1166 in Midland County, Texas and also being all of that certain 2.269 acre tract described in Volume 913, Page 525 of the Deed Records of Midland County, Texas, said 2.273 acre tract being more particularly described as follows and as surveyed under the supervision of Criss Texas Land Services, Inc. on December, 2011 & January, 2015.

BEGINNING at a 1/2 inch iron rod set in the west Right of Way line of Midland Road, the north line of a 20 foot alley and the east line of said Tract 2 for the southeast corner of said 2.269 acre tract and the southeast corner hereof and from which an "X" cut in concrete found for the northeast corner of that certain tract described in File No. 2011-17424 of the Official Public Records of Midland County, Texas, being South 120°04' East a distance of 19.47 feet;

THENCE South 79°05'00" West a distance of 282.06 feet along the north line of said 20 foot alley and the south line of said 2.269 acre tract to a 1/2 inch iron rod set for the most southerly southeasterly corner hereof;

THENCE North 59°24'23" West a distance of 20.00 feet along the southeasterly line of said 2.269 acre tract to a 1/2 inch iron rod set in the east line of a 10 foot alley for the most westerly southeasterly corner hereof;

THENCE North 14°24'25" West a distance of 335.80 feet along the east line of said 10 foot alley and the west line of said 2.269 acre tract to an "X" marked in concrete in the south line of Sinclair Avenue for the northeastern corner of said 2.269 acre tract and the northeastern corner hereof;

THENCE to the same and the north line of said 2.269 acre tract, the following 4 courses:

1. North 79°05'00" East a distance of 165.80 feet to a 1/2 inch iron rod set for a corner hereof;
2. with a curve turning to the right with an arc length of 88.68 feet, with a radius of 258.64 feet, with a chord bearing of North 85°22'39" East, with a chord length of 88.05 feet to a 1/2 inch iron rod set for a corner hereof;
3. with a reverse curve turning to the left with an arc length of 23.31 feet, with a radius of 339.46 feet, with a chord bearing of South N 6°43'58" East, with a chord length of 23.36 feet to a 1/2 inch iron rod set for a corner hereof;
4. with a reverse curve turning to the right with an arc length of 39.95 feet, with a radius of 30.00 feet, with a chord bearing of South 52°32'12" East, with a chord length of 37.76 feet to a 1/2 inch iron rod set in the west line of said Midland Road and the east line of said 2.269 acre tract;

THENCE South 14°24'23" East a distance of 286.54 feet along the west line of said Midland Road and the east line of said 2.269 acre tract to the POINT OF BEGINNING containing 2.273 acres more or less, as shown herein.

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.68	258.64	18°04'04"	N 85°22'39" E	88.05
C2	23.31	339.46	4°10'40"	S 6°43'58" E	23.36
C3	39.95	30.00	16°17'54"	S 52°32'12" E	37.76

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.68	258.64	16°34'00"	N 04°47'00" E	88.34
C2	37.73	33.68	85°1'58"	S 66°21'58" E	35.71
C3	36.85	30.00	76°17'54"	S 53°05'58" E	37.04

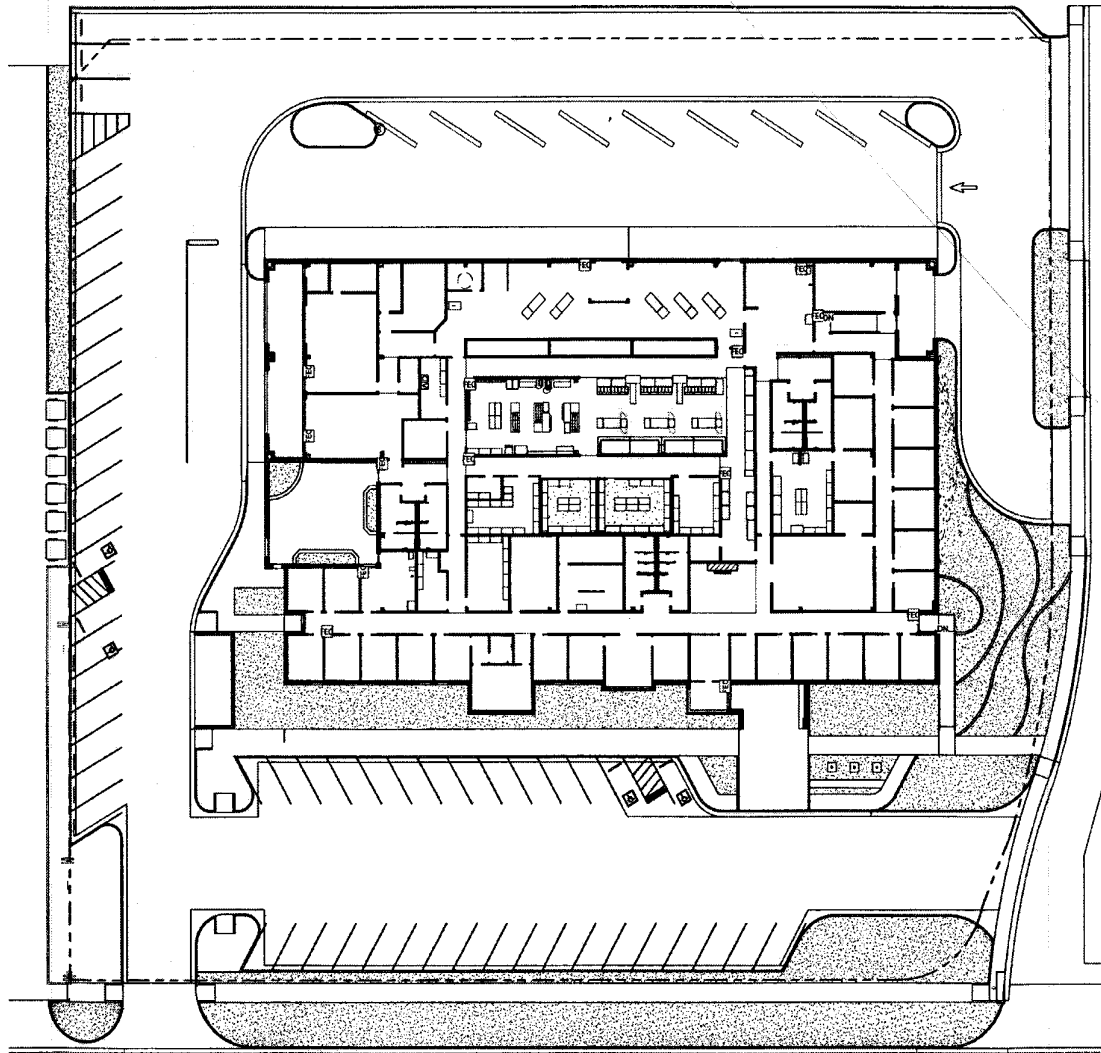
TREE NUMBER	SPECIES	DIAMETER
1	OAK	24"
2	OAK	24"
3	MESQUITE	6"
4	OAK	10"
5	OAK	42"
6	OAK	16"
7	OAK	TWIN 12"
8	OAK	17"
9	PECAN	21"
10	PECAN	24"
11	PECAN	20"
12	PECAN	18"

PACKET

24.37

January 23, 2024

EXHIBIT "B"



PACKET

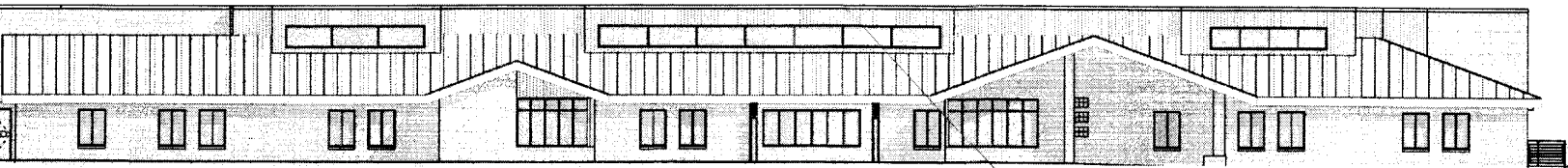
NEW FACILITY

24.38

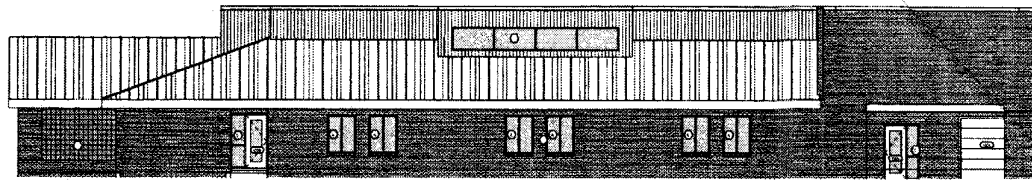


January 23, 2024
VANDERKIFF GROUP
ARCHITECTS • PC
312 N. BRIDGE SPRING SUITE 100 (409) 887-0781 MIDLAND, TEXAS
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EXHIBIT "B" (cont'd)



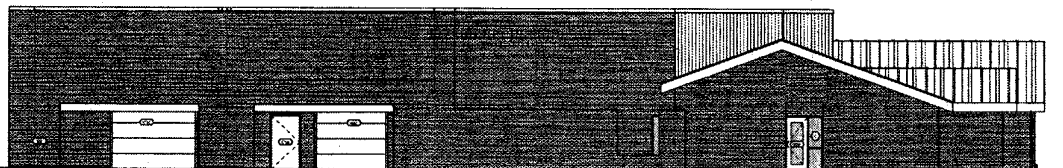
NORTH ELEVATION EXHIBIT



2 EAST ELEVATION EXHIBIT
X:1.00 1/8" = 1'-0"



SOUTH ELEVATION EXHIBIT



4 WEST ELEVATION EXHIBIT
X:1.00 1/8" = 1'-0"

PACKET

NEW FACILITY

24.39



VANDERGRIFF ARCHITECTS, P.C.

312 N. BIG SPRING BLVD. SUITE 100 (409) 207-0761 MIDLAND, TEXAS
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23, 2024



City Council Meeting

Item Number: 22
Meeting Date: September 28, 2021
To: City Council / City Manager
From: Kelly Martinez, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.273-ACRE TRACT OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Stephen T. Marcum is requesting to rezone the property located at 3301 Sinclair Avenue, to redevelop the existing Senior Life Midland building.

Recommended City Council Action:

Approve

Surrounding Zoning and Land Uses:

The properties to the north, east, and west are zoned SF-1, Single-Family District, and are the locations of residential homes. The property to the south is zoned PD, Planned District for an Office Center, and the location of Permian Nephrology Associates.

Current Zoning:

SF-1, Single-Family Dwelling District (Ordinance No. 6723).

PACKET

22.1

October 12, 2021

PACKET

24.40

January 23, 2024

Analysis:

The applicant Stephen T. Marcum, is requesting to rezone the property from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center to allow for the redevelopment of Senior Life Midland on the property located at 3301 Sinclair Avenue. Senior Life Midland is a private, non-profit agency that offers programs designed to meet the needs of older Midland Residents.

The property has a specific use permit (Ordinance No. 6723), which allows the property to be used as a senior citizen center. Since the current zoning ordinance does not allow this use, through a specific use designation, a planned development district provides some flexibility to allow for these uses.

The proposed site plan (Exhibit B) shows 28,837 square feet of building, including twenty-three (23) office spaces, three (3) conference rooms, a handy man shop, a kitchen, several storage rooms, a receiving area, and a volunteer pick-up area. Sixty-three (63) parking spaces are proposed out of the seventy-two (72) that are required per our code (1 per 400 square feet). Therefore, this site does not have adequate parking. However, the applicant has noted that the 63 parking spaces are more than adequate for their staff and the population that they serve.

Furthermore, a business office is not allowed in the SF-1, Single-Family Dwelling District. Therefore, this zone change request will bring this lot into conformance with the current zoning ordinance and allow for the redevelopment of the site. Additionally, this property is in the process of platting.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

PACKET

22.2

October 12, 2021

PACKET

24.41

January 23, 2024

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

Transportation: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review.

No objections to plat.

Planning:

This proposed development fits with chapter 3, An Integrated Land Use Vision, "Future Land Use Map" of the Tall City Tomorrow comprehensive plan as this area is called for Urban-Medium Neighborhood Center. This designation calls for a mix of traditional neighborhood business including small-scale commercial, office, civic, and residential. The commercial uses should be low impact and provide a variety of neighborhood services. Therefore, the redevelopment of Senior Life Midland is compliant with the recommendations of the Tall City Tomorrow.

This request was approved at the September 7, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center, subject to condition A through C.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the O-1, Office District.**
- B. That this property shall conform to the site plan and elevations, which are attached hereto and incorporated herein as Exhibits "B".**
- C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**

Letters of Objection:

Staff has not received any letters of objection as of September 22, 2021.

Attachments:

PACKET

22.3

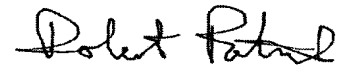
October 12, 2021

PACKET

24.42

January 23, 2024

Application
Property Survey (Exhibit A)
Site Plan and Elevations (Exhibit B)
Maps
Ordinance No. 6723



City Manager's Office

PACKET

22.4

October 12, 2021

PACKET

24.43

January 23, 2024

EXHIBIT "A"

(4.78 ACRES)
1443/06 M.C.D.R.

SURVEY PLAT

SEE DETAIL E

SEE DETAIL D

SEE DETAIL B

SEE DETAIL A

SINCLAIR AVENUE (VARIABLE R.O.W.)

2.273 ACRES
BEING ALL OF
913/525 M.C.D.R.

SEE DETAIL I

SEE DETAIL F

SEE DETAIL H

N 59°24'23" W
20.00'
(N 60°00'00" W)
(20.00')

S 35°00'00" W 282.06'
S 75°35'37" W 282.06'

LOT 1
SUNSET ACRES
FILE NO: 2011-17424 M.C.O.P.R.

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.58'	258.68'	18°34'04"	N 85°23'38" E	88.25'
C2	23.31'	119.56'	4°10'40"	N 89°43'30" E	23.25'
C3	38.80'	30.00'	78°17'58"	S 52°33'21" E	39.26'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.58'	258.68'	18°34'04"	N 85°23'38" E	88.25'
C2	23.31'	119.56'	4°10'40"	N 89°43'30" E	23.25'
C3	38.80'	30.00'	78°17'58"	S 52°33'21" E	39.26'

TREE NUMBER	SPECIES	DIAMETER
1	OAK	24"
2	OAK	24"
3	MESQUITE	6"
4	OAK	10"
5	OAK	42"
6	OAK	16"
7	OAK	TWIN 12"
8	OAK	TWIN 12"
9	PECAN	21"
10	PECAN	14"
11	PECAN	20"
12	PECAN	18"

LEGAL DESCRIPTION: Being 2.273 acres or land out of Section 36, Block 35, T.14N, R.10E, Co. Surber, Abstract No. 1100 in Midland County, Texas and also being all of that certain 2.269 acre tract described as Volume 913, Page 545 of the Deed Records of Midland County, Texas, said 2.273 acre tract being more particularly described as follows and as surveyed under the supervision of Grant & Land Services, Inc. on December 10, 2011 & January 2012.

BEGINNING at a 1/2 inch iron rod set in the west Right of Way line of Midland Road, the north line of a 26 foot alley and the east line of said Tract 1 for the southeast corner of said 2.269 acre tract and the southeast corner hereof and from thence as "C" set as concrete found for the northeast corner of that certain tract described as File No. 4011 (Part of the Official Public Records of Midland County, Texas) to said "C" set a distance of 19.87 feet.

THENCE South 75°35'37" West a distance of 282.06 feet along the north line of said 26 foot alley and the south line of said 2.269 acre tract to a 1/2 inch iron rod set in the west boundary line of said 2.269 acre tract.

THENCE North 59°24'23" West a distance of 20.00 feet along the southwesterly line of said 2.269 acre tract to a 1/2 inch iron rod set in the east line of a 10 foot alley for the most westerly southeast corner hereof.

THENCE North 14°21'21" West a distance of 282.06 feet along the east line of said 10 foot alley and the west line of said 2.269 acre tract to an "X" marked in concrete in the north line of Sinclair Avenue for the northeast corner of said 2.269 acre tract and the northeast corner hereof.

THENCE along the south line of Sinclair Avenue and the north line of said 2.269 acre tract, the following 6 curves are:

1. North 75°35'37" East a distance of 195.88 feet to a 1/2 inch iron rod set for a corner hereof.
2. With a curve bearing to the right with an arc length of 88.58 feet, with a radius of 258.68 feet, with a chord bearing of North 85°23'38" East, with a chord length of 88.25 feet to a 1/2 inch iron rod set for a corner hereof.
3. With a curve bearing to the left with an arc length of 23.31 feet, with a radius of 119.56 feet, with a chord bearing of North 89°43'30" East, with a chord length of 23.25 feet to a 1/2 inch iron rod set for a corner hereof.
4. With a curve bearing to the right with an arc length of 38.80 feet, with a radius of 30.00 feet, with a chord bearing of South 52°33'21" East, with a chord length of 39.26 feet to a 1/2 inch iron rod set in the west line of said Midland Road and the east line of said 2.269 acre tract.

THENCE South 14°21'21" East a distance of 282.06 feet along the west line of said Midland Road and the east line of said 2.269 acre tract to the POINT OF BEGINNING containing 2.273 acres more or less, and as shown hereon.

PACKET

22.9

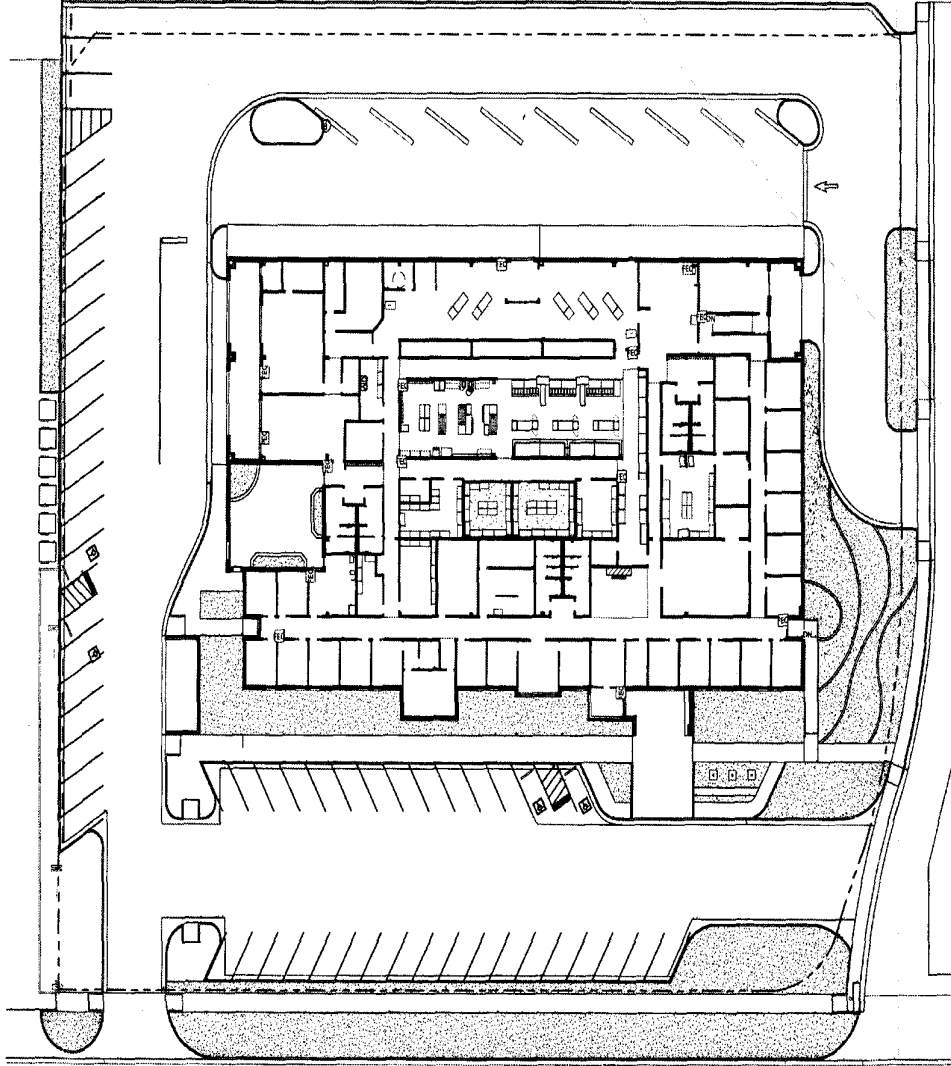
October 12, 2021

PACKET

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January 23, 2024

EXHIBIT "B"



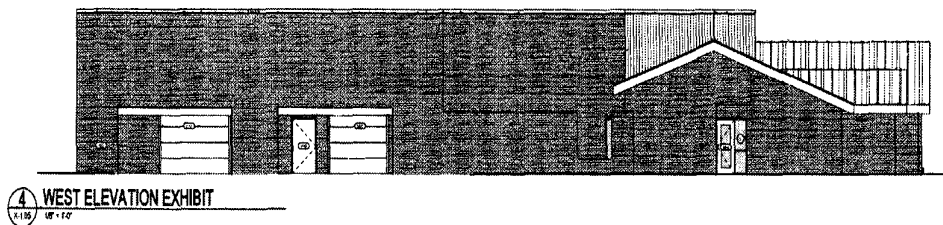
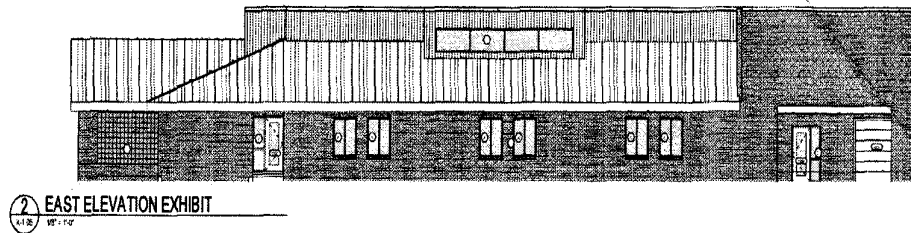
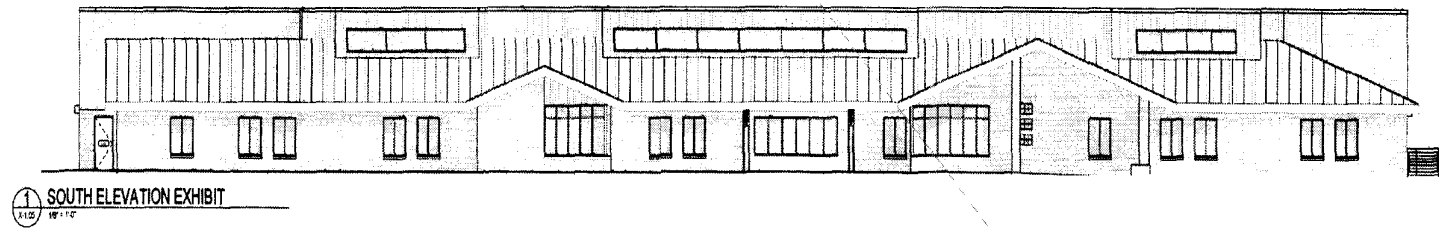
PACKET
X-1.02 SITE PLAN
SCALE: 1" = 20'-0"
DATE: 07/06/21

24 45 10
NEW FACILITY

January 23, 2024
October 12, 2024
VANDERGRIF GROUP
ARCHITECTS • PC
312 N. BIG SPRING BLVD. SUITE 100 (432) 267-0781 MIDLAND, TEXAS
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7/7/2021 11:12:43 AM

EXHIBIT "B" (cont'd)



X105 ELEVATIONS
PACKET PACKET
DATE: 07/02/11

C:\Users\CAO\Documents\2010\SENDER LIFE MCLAND NEW FACILITY.dwg (CAO) 11/12/2011 11:12:50 AM

NEW FACILITY
22.11



08/08/2011 08:28:24
ARCHITECTS + PC
3102 N. RING SPRING BLVD. SUITE 100 (432) 907-0781 MCKINNEY, TEXAS
© Copyright 2011 Architectural Firm, Inc.



