Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the City Council of the City of Midland is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 9, 2021 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

Videoconference Information
Please click this URL to join. https://zoom.us/j/91652009649?pwd=SGhEZS9pNkpvU2JQaUhUN2pIem1HQT09
Passcode: 165773

Or join by phone:
Dial(for higher quality, dial a number based on your current location):
US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656
Webinar ID: 916 5200 9649
International numbers available: https://zoom.us/u/acR6XhWCRu

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

OPENING ITEMS

1. Invocation – Pastor Roy Smith, True-Lite Christian Fellowship

2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:

   a. REGULAR CITY COUNCIL MEETING OF JANUARY 26, 2021

4. 2021-019 – RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH CORE & MAIN, LP, FOR THE PURCHASE AND INSTALLATION OF CERTAIN NEPTUNE GATEWAY DATA COLLECTORS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION AT A TOTAL COST OF $593,777.80 (GENERAL

SERVICES)

5. 009-2021 – MOTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE DIRECT CASE RATE PRACTITIONER AGREEMENTS WITH ANESTHESIA MEDICAL GROUP OF PERMIAN BASIN, MIDLAND EMERGENCY MANAGEMENT, PLLC, AND PERMIAN BASIN ANESTHESIA, PLLC, AND A DIRECT CASE RATE FACILITY AGREEMENT WITH MIDLAND MEMORIAL HOSPITAL, AND TO EXECUTE ANY OTHER DOCUMENTS AND TO TAKE ANY OTHER ACTIONS NECESSARY TO GIVE EFFECT TO SAID AGREEMENTS (ADMINISTRATIVE SERVICES)

6. 010-2021 – MOTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY WITH OGM, LLC, REGARDING CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS A 0.322-ACRE TRACT LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (AIRPORTS)

7. 011-2021 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF WEST 191 INDUSTRIAL PARK, SECTION 6, BEING A PLAT OF A 33.95-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 171-FEET EAST OF NORTH FARM-TO-MARKET ROAD 1788, EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)

8. 012-2021 – MOTION AUTHORIZING THE INTENT OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ESTABLISH THE SCHEDULE FOR 2021 CDBG GRANT APPLICATION CYCLE (DEVELOPMENT SERVICES)

9. 2021-020 – RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO PURCHASE AN APPROXIMATE 0.076-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 104A, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BEAL PARKWAY AND THOMASON DRIVE); AUTHORIZING THE INTERIM CITY MANAGER TO OBTAIN AN APPRAISAL, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID REAL PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD A CLOSING; AUTHORIZING THE EMPLOYMENT OF LEGAL COUNSEL; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (ENGINEERING SERVICES)

10. 013-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND PINNACLE MIDSTREAM II LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 20, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)

11. 2021-021 – RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT WITH CHAMBERS TRACTOR SERVICE OF MIDLAND, TEXAS, FOR

THE DEMOLITION OF A STRUCTURE LOCATED ON LOT 3, BLOCK 2, SOLOMON ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING PAYMENT (GENERAL SERVICES)

SECOND READINGS

12. 10145 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 11, CORRECTION PLAT OF WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WINDHAVEN DRIVE), 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

13. 10146 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 56A, BELMONT ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 360 FEET EAST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

14. 10147 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 316-SQUARE FOOT PORTION OF LOT 2E, BLOCK 4, CORPORATE PLAZA, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 366 FEET EAST OF NORTH BIG SPRING STREET AND APPROXIMATELY 876 FEET NORTH OF CORPORATE DRIVE), WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN CONNECTION WITH A FOOD AND BEVERAGE SALES STORE FOR OFF-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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

15. 10148 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF

MIDLAND TO REZONE A 0.08-ACRE TRACT OF LAND OUT OF TRACT 3, MIDKIFF HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED APPROXIMATELY 160 FEET WEST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 250 FEET SOUTH OF ANDREWS HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

16. 10149 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.58-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

PUBLIC HEARINGS

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

17. 014-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO DIAMONDBACK E&P LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: BILLINGS UNIT 807WB AND MISSOULA UNIT 806WA; SAID WELLS BEING GENERALLY LOCATED BETWEEN 409 FEET AND 410 FEET NORTH OF GREEN TREE BOULEVARD EXTENSION AND BETWEEN 2,022 FEET AND 2,042 FEET WEST OF NORTH MIDKIFF ROAD EXTENSION (DEVELOPMENT SERVICES)

18. 10150 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 4, REPLAT OF WINDWOOD PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND ELM AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA AND A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LR, LOCAL RETAIL DISTRICT TO MF-16, MULTIPLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

19. 10151 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY

AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

MISCELLANEOUS

20. 015-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH MT223, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS AN APPROXIMATE 2,140-SQUARE FOOT PORTION OF SOUTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 65, AND CERTAIN OTHER NEARBY PORTIONS OF SOUTH COLORADO STREET, SOUTH LORAINE STREET, WEST WALL STREET, AND WEST MISSOURI AVENUE RIGHTS-OF-WAY, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (ENGINEERING SERVICES)

21. 016-2021 – MOTION AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO ESTABLISH A LANDLORD RENTAL ASSISTANCE PROGRAM (THE "PROGRAM") FOR THE GRANTING OF CARES ACT FUNDS OR OTHER SUCH GRANT FUNDS TO RESIDENTS OF MIDLAND WHO OWN AND OPERATE SINGLE-FAMILY OR TWO-FAMILY (DUPLEX) RENTAL PROPERTIES; PROVIDING THAT THE OWNER OF AN APARTMENT COMPLEX OR OTHER SIMILAR MULTI-FAMILY DEVELOPMENT SHALL NOT BE ELIGIBLE TO PARTICIPATE IN THE PROGRAM; AND PROVIDING FOR THE ESTABLISHMENT OF CERTAIN PROGRAM EVICTION MORATORIUM REQUIREMENTS (CITY ATTORNEY)

EXECUTIVE SESSION

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

    a. Section 551.071, Consultation with the City Attorney

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

Respectfully Submitted,

Robert Patrick
Interim 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 26, 2021

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., January 26, 2021.

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

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

OPENING ITEMS

1. Invocation – Minister Josh Gatewood, Stonegate Fellowship

2. Pledge of Allegiance

PRESENTATIONS

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

   a. Presentation of 2020 Management Awards

   Council Member Dufford presented the following Management Awards: Becky Smith (Service delivery); Whitney Criag & Kiara Taylor (Organizational efficiency); Carlos Perez & Nathan Hernandez (Innovation); Laura Fernandez (Monetary Savings); Eddie Chavez & Priscilla Fernandez (Innovation); Facilities Services Division (Service Delivery); Purchasing Division (Organizational efficiency); Johnny Mancha (Monetary savings); Jesse Zamora (Monetary savings); Crystal Garcia (Organizational efficiency); Sara Gray (Organizational efficiency); Christy Fosse (Organizational efficiency); Midland Municipal Court (Innovation, Monetary savings, Organizational efficiency, Service delivery)

CONSENT AGENDA

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Lori Blong moved to approve the Consent Agenda items 4-11, excluding items 6, 7, 9, 10; seconded by Jack Ladd.

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

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR CITY COUNCIL MEETING OF JANUARY 12, 2021

5. 2021-013 – RESOLUTION APPROVING THE PURCHASE OF ADDITIONAL STORAGE CAPACITY FOR DATA CENTER BACKUP HARDWARE AND MAINTENANCE FOR THE PRIMARY DATA CENTER FOR THE COMMUNICATIONS AND INFORMATION SYSTEMS DEPARTMENT FROM UNIQUE DIGITAL TECHNOLOGY, LLC, THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF $264,000.00 (GENERAL SERVICES)

8. 008-2021 – MOTION APPROVING PLANS AND SPECIFICATIONS FOR THE GATE #6 ELEVATED WALKWAY INSTALLATION PROJECT (700244-505) AT MIDLAND INTERNATIONAL AIR & SPACE PORT, SAID PLANS AND SPECIFICATIONS BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE NUMBER AND DATE OF THIS MOTION, AND AUTHORIZING THE INTERIM CITY MANAGER OR THE INTERIM CITY MANAGER'S DESIGNEE TO ADVERTISE FOR COMPETITIVE BIDS FOR SAID PROJECT PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN SAID PLANS AND SPECIFICATIONS (AIRPORTS)

11. 2021-017 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS (POLICE)

The following items were pulled from consent agenda and considered individually.