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-21-0256

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Stephen T. Marcum, P.E.

Phone (432) 685-1226

Email
smarcum@skylinecivilgroup.com

Address

3323 N. Midland Drive, STE 113-166

City

Midland

State

TX

Zip

79707

Property Owner

Printed Name: Community & Senior Services of Midland

Phone (432) 689-6693

Email

Address

3301 Sinclair Ave.

City

Midland

State

TX

Zip

79707

Representative (if different from Applicant or Property Owner)

Firm: Skyline Civil Group, LLC

Printed Name: Stephen T. Marcum, P.E.

Phone ()

Email

Address

Same as Above

City

State

Zip

Street Address: 3301 Sinclair Ave.

Legal Description

Lot: Block: Subdivision: RE: Survey Attached Herein

Current Zoning:

SF1

Proposed Zone: O-1

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Commercial Business / Office Proposed

Community driven business / very important/appreciated by senior's within The Midland Community.

Present Use of Property: Senior Life Facility / Meals on Wheels / Meal Preparation and Delivery

Proposed Use of Property: Same Use

How would this zone change affect the public health, safety and welfare?

Community driven business / very important/appreciated by senior's within The Midland Community.

Describe how conditions affecting the property have changed since present zoning designation: N/A

Community driven business / very important/appreciated by senior's within The Midland Community.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

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22.12

October 12, 2021

PACKET

24.47

January 23, 2024

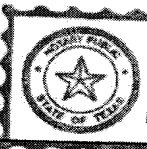
Signature (by property owner only - authorized agent must sign affidavit below)	
Applicant (signature): <u>[Signature]</u>	Date: 08.01.21
Applicant (printed): Stephen T. Marcum	
Property Owner (signature): <u>[Signature]</u>	Date: 08.01.21
Property Owner (printed): <u>Kathleen K. Haynie (Senior Life Midland)</u>	
The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received. All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.	

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Stephen T. Marcum who, being by me duly sworn, upon oath says: That (s)he is the owner of Kathleen K. Haynie or authorized by Senior Life Midland, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

Subscribed and sworn to before me, this 11th day of August, 2021, to certify which witness my hand and seal of office.



Rebekah Taylor
Notary Public, State of Texas
Notary ID 449819-2
My Commission Exp. 06-23-2024

[Signature]
Rebekah Taylor
Lubbock County
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # _____	
Received By: _____	Date: _____

Application will not be considered for scheduling until reviewed by a planner.

PACKET 22.13 October 12, 2021
 Special Exception Application 2 Revised 12/6/16

PACKET 24.48 January 23, 2024

(4.78 ACRES)
1443/06 M.C.D.R.

SURVEY PLAT

SEE DETAIL E

SEE DETAIL D

SEE DETAIL B

SEE DETAIL A

SIXCLAIR AVENUE (VARIABLE R.O.W.)

MURPHY ROAD (100' R.O.W.)

2.273 ACRES
BEING ALL OF
913/525 M.C.D.R.

SEE DETAIL I

SEE DETAIL C

SEE DETAIL F

SEE DETAIL H

MURPHY ROAD (VARIABLE R.O.W.)

LOT 1
SUNSET ACRES
FILE NO: 2011-17424 M.C.O.P.R.

LEGAL DESCRIPTION: Being 2.273 acres of land out of Section 20, Block 39, T.10S, R.10E, Co. Survey, Abstract No. 116, in Midland County, Texas and also being all of that certain 2.248 acre tract described in Volume 933, Page 547 of the Deed Records in Midland County, Texas, said 2.273 acre tract being more particularly described as follows and as surveyed under the supervision of Cross Texas Land Services, Inc. in December, 2014 & January 2015:

BEGINNING at a 1/2 inch iron rod set in the west Right of Way line of Shiloh Road, the north line of a 20 foot alley and the east line of said Tract 1 (the combined corner of said 2.248 acre tract and the southeast corner, hereinafter as "X" rod as located) found in the combined corner of that certain tract described in File No. 2011-17424 of the Official Public Records of Midland County, Texas, four rods south 1/2 inch iron rod (a distance of 19.97 feet);

THENCE South 79°09'29" West a distance of 262.65 feet along the north line of said 20 foot alley and the south line of said 2.248 acre tract to a 1/2 inch iron rod set in the west southerly southeast corner line of;

THENCE North 59°24'23" West a distance of 20.00 feet along the southerly line of said 2.248 acre tract to a 1/2 inch iron rod set in the west line of a 10 foot alley for the most westerly southeast corner line of;

THENCE South 1°49'23" West a distance of 305.80 feet along the east line of said 10 foot alley and the west line of said 2.248 acre tract to an "X" mark as concrete in the south line of Sixclair Avenue for the northeast corner of said 2.248 acre tract and the northeast corner line of;

THENCE along the south line of Sixclair Avenue and the north line of said 2.248 acre tract, the following 4 courses:

1. North 79°05'07" East a distance of 165.00 feet to a 1/2 inch iron rod set for a corner line of;
2. with a curve turning to the right with an arc length of 88.89 feet, with a radius of 270.56 feet, with a chord bearing of North 87°52'39" East, with a chord length of 88.25 feet to a 1/2 inch iron rod set for a corner line of;
3. with a curve turning to the left with an arc length of 23.31 feet, with a radius of 349.66 feet, with a chord bearing of South 34°43'38" East, with a chord length of 23.30 feet to a 1/2 inch iron rod set for a corner line of;
4. with a curve turning to the right with an arc length of 39.05 feet, with a radius of 30.00 feet, with a chord bearing of South 52°32'12" East, with a chord length of 37.96 feet to a 1/2 inch iron rod set in the north line of said Shiloh Road and the east line of said 2.248 acre tract;

THENCE South 1°49'23" East a distance of 305.80 feet along the west line of said Shiloh Road and the east line of said 2.248 acre tract to the POINT OF BEGINNING containing 2.273 acres more or less, and as shown herein.

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.89	270.56	178°50'41"	N 87°52'39" E	88.25
C2	23.31	349.66	47°00'00"	S 34°43'38" E	23.30
C3	39.05	30.00	106°17'55"	S 52°32'12" E	37.96

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C4	88.89	270.56	178°50'41"	N 87°52'39" E	88.25
C5	23.31	349.66	47°00'00"	S 34°43'38" E	23.30
C6	39.05	30.00	106°17'55"	S 52°32'12" E	37.96

TREE NUMBER	SPECIES	DIAMETER
1	OAK	24"
2	MESQUITE	6"
3	OAK	12"
4	OAK	42"
5	OAK	36"
6	OAK	24"
7	OAK	TWIN 12"
8	OAK	TWIN 12"
9	PECAN	21"
10	PECAN	14"
11	PECAN	20"
12	PECAN	18"

PACKET

22.14

October 12, 2021



City of Dallas
12100 - 12100-0000
12100 - 12100-0000
12100 - 12100-0000

0' 20' 40' 60'

1. This plat was prepared by the City of Dallas, Texas, and is subject to the approval of the City Council.

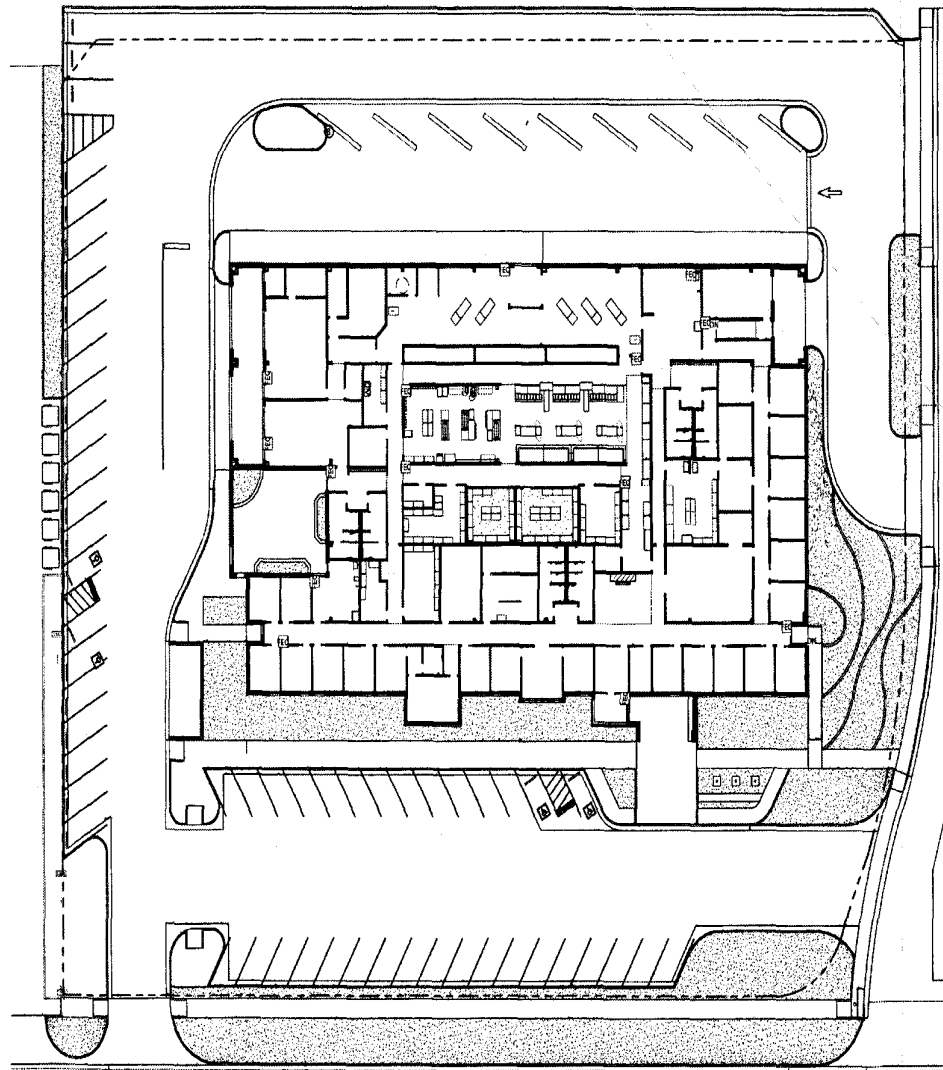
2. This plat was prepared by the City of Dallas, Texas, and is subject to the approval of the City Council.

3. This plat was prepared by the City of Dallas, Texas, and is subject to the approval of the City Council.

PACKET

24.49

January 23, 2024

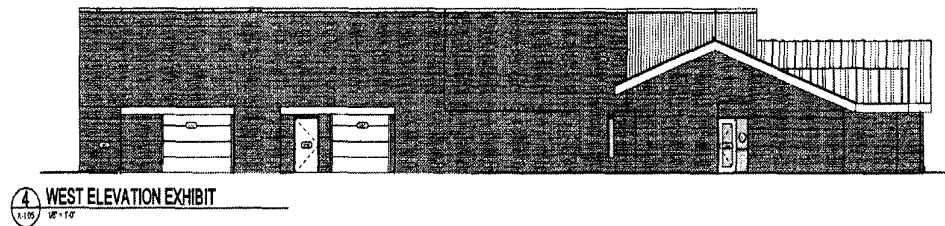
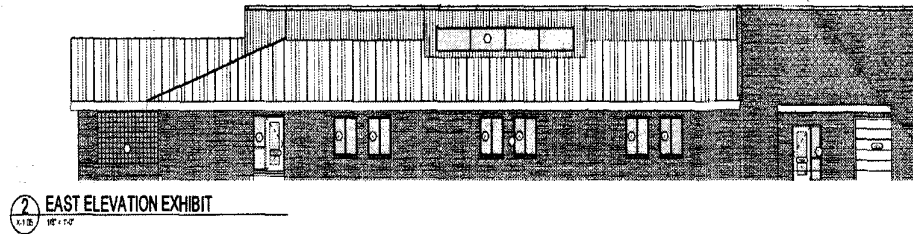
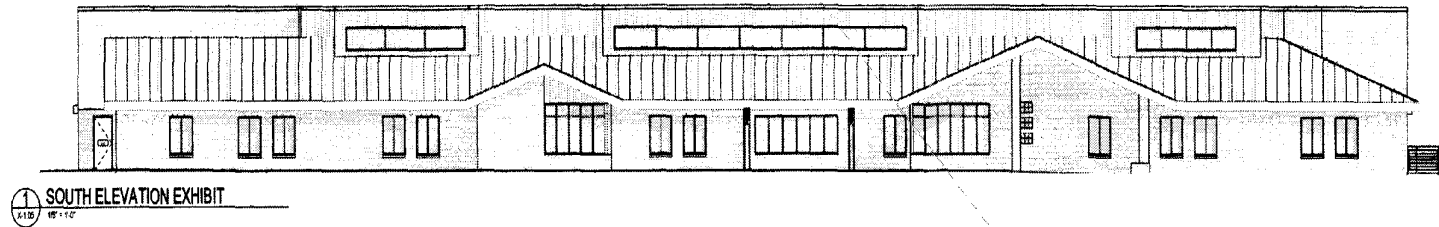


KARL RACKET
 SITE PLAN
 SCALE: 1" = 20'-0"
 DATE: 07/06/21

NEW FACILITY

October 12, 2021
 January 23, 2024
VANBERGRIFF GROUP
 ARCHITECTS, P.C.
 312 N. BIG SPRING BLVD. SUITE 100 (409) 867-0781 MIDLAND, TEXAS
© 2021 VANDERGRIF GROUP

C:\Users\KARL\Documents\2105 SENIOR LIFE MIDLAND NEW FACILITY\plan\sheet.dwg
 2/2/2021 11:12:42 AM

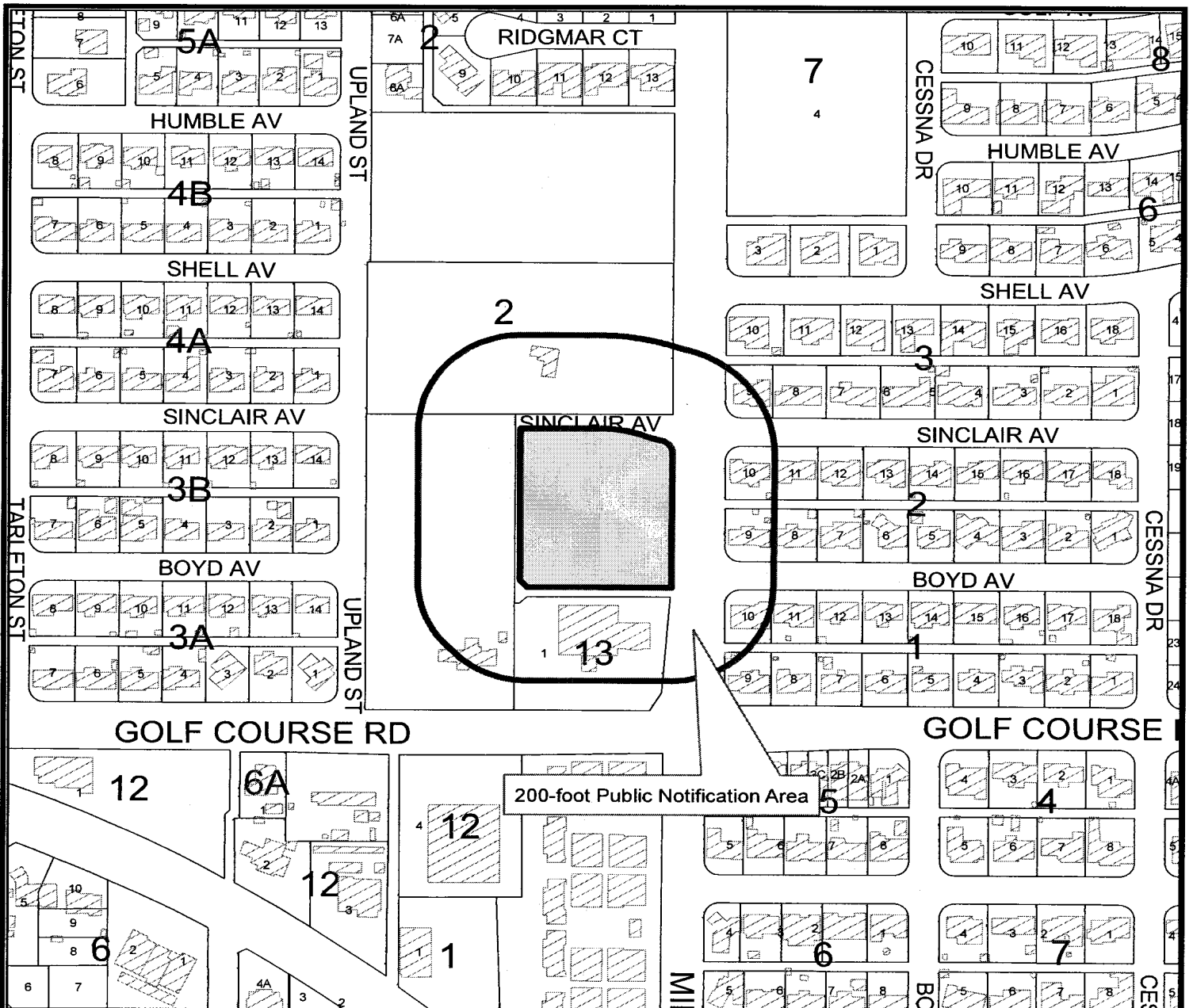


X-1.05 ELEVATIONS
SCALE: 1/8" = 1'-0"
PACKET

C:\Users\CAD\Desktop\HOSP RENOV LIFE WILKINS NEW FACILITY.dwg
1/11/2024 11:19:20 AM

NEW FACILITY
24.512.16

WILKINS LIFE GROUP
January 23, 2024
312 N. BIG SPRING BLVD. 100 (409) 667-0701 ARLAND, TEXAS
© 2024 WILKINS LIFE GROUP



LOCATION MAP

Z-21-0256

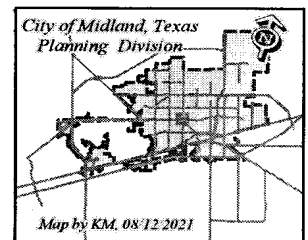
Scale: 1" = 200'

Consider a request by Stephen T. Marcum for a zone change from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center on a 2.273-acre tract of land located in Section 20, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located on the southwest corner of the intersection of Pacific Road and Sinclair Avenue. 22.17 (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

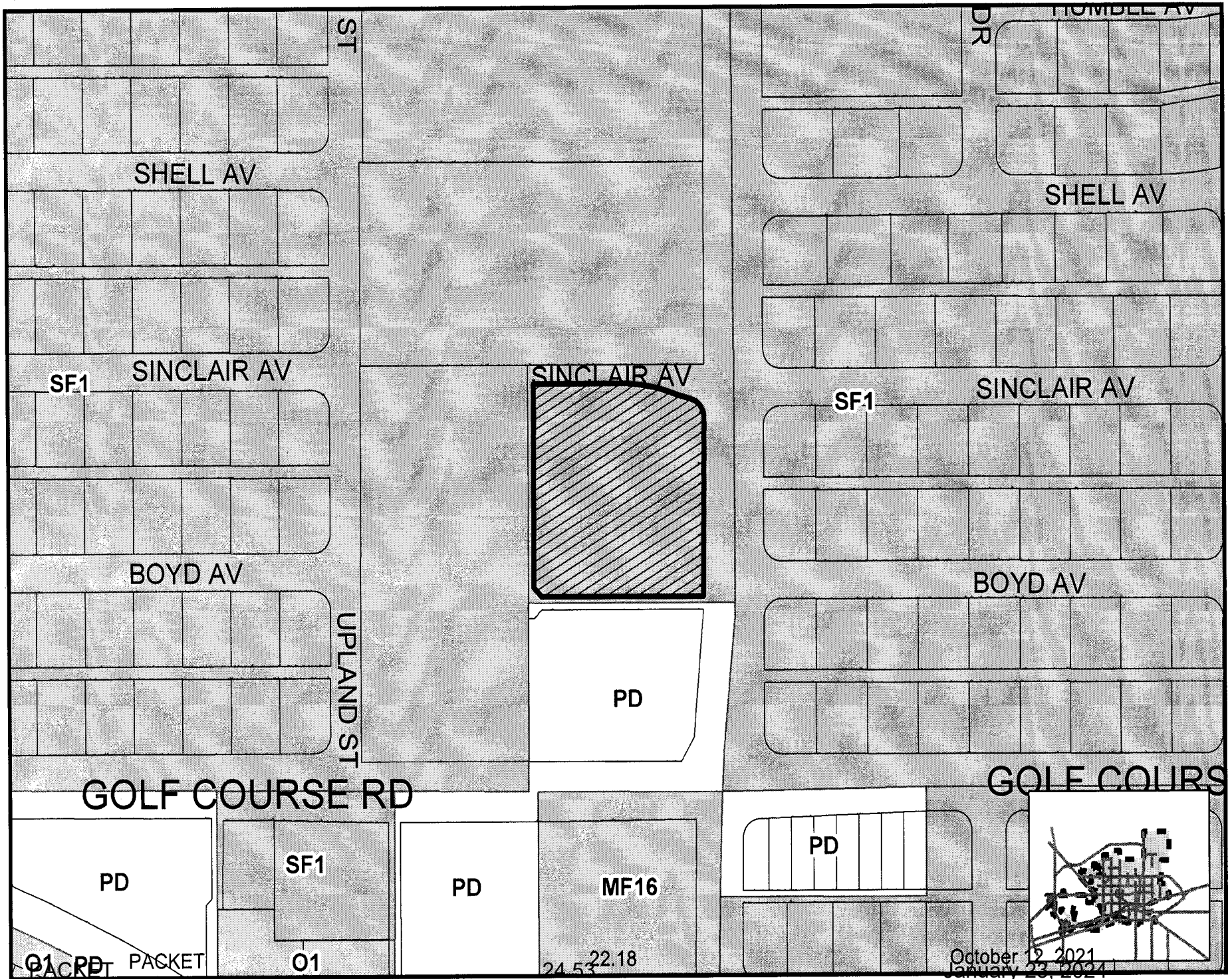


©THE CITY OF MIDLAND - 2021

October 12, 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR FOR THE DESIGN AND BASIS OF THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



ORDINANCE NO. 6723

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF CERTAIN PROPERTY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED "1F-1", ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT FOR A SENIOR CITIZENS CENTER; MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF ONE THOUSAND DOLLARS (\$1,000.00); AND ORDERING PUBLICATION

WHEREAS, the Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit, set out hereinafter, subject to the special conditions and restrictions set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned "1F-1", One-Family Dwelling District, to wit:

The N/380' of the E/2 of the S/2 of Tract 2, Sunset Acres Addition to the City of Midland, Midland County, Texas: is hereby changed to permit said premises to be used under a Specific Use Permit for a Senior Citizens Center, together with the uses permitted in a "1F-1", One-Family Dwelling District, subject to the following conditions:

A. That the use and development of this tract for a Senior Citizens Center shall conform to the site plan attached hereto as Exhibit "A" and made a part hereof for all legal purposes.