6. 2021-014 – RESOLUTION APPROVING THE PURCHASE OF TWO (2) AMBULANCES FROM STERLING MCCALL FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF $800,000.00 (GENERAL SERVICES)

Council Member Trost asked why there was not more local participation. Fire Chief Blumenauer reported that only certain manufacturers sell a chasis that can be used for an ambulance and there are no local manufacturers.

Lori Blong moved to approve Resolution No. 2021-014; seconded by Jack Ladd.

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

7. 007-2021 – MOTION AUTHORIZING THE INTERIM CITY MANAGER OR THE INTERIM CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST OF QUALIFICATIONS FOR PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES ASSOCIATED WITH FUTURE CAPITAL IMPROVEMENT PLAN (CIP) PROJECTS AT MIDLAND INTERNATIONAL AIR & SPACE PORT AND MIDLAND AIRPARK AND TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (AIRPORTS)

Council Member Ladd reported he goes to MPO about once a month and sees that the CAF facility is overgrown and asked about the plans for that building. Airports Director Justine Ruff reported they plan to make it into a FBO, fixed based operator, which is like a gas station for airplanes. They have hired Parkhill to put together a RFP that will come out later this spring. As new projects are developed, the agreemeent with Parkhill will be amended.

Jack Ladd moved to approve Motion No. 007-2021; seconded by John Norman.

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

9. 2021-015 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH FLAGSHIP AIRPORT SERVICES, INC., OF SOUTHLAKE, TEXAS, FOR JANITORIAL SERVICES AT MIDLAND INTERNATIONAL AIR AND SPACE PORT FOR A TOTAL COST OF $6,352,258.00 (AIRPORTS)

Council Member Ladd understands that janitorial will get more expensive during a pandemic, but asked if it is reasonable for them to double. Deputy Director of Airports, Aaron Easton reported that due to the pandemic the last vendor grossly underestimated the cost. All of the estimates were in line with each other. He confirmed that the only local vendor had an incomplete bid packet that was missing bonds.

Council Member Robnett asked if there could be any overlap between other City facilities and the airport. Airports Director Justine Ruff reported contracts have to be separate for funding reasons.

Council Member Ladd asked why we went with a five year contract instead of three noting the pandemic may be over by then and prices could come down. Airports Director Justine Ruff reported they usually do a five year contract because of the amount of work that goes into putting this together. She also noted that there were additional requests added

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because their building is getting older, such as requiring the contractor to have specific equipment and to keep it running.

Jack Ladd moved to approve Resolution No. 2021-015; seconded by Michael Trost.

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

10. 2021-016 – RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE PERMIAN BASIN BICYCLE ASSOCIATION REGARDING A CERTAIN 135.285-ACRE TRACT OF LAND OUT OF TRACTS 11 AND 12, SECTION 44, BLOCK 38, TOWNSHIP-1-SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (COMMUNITY SERVICES)

Council Member Robnett wanted to ensure that the City retains reasonable access and use.

Stephen Mitchell shared a brief slide show sharing what features will look like that have already been built at other locations. They will have bike races there and the area is good for the entire community in general for walking and biking. The Permian Basin Bicycle Association (PBBA) and the West Texas Trail Alliance (WTTA) will fundraise and build the trails with private money. When asked if he was okay with the City retaining access, Mr. Mitchell reported they were. When the City needs access to an area, they will just reroute the trails around the work that needs to be performed. He concluded that if this is approved, a professional trail builder will come out on March 1 and they should be ready for use by June.

Council Member Norman asked if there is a fee to use the trails. Stephen Mitchell noted that an individual membership is $30 per year and a family membership is $35 a year. The fees are used to cover the cost of insurance and to maintain the trails. He added that the fee will also give access to the Odessa trail.

Council Member Dufford asked why if this is City-owned facility, the applicant needs to carry insurance. Interim City Manager Robert Patrick reported the insurance is for their liability. They are also required to name the City of Midland as additional insured.

Council Member Ladd thanked the many people who worked on this project noting that he and Council Member Blong have been working on this since they were elected. He asked everyone to please donate generously to this project. Council Member Blong echoed Council Member Ladd's comments noting that contributions would benefit the City.

Spencer Robnett moved to approve Resolution No. 2021-016 with the amendment for the City to reserve the right to enter into agreements with third parties so long as they do not interfere with PBBA activities; seconded by Jack Ladd.

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

DRAFT

NAY: None
ABSTAIN: None
ABSENT: None

SECOND READINGS

12. 10139 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 42.30-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T& P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF CARRIAGE ROAD, APPROXIMATELY 1,740 FEET SOUTH OF OCCIDENTAL PARKWAY); 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 12, 2021)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10139.

Dustin Eggleston, Lubbock, reported he was available to answer questions.

Lori Blong moved to approve the second and final reading of Ordinance No. 10139; seconded by Michael Trost.

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

13. 10140 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 14 AND 15, BLOCK 1, WADLEY HEIGHTS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF MOGFORD STREET AND WEST WADLEY 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 12, 2021)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10140.

Scott Dufford moved to approve the second and final reading of Ordinance No. 10140; seconded by Lori Blong.

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

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ABSTAIN: None
ABSENT: None

14. 10141 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 15-ACRE TRACT OF LAND OUT OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM BP, I-20 BUSINESS PARK DISTRICT, IN PART, RR, REGIONAL RETAIL DISTRICT, IN PART, AND LI, LIGHT INDUSTRIAL DISTRICT, IN PART, TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF LOTE BUSH DRIVE AND WEST INTERSTATE 20); 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 12, 2021)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10141.

Lori Blong moved to approve the second and final reading of Ordinance No. 10141; seconded by Spencer Robnett.

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

15. 10142 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,295-SQUARE FOOT PORTION OF LOT 3, LESS THE EAST 2.14 ACRES, BLOCK 15A, OXFORD HEIGHTS, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 800 FEET EAST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 12, 2021)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10142.

Angelina Govan, 4200 W. Illinois, reported they wanted their hours to go until midnight each night with the standard hours, seven days a week.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10142 with the amendment to change alcohol service hours from 11:00 a.m. to midnight seven days a week; seconded by Lori Blong.

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

16. 10144 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4, BLOCK 194, SOUTHERN ADDITION, AND LOT 3, BLOCK 2, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-2, SINGLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH JEFFERSON STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 12, 2021)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10144.

Lori Blong moved to approve the second and final reading of Ordinance No. 10144; seconded by John Norman.

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

PUBLIC HEARINGS

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

17. 10145 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 11, CORRECTION PLAT OF WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WINDHAVEN DRIVE), 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 (DEVELOPMENT SERVICES)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10145.

Mayor Payton opened the public hearing at 10:56 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

DRAFT

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10145; seconded by Jack Ladd.

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

18. 10146 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 56A, BELMONT ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 360 FEET EAST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10146.

Mayor Payton 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. 10146; seconded by Lori Blong.

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

19. 10147 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 316-SQUARE FOOT PORTION OF LOT 2E, BLOCK 4, CORPORATE PLAZA, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 366 FEET EAST OF NORTH BIG SPRING STREET AND APPROXIMATELY 876 FEET NORTH OF CORPORATE DRIVE), WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN CONNECTION WITH A FOOD AND BEVERAGE SALES STORE FOR OFF-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 (DEVELOPMENT SERVICES)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10147.

DRAFT

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

Catherine Chamblee, Austin, representing the applicant, reported this is for a beer and wine permit for on-premises consumption. Her and Luisa Alvorado were available for questions.

There being no one else wishing to speak, the public hearing was closed at 11:00 a.m.

Michael Trost moved to approve the first of two readings of Ordinance No. 10147; seconded by Jack Ladd.

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

20. 10148 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.08-ACRE TRACT OF LAND OUT OF TRACT 3, MIDKIFF HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED APPROXIMATELY 160 FEET WEST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 250 FEET SOUTH OF ANDREWS HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10148.

Mayor Payton opened the public hearing at 11:01 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Lori Blong moved to approve the first of two readings of Ordinance No. 10148; seconded by Spencer Robnett.

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

21. 10149 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.58-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND

DRAFT

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

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10149.

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

Jack Ladd moved to approve the first of two readings of Ordinance No. 10149; seconded by Lori Blong.