PACKET

22.19

October 12, 2021

PACKET

24.54

January 23, 2024

B. That permitted activities shall be limited to those defined under Section 11-1-10-(A)-33-b of the City Code of Midland, Texas, pertaining to a Senior Citizens Center.

C. That the hours of operation shall not exceed 7:00 a.m. to 10:00 p.m. daily.

D. That the number of paid and volunteer staff members shall not exceed 20 at any time.

E. That the gross area of office space shall not exceed 6,971 square feet, including both the main and detached structures.

F. That the kitchen area, as located on Exhibit "A" shall not exceed 765 square feet in area, and may be used for the preparation of meals for both on-site and off-site serving. The maximum number of vehicle arrivals to distribute offsite meals shall not exceed 15 per day, and the number of on-site meals served shall not exceed 48 per day.

G. That any combination of group meetings, seminars, counseling services, director meetings or similar group activities shall be limited to a total of 30 participants at any time.

H. A van shall be available for the purpose of transporting participants to and from the center and shall be used to the greatest extent practical for reducing the number of personal vehicle trips to the center.

I. Adult day care shall be limited to 20 participants, in addition to persons attending counseling sessions or other group activities.

J. That the respective staff and participant limits stated above shall not apply to special receptions, meetings, and other similar group activities held not more than four (4) days per year.

SECTION TWO. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding one thousand dollars (\$1,000.00).

SECTION THREE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 16th day of December, A.D., 1986; and passed to second reading on motion of Council member Corrales, seconded by Council member Godfrey, by the following vote:

Council members voting "AYE": Corrales, Godfrey, Heck, Marcum, Fish and Rendall

PACKET 22.20 October 12, 2021

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Corrales, seconded by Council member Godfrey, on the 22nd day of December, A.D., 1986, at a special meeting of the City Council:

Council members voting "AYE": Corrales, Godfrey, Heck, Rendall, Marcum and Fish

Council members voting "NAY": None

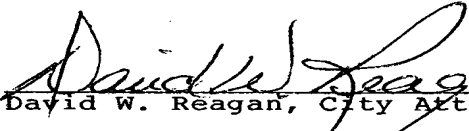
PASSED AND APPROVED THIS 22nd day of December, A.D., 1986.


Carroll M. Thomas, Mayor

ATTEST:


B. C. Stanton, City Secretary

APPROVED AS TO FORM:


David W. Reagan, City Attorney

PACKET

22.21

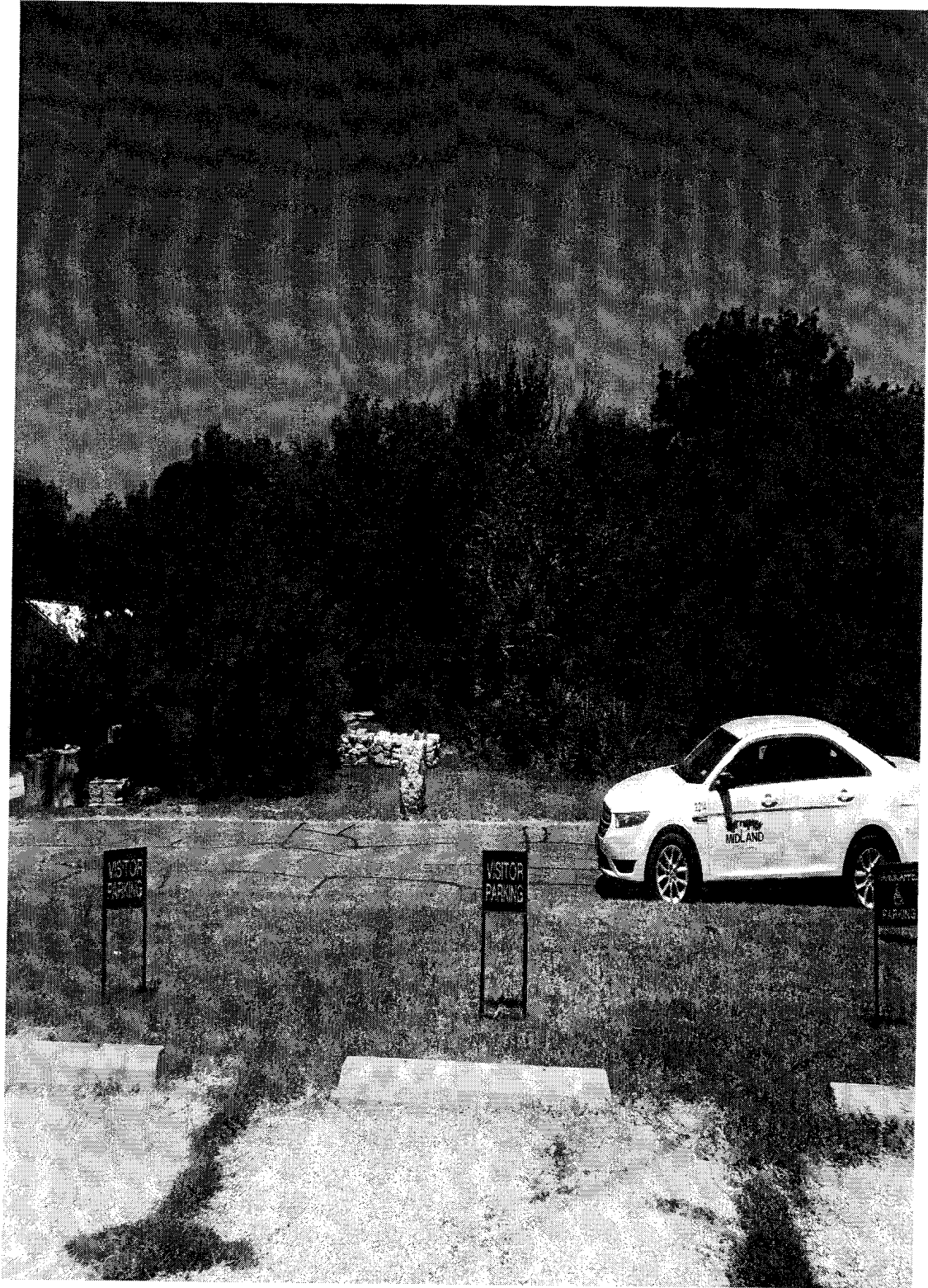
October 12, 2021

-3-

PACKET

24.56

January 23, 2024



PACKET

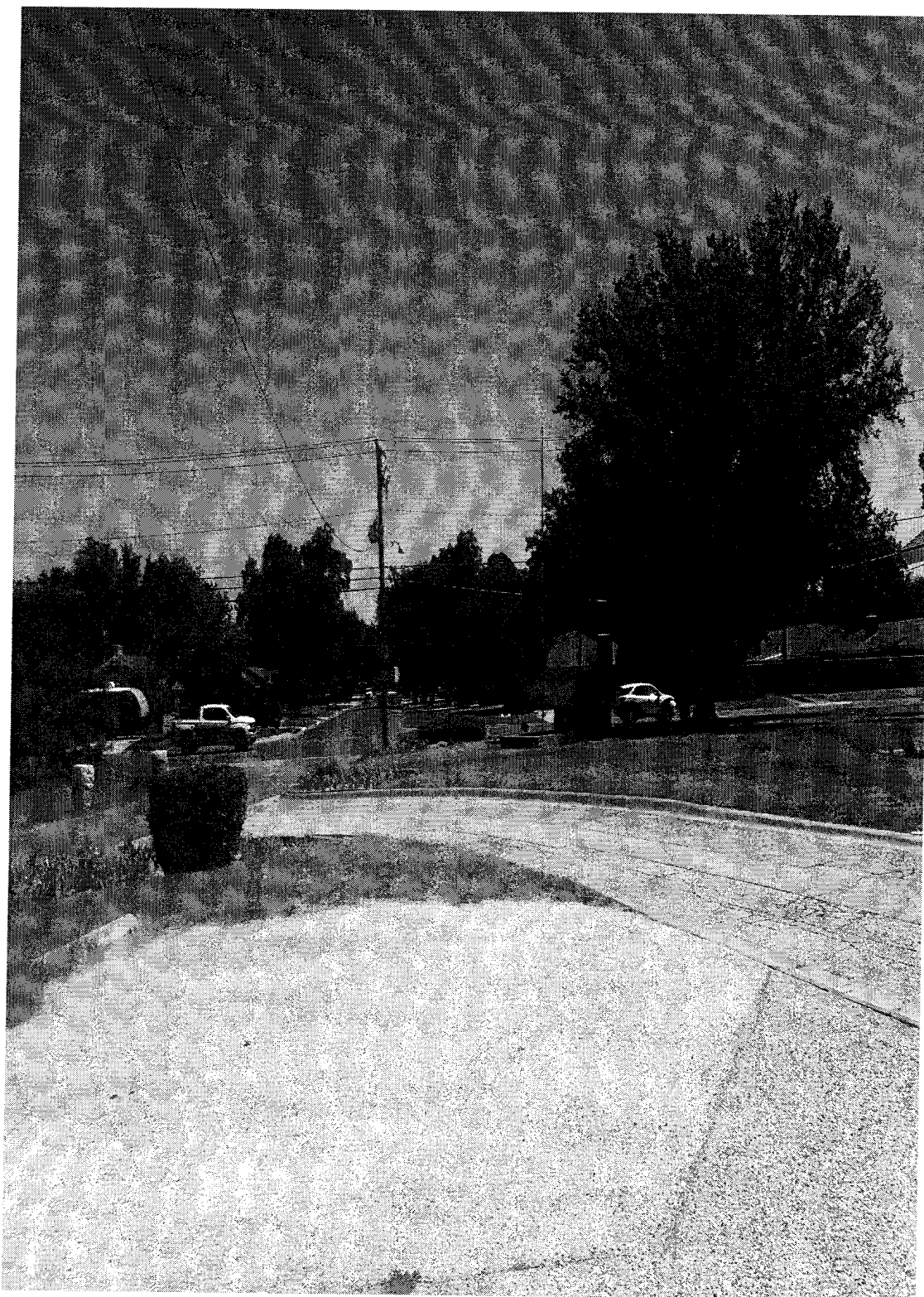
22.23

October 12, 2021

PACKET

24.58

January 23, 2024



PACKET

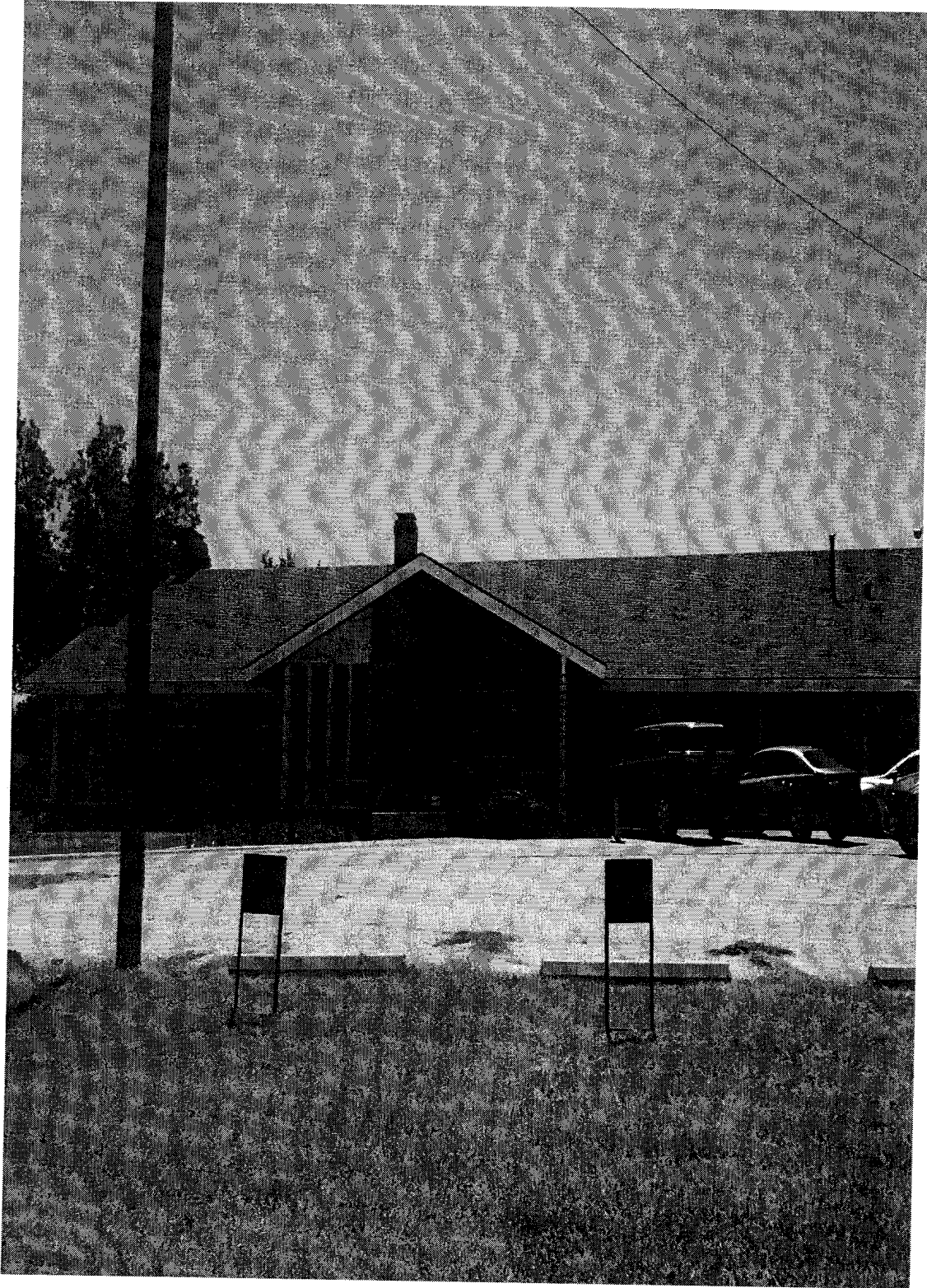
22.24

October 12, 2021

PACKET

24.59

January 23, 2024



PACKET

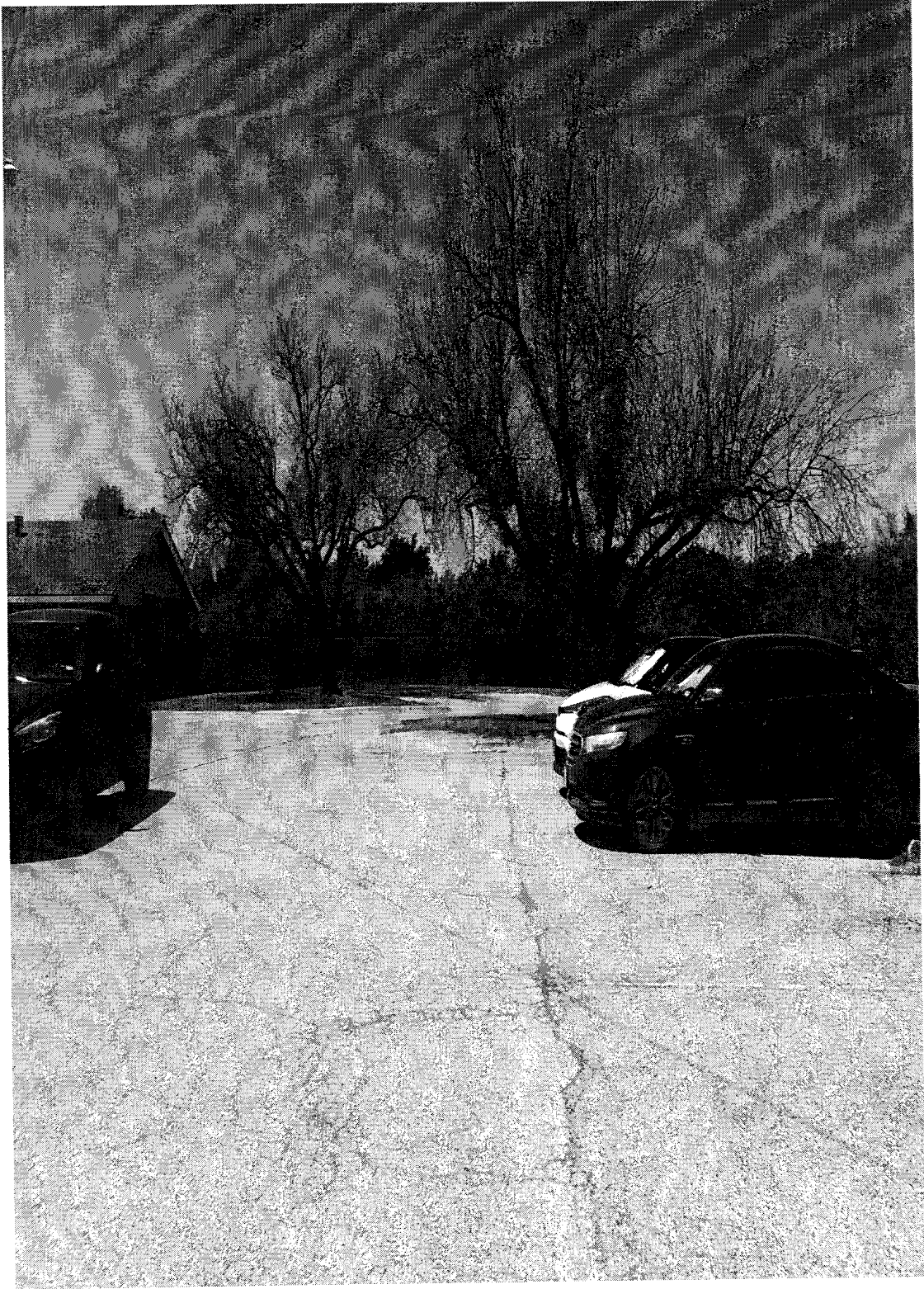
22.25

October 12, 2021

PACKET

24.60

January 23, 2024



PACKET

22.26

October 12, 2021

PACKET

24.61

January 23, 2024



City Council Meeting

Item Number: 25
Meeting Date: January 23, 2024
To: City Council / City Manager
From: Jose Ortiz, Assistant City Manager
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, THE MIDLAND DEVELOPMENT CORPORATION, AND MIDLAND DOWNTOWN RENAISSANCE, LP, REGARDING THE DEVELOPMENT OF CERTAIN REAL PROPERTY INCLUDING LOTS 1A, 5, 6, 7, AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (DISTRICT 2) (CITY MANAGER)

Purpose:

RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, MIDLAND DEVELOPMENT CORPORATION AND MIDLAND DOWNTOWN RENAISSANCE, LP

Recommended City Council Action:

Approve

Fiscal Impact:

None

Strategic Priority:

Strong Economy with More Quality Jobs

Discussion:

The Midland Downtown Renaissance, LP (MDR) intends to acquire fee ownership of the entire surface estate of the MDR Land and will raise the at-risk private capital needed to complete the Project (as defined in this agreement). The City of Midland, Midland Development

Corporation (MDC), and MDR desire to combine their efforts to facilitate the downtown development. Due to the location of the Project Land in downtown Midland, Texas, the Parties desire for the Project to be developed, operated, and maintained at high standards to reflect positively on the City of Midland as a whole. The Parties propose that private and public funds and resources be used to develop the Project Land as the Project. The MDR is subject to the terms of this Agreement, desires to develop the Project Land into a mixed-use project that includes a new downtown, full-service hotel with event space, retail space, restaurant space, and a new parking facility.

The City of Midland finds and determines that providing the incentives described herein to MDR in exchange for MDR's completion of the Project will promote local economic development, stimulate business and commercial activity, and create jobs within the City of Midland. Additionally, the City of Midland finds that the Project is in the public interest and will directly establish a public purpose for the City of Midland and the State of Texas in promoting the economic welfare of the general public by securing and retaining business enterprises as a result of maintaining a higher level of employment, economic activity, and stability.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
MASTER DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MIDLAND, THE MIDLAND
DEVELOPMENT CORPORATION, AND MIDLAND
DOWNTOWN RENAISSANCE, LP, REGARDING THE
DEVELOPMENT OF CERTAIN REAL PROPERTY
INCLUDING LOTS 1A, 5, 6, 7, AND 8, BLOCK 35,
ORIGINAL TOWN ADDITION, CITY AND COUNTY OF
MIDLAND, TEXAS**

WHEREAS, the City of Midland (the “*City*”) is the owner of the real property described as Lots 7 and 8, Block 35, Original Town Addition, City and County of Midland, Texas; and

WHEREAS, the Midland Development Corporation (the “*MDC*”) is the owner of the real property described as Lots 1A, 5, and 6, Block 35, Original Town Addition, City and County of Midland, Texas (together with the above-referenced City-owned property, the “*Property*”); and

WHEREAS, the City, the MDC, and Midland Downtown Renaissance, LP, desire to cause the Property to be developed into a mixed-use project that includes a new downtown, full-service hotel with event space, retail space, restaurant space, and a new parking facility (the “*Project*”), for the use and enjoyment of residents and visitors of the City, and to attract business and business patrons to downtown Midland; and

WHEREAS, due to the location of the Property in downtown Midland, the City, the MDC, and Midland Downtown Renaissance, LP, desire for the Property to be developed, operated, and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the City, the MDC, and Midland Downtown Renaissance, LP, propose that private and public funds and resources be used to develop the Property as the Project; and

WHEREAS, Texas Constitution article III, section 52-a, and Texas Local Government Code § 380.001 provide constitutional and statutory authority for the City’s

grant of public funds and resources to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, Tex. Loc. Gov't Code § 253.0125 authorizes the conveyance of real property by a municipality pursuant to a Chapter 380 economic development agreement for the promotion of a public purpose relating to economic development; and

WHEREAS, the City Council of the City finds and determines that the Master Development Agreement referenced in Section Two hereof constitutes (i) a program for making a grant of public funds and real property to promote a public purpose relating to economic development, and (ii) the City's grant of public funds, real property, and resources will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve, and promote the City's Bush Convention Center; and

WHEREAS, in accordance with the applicable provisions of Chapter 351 of the Texas Tax Code, the City may pledge the revenue derived from the tax imposed under Chapter 351 from a hotel project that is located on land owned by the City and located within 1,000 feet of a convention center facility owned by the City for the payment of obligations incurred to acquire, lease, construct, and equip such a hotel and associated facilities; and

WHEREAS, the City Council of the City finds and determines that the City's grant of public funds, real property, and resources provided for the Project under the Master Development Agreement will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve and promote the Bush Convention Center; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of the Master Development Agreement for the purposes stated herein;

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

SECTION ONE. That the above recitals are hereby approved and adopted for all purposes.

SECTION TWO. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, the Master Development Agreement between the City of Midland, the Midland Development Corporation, and Midland Downtown Renaissance, LP. Said Master Development Agreement shall kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION THREE. That the City Manager, or his designee, is hereby authorized and directed, on behalf of the City of Midland, to administer and enforce the terms of the Master Development Agreement.

SECTION FOUR. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, any and all related agreements, amendments, easements, legal instruments or documents necessary and appropriate to carry out the intent of the Master Development Agreement.