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

MISCELLANEOUS

22. 2021-018 – RESOLUTION AUTHORIZING CERTAIN MIDLAND DEVELOPMENT CORPORATION CONTRACTS (CITY MANAGER)

No action was taken on this item.

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

Spencer Robnett moved to appoint Robert Gray to the Zoning Board of Adjustments; seconded by Lori Blong.

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

Staff was directed to advertise the vacant positions.

EXECUTIVE SESSION

Mayor Payton recessed the meeting at 11:04 a.m. to go to Executive Session.

24. 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.

DRAFT

The Council met in Executive Session until 12:10 p.m. Mayor Payton reconvened the meeting in Regular Session at 12:11 p.m. with all Council Members present. No further actions were taken.

All the business at hand having been completed, the meeting adjourned at 12:11 p.m.

PASSED AND APPROVED February 9, 2021.

_____

Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 4

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH CORE & MAIN, LP, FOR THE PURCHASE AND INSTALLATION OF CERTAIN NEPTUNE GATEWAY DATA COLLECTORS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION AT A TOTAL COST OF $593,777.80 (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a contract for the sole source purchase and installation of Neptune Gateway water meter data collectors to Core & Main LP for a cost of $593,777.80.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY21 Water and Sewer Operating Budget

Discussion:

The Customer Service Division of the Finance Department is using automatic read water meters utilizing Neptune water meters and associated parts. Core & Main LP is the sole authorized distributor for the Neptune Technology Group in the state of Texas. 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 due to “patents”, copyrights, secret processes, or natural monopolies. Staff recommends awarding a sole source contract for purchase and installation of Neptune Gateway water meter data collectors to Core & Main LP for a cost not to exceed $593,777.80. Please see the attached memo from Tony Goyang, Customer Service Manager, for additional information.

Therefore, please consider a resolution awarding a sole source contract for purchase and installation of Neptune Gateway water meter data collectors to Core & Main LP of El Paso, Texas for a cost not to exceed $593,777.80.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Service Director, Erika Martinez, Purchasing Manager

FROM: Tony Goyang, Customer Service Manager

SUBJECT: Consider a Resolution approving the purchase and installation of Gateway Collectors from Core & Main, Contractor for Neptune AMI meters and other Neptune parts.

DATE: January 27, 2021

The Customer Service Division is requesting approval of a resolution to purchase additional AMI Gateway Collectors from a sole source agreement for Neptune products from Core & Main for a Total Amount of $593,777.80

This agreement will run from February 10 to September 30, 2021. This will allow us to complete the installation of AMI Collectors that will transmit direct meter reads throughout City to the billing system.

The Customer Service Division continues its plan to convert all manual read to a more efficient and accurate read.

Switching to an Advance Metering Infrastructure (AMI) for the City of Midland will provide the water customers the ability to monitor their water usage more frequently to determine any possible leaks within the billing cycles.

This agreement is budgeted for 2021 Fiscal Year and will be paid from the Water and Sewer Fund.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH CORE & MAIN, LP, FOR THE PURCHASE AND INSTALLATION OF CERTAIN NEPTUNE GATEWAY DATA COLLECTORS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION AT A TOTAL COST OF $593,777.80

WHEREAS, the City of Midland's Customer Service Division of the Finance Department is establishing an automatic meter interface system that requires the use of certain Neptune Gateway data collectors and associated parts; and

WHEREAS, Core & Main, LP, is the sole authorized distributor for said Neptune Gateway data collectors in Texas; and

WHEREAS, Core & Main, LP, has agreed to provide the City of Midland with said Neptune Gateway data collectors and associated parts for its automatic meter interface system for a total cost of $593,777.80; and

WHEREAS, said Neptune Gateway data collectors and associated parts are proprietary in nature and are available only through Core & Main, LP; and

WHEREAS, the City Council finds the price proposed for the purchase and installation of said Neptune Gateway data collectors and associated parts 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 the purchase and installation of said Neptune Gateway data collectors and associated parts;

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

SECTION ONE. That the Interim 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 Core & Main, LP, for the purchase and installation of certain Neptune Gateway data collectors and associated parts for the Customer Service Division of

the Finance Department at a total cost of $593,777.80. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Core & Main, LP, in accordance with the terms of the above-referenced contract, from funds available in the Water Fund upon receipt of proper invoices or statements approved by the City Manager's 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., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Mark Mason, Finance Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 21000657

THIS CONTRACT, effective the 10th day of February, 2021, by and between the City of Midland, hereinafter referred to as "City", and Core & Main LP, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: $ 593,777.80 DOLLARS

2. **Scope of Work:** Company shall perform all work described for labor, material, equipment and supervision necessary for the purchase and installation of Gateway water meter data collectors in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B.....Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of $50,000 and more
EXHIBIT D..... Wage Scale

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

4. **City's Representative:** City's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. City's representative will not be responsible for Company's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

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

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

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

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

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

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR**

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.1. **INTENTIONALLY OMITTED.**

8.2. **COMPANY AGREES THAT, TO THE EXTENT COMPANY HAS BEEN PAID FOR ITS WORK, 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 NEGLIGENT ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 180 calendar days after release to proceed.

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by Company, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change

Orders, the City may thereafter issue payment to Company in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by Company. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

16.1. The City may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Company and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount. Payment will be made within 30 days of the date of Company's invoice.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between Company and the City, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." Company agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Company and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

17.1. In the event Company shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then Company and Company's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the City $500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that Company shall be in default after the time stipulated in the contract for completing the work. Further, the City shall have the right to cancel this contract for such delay. In the event the City cancels this contract pursuant to the terms of this section, the City shall pay to Company only those monies deemed appropriate by the City, in its sole discretion, to compensate Company for any work actually performed, less any liquidated damages Company owes the City.

17.2. The said amount is fixed and agreed upon by and between Company and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

17.3. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that Company shall not be charged with liquidated damages or any excess cost when the City determines, in its sole discretion, that Company is without fault and Company's reasons for the time extension are acceptable to the City. Provided, further, that Company shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

a. To any preference, priority or allocation order duly issued by the Government;

b. To unforeseeable cause beyond the control and without the fault or negligence of Company, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

17.4. Provided, further, that Company shall, within ten (10) days from the beginning of such delay, unless the City shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Company within a reasonable time of its decision in the matter.

17.5. **COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY**

SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

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

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

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

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

COUNSEL PRIOR TO ITS EXECUTION.

20. **Governmental Immunity:** By executing this contract City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

The Business Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name City as an additional insured and waive subrogation in favor of City.

The Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of City.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of City. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name City as an additional insured on a claims occurred basis. City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that

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

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

Company certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Company shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Company.

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

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

24. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

25. **Independent Contractor:** It is expressly understood and agreed that Company shall perform all

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

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

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

Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Contract are reasonable.

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

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

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

30. To the extent that Tex. Gov't Code section 2270.002 applies to this Contract, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Contract. If Tex. Gov't Code section 2270.002 does not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

31. **Records Retention and Production of Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Contract that is in the custody or possession of Company on request of City, and (3) on completion of the Contract, either (i) provide at no cost to City all contracting information related to the Contract that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

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

33. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of

this Contract and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY: CORE & MAIN LP

By: _____

Name:_____

Title:_____

STATE OF_____§

§

COUNTY OF_____§

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

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

_____
Notary Public, State of Texas

EXHIBIT "A"

Bid Proposal for Copy of Copy of Midland Gateway Install II

CUSTOMER

CITY OF MIDLAND
1606 ORCHARD
MIDLAND, TX 79701
Contact: Tony Goyang
tgoyang@midlandtexas.gov

Job
Copy of Copy of Midland Gateway Install II
Bid Date: 01/08/2021
Bid #: 1632717

CONTACT

Sales Representative
Arnold Osuna
(M) 915-449-0418
(T) 915-590-6922
(F) 915-590-7034
Arnold.Osuna@coreandmain.com

Core & Main
930 Pendale Rd
El Paso, TX 79907
(T) 915-590-6922

NOTES

A Mobilization Fee will apply in case all proposed gateways are not installed on first deployment.
Pricing does not include any permit required by City
Written permission to install collectors on proposed sites must be obtained before start of project