SECTION FIVE. That the City Comptroller is hereby authorized and directed to make payment(s) to Midland Downtown Renaissance, LP, or other appropriate party, in accordance with the terms of the Master Development Agreement and all related agreements, amendments, easements, legal instruments or documents necessary and appropriate to carry out the intent of the Master Development Agreement, from funds available in the appropriate budget account(s) in the fiscal year in which the payment is to be made upon receipt of proper invoice or statement approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

MASTER DEVELOPMENT AGREEMENT

BETWEEN

**CITY OF MIDLAND, TEXAS,
MIDLAND DEVELOPMENT CORPORATION
AND
MIDLAND DOWNTOWN RENAISSANCE, LP**

This Master Development Agreement (“*Agreement*”) is made and entered into by and between the City of Midland, Texas (“*CITY*”), a home rule municipal corporation, the Midland Development Corporation (“*MDC*”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and Midland Downtown Renaissance, LP or assigns (“*MDR*”), a Texas limited partnership. CITY, MDC and MDR are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

WITNESSETH:

WHEREAS, CITY owns the City Land (as defined herein);

WHEREAS, MDC owns the MDC Land (as defined herein);

WHEREAS, MDR Land (as defined herein) is currently owned by unrelated third parties;

WHEREAS, MDR intends to acquire fee ownership of the entire surface estate of the MDR Land (as defined herein);

WHEREAS, MDR will raise and provide the at-risk private capital needed to complete the Project (as defined herein);

WHEREAS, CITY, MDC and MDR desire to combine their efforts to facilitate development of the Project Land (as defined herein) as the Project;

WHEREAS, due to the location of the Project Land in downtown Midland, Texas, the Parties desire for the Project to be developed at high standards in order to reflect positively on the City of Midland as a whole;

WHEREAS, the Parties propose that private and public funds and resources be used to develop the Project Land as the Project;

WHEREAS, MDR, subject to the terms of this Agreement, desires to develop the Project Land into a mixed-use project that includes a new downtown, full-service hotel with event space, retail space, restaurant space and a new parking facility;

WHEREAS, the governing body of CITY finds and determines that providing the incentives described herein to MDR in exchange for MDR’s completion of the Project will

promote local economic development, stimulate business and commercial activity and create jobs within the City of Midland;

WHEREAS, the governing body of CITY finds and determines that the Project is in the public interest and will directly establish a public purpose for the City of Midland and the State of Texas in promoting the economic welfare of the general public by securing and retaining business enterprises as a result of maintaining a higher level of employment, economic activity, and stability;

WHEREAS, Article III, Section 52-a, of the Texas Constitution and Chapter 380 of the Texas Local Government Code provide constitutional and statutory authority for CITY's grant of incentives hereunder to promote local economic development and to stimulate business and commercial activity in the City of Midland;

WHEREAS, Section 253.0125 of the Texas Local Government Code authorizes the conveyance of real property by a municipality pursuant to a Chapter 380 economic development agreement for the promotion of a public purpose relating to economic development;

WHEREAS, the governing body of CITY finds and determines that (i) this Agreement constitutes a program for making a grant of public funds to promote local economic development, and (ii) CITY's expenditures hereunder will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve and promote the Convention Center (as defined herein);

WHEREAS, in accordance with the applicable provisions of Chapter 351 of the Texas Tax Code, CITY may pledge the revenue derived from the tax imposed under Chapter 351 from a hotel project that is located on land owned by CITY and located within 1,000 feet of a convention center facility owned by CITY for the payment of obligations incurred to acquire, lease, construct, and equip such a hotel and associated facilities;

WHEREAS, the governing body of CITY hereby designates the Hotel (as defined herein) as the official Convention Center hotel of CITY for all legal purposes;

WHEREAS, the governing body of CITY finds and determines that Chapters 272 and 380 of the Texas Local Government Code, and other applicable law, authorize CITY's real property obligations set out herein;

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

WHEREAS, MDC is authorized to expend funds on the Project in accordance with Chapters 501 and 504 of the Texas Local Government Code;

WHEREAS, the MDC Board of Directors finds that the purpose of this Agreement qualifies as an infrastructure and site improvement project under Texas Local Government Code § 501.103 and is therefore eligible for MDC funding;

WHEREAS, the governing bodies of CITY and MDC find that the expenditures of CITY and MDC hereunder are necessary to promote or develop new or expanded business enterprises within the City of Midland; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the Parties' respective rights, obligations and undertakings with regard to the funding, development and operation of the Project;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to the Parties, the Parties have agreed and do hereby agree as follows:

ARTICLE I. DEFINITIONS

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

- 1.1 ***"Affiliate"*** means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another Person. For purposes of this definition the term "control" (including its derivatives and similar terms) means possessing the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract, or otherwise. Notwithstanding the foregoing, any Person shall be deemed to control any specified Person if such Person owns fifty percent (50%) or more of the voting securities of the specified Person, or if the specified Person owns fifty percent (50%) or more of the voting securities of such Person, or if fifty percent (50%) or more of the voting securities of the specified Person and such Person are under common control.
- 1.2 ***"Alleys"*** are defined in Section 3.8.
- 1.3 ***"Annual Incentives"*** means HOT Rebate, Property Tax Rebate and SCCHP incentive payments received by MDR in any given calendar year during the term of this Agreement, as economic development incentives for MDR's design, development, construction, operation and maintenance of the Project.
- 1.4 ***"Capital Contribution"*** means economic development incentive funding provided by MDC to MDR in an aggregate amount not to exceed \$45,000,000.00 as set forth in Article IV, and subject to the terms and conditions of this Agreement.
- 1.5 ***"Certificate of Completion"*** is defined in Section 2.6.
- 1.6 ***"Certificate of Occupancy"*** is defined in Section 2.6.

- 1.7 “**Certified Appraised Value**” means, with respect to each portion of the Project Land on which each Project phase is located, the appraised value as certified by the Midland Central Appraisal District as of January 1 of each year of the applicable Property Tax Rebate Term.
- 1.8 “**Change Orders**” is defined in Section 2.3.
- 1.9 “**City Approvals**” means permits or approvals required under applicable City of Midland ordinances or regulations in order for MDR to develop, construct, use and operate the Project.
- 1.10 “**City Land**” means the surface estate only of Lots 7 and 8, Block 35, Original Town Addition, City and County of Midland, Texas with a Surface Waiver.
- 1.11 “**Comparable Hotels**” means the description of hotels listed on Exhibit A attached hereto and incorporated herein for all purposes.
- 1.12 “**Construction Commencement**” is defined in Section 2.5.
- 1.13 “**Construction Commencement Obligation**” is defined in Section 2.5.
- 1.14 “**Construction Completion Obligation**” is defined in Section 2.6.
- 1.15 “**Construction Materials Sales Tax Rebate**” means a one hundred percent (100%) rebate of CITY’s one percent (1%) sales and use tax receipts for materials and labor of taxable items used in the construction of the Project.
- 1.16 “**Convention Center**” means the CITY-owned convention center located at 105 N. Main Street, Midland, Texas 79701.
- 1.17 “**Design Commencement Date**” is defined in Section 2.2.
- 1.18 “**Effective Date**” means January 23, 2024.
- 1.19 “**Energas Property**” means the surface estate with a Surface Waiver of Lots 3 and 4, Block 35, Original Town Addition, City and County of Midland, Texas.
- 1.20 “**Financing Obligation**” is defined in Section 2.1.
- 1.21 “**Force Majeure**” is defined in Section 11.7.
- 1.22 “**Go Forward Notice**” is defined in Article IX.
- 1.23 “**Ground Lease**” is defined in Section 3.6 and the form of which is attached hereto as Exhibit B, which is incorporated herein for all purposes.
- 1.24 “**HOT Rebate**” means CITY’s rebate of municipal hotel occupancy tax revenue paid by MDR to CITY, at the current rate of seven percent (7%) of the price paid for a room in the Hotel, pursuant to Chapter 351 of the Texas Tax Code, as amended, and the Municipal Code of the City of Midland § 3-3-2, as amended.
- 1.25 “**HOT Rebate Commencement Date**” is defined in Section 5.1.

- 1.26 ***“HOT Rebate Notice”*** is defined in Section 5.1.
- 1.27 ***“Hotel”*** means the full-service hotel of a quality consistent with the Comparable Hotels to be designed, developed, and constructed by MDR on the Project Land as part of the Project.
- 1.28 ***“Hotel Property”*** means the MDR Land or the Midland Land as set forth in Section 3.6 herein.
- 1.29 ***“Initial Appraised Value”*** means, with respect to each portion of the Project Land on which each Project phase is located, the appraised value for the land only as certified by the Midland Central Appraisal District as of January 1 of the year in which this Agreement is executed.
- 1.30 ***“Laydown Lot License Agreement”*** is defined in Section 3.7.
- 1.31 ***“Location Notice”*** is defined in Section 3.6.
- 1.32 ***“Maximum Energas Cost”*** is defined in Section 3.10.
- 1.33 ***“MDC Land”*** means, collectively, MDC Tract A and MDC Tract B.
- 1.34 ***“MDC Tract A”*** means the surface estate only of Lots 5 and 6, Block 35, Original Town, City and County of Midland, Texas with a Surface Waiver.
- 1.35 ***“MDC Tract B”*** means the surface estate only of (i) Lot 1A, Block 35, Original Town Addition, Section 8, an addition to the City of Midland, Midland County, Texas, as recorded in Cabinet J, Page 8, of the Plat records of Midland, County, Texas; and (ii) Lots 9-12, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas, as recorded in Volume 3, Page 232, of the Deed Records of Midland County, Texas with a Surface Waiver.
- 1.36 ***“MDR Land”*** means the surface estate only of all of Lots 1-13 and the east 1/2 of Lot 14, Block 56, Original Town of Midland, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof recorded in Volume 3, Page 232, Deed Records of Midland County, Texas to be acquired as set forth herein.
- 1.37 ***“MDR Land Acquisition”*** is defined in Section 3.5.
- 1.38 ***“Midland Land”*** means, collectively, the City Land and the MDC Land.
- 1.39 ***“New Garage”*** is defined in Section 2.7.
- 1.40 ***“Off-Site Improvements”*** means any utility costs, including but not limited to, extension fees, connection fees or relocation costs related to the completion of the Project.
- 1.41 ***“Option to Terminate for Excess Construction Estimate”*** is defined in Section 2.6.
- 1.42 ***“Person”*** means any natural person, corporation, voluntary association, joint stock company, business trust, partnership, limited liability company, common law or statutory trust, joint venture, governmental authority, proprietorship, or other legal entity however constituted.

- 1.43 ***“Phase II Certificate of Completion”*** is defined in Section 2.7.
- 1.44 ***“Phase II Construction Commencement”*** is defined in Section 2.7.
- 1.45 ***“Project”*** means the improvements to the Project Land, all to be developed and constructed by MDR, in accordance with the terms and conditions hereof, in order to achieve:
- (A) the Hotel and associated and appurtenant facilities, which at a minimum shall consist of: (i) a full-service hotel of a quality consistent with the Comparable Hotels with approximately one hundred thirty-five (135) to one hundred fifty (150) guest rooms; (ii) retail and restaurant space; and (iii) ballroom and meeting space of approximately 8,000 to 10,000 square feet (***“Project Phase I”***); and
 - (B) the New Garage (***“Project Phase II”***).
- The Project shall be constructed in accordance with the Project Design and Construction Documents and all other applicable terms and conditions hereof.
- 1.46 ***“Project Design and Construction Documents”*** means the site plan shown on Exhibit C hereto, the conceptual design documents attached hereto as Exhibit D, and the design and construction documents approved by CITY pursuant to Section 2.2, as amended by Change Orders and as otherwise provided herein.
- 1.47 ***“Project Land”*** means either (a) the Midland Land and the MDR Land, or (b) just the Midland Land.
- 1.48 ***“Property Tax Rebate”*** means, with respect to each portion of the Project Land on which each Project phase is located, an annual rebate of ad valorem property tax revenue that was paid by MDR to CITY on such portion of the Project Land during the applicable Property Tax Rebate Term as set forth herein, but only to the extent that the ad valorem tax attributable to the Certified Appraised Value during each year of the Property Tax Rebate Term exceeds the ad valorem tax that would be attributable to the Initial Appraised Value during the same year.
- 1.49 ***“Property Tax Rebate Commencement Date”*** is defined in Section 5.2.
- 1.50 ***“Property Tax Rebate Notice”*** is defined in Section 5.2.
- 1.51 ***“Property Tax Rebate Term”*** means, with respect to each Project phase, a period beginning on the Property Tax Rebate Commencement Date and ending ten (10) years following the Property Tax Rebate Commencement Date.
- 1.52 ***“Qualified Transferee”*** means any entity under common ownership or common management with MDR or entity identified in any financing or subscription documents delivered in connection with the Financing Obligation.
- 1.53 ***“SCCHP”*** means the State Convention Center and Hotel Program that provides for rebates of state hotel occupancy tax and sales tax revenue administered by the State Comptroller’s Office.

- 1.54 “**Surface Waiver**” means a waiver of surface rights, in the form approved by MDR that waives the rights of ingress/egress, access or use of the surface by the owner of any reserved interest in the land.
- 1.55 “**Street Improvements**” means any traffic signals, paving, bollards, striping, sidewalks, drainage, landscaping or other similar items reflected in the Project Design and Construction Documents or otherwise required by the CITY or any other governmental agency as a condition of the Project.

ARTICLE II.

OBLIGATIONS OF MDR

During the term of this Agreement, MDR shall comply with the following terms and conditions.

- 2.1 **Financing; Pro Forma.** MDR shall provide CITY and MDC evidence of sufficient capitalization, for completion of the Project, the form of which shall be in MDR’s reasonable discretion and subject to any reasonable requests by CITY or MDC for MDR to supplement the same (the “**Financing Obligation**”) within sixty (60) days following the completion of all of the following: (i) CITY’s and MDC’s approval and execution of this Agreement; (ii) the expiration of MDR’s due diligence period in Article IX; and (iii) the completion of the conditions precedent in Article X.

Notwithstanding the foregoing paragraph or any contrary provision contained herein, MDR shall satisfy the Financing Obligation on or before December 31, 2027. MDR’s timely satisfaction of the Financing Obligation on or before December 31, 2027, shall constitute a material covenant of this Agreement. If MDR fails to perform said material covenant (and CITY and MDC are not in breach of this Agreement and there has not been a Force Majeure event), either Party shall have the right to terminate this Agreement, in its sole discretion and without penalty, upon providing written notice to the other Parties.

In conjunction with MDR’s satisfaction of the Financing Obligation, MDR shall provide CITY and MDC a budget and financial pro forma for the Project and will provide a reasonable opportunity for representatives of MDC and CITY to review the financing documentation, including but not limited to any executed subscription agreements.

- 2.2 **Design.** MDR shall submit to CITY and MDC a copy of the following Project Design and Construction Documents for approval in accordance with the following schedule:
- (a) Fifty percent (50%) design development drawings within three hundred (300) days following the approval referenced in Section 11.18 hereof, (the “**Design Commencement Date**”);
 - (b) Fifty percent (50%) construction drawings and specifications within one hundred eighty (180) days following CITY’s and MDC’s approval of the design development drawings referenced in Section 2.2(a) above; and

- (c) Ninety percent (90%) construction drawings and specifications within one hundred twenty (120) days following CITY's and MDC's approval of the construction drawings and specifications referenced in Section 2.2(b) above.

MDR must obtain CITY's and MDC's written approval of each design and construction drawing and specification submitted by MDR pursuant to Section 2.2(a) – (c), which shall not be unreasonably withheld, conditioned or delayed. CITY and MDC shall either approve or disapprove (with objections listed with specificity if disapproved) all design and construction drawings and specifications within fifteen (15) business days following delivery thereof to CITY and MDC. If CITY or MDC fails to approve or disapprove the applicable design or construction drawings and specifications within the fifteen (15) business day period, then MDR shall give CITY or MDC, as applicable, a second written notice, which must state in conspicuous type, the following: **"THIS NOTICE REQUIRES IMMEDIATE ATTENTION. FAILURE TO RESPOND IN WRITING IN THE MANNER REQUIRED BY THE MASTER DEVELOPMENT AGREEMENT WITH APPROVAL OR DISAPPROVAL OF THE ENCLOSED PLANS WITHIN FIVE (5) CALENDAR DAYS AFTER RECEIPT HEREOF SHALL BE DEEMED YOUR APPROVAL OF THE ENCLOSED."** In the event that CITY or MDC, as applicable, fails to either approve or disapprove (with objections listed with specificity) the applicable design or construction drawings and specifications within such additional five (5) calendar day period, then such design or construction drawings and specifications, as applicable, shall be deemed to have been approved by CITY and MDC. Compliance with the "fifty percent (50%)" and "ninety percent (90%)" standard as specified above shall be as reasonably determined by MDR's architect on the Project.

For the avoidance of doubt and notwithstanding any contrary provision herein, the timeline for the approvals set forth in this Section 2.2 shall not apply to or govern the City Approvals for the Project in Section 2.4. The timeline for the approvals of the Project Design and Construction Documents set forth in this Section 2.2 shall be for the sole and exclusive purpose of MDR obtaining a general and preliminary approval of the Project design, exclusive of the City Approvals. Any approval obtained by MDR under this Section 2.2 shall not be deemed to be a City Approval for the purposes of Section 2.4.

- 2.3 Change Orders.** Due to the complexity of the Project, CITY and MDR acknowledge that there will need to be on-going adjustments and deviations from the Project Design and Construction Documents. MDR shall utilize commercially reasonable efforts to minimize such adjustments and deviations. MDR will keep CITY advised in writing as to any material adjustments and deviations ("**Change Orders**"), which shall be subject to CITY's prior written approval, which will not be unreasonably withheld, conditioned or delayed. For purposes hereof, a "material adjustment or deviation" shall mean a change that: (i) costs more than \$5,000,000.00, (ii) materially reduces the quality of materials, or (iii) materially reduces the scope of the Project (as set forth in the definition thereof). CITY shall respond to MDR's written submission of a Change Order within five (5) business days from its receipt thereof. In the event CITY disapproves the applicable Change Order, CITY and MDR shall thereafter work together, diligently and in good faith, to modify the applicable Change Order so that it is acceptable to both Parties. In the event that CITY fails to either approve or disapprove (with objections listed with specificity) the applicable

Change Order within such five (5) business day period, then the applicable Change Order shall be deemed to have been approved by CITY.

- 2.4 Permitting.** The City Approvals required for the construction and development of the Project shall be issued pursuant to CITY's standard procedures and applicable ordinances. Such City Approvals include, without limitation, all building permits and certificate of occupancy. CITY shall cooperate in good faith with MDR to facilitate prompt and timely review and processing of all applications for City Approvals, including the timely processing and checking of all maps, plans, permits, building plans, construction work, subdivision plats, and other plans relating to development and construction of the Project.
- 2.5 Construction Commencement.** On or before three (3) months following the approval of the Project Design and Construction Documents, issuance of the required building permits, expiration of the Due Diligence Period in Article IX, and completion of the Conditions Precedent in Article X, MDR shall utilize commercially reasonable efforts to commence construction by entering into a construction contract for construction of Phase I of the Project ("**Construction Commencement**") of the Project in accordance with the Project Design and Construction Documents and MDR's architect shall provide CITY and MDC written certification that construction on the Project has commenced (the "**Construction Commencement Obligation**").
- 2.6 Construction Completion.** On or before thirty-two (32) months following Construction Commencement, MDR shall substantially complete Project Phase I improvements on the Project Land in substantial accordance with the Project Design and Construction Documents. The thirty-two (32) month time period referenced in the preceding sentence is subject to extension for Force Majeure (as defined herein) events or upon approval by CITY and MDC of MDR's written request for an extension, such approval not to be unreasonably withheld by CITY or MDC. MDR's architect shall provide CITY and MDC written certification of such completion of construction (the "**Certificate of Completion**"). The total construction cost (both hard and soft costs) of the Project shall be not less than One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00). MDR shall make reasonable efforts to obtain a temporary certificate of occupancy for the guest room and ballroom/meeting space components of the Hotel (the "**Certificate of Occupancy**") and open such components for business to the general public on or before three (3) months following the issuance of the Certificate of Completion. MDR's obligations under this section are collectively referred to herein as the "**Construction Completion Obligation.**" Notwithstanding anything to the contrary contained in this Agreement, in the event the estimated costs for the Project exceed One Hundred Seventy-Five Million and No/100 Dollars (\$175,000,000.00), MDR, shall have the right to terminate this Agreement upon written notice to City and upon such termination, MDR shall be released from all obligations herein ("**Option to Terminate for Excess Construction Estimate**"). MDR's Option to Terminate for Excess Construction Estimate shall expire on the satisfaction of the conditions precedent as set forth in Article X. In the event of such termination, MDR shall promptly reconvey all real property conveyed to MDR under this Agreement back to the CITY and MDC.
- 2.7 New Garage.** Upon completion of Project Phase I, MDR agrees to construct a new parking facility (the "**New Garage**") with a minimum of eight hundred (800) parking spaces on the

Midland Land. The budget for such New Garage, together with the plans and specifications therefor, shall be in the sole discretion of MDR; provided, however, that MDR shall keep CITY and MDC informed of the status of the New Garage during all phases of design and construction, including any material modifications or changes thereto; provided further, however, that the New Garage shall be designed to include 25% of the proposed parking spaces for unreserved self-parking for the public, and shall have reasonably sufficient and convenient vehicular ingress and egress. Construction of the New Garage shall commence at any time as determined by MDR but in no event later than twenty-four (24) months following the issuance of the Certificate of Occupancy referenced in Section 2.6 (“**Phase II Construction Commencement**”) and shall be diligently pursued and completed within twenty-four (24) months following the Phase II Construction Commencement. Following the completion of Phase II, MDR’s architect shall provide CITY and MDC written certification of the completion of construction on the New Garage (“**Phase II Certificate of Completion**”).

2.8 Additional Obligations of MDR. Subject to the terms and conditions set forth in this Agreement, MDR agrees to the following:

- (a) Subject to MDR’s right to contest by appropriate proceedings, to comply with all codes, ordinances, statutes, rules and regulations applicable to the Project, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, including the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*).
- (b) Provided that neither the CITY or MDC are in default of this Agreement and subject to the completion of MDR’s Due Diligence in Article IX and Conditions Precedent in Article X, to plan, design, and construct the Project, while MDR or a Qualified Transferee is the owner of the Project, with high standards of cleanliness and safety as applicable to the Comparable Hotels. MDR acknowledges and agrees the Project will be highly visible to, and visited by, tourists, business visitors and residents of the greater Midland area. The Parties stipulate and agree that constructing the Project in such a manner provides a benefit to CITY in encouraging expansion of the convention and tourism industry in Midland and in potentially attracting more businesses to the downtown Midland area.

2.9 Project Inspection; Costs. CITY and its employees and agents shall have the right, during reasonable hours, to confirm that all work performed on the Project is being completed in accordance with the terms of this Agreement. MDR shall, within thirty (30) days after completion of the Project, provide CITY with a written statement or report, together with sufficient supporting documentation in a form reasonably acceptable to CITY, certifying the total Project costs, and upon request from CITY, reasonable supplemental documentation or evidence of such costs.

**ARTICLE III.
PROPERTY**

The Parties agree to the following terms and conditions in relation to the subject land and improvements:

- 3.1 City Land.** Within two (2) months following the execution hereof, CITY agrees to completely abate, or cause to be abated, the City Land of all hazardous materials, including but not limited to asbestos, in a commercially reasonable fashion, and grade and compact the City Land in a commercially reasonable fashion and as necessary, as determined by MDR in its reasonable discretion, for a portion of the Project to be constructed thereon. CITY agrees to provide MDR with documentation reasonably satisfactory to MDR evidencing CITY's completion of its obligations pursuant to this section, including but not limited to adding MDR as a beneficiary to any environmental reports.
- 3.2 MDC Land.** Within two (2) months following the execution hereof, MDC agrees to completely abate, or cause to be abated, the MDC Land of all hazardous materials, including but not limited to asbestos, in a commercially reasonable fashion, and grade and compact the MDC Land in a commercially reasonable fashion and as necessary, as determined by MDR in its reasonable discretion. MDC agrees to provide MDR with documentation reasonably satisfactory to MDR evidencing MDC's completion of its obligations pursuant to this section, including but not limited to adding MDR as a beneficiary to any environmental reports.
- 3.3 Conveyance of City Land.** Concurrently with the execution hereof, CITY and MDR shall enter into a purchase and sale agreement (or other such instrument of conveyance), satisfactory in form and substance to the Parties thereto, pursuant to which, after MDR satisfaction of MDR's Financing Obligation, CITY shall sell and convey the City Land to MDR for the purchase price of One and No/Dollars (\$1.00).
- 3.4 Conveyance of MDC Land.** Concurrently with the execution hereof, MDC and MDR shall enter into a purchase and sale agreement (or other such instrument of conveyance), satisfactory in form and substance to the Parties thereto, pursuant to which, after MDR satisfaction of MDR's Financing Obligation, MDC shall sell and convey the MDC Land to MDR for the purchase price of One and No/100 Dollars (\$1.00).
- 3.5 MDR Land Acquisition.** MDR shall make reasonable efforts to acquire fee ownership in the entire surface estate of the MDR Land with Surface Waiver (the "**MDR Land Acquisition**") to be used for the Project.
- 3.6 Ground Lease for Hotel Property.** The Parties acknowledge that the Hotel may, at MDR's sole option, be constructed on either: (i) the MDR Land provided the MDR Land Acquisition is completed; or (ii) the Midland Land. The site selected by MDR for the Hotel shall be deemed the "**Hotel Property**"; provided, if the MDR Land is selected as the construction site for the Hotel, the term "**Hotel Property**" will not include Lot 13 and the east 1/2 of Lot 14, Block 56, on which sits the commercial building with an address of 306 Wall Street, Midland, Texas, as the Hotel will not be located on such land. The New Garage shall be located on the Midland Land. MDR shall provide CITY with written notice of the final location for the Hotel sixty (60) days prior to the Project Phase I Construction Commencement (the "**Location Notice**"). Within thirty (30) business days of delivery of the Location Notice, the Parties shall execute a purchase and sale agreement setting forth:

1) the conveyance of the land only (excluding any contemplated improvements) for the Hotel Property to CITY (subject to a reversion to MDR); 2) execution of a long-term ground lease for the Hotel Property in the form attached hereto as **Exhibit B**, pursuant to which CITY shall ground lease back to MDR the Hotel Property (the “**Ground Lease**”).

3.7 Laydown Lot License Agreement. If necessary and appropriate as determined by MDR, CITY and MDR agree to enter into a laydown lot license agreement (the “**Laydown Lot License Agreement**”), in form and substance satisfactory to the Parties thereto, to provide MDR with a construction laydown area located within reasonable proximity to the Project Land during construction of the Project. The Laydown Lot License Agreement shall not require the payment of any rent. MDR shall be limited to the use of such area as a construction lay-down and staging area in connection with the construction of the Project. Such construction lay-down area shall be reasonably limited in size.

3.8 Alleys.

- (a) MDR and CITY acknowledge that there exists a CITY-owned alley in Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas between the City Land and MDC Tract A, and MDC Tract B and MDC Tract A that extends north to Illinois Avenue (the “**Block 35 Alley**”). CITY agrees to vacate the Block 35 Alley at its sole cost and expense. CITY shall include the fee conveyance of the Block 35 Alley to MDR at no cost pursuant to the purchase and sale agreement referenced in Section 3.3 herein.
- (b) MDR and CITY acknowledge that there exists a CITY-owned alley in Block 56, Original Town of Midland, an addition to the City of Midland, Midland County, Texas between Lots 1-12 to the east and Lots 13-18 to the east (the “**Block 56 Alley**”). If the MDR Land Acquisition is completed, CITY agrees to vacate the Block 56 Alley at its sole cost and expense and convey in fee simple the Block 56 Alley to MDR.
- (c) As used in this Agreement, “**Alleys**” shall refer to the Block 35 Alley and the Block 56 Alley.

3.9 Colorado Street. CITY shall commence the vacation of that certain portion of Colorado Street located between Wall Street and Texas Avenue and abutting the Project Land upon execution of this Agreement and shall convey the same to MDR, subject only to limited surface access rights by CITY as set forth in the purchase and sale agreement referenced in Section 3.3 herein.

3.10 Energas Property. CITY shall promptly make reasonable efforts to obtain title to the Energas Property and have all subsurface and surface improvements and equipment removed, at CITY’s cost, provided, however, that CITY shall not be obligated to expend an amount greater than \$250,000.00 (“**Maximum Energas Cost**”). In the event the cost exceeds the Maximum Energas Cost, the CITY shall notify MDR in writing and MDR shall, in its sole and exclusive option, have the option, to contribute funds above the Maximum Energas Cost, waive the requirement to obtain Energas Property, or terminate

this Agreement. MDR shall assist CITY in contacting and facilitating the negotiations with Energas.

- 3.11 Aerial Easements.** If the Location Notice referenced in Section 3.6 specifies the MDR Land as the site selected by MDR for the Hotel, CITY shall execute easements in a form reasonably acceptable to MDR permitting the construction and maintenance of sky bridges over certain portions of public rights of way in connection with the completion of the Project and as reasonably requested by MDR. The portions of public rights of way that are subject to this section are more particularly shown on Exhibit E, which is attached hereto and incorporated herein for all purposes.
- 3.12 Default by MDR; Termination.** If a default by MDR occurs and results in the termination of this Agreement pursuant to Section 2.1 or Section 6.3, MDR shall reconvey the Midland Land, inclusive of the Block 35 Alley and Energas Property, and the Block 56 Alley, if previously conveyed to MDR, to MDC and the CITY, respectively, at no cost. Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions and obligations under this Section 3.12 shall survive any termination of this Agreement.

ARTICLE IV. MDC INCENTIVE

As consideration for MDR planning, designing, developing, and constructing the Project in accordance with the terms and conditions of this Agreement, MDC agrees to provide MDR with the Capital Contribution, subject to the following schedule, terms and conditions:

- 4.1 Disbursement No. 1.** Within five (5) business days following MDR's completion of the Project Phase I Construction Commencement Obligation, MDC agrees to provide MDR with the first Capital Contribution disbursement in the amount of Five Million and No/100 Dollars (\$5,000,000.00). As a condition precedent to the first Capital Contribution disbursement, MDR shall have satisfied MDR's Financing Obligation.
- 4.2 Disbursement No. 2.** Within five (5) business days following MDC's receipt of MDR's architect's written certification of the date on which the Project Phase I is, as determined by said architect, fifty percent (50%) complete based on work completed as a percentage of the estimated total work, MDC agrees to provide MDR with the second Capital Contribution disbursement in the amount of Ten Million and No/100 Dollars (\$10,000,000.00).
- 4.3 Disbursement No. 3.** Within five (5) business days following MDC's receipt of the Certificate of Completion for Project Phase I, MDC agrees to provide MDR with the third Capital Contribution disbursement in the amount of Fifteen Million and No/100 Dollars (\$15,000,000.00). Disbursements No. 1, No. 2 and No. 3 shall collectively be referred to as the "*Phase I Disbursements*."
- 4.4 Disbursement No. 4.** Within five (5) business days following MDC's receipt of MDR's architect's written certification of the date on which the Project Phase II is, as determined

by said architect, twenty-five percent (25%) complete based on work completed as a percentage of the estimated total work for Project Phase II, MDC agrees to provide MDR with the fourth Capital Contribution disbursement in the amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00).

4.5 Disbursement No. 5. Within five (5) business days following MDC's receipt of the Certificate of Completion for Project Phase II, MDC agrees to provide MDR with the final Capital Contribution disbursement in the amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00). Disbursements No 4 and No. 5 shall collectively be referred to as the "***Phase II Disbursements.***"

4.6 Distribution of Disbursements. Notwithstanding any contrary provision contained herein, MDC shall not be required to provide MDR with two Capital Contribution disbursements within the same MDC fiscal year. If two Capital Contribution disbursements shall become due in the same MDC fiscal year, the second Capital Contribution disbursement may be delayed until MDC's next fiscal year; provided that it is paid within ten (10) days of MDC's following fiscal year and provided further that such date shall not be later than ninety (90) days after such payment is due.

4.7 Clawback.

- (a) **Phase I.** If one or more Capital Contribution disbursements were provided to MDR and MDR (i) terminates or abandons the Project Phase I prior to the Construction Completion Obligation for Phase I and, within ninety (90) days following written notice thereof from MDC to MDR, MDR fails to cure same by utilizing commercially reasonable efforts to pursue the completion of the Construction Completion Obligation for Phase I, or (ii) otherwise fails to complete the Construction Completion Obligation for Phase I, as set forth in this Agreement, then MDR shall repay to MDC all Phase I disbursements, without interest, within thirty (30) days after MDC provides written notice to MDR. Upon completion of Phase I, the Phase I Disbursements shall be deemed earned by MDR.
- (b) **Phase II.** If one or more Capital Contribution disbursements were provided to MDR for Phase II and MDR (i) terminates or abandons the Project Phase II prior to the Construction Completion Obligation for Phase II and, within ninety (90) days following written notice thereof from MDC to MDR, MDR fails to cure same by utilizing commercially reasonable efforts to pursue the completion of the Construction Completion Obligation for Phase II, or (ii) otherwise fails to complete the Construction Completion Obligation for Phase II, as set forth in this Agreement, then MDR shall repay to MDC all Phase II disbursements, without interest, within thirty (30) days after MDC provides written notice to MDR. Upon completion of Phase II, the Phase II Disbursements shall be deemed earned by MDR.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions and obligations under this Section 4.7 shall survive any termination of this Agreement.

ARTICLE V. CITY INCENTIVES

As consideration for MDR planning, designing, developing, and constructing the Project, at its sole expense, and in accordance with the terms and conditions of this Agreement, CITY agrees to the following:

- 5.1 HOT Rebate.** At any time within two (2) years following the completion of the Construction Completion Obligation for each Project phase, MDR shall have the right to provide written notice (the “***HOT Rebate Notice***”) to CITY of MDR’s election to commence the HOT Rebate and the date of the commencement thereof (the “***HOT Rebate Commencement Date***”). Upon CITY’s receipt of such HOT Rebate Notice, CITY agrees to rebate to MDR the municipal hotel occupancy tax revenue paid by MDR to CITY pursuant to Chapter 351 of the Texas Tax Code and the applicable provisions of the Midland City Code applicable to the period beginning on the HOT Rebate Commencement Date and ending ten (10) years following the HOT Rebate Commencement Date for each respective Project phase. CITY agrees to rebate said funds to MDR on a quarterly basis with such rebates due within thirty (30) days following the end of any calendar quarter during which CITY receives said funds from MDR.
- 5.2 Property Tax Rebate.** At any time within two (2) years following the completion of the Construction Completion Obligation for each Project phase, MDR shall have the right to provide written notice (the “***Property Tax Rebate Notice***”) to CITY of MDR’s election to commence the Property Tax Rebate and the date of the commencement for each Project phase thereof (the “***Property Tax Rebate Commencement Date***”). Conditioned upon MDR complying with all material terms, conditions and covenants of this Agreement, CITY agrees to pay to MDR the Property Tax Rebate for each Project phase during each applicable Property Tax Rebate Term. CITY agrees to pay each applicable Property Tax Rebate to MDR on an annual basis with each Property Tax Rebate being due within thirty (30) days following the end of each calendar year during which CITY receives said funds from MDR.
- 5.3. State Convention Center and Hotel Program.** CITY agrees to request a private letter ruling from the Texas Comptroller confirming the Project’s eligibility for the SCCHP. A copy of such request and response shall be promptly provided to MDR. Conditioned upon the Texas Comptroller issuing a ruling confirming the Project’s eligibility for the SCCHP and MDR complying with all material terms, conditions and covenants of this Agreement, CITY agrees to rebate, on behalf of the State of Texas, all state hotel occupancy tax and sales tax revenue for the Project to MDR applicable to the period beginning on the HOT Rebate Commencement Date and ending ten (10) years following the HOT Rebate Commencement Date. CITY’s payments of such funds shall occur within sixty (60) days of the City’s receipt of said funds from the State.
- 5.4 No Warranty.** For the avoidance of doubt, Annual Incentives shall be subject to all other applicable terms and conditions hereof. **MDR acknowledges and agrees that neither CITY nor MDC has made any representation, warranty or covenant of any kind or**

character, express or implied, with respect to the amount of Annual Incentives that the Project may achieve.

- 5.5 Audit Rights.** MDR shall establish and maintain a reasonable accounting system that enables CITY to readily identify records relating to or pertaining to MDR's obligations under this Agreement, including Project costs, hotel occupancy tax, and property tax records. CITY and its authorized representatives shall have the right to audit, examine, and make copies of such records (in whatever form they may be kept, whether written, electronic, or other) kept by or under the control of MDR, including those kept by MDR, its employees, agents, assigns, successors, and subcontractors. MDR shall maintain such records during the term of this Agreement, together with such supporting or underlying documents and materials, and for a period of three (3) years following termination of this Agreement provided that the records of the Project costs shall only be maintained for two (2) years following Construction Completion for the respective phase. Upon reasonable advance written notice, such records shall be made available to CITY, and its authorized representatives, for audit during normal business hours at MDR's office or place of business, or at a time and location that is reasonably convenient for CITY. Costs of any audit conducted pursuant to the authority of this section shall be borne by CITY, unless otherwise agreed to in writing by MDR.
- 5.6 CITY Fees.** CITY agrees to waive any street closure fees and development fees, including but without limitation, building permit fees and any similar charges or fees (save and except for impact fees) that would be payable by MDR to CITY in connection with the Project, and/or any construction, maintenance, repair, alterations, renovations, improvements, remedial, casualty repair or condemnation repair work related thereto.
- 5.7 Construction Materials Sales Tax Refund.** CITY shall refund to MDR one hundred percent (100%) of CITY's sales and use tax receipts for materials and labor of taxable items used in the construction of each phase of the Project. MDR shall use its best efforts to obtain said materials and labor from within the corporate limits of the City of Midland, Texas.
- 5.8 Street Improvements.** CITY and MDR agree to work together for the purpose of determining mutually agreeable Street Improvements (if any) that benefit or enhance the urban functionality, vehicular access, and pedestrian realm on streets adjacent to the Project, including Texas Avenue and Colorado Street. CITY agrees to pay for any such Street Improvements.
- 5.9 Off-Site Improvements.** CITY and MDR agree to work together for the purpose of determining mutually agreeable Off-Site Improvements required to complete the Project. CITY agrees to pay for any such Off-Site Improvements.
- 5.10 Official Designations.** Conditioned upon the completion of the Hotel and its opening to the public, the governing body of CITY hereby designates, for all legal purposes: (i) the Convention Center as the official convention center of CITY, and (ii) the Hotel as the official convention center hotel of CITY.

- 5.11 Preferred Vendor.** Upon completion and opening to the public Hotel, the City shall identify the Hotel as the preferred food and beverage vendor and the Garage as the preferred parking facility for Convention Center events.

ARTICLE VI.

EVENTS OF DEFAULT

- 6.1** Subject to Force Majeure in Section 11.7 and any applicable notice and cure periods contained herein, each of the following shall constitute event of default under this Agreement:

- (a) **Failure to Complete Project.** MDR's failure to design, develop, construct, open the Project consistent with the terms and conditions of this Agreement, and if MDR fails to cure such failure within ninety (90) days after written notice from CITY detailing such failure, or if such failure cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if MDR fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure. Provided however, that if MDR does not proceed with the Phase II Project, the City and MDC's sole remedy shall be as set forth in Section 4.7(b) herein.
- (b) **False Statements.** Any material written warranty, representation, or statement knowingly made or furnished to CITY or MDC by MDR under this Agreement or any material document(s) related hereto furnished to CITY or MDC by MDR is knowingly false or misleading in any material respect, either now or at the time made or furnished, and MDR fails to cure the same within thirty (30) days after written notice from CITY or MDC detailing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if MDR fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, or if MDR obtains actual knowledge that any such material warranty, representation, or statement has become false or misleading after the time that it was made, and MDR fails to promptly provide written notice to CITY and MDC of the false or misleading nature of such warranty, representation, or statement after MDR learns of its false or misleading nature. Notwithstanding anything to the contrary contained herein, MDR's knowledge is limited to the actual knowledge of any officer or manager of MDR.
- (c) **Insolvency.** The dissolution or termination of MDR's existence as a going business or concern, insolvency, appointment of receiver of any part of MDR's portion of the Project, any assignment of all or substantially all of the assets of MDR for the benefit of creditors of MDR, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against MDR.
- (d) **Development Obligations.** MDR's failure to comply with any obligation set forth in Article II of this Agreement and MDR's failure to cure the same within ninety (90) days after MDR's receipt of written notice from CITY, unless such failure

cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if MDR fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of CITY or MDC.

- (e) **Property Taxes.** MDR's failure to pay its property taxes for the Project Land owed to CITY and MDR's failure to timely and properly follow the legal procedures for protest and/or contest of such taxes, and to cure such failure or post a satisfactory bond within thirty (30) days after written notice from CITY and/or the Midland Central Appraisal District for two successive tax years.
- (f) **Failure to Perform Material Covenant.** A Party's failure to perform or observe any material term, condition or covenant contained in this Agreement and such Party's failure to cure the same within ninety (90) days after written notice from CITY or MDR as applicable, unless such failure cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if CITY or MDR, as applicable, fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of the other Party hereto.

6.2 Notice of Default. If a default occurs, and a non-defaulting Party desires to assert such default, such non-defaulting party shall notify the defaulting Party in writing in accordance with Section 11.12 herein. Such notice shall specify the nature of the default and what action, if any, the non-defaulting Party requires or proposes with respect to curing the default.

6.3 Termination. Except as provided in this Agreement, if a default occurs and continues to occur after the applicable cure period following the defaulting Party's receipt of the notice prescribed in Section 6.2, or later if additional time is otherwise afforded for cure as provided herein, the non-defaulting Party may terminate this Agreement after delivery of a further written notice to or demand upon the defaulting Party; provided, however, the non-defaulting Party shall not terminate this Agreement for as long as the defaulting Party proceeds in good faith and using its best efforts to remedy and correct the default, having commenced said efforts within the ninety (90) days or, if said efforts cannot be commenced within said ninety (90) day period, within a reasonable time following the notice prescribed in Section 6.2. Except as provided in Section 4.7, in the event of termination of this Agreement, any liability of MDR or its Affiliate for a default by MDR or its Affiliate under this Agreement, shall be limited solely to its interest in the phase of the Project during which MDR has defaulted.

6.4. Cross Default. Notwithstanding any contrary provision contained herein, an uncured material default by MDR in the Ground Lease, after passage of the applicable notice and cure periods (if any), shall, at the option of CITY, be a default under this Agreement, in which event CITY shall be entitled (but not required) to apply all rights and remedies of CITY under the terms of this Agreement.

ARTICLE VII.
TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective on the Effective Date and shall terminate on the later of: (i) the tenth (10th) anniversary of the HOT Rebate Commencement Date for Project Phase II; (ii) the tenth (10th) anniversary of the Property Tax Rebate for Project Phase II; and (iii) the date of CITY's final SCCHP rebate payment due under this Agreement, unless terminated earlier as provided for herein; provided, however, if CITY has not fulfilled its obligation to provide the HOT Rebate or the Property Tax Rebate to MDR for any period within such ten (10) year time period, this Agreement shall not terminate until such HOT Rebate and Property Tax Rebate has been paid for each Project phase.

ARTICLE VIII.
USE OF PUBLIC FUNDS

The Parties acknowledge and agree that the public funds or resources expended, granted or guaranteed hereunder shall be utilized solely for purposes authorized under applicable law and the terms of this Agreement. CITY represents and warrants that it is authorized under applicable law to enter into this Agreement. CITY and MDC expressly waive their respective rights of governmental immunity, including but not limited, pursuant to Section 271.152 of the Local Government Code but only as to a suit for a breach of contract and an action in equity by MDR for specific performance to enforce the terms of this Agreement, including but not limited to, any incentive payments due and owing to MDR and any attorney's fees incurred by MDR.

ARTICLE IX.
DUE DILIGENCE PERIOD

Beginning on the Effective Date, MDR may inspect the Midland Land and determine whether it is suitable for MDR's needs. If MDR determines that the Midland Land is acceptable, MDR shall deliver to CITY and MDC within ninety (90) days of the Effective Date written notice of MDR's intent to proceed with the Project ("***Go Forward Notice***"). If MDR fails to timely deliver the Go Forward Notice, this Agreement shall be deemed terminated without further notice, instruction or delay and the Parties shall have no further rights or obligations under this Agreement. If MDR delivers the Go Forward Notice before the end of the ninety (90) day due diligence period, MDR shall proceed with the Project subject to completion of the conditions precedent set forth in Article X. MDR shall have the right to access and inspect the physical condition of the Midland Land and make such engineering, environmental and other studies of the Midland Land as MDR may elect. CITY and MDC agree to fully cooperate and to reasonably assist MDR in obtaining any entitlements and/or to satisfy any requirements necessary to allow the Midland Land to be used for the Project. During the ninety (90) day due diligence period, MDR shall complete its review of the Midland Land, which may include, but shall not limited to the following items.

- 9.1** CITY and MDC shall be the sole owners of good and indefeasible fee simple title to the surface estate of their respective portions of the Midland Land, free and clear of all liens, encumbrances, restrictions, conditions and agreements except for permitted exceptions

approved by MDR.

- 9.2** Good and indefeasible fee simple title to the surface estate of the Midland Land shall be insurable as such by the title company, at its lowest rates allowed by law, as required by MDR.
- 9.3** CITY and MDC have provided an ALTA survey encompassing all of the Midland Land adequate for the title company to delete any exception for general survey matters in the title policy and in a form acceptable to MDR.