Bid Proposal for Copy of Copy of Midland Gateway Install II

CITY OF MIDLAND
Bid Date: 01/08/2021
Core & Main 1632717

Core & Main
930 Pendale Rd
El Paso, TX 79907
Phone: 915-590-6922
Fax: 915-590-7034

Seq#	Qty	Description	Units	Price	Ext Price
10		**MIDLAND R900V4 GATEWAY**			
20		**INSTALLATION AT 20 CUSTOMER**			
30		**LOCATIONS**			
50	20	TOWER SYSTEMS TOWER INSTALL	EA	19,188.89	383,777.80
70		**INSTALL NEPTUNE R900V4**			
80		**GATEWAYS INCLUDING ANTENNA,**			
90		**UPS', COAX, CONNECTORS,**			
100		**AND SOLAR SYSTEMS**			
110		**ON A COMBINATION OF 5 C&M**			
120		**AND 13 CUSTOMER PROVIDED**			
130		**ASSETS. SEE APPENDIX A**			
140		**FOR A SITE LIST**			
160		**R900V4 GATEWAYS**			
170		**INCLUDING ANTENNA, UPS',**			
180		**COAX, CONNECTORS**			
190		**AND SOLAR SYSTEM**			
210	20	NEPTUNE 13458-000 GATEWAY V4 CELLULAR (CDMA/GPRS)	EA	10,500.00	210,000.00
				Sub Total	**593,777.80**
				Tax	0.00
				Total	**593,777.80**

Branch Terms:

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES UPON THIRTY (30) CALENDAR DAYS' NOTICE TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: https://coreandmain.com/TandC/

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____day of_____, 20___.

_____	_____
Principal	Surety
By_____	By _____
Address_____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____day of_____, 20___.

_____	_____
Principal	Surety
By_____	By _____
Address_____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

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

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

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

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)……..	$ 13.55	
ELECTRICIAN.....	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	$ 12.36	

Structures.....$ 13.52

LABORER
- Asphalt Raker.....$ 12.28
- Flagger.....$ 9.30
- Laborer, Common.....$ 10.30
- Laborer, Utility.....$ 11.80
- Work Zone Barricade Servicer.....$ 10.30

POWER EQUIPMENT OPERATOR:
- Asphalt Distributer.....$ 14.87
- Asphalt Paving Machine.....$ 13.40
- Broom and Sweeper.....$ 11.21
- Crane, Lattice Boom 80 Tons or Less.....$ 16.82
- Crawler Tractor Operator……...$ 13.96
- Excavator, 50,000 lbs or less.....$ 13.46
- Front End Loader Operator, Over 3 CY.....$ 12.77
- Front End Loader, 3CY or less.....$ 12.28
- Loader/Backhoe.....$ 14.18
- Mechanic.....$ 20.14
- Milling Machine.....$ 15.54
- Motor Grader, Rough.....$ 16.15
- Motor Grader, Fine.....$ 17.49
- Pavement Marking Machine…….....$ 16.42
- Reclaimer/Pulverizer…….....$ 12.85
- Roller, Asphalt.....$ 10.95
- Roller, Other.....$ 10.36
- Scraper.....$ 10.61
- Spreader Box.....$ 12.60

Servicer.....$ 13.98

Steel Worker (Reinforcing).....$ 13.50

TRUCK DRIVER
- Lowboy-Float.....$ 14.46
- Single Axle.....$ 12.74
- Single or Tandem Axle Dump……$ 11.33
- Tandem Axle Tractor with Semi.....$ 12.49

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

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

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

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

NEPTUNE
TECHNOLOGY GROUP

January 20, 2021

Tony Goyang
City of Midland
Customer Service Manager

Tony,

I am writing this letter to confirm that Core and Main is the sole authorized distributor for Neptune Technology Group Products for the City of Midland and the entire State of Texas.

Core and Main handles our full line of Neptune Meters, Radio Frequency Meter Reading Systems, and parts. Their local sales person for the City of Midland is Arnold Osuna and he can be reached at (915) 449-0418. Core and Main also has a Meter and System Specialist on board that covers the Permian Basin area and his name is Ray Richardson and he can be reached at (505) 400-6464.

If you have any question or need anything else please give me a call at (281) 794-3133. We appreciate your business.