ARTICLE X.
CONDITIONS PRECEDENT TO MDR'S PERFORMANCE

- 10.1 Vacation of Alleys.** CITY has vacated the Block 35 Alley and conveyed fee simple title of the surface estate, with a Surface Waiver, to MDR at no cost, and if the MDR Land Acquisition is completed, CITY has then vacated the Block 56 Alley and conveyed fee simple title of the surface estate, with a Surface Waiver, to MDR at no cost, all in accordance with Section 3.8.
- 10.2 Removal of the Energas Improvements and Transfer of Ownership.** CITY has removed or caused the removal of all surface and subsurface improvements located on the Energas Land, at its cost and has transferred or caused to be transferred fee simple title of the surface estate, with Surface Waiver, of the Energas Land to MDR at no cost to MDR.
- 10.3 Vacation of Colorado Street.** CITY has vacated that certain portion of Colorado Street located between Wall Street and Texas Avenue and abutting the Project Land, and conveyed fee simple title to MDR at no cost, all in accordance with Section 3.9. Upon completion of the Project Design and Construction Documents, MDR may reconvey said vacated portions of Colorado Street not incorporated into the Project to CITY at no cost.
- 10.4 MDR Land Acquisition.** MDR has completed or waived the fee simple acquisition of the entire surface estate of the MDR Land, all in accordance with Section 3.5.
- 10.5 Construction Permitting and Design Approvals.** MDR has received (1) CITY's and MDC's written approval of each design and construction drawing and specifications subject by MDR pursuant to Section 2; and (2) governmental approvals, including from CITY, of all land use requirements, utility approvals and building permit requirements required to commence construction of the Project.
- 10.6 Financing Approval.** MDR has obtained the required capitalization, including but not limited to any financing approvals, necessary for completion of the Project, in its sole and absolute discretion. Completion of this condition precedent shall be evidenced by delivery of a written notice by MDR to CITY and MDC.
- 10.7 Receipt of Construction Estimate.** MDR has received and approved the construction

estimate for the Project.

If any condition precedent to MDR's performance set forth above cannot or will not be satisfied, MDR, at its sole option, may terminate this Agreement at any time, in which event all other rights and obligations of CITY, MDC and MDR hereunder shall terminate immediately.

ARTICLE XI.

GENERAL TERMS

- 11.1 Entire Agreement.** This Agreement, together with the instruments attached hereto as exhibits, embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.
- 11.2 Termination.** This Agreement may be terminated by mutual agreement of the Parties or as otherwise specifically provided for under the terms of this Agreement.
- 11.3 Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the Parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the Parties hereto have executed at least one counterpart.
- 11.4 Legal Relationship.** The Parties are not, and shall not be considered as, joint venturers, partners, or agents of each other. No Party shall have the power to bind nor obligate another Party, except as set forth in this Agreement. The Parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. The Parties acknowledge and agree that they are separate and distinct entities, and no Party shall be held responsible for the actions or obligations of another Party. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between CITY, MDC, and MDR. 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 that would give rise to vicarious liability.
- 11.5 Legal Construction.** If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 11.6 Consideration.** The Parties hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties.
- 11.7 Force Majeure.** In the event that CITY, MDC or MDR shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of an act of God, strike, lockout, hazardous material, latent defects, labor trouble, inability to procure

materials, labor shortages, utility delays, pandemic, unseasonable weather affecting construction or operation, failure of power, riot, insurrection, or war, national, regional or local emergency, or other similar events beyond the reasonable control of the delayed Party, that is not the result of any intentional act or misconduct (“*Force Majeure*”), then: (i) the delayed Party shall promptly provide written notice of such event of Force Majeure to the other Parties; and (ii) the delayed Party’s performance of such act shall be excused for the period of the delay; and (iii) the period for the performance of any such act shall be extended for a period equal to the period of such delay.

- 11.8 No Disparity of Bargaining Position.** The Parties agree that there was no disparity of bargaining power between the Parties in the negotiation and execution of this Agreement. The Parties acknowledge and agree that they were represented by their own legal counsel. The Parties acknowledge and agree that they read and understood the entire Agreement prior to its execution. The Parties acknowledge and agree that there were numerous compromises and concessions made by the Parties resulting in the agreed-upon terms of this Agreement.
- 11.9 Third-Party Beneficiary.** The Parties’ approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement and no person or entity that is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- 11.10 Successors and Assigns.** CITY, MDC, and MDR each bind themselves and their respective successors, executors, administrators, and assigns to the other Parties to this Agreement. Except as specifically provided in this Agreement, no Party may assign, subcontract, or transfer any interest in this Agreement without the written consent of the other Parties. The issue of whether or not to grant consent to an assignment is in the sole discretion of the Parties. Notwithstanding the foregoing, MDR shall have the right, without the consent of CITY, to: (i) collaterally assign its rights under this Agreement to its mortgage lender at any time; (ii) assign its rights under this Agreement in connection with a transfer to a Qualified Transferee; (iii) assign its rights under this Agreement to an Affiliate; (iv) substitute and/or add general partners and limited partners; or (v) enter into concession agreements, operating agreements, or management agreements as determined necessary by MDR in its sole and absolute discretion. Upon the assignment of this Agreement by MDR, CITY agrees that MDR, its owners, members, managers and employees, shall be released from all liability and obligations under this Agreement including as to time periods before and after the date of such assignment; provided that the assignee assumes such liability and obligations. Except as specifically provided in this Agreement, no assignment, delegation of duties, or subcontract under this Agreement will be effective without the written consent of CITY and MDC.
- 11.11 Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. All performance and payments made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive and mandatory venue for any claim, suit or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and

undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

11.12 Notices and Payments. All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown below; (ii) sent via electronic transmission to the email addresses set forth below of the Party to whom the notice is to be given; or (iii) when delivered by hand-delivery. Any Party may change its address for notices under this Agreement by giving formal written notice to the other Parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other Parties informed at all times of its current address.

If to CITY:

City Manager
City of Midland
P.O. Box 1152
Midland Texas 79702
Email: tgonzalez@midlandtexas.gov

With Copy to:

City Attorney's Office
City of Midland
300 N. Loraine Street, Suite 320
Midland, Texas 79701
Email: johnemiller@midlandtexas.gov

If to MDC:

Midland Development Corporation
Executive Director
200 N. Loraine Street, Suite 610
Midland Texas, 79701
Email: sharris@midlandtxedc.com

With Copy to:

City Attorney's Office
City of Midland
300 N. Loraine Street, Suite 320
Midland, Texas 79701
Email: johnemiller@midlandtexas.gov

If to MDR:

Midland Downtown Renaissance, LP
223 West Wall Street Suite 300
Midland, Texas 79702

With Copy to:

Hedloc Investments Co, LP
223 W. Wall Street, Suite 300
Midland, Texas 79701
info@hedlocinv.com

With Copy to:

Moorman Tate, LLP
207 East Main Street
Brenham, Texas 77833

c/o Andrew Hefferly
hefferly@moormantate.com

- 11.13 Indemnity.** MDR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND MDC, AND ALL CITY AND MDC OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON THE PROJECT LAND, ON ACCOUNT OF ANY NEGLIGENT ACT OF MDR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR ANY CONTRACTOR, ARISING OUT OF, OR RESULTING FROM, MDR'S ACTIVITIES OR OPERATIONS UNDER THIS AGREEMENT.
- 11.14 Remedies.** No right or remedy granted herein or reserved to a Party is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder.
- 11.15 Waiver of Performance.** The failure of any Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights under this Agreement, will not be construed as a waiver or relinquishment by such Party of such term, covenant, condition or right with respect to further performance.
- 11.16 Confidentiality.** MDR acknowledges that CITY and MDC are governmental entities subject to the Texas Public Information Act, as amended. MDR agrees that this Agreement in no way affects, modifies or limits the obligation of CITY or MDC to comply with the Texas Public Information Act or any ruling or decision of the Texas Attorney General. Provided however, that CITY agrees to promptly provide MDR with written notice of any request received by CITY under the Texas Public Information Act and shall cooperate with MDR in pursuing an Attorney General Ruling to withhold MDR's trade secrets or information considered confidential by MDR.
- 11.17 Authority.** Each Party represents, warrants, and agrees that it has the full right, power and authority to execute this Agreement, and that this Agreement shall become valid and binding between the Parties upon execution.
- 11.18 Approval.** This Agreement shall not become effective until approved by a duly-passed resolution of the Midland City Council.
- 11.19 No Recording.** The Parties agree that this Agreement shall not be recorded in any real property records; provided, however, that the Parties shall cooperate to execute a Memorandum of this Agreement in form and substance reasonably acceptable to the Parties upon the request of a Party.
- 11.20 Delegation of Authority.** Notwithstanding anything to the contrary contained in this Agreement, the City and MDC hereby delegate authority to the City Manager for the City

of Midland to extend the Due Diligence Period upon written request of MDR for an additional ninety (90) days. The City Manager and MDC Chairman are hereby authorized to execute an amendment to this Agreement setting for such extension without any further action from the City Council or MDC board.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, TOMMY GONZALEZ, City Manager of the CITY OF MIDLAND, TEXAS, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2024.

Notary Public, State of Texas

**MIDLAND DEVELOPMENT
CORPORATION**

By: _____
P. Lourcey Sams, Chairman

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, P. LOURCEY SAMS, Chairman of the MIDLAND DEVELOPMENT 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 entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2024.

Notary Public, State of Texas

MIDLAND DOWNTOWN RENAISSANCE, LP

By: Midland Downtown Development, LLC
Its: General Partner

By: W.D. Hord, III
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, W.D. Hord, III, as Manager of Midland Downtown Development, LLC, a Texas limited liability company, as the General Partner of MIDLAND DOWNTOWN RENAISSANCE, LP, a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2024.

Notary Public, State of Texas

Exhibit A

Comparable Hotels

Exhibit A – Comparable Hotels

Hotel Description

4.0+ Star Hotel Standards; Requirements; Expectations, & Description of Amenities

The facility must offer the upscale accommodations expected by high-end corporate groups and conventioners, as well as independent business travelers, and a wide range of event and assembly groups. It is expected that the facility management team will be experienced with full-service, convention-oriented, business travel hotels with 100+ guestrooms.

Atmosphere

Offer a welcoming, comfortable and exceptional guest experience while also respecting the surrounding environment.

Interior Finishes and Standards

All interior finishes will be reflective of an upscale property. The quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

Guestrooms

The proposed hotel should offer a minimum of 135 guestrooms, in order to sell a convention center and guestroom package. Each guestroom should offer, at a minimum, the following desired amenities:

- sufficient area to accommodate a king size bed or two double size beds;
- one telephone, speakerphone, voice mail and data port access;
- high-speed internet access and Wi-Fi service;
- television, with cable and on-command movies;
- bath/dressing area equipped with a hand-held hair dryer, and amenity tray;
- supplied with upscale branded soaps, shampoo and conditioner.

Food and Beverage

The hotel should offer at a minimum a bar/lounge and full-service restaurant. The restaurant should offer a separate exterior entrance to attract not only hotel guests but also other diners. Room service should be available during normal operating hours seven days a week with overnight service preferred but not required.

Other Facilities and Amenities

The hotel should offer function and meeting space, business center, a market, Wi-Fi service in all public areas of the hotel, and valet parking. The property must meet all required standards of the Americans with Disabilities Act (ADA), if applicable. It is expected that the property will be privately-owned and offer facilities and amenities on a level approximately similar to hotel products such as, but not limited to, a full-service Hilton, Hyatt, Omni, or Marriott Hotels, as well as The Hotel Paso Del Norte, El Paso, Texas, and The Plaza Hotel Pioneer Park, El Paso, Texas.

Exhibit B

Ground Lease

GROUND LEASE

THIS GROUND LEASE AGREEMENT (this “Lease”) is entered into this _____ day of 20 by and between the **CITY OF MIDLAND, TEXAS** (“Landlord”) and _____, a Texas _____ (“Tenant”).

WHEREAS, Landlord owns the land more particularly described in Section 1.01 below, but not any of the improvements located thereon (with such land without the improvements being referred to as the “Premises”);

WHEREAS, Landlord, Tenant, and the Midland Development Corporation have entered into that certain Master Development Agreement (the “Master Development Agreement”) dated as of January 23, 2024, which is incorporated into this Lease by reference as if fully set forth herein and provides for, among other items, a program of incentives in exchange for Tenant completing certain improvements on the Premises (the “Project,” as defined in the Master Development Agreement) that will promote local economic development and stimulate business and commercial activity within the City of Midland, Texas;

WHEREAS, Tenant’s lease of the Premises under the terms and conditions contained herein is desired and essential for the viability of the Project; and

WHEREAS, Tenant has indicated a willingness and ability to properly keep, maintain and improve the Premises in accordance with standards established by Landlord and the Master Development Agreement;

NOW THEREFORE, Landlord and Tenant agree as follows:

ARTICLE I - PREMISES

1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease from Landlord, the following described land (excluding all improvements) located in Midland County, Texas:

Midland County, Texas, as more particularly described in Exhibit
“A” attached hereto.

ARTICLE II - TERM OF LEASEHOLD

2.01 Term. This Lease shall be effective immediately after execution of the deed which conveys title to the Premises from Tenant to Landlord, as contemplated in the Master Development Agreement (“Effective Date”). This Lease shall be for a term of fifty (50) years, commencing on the Effective Date (the “Term”), unless this Lease is terminated in accordance with the terms hereof.

2.02 Holding Over. Any holding over by Tenant of the Premises at the expiration, termination or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of the current monthly Rent, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

ARTICLE III - RENT

3.01 Rent. Tenant shall pay Landlord rent at the rate of One and 00/100ths Dollars (\$1.00) per year during the Term (the "Rent"). All Rent to be paid by Tenant to Landlord shall be in lawful money of the United States of America and at such place or places as may be designated from time to time by Landlord. Tenant's obligation to pay Rent under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay Rent as required by this Lease.

3.02 Commencement of Rent. Tenant's obligation to pay the Rent to Landlord shall commence as of the Effective Date.

3.03 Time of Payment. The Rent shall be paid annually. The Rent payments shall be paid in advance on or before the first day of the annual anniversary of the Effective Date of this Lease. The initial Rent payment will be paid within ten (10) days after the Effective Date. At Tenant's option, Tenant may elect to make one or more lump sum rent payments in lieu of paying \$1.00 per year, such lump sum payment to serve as the Rent hereunder for the number of years equal to the quotient when using the Rent paid in a period as the numerator and \$1.00 as the denominator.

3.04 Unpaid Rent, Fees and Charges. Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Landlord within thirty (30) days after written notice from Landlord to Tenant, shall be deducted from any payments to Tenant from the City of Midland as contemplated by the Master Development Agreement. In the event such sums are satisfied by deduction from payments due to Tenant under the Master Development Agreement, any such missed Rent, fees, or other charges accrued or owed by Landlord shall not be deemed a default of this Lease.

3.05 Place of Payment. All Rent shall be paid to Landlord at the following address:

City of Midland
P.O. Box 1152
Midland, Texas 79701

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Landlord.

ARTICLE IV - PRIVILEGES

4.01 Right to Redevelop the Premises. Tenant shall have the right and privilege, at any time and from time to time, to freely, and without notice to or consent of Landlord, maintain, rehabilitate, redevelop, remodel, remove or otherwise modify the improvements upon the Premises, and to construct new improvements upon the Premises, subject to the terms, covenants, and conditions of the Master Development Agreement and as provided herein. Landlord and Tenant acknowledge and agree that there are existing improvements located on the Premises of which Tenant has had possession and title prior to the Effective Date; in accordance with the Master Development Agreement, immediately prior to the Effective Date of this Lease, Tenant owned the Premises.

ARTICLE V - OBLIGATIONS OF LANDLORD

5.01 Quiet Enjoyment. Landlord, upon Tenant's paying Rent and performing all of the obligations, conditions set forth in the Lease, covenants and warrants that, Tenant shall and may peaceably and quietly have, hold, and enjoy sole possession of the Premises. Landlord has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

5.02 Authority of Landlord to Lease Premises. Landlord hereby represents and warrants that, as of the Effective Date, Landlord owns fee simple title to the Premises and has the full, requisite authority to enter into this Lease and to carry out and perform all obligations under this Lease.

ARTICLE VI - OBLIGATIONS OF TENANT

6.01 Net Lease. This Lease shall be without cost to Landlord except for Landlord's obligations specifically set forth elsewhere in this Lease. Tenant shall or shall cause the following to occur:

- A. Keep and maintain the Premises and improvements located thereon in good repair at all times, subject, in any event, to Tenant's rights under Section 4.01 absent casualty or condemnation;
- B. Pay any and all taxes assessed against the Premises and improvements and Tenant's interest in the Premises, and all of Tenant's personal property located on the Premises, subject to Tenant's right to protest the valuation in accordance with state law and the Master Development Agreement; and
- C. Pay all insurance premiums required to be carried by Tenant in accordance with the terms of this Lease.

6.02 Condition of Premises. Tenant accepts the Premises in its present condition and agrees that the Premises is suitable for Tenant's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Landlord has not made any warranties expressed or implied with regard to the condition of the Premises, improvements or their suitability for a particular use except as set forth in this Lease and in the Master Development Agreement. Tenant accepts the Premises "As Is", with all faults, relying on Tenant's own inspection and judgment and not in reliance on any representations of Landlord, other than those set forth in this Lease and in the Master Development Agreement. Landlord shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition, subject to casualty and condemnation as provided herein.

6.03 Compliance With Laws. Tenant, at Tenant's expense, agrees that it will construct, operate and maintain or cause the construction, operation and maintenance of the improvements on the Premises in accordance with the Master Development Agreement and in accordance with all applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Landlord or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon. Notwithstanding the foregoing, Landlord will not impose new laws or regulations upon Tenant, its sublessees/subtenants, or the Property that are not applied equally to all hotel/motel properties in Midland, Texas, or that will increase Tenant's obligations or reduce Tenant's benefits under this Lease.

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, in force on the Effective Date of the Lease or which may hereafter be in force and applicable to the Premises, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons.

Notwithstanding anything to the contrary contained herein, Tenant shall not be obligated to comply with any laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county or municipal authorities which may be adopted or amended after the Effective Date of the Lease for which tenant may have vesting/legal non-conforming rights under applicable law and, provided further that nothing in this Lease shall be deemed to be a waiver of Tenant's vested/grandfathered rights under the Laws.

Tenant shall, at Tenant's expense, comply or shall cause the compliance with all present and hereinafter enacted "Environmental Laws" (as defined below), and any amendments thereto affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) “Environmental Laws” means any one or all of the: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) “Hazardous Material” shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Material, other than those used during the operation of a hotel and related facilities, to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its subtenants, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law. **TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY AND ANY AND ALL CLAIMS OR ACTIONS BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, ARISING IN CONNECTION WITH CONTAMINATION OF, OR ADVERSE EFFECTS**

ON, THE ENVIRONMENT OR VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENT OR JUDICIAL ENTITY, TO THE EXTENT THEY ARE INCURRED OR ASSESSED AS A RESULT OF ANY ACTIVITY OR OPERATION ON OR DISCHARGE FROM THE PREMISES OR ANY IMPROVEMENTS THEREON CAUSED BY THE ACT OR OMISSION OF TENANT, ITS SUBTENANTS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES. THIS OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL COSTS AND EXPENSES RELATED TO CLEANING UP THE PREMISES, IMPROVEMENTS, LAND, SOIL, UNDERGROUND OR SURFACE WATER TO THE EXTENT REQUIRED UNDER ENVIRONMENTAL LAWS (“ENVIRONMENTAL CLAIMS”). TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LEASE. THIS INDEMNIFICATION OF LANDLORD BY TENANT INCLUDES, WITHOUT LIMITATION, COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEANUP, REMEDIAL, REMOVAL OR RESTORATION WORK TO THE EXTENT REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION HAVING AUTHORITY TO ENFORCE ENVIRONMENTAL LAWS BECAUSE OF HAZARDOUS MATERIAL LOCATED ON THE PREMISES OR ANY IMPROVEMENTS THEREON, OR PRESENT IN THE SOIL OR GROUND WATER ON, UNDER OR ABOUT THE PREMISES. THE PARTIES AGREE THAT LANDLORD'S RIGHT TO ENFORCE TENANT'S PROMISE TO INDEMNIFY IS AN ADEQUATE REMEDY AT LAW FOR TENANT'S VIOLATION OF ANY PROVISION OF THIS SECTION.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant or caused by the Tenant or its employees, subcontractors, agents, subtenants, or contractors results in any permanent contamination by such Hazardous Material of the Premises or any improvements thereon, or any surrounding property, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or the surrounding property to the condition existing prior to such contamination.
- (3) Tenant shall, at Tenant's own cost and expense, make or cause to be made all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws that are applicable to Tenant's operations and activities on the Premises. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon or on surrounding property to comply with applicable Environmental Laws because of the Tenant's operations or activities on the Premises, then Tenant shall, at Tenant's own cost and expense, prepare and submit or cause to be prepared and submitted the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly respond or shall cause prompt response to reasonable requests for non-privileged information in Tenant's possession by Landlord to determine the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property that is caused by the Tenant's operations or activities on the Premises.
- (4) Tenant shall notify Landlord or shall cause Landlord to be notified within five (5) business days after Tenant becomes aware of any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises.
- (5) Tenant shall insert the provisions of this Section 6.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (6) Tenant's responsibilities and obligations under the entirety of Section 6.03(B) shall apply only to Environmental Claims to the extent that they are caused by the actions of the Tenant or its employees, agents,

contractors or subtenants beginning on the Effective Date of this Lease and such actions ending on the effective date of the termination of this Lease.

C. Reporting.

- (1) At any time that Tenant or Landlord submits any filing or response pertaining to its property, operations, or presence on the Premises with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the EPA or the TCEQ, or any successor agencies, Tenant or Landlord shall provide duplicate copies to the other of such filing(s) or response(s) with any related documents at the time same are made.

6.04 Compliance by Tenant. With respect to compliance called for in Section 6.03, if a complaint is received by Tenant from either a private or government entity regarding compliance with laws, rules or regulations and/or Hazardous Materials or disability access or compliance of the Premises, Tenant reserves the right to mediate, contest, comply with or otherwise respond to such complaint as Tenant deems to be reasonably prudent under the circumstances, including but not limited assertion of a nonconforming use exception. Landlord and Tenant agree that so long as the governmental entity or entities charged with enforcing such statutes, rules and regulations have not expressly required Tenant to take specific action to effectuate compliance with such statutes, rules and regulations, Tenant shall be conclusively deemed to be in compliance with such statutes, rules and regulations. In the event Tenant is required to take action to effectuate compliance with such statutes, rules and regulations Tenant shall have a reasonable period of time to make the improvements and alterations necessary to effectuate such compliance.

6.05 Plans. Tenant will apply for and obtain or shall cause to be applied and obtained the appropriate building permits from the City of Midland, Texas. Nothing herein will require Tenant to obtain any approvals beyond what is normally required for hotel facilities in Midland, Texas.

6.06 Landscaping and Maintenance of Improvements. Tenant shall landscape the Premises or shall cause the Premises to be landscaped in accordance with applicable provisions of the City of Midland Municipal Code and shall keep the improvements on the Premises in a good state of repair and condition and in a presentable condition, subject to Tenant's rights under Section 4.01 above.

6.07 Utilities. Tenant shall pay or shall cause to be paid for all costs or charges for utility services furnished to the Premises during the Term. Tenant shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

6.08 Trash, Garbage, and Other Refuse. Tenant shall provide or shall cause to be provided a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Tenant shall provide and use or shall cause to be provided and used suitable covered

commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

6.09 Permitted Uses. Tenant will not enter into any business activity on the Premises other than that which is permitted pursuant to zoning regulations applicable to the Premises.

6.10 Penalties Assessed by State or Federal Agencies. Tenant understands and agrees that in the event any state or federal agency assesses a civil penalty against Landlord for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Tenant, its subtenants, agents, employees, contractors, licensees or invitees, with respect to the Premises, Tenant shall reimburse Landlord in the amount of such civil penalty assessed. Failure to reimburse Landlord within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder. Upon the occurrence of any event giving rise to liability of Tenant under this Section, Landlord shall give Tenant notice of such event in a copy of any communication or document received by Landlord with respect to each event and Tenant shall be entitled to conduct the negotiation or defense of any claim, cause of action, suit, demand, or judgment by counsel selected by Tenant, subject to the approval of such counsel by Landlord in its reasonable judgment. The failure of Landlord to give Tenant prompt notice of such occurrence shall not excuse Tenant from liability under this Section, except to the extent that such liability arose directly by reason of, or was increased or enhanced by, the failure of Landlord to give such notice.

ARTICLE VII - INSURANCE AND INDEMNIFICATION

7.01 Insurance. Prior to the execution of this Lease, Tenant shall obtain, provide Landlord proof of, and shall maintain for the Term, the types and amounts of insurance coverage on the Premises listed below:

Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence;

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence; and

One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence.

7.02 Additional Insured. Landlord shall be named as an additional insured on all Comprehensive general liability insurance policies obtained by Tenant with respect to the Premises either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled, or the amount of coverage decreased without either thirty (30) calendar days prior written notice to the Landlord or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

All policies shall also provide for a waiver of subrogation in favor of Landlord.

7.03 Fire and Other Risks Insurance. Tenant, at its sole cost and expense, shall throughout the Term, keep or cause to be kept all improvements, now or hereafter located upon the Premises, insured for full replacement value against loss or damage by fire and against loss or damage by other risks embraced by “extended coverage” and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, which may include costs of replacing excavations and foundation, but without deduction for depreciation.

7.04 Authorized Insurance and Surety Companies. All required policies of insurance and bonds shall be written by insurance and surety companies or brokers authorized to do business in the State of Texas. Certificates of insurance shall be delivered to Landlord at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Landlord to be listed as an additional insured in the general liability policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled without at least thirty (30) days' prior written notice to Landlord.

7.05 Indemnification. DURING THE TERM AND FOR SUCH CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES RESULT FROM AN INCIDENT OCCURRING DURING THE TERM, TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE

PREMISES, ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISE, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART, FROM THE NEGLIGENCE OF THE LANDLORD, IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD AND LANDLORD WILL COOPERATE WITH TENANT IN SUCH DEFENSE, INCLUDING THE ASSERTION OF ANY IMMUNITY OR LIMITATION OF LIABILITY DEFENSE AS APPLICABLE. Upon the occurrence of any event giving rise to liability of Tenant under the indemnification contained in this Section, Landlord shall give Tenant notice of such event and a copy of any communication or document received by Landlord with respect to each event and Tenant shall be entitled to conduct the negotiation or defense of any claim, cause of action, suit, demand, or judgment by counsel selected by Tenant, subject to the approval of such counsel by Landlord in its reasonable judgment. The failure of Landlord to give Tenant prompt notice of such occurrence shall not excuse Tenant from liability under this Section, except to the extent that such liability arose directly by reason of, or was increased or enhanced by, the failure of Landlord to give such notice.

ARTICLE VIII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

8.01 Obligations of Tenant. During the Term, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and, if the damage or destruction is to fifty percent (50%) or less of the Premises, Tenant shall, subject to and limited to the amount of insurance proceeds paid to Tenant by the insurance company or companies, promptly repair, replace and rebuild the same, to the greatest extent as practical to the character of the buildings and improvements existing immediately prior to such damage or destruction. If the damage or destruction is greater than fifty percent (50%) of the Premises, Tenant may elect to either: (i) subject to and limited to the amount of insurance proceeds paid to Tenant by the insurance company or companies, promptly repair, replace and rebuild to the greatest extent as practical and as nearly as practical to the character of the buildings and improvements existing immediately prior to such damage or destruction; or (ii) exercise its option to purchase the Premises as set forth in Article IX below. Any such repairs, replacements or rebuilding shall be made by Tenant as aforesaid and subject to and in accordance with the following terms and conditions:

- A. In the event the plans and specifications for reconstruction of the Premises (“Plans”) are substantially different from Tenant’s plans for the initial redevelopment of the Premises, Tenant shall deliver to Landlord, for review and approval (which shall not be unreasonably withheld, conditioned or delayed),

such reconstruction plans; provided, however, that Tenant shall, in any event comply with the Master Development Agreement in connection with any reconstruction. Landlord agrees to review such Plans within thirty (30) days of receipt and provide any reasonable comments to Tenant. Should Landlord fail to provide its comments during this time period, the Plans shall be deemed approved and Tenant may proceed to permitting.

- B. Upon approval or completion of the Plans, whichever is applicable, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications, and submit the same to appropriate governmental agencies for permitting. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to Landlord one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction there over and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Upon compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Tenant. Receipt by Tenant's lender will not be considered receipt by Tenant under the terms of the Lease. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- D. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.

8.02 Insurance Proceeds. Upon receipt by Tenant of the proceeds of the insurance policy or policies, Tenant shall pay for the cost of such repair, replacement or rebuilding. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Tenant may exercise its option to purchase the Premises or trigger the reversion as set forth in Article IX below. If the amount of such insurance proceeds is in excess of such costs thereof, the amount of such excess shall be retained by Tenant.

ARTICLE IX – OPTION TO PURCHASE/PUT

9.01 Tenant's Option to Purchase.

A. Grant of Option. For separate, additional consideration in the amount of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Landlord grants to Tenant a purchase option (the “Option”), exercisable at any time on or after the earlier of: 1) the fifteenth (15th) anniversary date of the opening of the hotel facilities (including, obtaining Certificates of Occupancy for all guest rooms; restrooms; conference, meeting and ball rooms; all retail and dining spaces; and other areas accessible to the general public) on the Premises pursuant to the Master Development Agreement (as evidenced by Tenant’s written notice to Landlord) or; 2) upon receipt by Tenant from the City of Midland of all State Convention Center Hotel Program (“SCCHP”) funds as set forth in the Master Development Agreement, and expiring at the end of the Term (the “Option Period”), pursuant to and subject to the conditions of this Article IX, to purchase the Premises (excluding the Improvements thereon, which are owned by Tenant), from Landlord for the agreed upon price of One and 00/100ths dollars (\$1.00) (the “Purchase Price”).

B. Exercise of Option.

(1) Tenant shall give notice of the exercise of the Option prior to the expiration of the Option Period.

(2) If Tenant has exercised the Option, Tenant shall purchase the Premises within one hundred eighty (180) days after the date of the exercise of the Option, and shall pay to Landlord the Purchase Price, subject to Section 9.04 below.

(3) Notwithstanding the foregoing, or any provision herein to the contrary, if the City of Midland receives a preliminary determination that the City and Development are not qualified for participation in the SCCHP, as contemplated in the Midland Development Agreement, Tenant may immediately exercise the Option, and the Option Period shall run from the date on which Tenant was notified that the City of Midland and Development did not qualify for participation in the SCCHP through and including the date that is one (1) year thereafter.

(4) Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord has the right to terminate this Lease for any reason, prior to termination, Landlord will provide Tenant at least thirty (30) days prior written (the “Termination Notice”) in which case, Tenant may then immediately exercise the Option, and the Option Period shall run from the date Tenant receives the Termination Notice through and including one (1) year thereafter.

(5) Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord is in default of this Lease or the Master Development Agreement and Landlord fails to cure said default within thirty (30) days following written notice from Tenant to Landlord detailing such default (the “Landlord Default Notice”), or if such default cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Landlord fails to commence such cure within such thirty (30) day period or fails to continuously and diligently pursue the cure

of said default thereafter, Tenant may then immediately exercise the Option, and the Option Period shall run from the date of the Landlord Default Notice through and including one (1) year thereafter.

9.02 Landlord's Put. For separate, additional consideration in the amount of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Tenant hereby grants to Landlord an option to put the Premises to Tenant (the "Put") during the Option Period defined in Section 9.01 herein for a price equal to the Purchase Price ("Put Option"). To exercise the Put Option, Landlord must give notice of its exercise prior to the expiration of the Put; provided, however, if Landlord fails to exercise the Put within such time period, Tenant shall deliver written notice to Landlord requesting, in conspicuous type, that Landlord notify Tenant whether Landlord will exercise the Put set forth in this Section 9.02. Landlord will have One Hundred Eighty (180) days following receipt of Tenant's notice to exercise the Put, even if such One Hundred Eighty (180) day period extends beyond the term of the Put Option. Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord, after submission of a complete application to SCCHP, is unable to qualify for incentives through participation in the SCCHP as contemplated in the Master Development Agreement, Landlord may then immediately exercise the Put, and the Put Option shall run from the date on which Tenant was notified by Landlord that it was unable to qualify for the SCCHP through and including the date which is one (1) year thereafter.

9.03 Terms and Conditions of Option/Put. In the event that the Premises are to be acquired by Tenant pursuant to Tenant's exercise of the Option or Landlord's exercise of the Put: (a) the closing of such acquisition shall occur in such place as Landlord and Tenant mutually determine; (b) the closing shall occur on a date designated by Tenant (with at least thirty (30) days' advance written notice to Landlord of such date) not later than One Hundred Eighty (180) days after the termination of the Option Period; (c) the Purchase Price shall be paid by Tenant to Landlord in cash; (d) Landlord shall execute and deliver such other documentation as shall be necessary to vest title to the Premises and all appurtenances owned by Landlord in Tenant including, but not limited to a special warranty deed free and clear of all liens and encumbrances except matters of title that existed on the Effective Date or that were approved by Tenant; (e) this Lease shall automatically terminate upon the recordation of the deed conveying the Premises to Tenant in the Deed Records of Midland County, and Tenant may file a memorandum of termination in the Deed Records of Midland County; and (f) all expenses of closing, including but not limited to any title policy premiums, survey costs, and recording fees (but excluding attorneys' fees, which shall be borne by the party incurring such fees), shall be borne solely by Tenant.

9.04 Reversion. Notwithstanding the foregoing, the deed conveying title to the Premises to Landlord from Tenant, shall reserve for Tenant a right of reversion wherein title to the Premises will automatically revert to Tenant upon expiration or termination of the Lease.

ARTICLE X – ENCUMBRANCES

10.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Tenant may

encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage; if so, Tenant shall promptly notify Landlord in writing. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

- A. The amount of the obligation secured by the Mortgage,
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Landlord upon Tenant under the terms and provisions of this Lease so long as such Mortgage is in effect.

10.02 Mortgagee's Rights. Upon receipt of a notice of default or demand in accordance with Section 10.01 above, Mortgagee shall have sixty (60) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within sixty (60) days, to commence performance within such sixty (60) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

No notice of a default by Tenant hereunder given by Landlord shall be effective against a Mortgagee that has provided Landlord the information specified in Section 10.01 of this Lease unless Landlord has given a copy of it to such Mortgagee.

No Mortgagee shall have any personal liability under this Lease unless and until it becomes Tenant under this Lease.

If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.

This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

10.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Lease.

10.04 Estoppel Certificates. Upon request, Landlord shall provide to Tenant, any subtenant or sublessee of Tenant, or Tenant's Mortgagee an estoppel certificate containing the following information: confirmation that Landlord remains owner of the Premises and lessor under this Lease; confirmation that this Lease contains the full agreement between Landlord and Tenant with regard to the Premises; confirmation that, if accurate, Tenant is current in its obligations under this Lease as of a certain date; confirmation that, if accurate to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and confirmation of the Effective Date and the date of expiration of the Term.

ARTICLE XI - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

11.01 Expiration. Except as otherwise provided in this Lease, this Lease shall expire at the end of the Term or any extension thereof.

11.02 Cancellation. Subject to the provisions of Article IX above, the following shall be events of default under this Lease in the event Tenant shall:

- A. be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due ("Monetary Default");
- B. file in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed within thirty (30) days after filing;
- C. make any general assignment for the benefit of creditors;
- D. abandon the Premises for more than one hundred and eighty (180) consecutive days after the Premises are open for business;
- E. be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Tenant, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty (30) day period, Tenant commences and thereafter diligently performs such action as may be reasonably necessary to cure such default;
- F. be adjudged bankrupt in involuntary bankruptcy proceedings;

- G. be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within Thirty (30) days after the appointment of such receiver; or
- H. be in default of the Master Development Agreement beyond any notice and cure period.

In any of the aforesaid events, Tenant may immediately exercise the Option, and Landlord may immediately exercise the Put. If neither Tenant nor Landlord elects to exercise the Option or the Put, respectively, and Tenant fails to cure a default within the cure period specified in this Lease, Landlord may, bring suit for the collection of rent as it becomes due without cancellation or termination of this Lease or Tenant's right to possession.

Failure of Landlord to declare Tenant in default of this Lease for any of the reasons set out shall not operate to bar or destroy the right of Landlord to declare Tenant in default of this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Landlord from Tenant after the service of any notice, after the commencement of any suit, shall affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

11.03 Waiver of Landlord's Lien. Landlord hereby waives any constitutional, statutory or contractual landlord's lien against any property or improvements of Tenant.

11.04 Assignment and Transfer. Tenant shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Landlord, which shall not be unreasonably withheld; provided, however, that Landlord's approval shall not be required in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee or to a Permitted Assignee or a sublease of the Premises to an Affiliate of the Tenant associated with the development and redevelopment of the Premises and the improvements thereon.

As use herein, a "Permitted Assignee" means: (i) an entity created by merger, reorganization or recapitalization of or with Tenant; or (ii) a purchaser of all or substantially all of Tenant's ownership interest or Tenant's assets in the Midland, Texas area, provided Landlord issues its prior written approval (not to be unreasonably conditioned, withheld, or delayed) of said purchaser; or (iii) an Affiliate of Tenant.

"Affiliate" For purposes of this Agreement, affiliate shall mean any entity under common ownership of more than 50% or under common management with Tenant.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

11.05 Subleasing. Tenant shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease. Any such sublease executed after the Effective Date shall be subject to the same conditions, obligations and terms as set forth herein and Tenant shall be responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Tenant shall promptly report to Landlord any sublease of the Premises, or any improvements thereon and, upon request of Landlord, Tenant shall furnish Landlord with a copy of any sublease agreement. In addition, Tenant shall provide to Landlord a list of its subtenants and the subtenants contact information every six months or, if sooner, whenever the identity of any subtenant changes. Landlord acknowledges that Tenant, without the consent of the Landlord, may sublease the Premises to an Affiliate of the Tenant associated with the redevelopment of the Premises and the improvements thereon. Upon request, Landlord shall provide to any subtenant or sublessee of Tenant a reasonable subordination, attornment and non-disturbance agreement regarding this Lease.

ARTICLE XII - CONDEMNATION

12.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute and / or limitation on use, including, but not limited to limitation of use of or access to the Premises by governmental action or restriction. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken or the date the limitation of use or access by the condemning authority is taken.
- B. “Total Taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial Taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant in Tenant’s reasonable judgement;
 - 2. The conduct of Tenant’s business on the Premises would be substantially prevented or impaired in Tenant’s reasonable judgement; or
 - 3. The portion of the Premises not so taken cannot be repaired or reconstructed, taking into consideration the amount of the award available

for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the Rent and after performance of all covenants and conditions required of Tenant under this Lease.

- D. “Partial Taking” means the taking of a fee title that is not either a Total Taking or a Substantial Taking.
- E. “Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to effectuate a Taking of any portion of the Premises or improvements thereon, containing a description or map reasonably defining the extent of the Taking.
- F. “Award” means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. “Date of Taking” means the date that (i) Tenant is required to vacate the Premises; (2) use of the Premises is limited pursuant to a final order of condemnation; or (3) the date of an agreement related to the Taking is entered into.

12.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Upon receipt by Landlord or Tenant of any Notice of Intended Taking, Tenant and Landlord shall have the right to exercise the Option and the Put, respectively. In such event, Tenant shall thereafter have all rights as the owner of the Premises under such condemnation proceeding and shall receive all Awards in connection therewith.

12.03 Rights of Parties During Condemnation Proceeding. In the event neither Tenant nor Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above,

then Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

12.04 Taking of Leasehold. In the event neither Tenant nor Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, then:

(A) Upon a Total Taking: (i) Tenant's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation; and (ii) Tenant may, at its election, exercise the Option in accordance with the terms of Section 9.01 above.

(B) If the Taking is a Substantial Taking under the aforementioned definition, Tenant may, by notice to Landlord within thirty (30) days after Tenant receives the Notice of Intended Taking, elect to treat the Taking as a Total Taking, and Tenant may then likewise exercise the Option in accordance with the terms of Section 9.01 above. If Tenant does not so notify Landlord, the Taking shall be deemed a Partial Taking.

(C) Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

12.05 Total Taking. In the event of a Total Taking, all of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. Unless Tenant or Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, all sums awarded for the Premises, as unencumbered by any Tenant-owned improvements, but subject to the Lease, shall be disbursed to Landlord.

12.06 Partial Taking. Unless Tenant or Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and damages or loss to the Leasehold estate. Landlord shall receive all sums awarded for the Premises, as unencumbered by the Tenant-owned improvements but subject to the Lease.

12.07 Obligations of Tenant Under Partial Taking. Promptly after any such Partial Taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises is leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the term hereof, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect. In no event will Tenant be required to spend funds for restoration or repair in excess of the funds received by Tenant.

12.08 Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the Term, neither the term nor the Rent shall be reduced or affected in any way and Tenant shall be entitled to the entire award.

12.09 Award. Notwithstanding the foregoing, Tenant will be entitled to pursue all claims with respect to a Taking and to receive the entire award arising from the Taking.

If any such Taking is for a period extending beyond the expiration date of the Term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE XIII - GENERAL PROVISIONS

13.01 Master Development Agreement. This Lease is subject to the terms, covenants and conditions contained in the Master Development Agreement. If this Lease conflicts with the provisions of Master Development Agreement, the Master Development Agreement shall control. Notwithstanding anything to the contrary contained herein, the exercise of Tenant's Option or Landlord's Put, as provided herein, shall not abate or terminate Landlord's obligations to pay Tenant the grant payments due under the Master Development Agreement.

13.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

13.03 Notices. All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD:

City Manager
City of Midland
P.O. Box 1152
Midland Texas 79702
Email: tgonzalez@midlandtexas.gov

With Copy to:

City Attorney's Office
City of Midland
300 N. Loraine Street, Suite 320
Midland, Texas 79701
Email: johnemiller@midlandtexas.gov

TENANT:

Midland Downtown Renaissance, LP:
223 West Wall Street Suite 300
Midland, Texas 79702

With Copy to:

Hedloc Investments Co, LP
223 W. Wall Street, Suite 300
Midland, Texas 79701
info@hedlocinv.com

With Copy to:

Moorman Tate, LLP
207 East Main Street
Brenham, Texas 77833
c/o Andrew Hefferly
hefferly@moormantate.com

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

13.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

13.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in Midland County, Texas.

13.06 Nondiscrimination Covenant. Tenant, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. Tenant shall maintain and operate or cause to be maintained and operated such facilities and services in compliance with all requirements imposed pursuant to such state and federal regulations regarding nondiscrimination as said regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Tenant shall use or shall cause to be used the Premises in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Tenant shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Lease, Tenant furnishes goods or services to the public at Tenant's development, Tenant agrees that it shall or shall cause the following:
 - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of Tenant's Development, and
 - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

13.07 Cumulative Rights and Remedies. All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

13.08 Interpretation. Landlord and Tenant agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that

party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

13.09 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

13.10 Paragraph Headings. The captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

13.11 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.12 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators. Tenant shall cause any assignee to execute an agreement whereby the assignee expressly agrees to be bound by all terms and conditions hereof.

13.13 Tax Exempt. Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises during the Term of this Lease. Tenant will provide written proof satisfactory to Landlord that all taxes and governmental charges of any kind as described herein have been paid in full upon request from Landlord. Landlord is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Tenant's use of the property or possession of the Premises.

Tenant in good faith may contest any tax or governmental charge, subject to the provisions in the Master Development Agreement, and provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest, subject to state law, and any appeal therefrom unless, in the opinion of counsel satisfactory to Landlord, such action will not adversely affect any right or interest of Landlord.

13.14 Waiver of Warranty of Suitability. **LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT ACKNOWLEDGES THAT TENANT IS FULLY AND COMPLETELY FAMILIAR WITH THE PREMISES AND TENANT LEASES THE PREMISES "AS IS – WHERE IS" AND LANDLORD DOES**

NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR ITS INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.

13.15 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 6.03 and 7.06.

13.16 Restrictions and Reservations. This Lease is subject to all existing rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Landlord will not amend or impose additional rights-of-way, easements, dedications, restrictions, reservations and other encumbrances affecting the Premises without Tenant's prior consent to be granted or withheld in Tenant's sole discretion.

Landlord reserves for itself and any authorized agent to, at any reasonable time and with forty-eight (48) hour notice (including notice via electronic mail), and will only be conducted in such manner as to not unreasonably interfere with the development or operation of the Premises, associated improvements and/or any parking facilities associated with the Premises, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with municipal, state, federal, and Environmental Laws. Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

13.17 Authorization to Enter into Lease. Each person executing this Lease on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing legal entity, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

13.18 Effective Date/Memorandum. Regardless of the date signed, this Lease shall be effective immediately after execution of the deed which conveys title to the Premises from Tenant to Landlord, as contemplated in the Master Development Agreement. Simultaneously with the full execution and delivery of this Lease, Landlord, acting through its City Manager without the need for City Council approval, and Tenant may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Landlord and Tenant. At a minimum, the memorandum of lease will include notification regarding Tenant's Option to Purchase in Section 9.01 of this Lease. Tenant shall provide to Landlord a copy of any memorandum filed of record in the Real Property records for Midland County, Texas.

/SIGNATURE PAGE AND ACKNOWLEDGEMENTS FOLLOW/

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day
of _____, 20__.

LANDLORD:
CITY OF MIDLAND, TEXAS

Tommy González
City Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on this _____ day of _____, 20__,
by Tommy González as City Manager for the City of Midland, Texas (Landlord).

Notary Public, State of Texas

TENANT:

MIDLAND DOWNTOWN RENAISSANCE, LP

By: Midland Downtown Development, LLC
Its: General Partner

By: W.D. Hord, III
Its: Manager

ACKNOWLEDGMENT

[illegible]

This instrument was acknowledged before me on this ____ day of _____, 20__, by W.D. Hord, III, as Manager of Midland Downtown Development, LLC, a Texas limited liability company, as the General Partner of MIDLAND DOWNTOWN RENAISSANCE, LP, a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

EXHIBIT A
PREMISES

Exhibit C

Site Plan(s)

Exhibit C – Site Plan

The following site plan drawings are in draft form, not final, and are made only for the purposes of illustrating a possible site plan for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these site plan drawings are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

Other than the last page of this Exhibit C, these site plan drawings contemplate placement of the hotel on the MDR Land (as defined in the Agreement), but per the Agreement, the hotel may be placed on the Midland Land (as defined in the Agreement). The last page of this Exhibit C contemplates placement of the hotel on the Midland Land.

Exhibit C — site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

PACKET

25.69

January 23, 2024

Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

PACKET

25.70

January 23, 2024

LEVEL 1

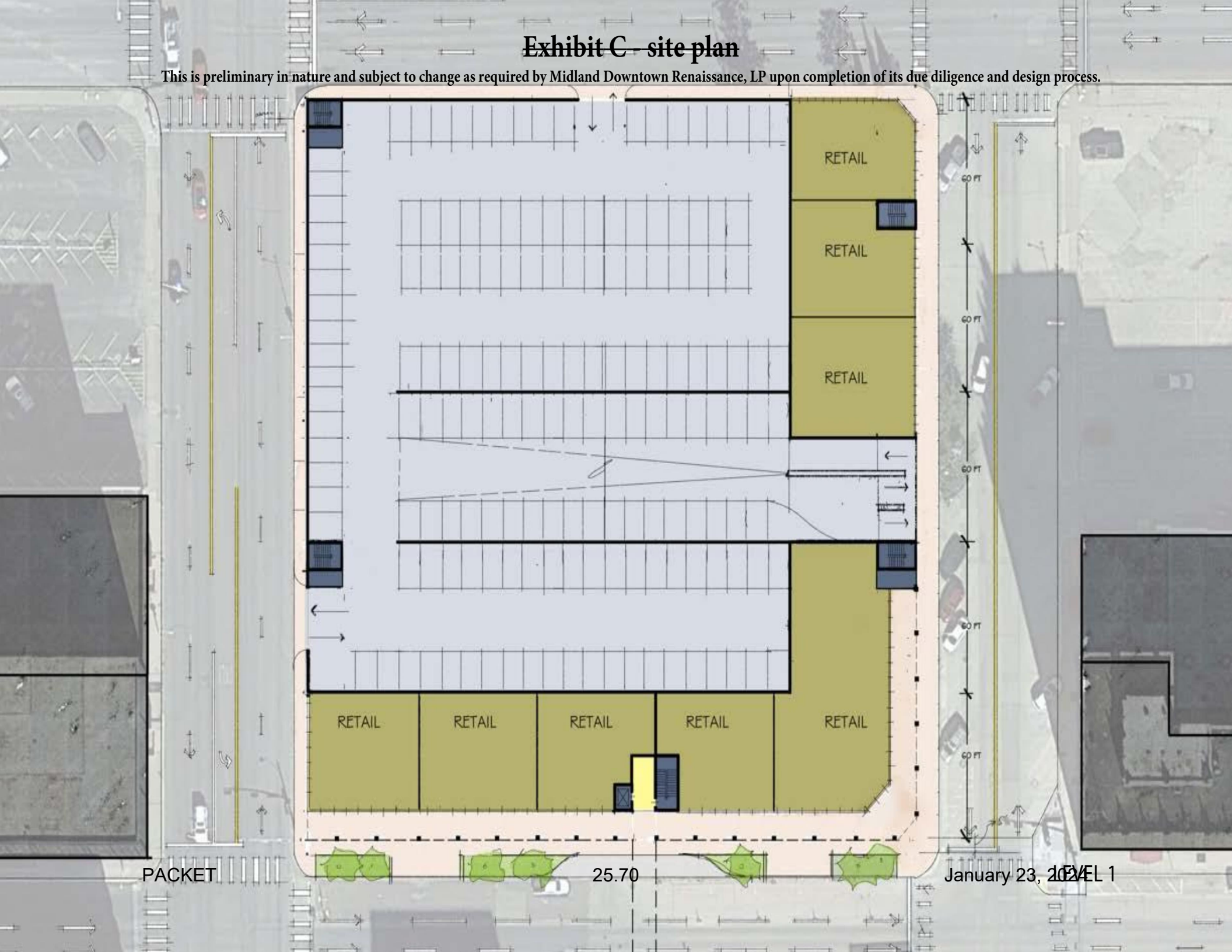
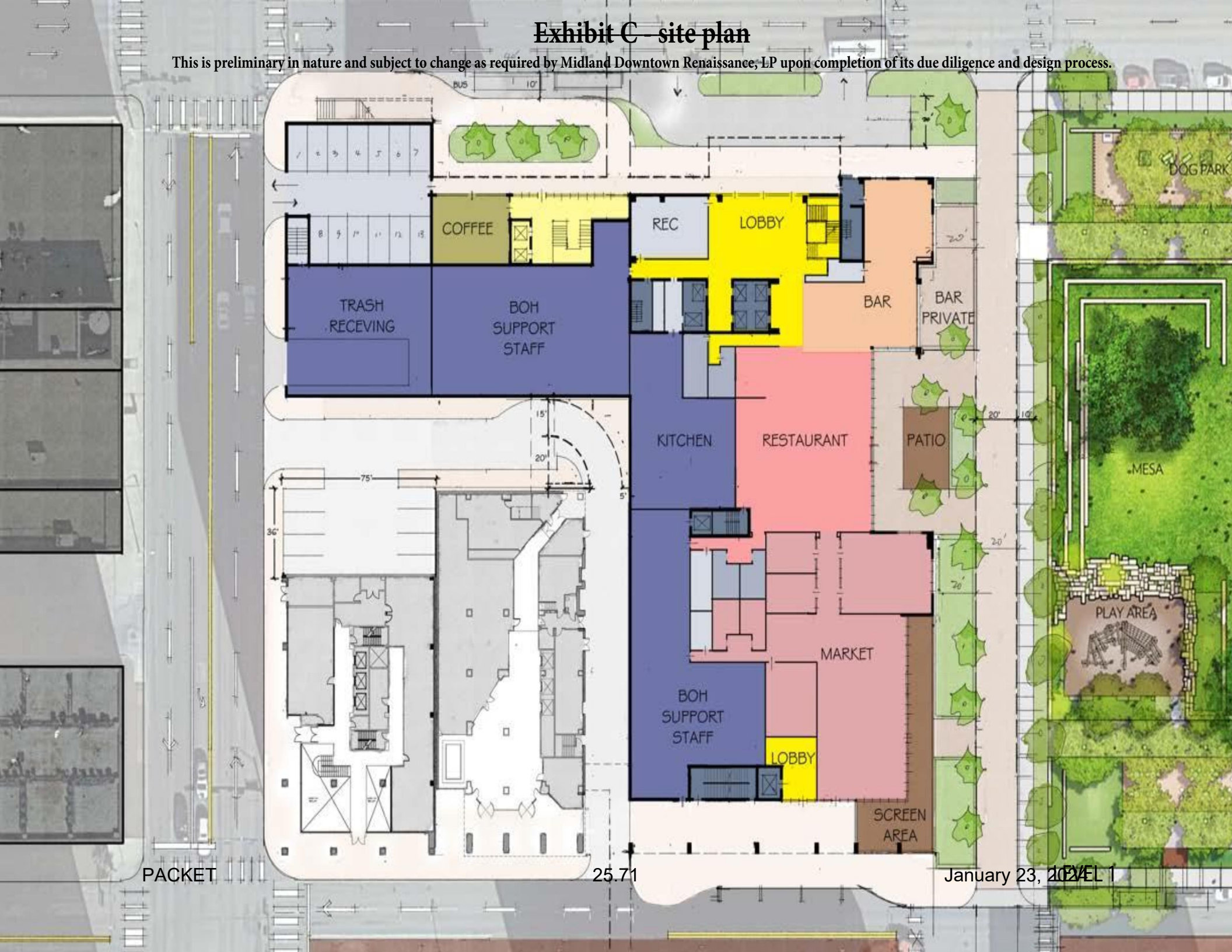


Exhibit C site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



PACKET

25.71

January 23, 2024

LEVEL 1

Exhibit C — site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

PACKET

25.72

January 23, 2024

LEVEL 2

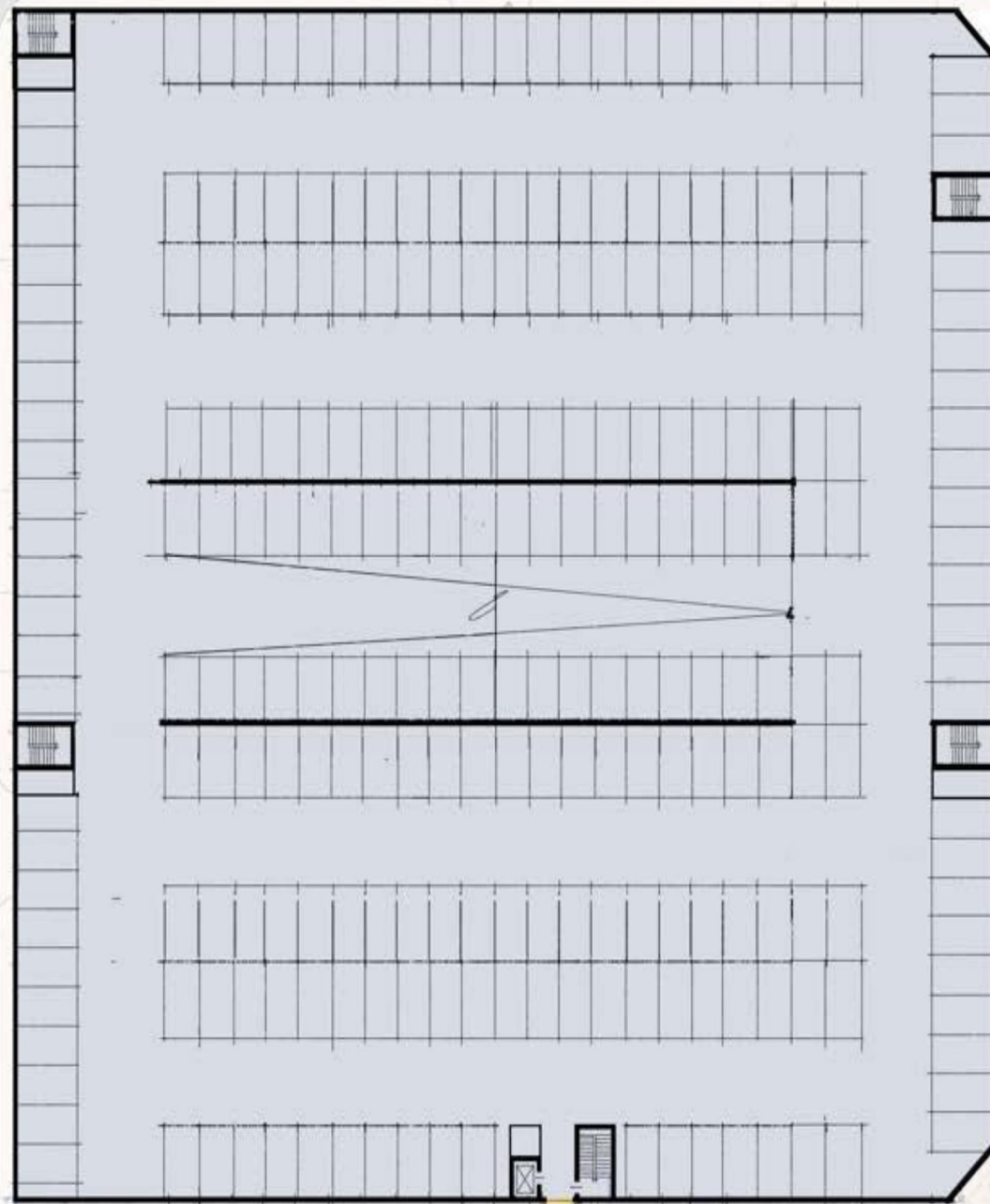


Exhibit C site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

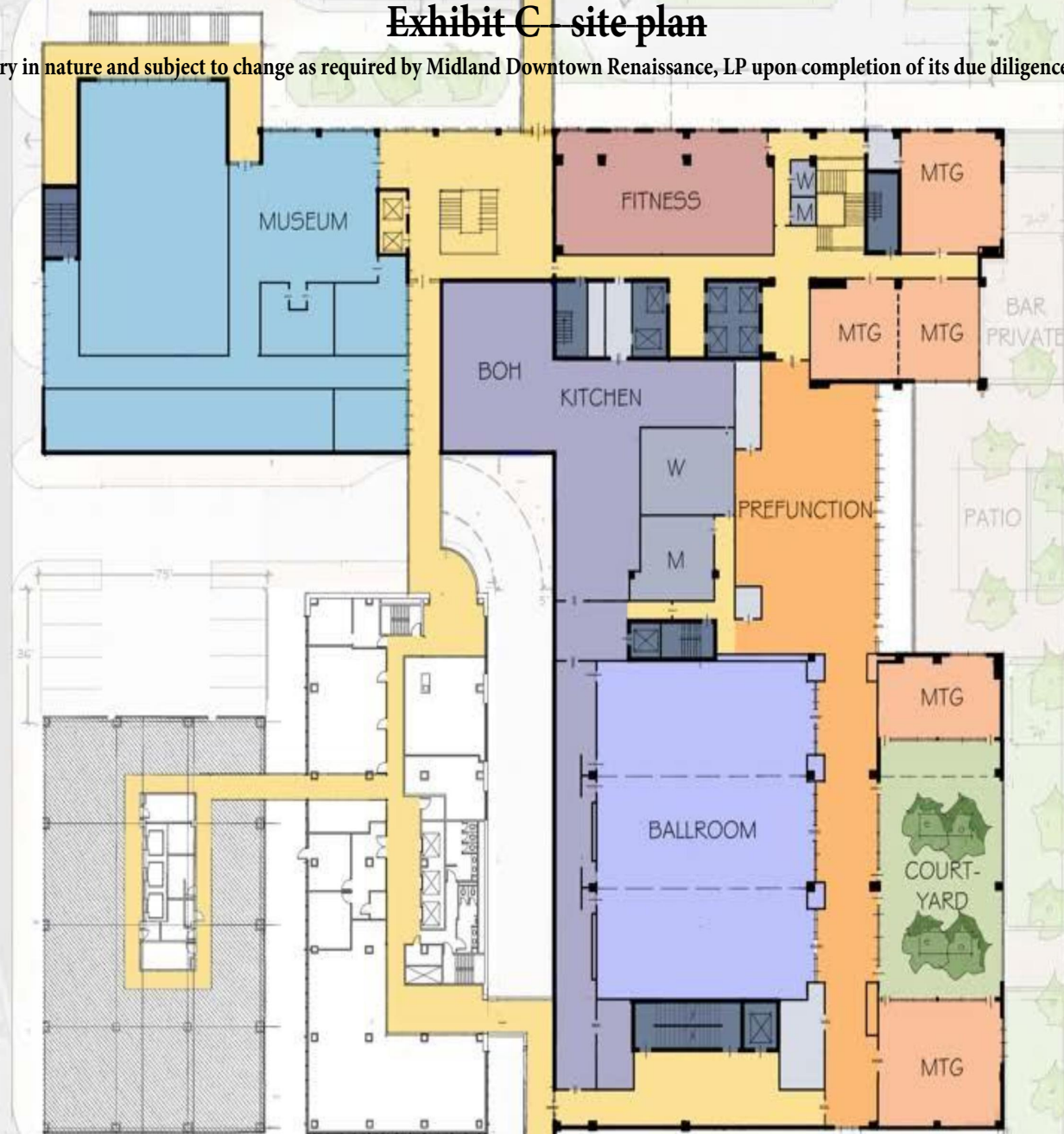


Exhibit C—site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



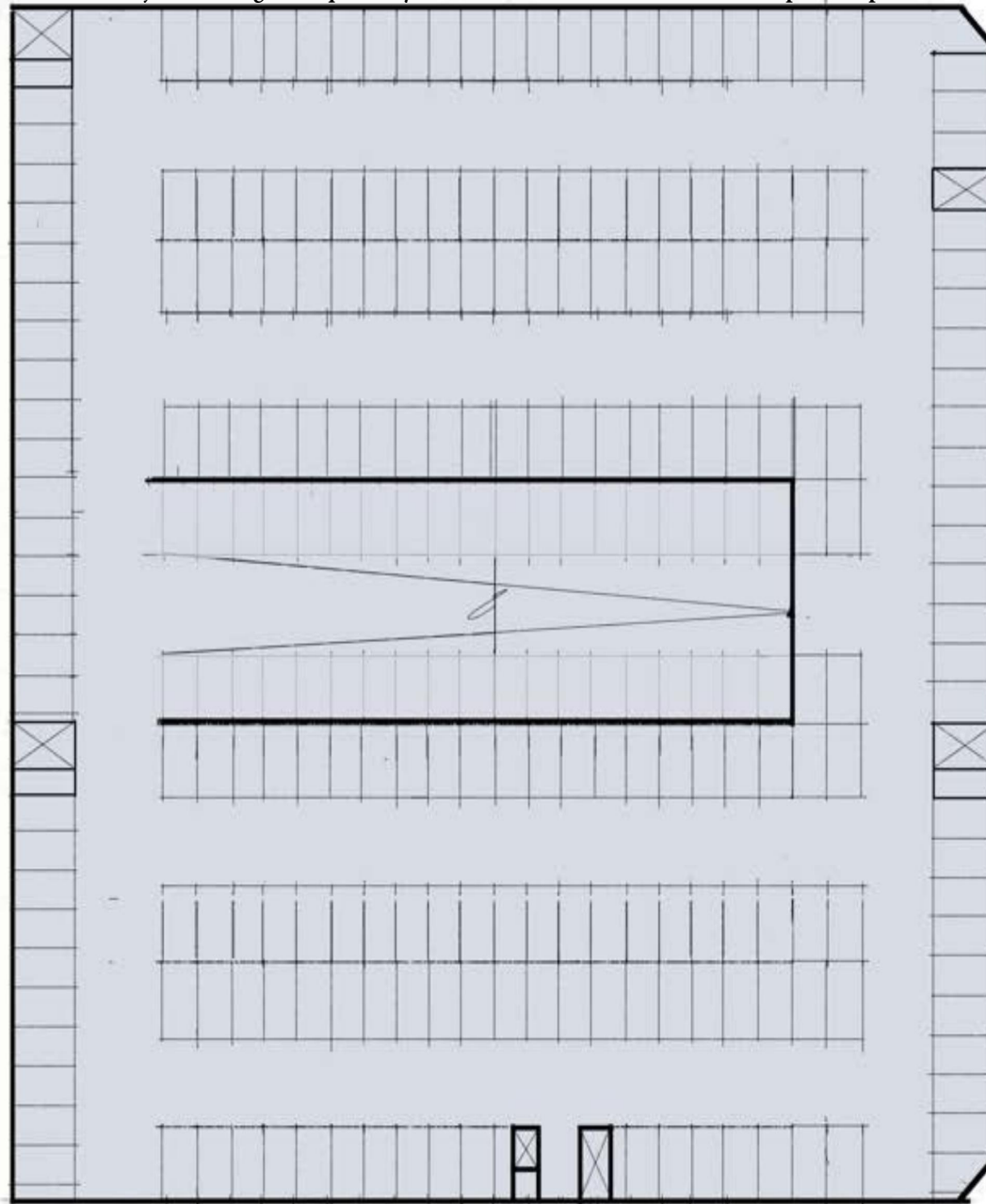
Exhibit C — site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



Exhibit C site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



PACKET

25.76

January 23, 2024
LEVEL 5 GARAGE
ROOFTOP

Exhibit C — site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

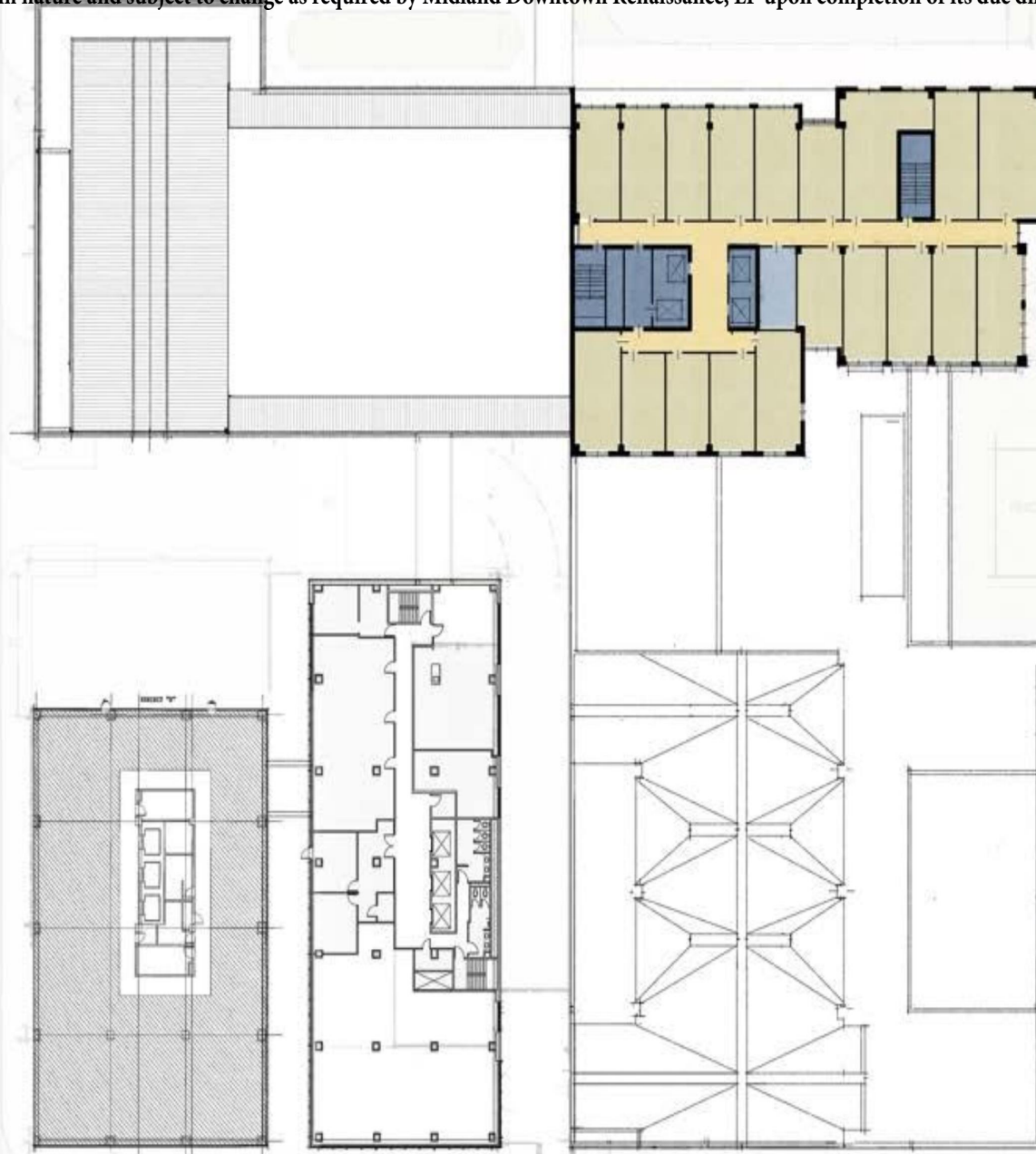


Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process. This image shows all development on the "Midland Land".



Exhibit D

Conceptual Design Documents

Exhibit D – Conceptual Design Documents

The following conceptual design documents are in draft form, not final, and are made only for the purposes of illustrating possible conceptual designs for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these conceptual designs are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

The following pages of Exhibit D are conceptual design documents which illustrate placement of the hotel on the MDR Land (as defined in the Agreement).

Later in Exhibit D – as indicated by page break – are conceptual design documents which illustrate placement of the hotel on the Midland Land (as defined in the Agreement).

Exhibit D—Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



PACKET

25.82

January 23, 2024

WP VISIONS LLC

Exhibit D—Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



PACKET

25.83

January 23, 2024

WVP VISIONS LLC

Exhibit D—Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



The following pages of Exhibit D are conceptual design documents which illustrate placement of the hotel on the Midland Land (as defined in the Agreement).

Exhibit D—Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



Exhibit D—Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



PACKET

25.87

January 23, 2024

WVP VISIONS LLC

Exhibit E

Portions of CITY Rights of Way Subject to Aerial Easements

Exhibit E – Aerial Easements

The following site plan design documents are in draft form, not final, and are made only for the purposes of illustrating possible site plans for an aerial easement for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these site plans are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

Exhibit E – Aerial Easements

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