Sincerely,

Charlie Trimble
Senior Territory Manager

Bid Proposal for Copy of Copy of Midland Gateway Install II

CUSTOMER

CITY OF MIDLAND
1606 ORCHARD
MIDLAND, TX 79701
Contact: Tony Goyang
tgoyang@midlandtexas.gov

Job
Copy of Copy of Midland Gateway Install II
Bid Date: 01/08/2021
Bid #: 1632717

CONTACT

Sales Representative
Arnold Osuna
(M) 915-449-0418
(T) 915-590-6922
(F) 915-590-7034
Arnold.Osuna@coreandmain.com

Core & Main
930 Pendale Rd
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NOTES

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CITY OF MIDLAND
Bid Date: 01/08/2021
Core & Main 1632717

Core & Main
930 Pendale Rd
El Paso, TX 79907
Phone: 915-590-6922
Fax: 915-590-7034

Seq#	Qty	Description	Units	Price	Ext Price
10		**MIDLAND R900V4 GATEWAY**			
20		**INSTALLATION AT 20 CUSTOMER**			
30		**LOCATIONS**			
50	20	TOWER SYSTEMS TOWER INSTALL	EA	19,188.89	383,777.80
70		**INSTALL NEPTUNE R900V4**			
80		**GATEWAYS INCLUDING ANTENNA,**			
90		**UPS', COAX, CONNECTORS,**			
100		**AND SOLAR SYSTEMS**			
110		**ON A COMBINATION OF 5 C&M**			
120		**AND 13 CUSTOMER PROVIDED**			
130		**ASSETS. SEE APPENDIX A**			
140		**FOR A SITE LIST**			
160		**R900V4 GATEWAYS**			
170		**INCLUDING ANTENNA, UPS',**			
180		**COAX, CONNECTORS**			
190		**AND SOLAR SYSTEM**			
210	20	NEPTUNE 13458-000 GATEWAY V4 CELLULAR (CDMA/GPRS)	EA	10,500.00	210,000.00
				Sub Total	**593,777.80**
				Tax	0.00
				Total	**593,777.80**

Branch Terms:

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES UPON THIRTY (30) CALENDAR DAYS' NOTICE TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: https://coreandmain.com/TandC/

THE CITY OF MIDLAND

CONTRACT

Contract No. 21000657

THIS CONTRACT, effective the 10th day of February, 2021, by and between the City of Midland, hereinafter referred to as "City", and Core & Main LP, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: $ 593,777.80 DOLLARS

2. **Scope of Work:** Company shall perform all work described for labor, material, equipment and supervision necessary for the purchase and installation of Gateway water meter data collectors in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B.....Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of $50,000 and more
EXHIBIT D..... Wage Scale

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

4. **City's Representative:** City's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. City's representative will not be responsible for Company's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

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

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

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

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

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

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR**

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.1. **INTENTIONALLY OMITTED.**

8.2. **COMPANY AGREES THAT, TO THE EXTENT COMPANY HAS BEEN PAID FOR ITS WORK, 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 NEGLIGENT ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 180 calendar days after release to proceed.

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by Company, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change

Orders, the City may thereafter issue payment to Company in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by Company. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

16.1. The City may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Company and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount. Payment will be made within 30 days of the date of Company's invoice.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between Company and the City, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." Company agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Company and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

17.1. In the event Company shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then Company and Company's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the City $500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that Company shall be in default after the time stipulated in the contract for completing the work. Further, the City shall have the right to cancel this contract for such delay. In the event the City cancels this contract pursuant to the terms of this section, the City shall pay to Company only those monies deemed appropriate by the City, in its sole discretion, to compensate Company for any work actually performed, less any liquidated damages Company owes the City.

17.2. The said amount is fixed and agreed upon by and between Company and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

17.3. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that Company shall not be charged with liquidated damages or any excess cost when the City determines, in its sole discretion, that Company is without fault and Company's reasons for the time extension are acceptable to the City. Provided, further, that Company shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

a. To any preference, priority or allocation order duly issued by the Government;

b. To unforeseeable cause beyond the control and without the fault or negligence of Company, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

17.4. Provided, further, that Company shall, within ten (10) days from the beginning of such delay, unless the City shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Company within a reasonable time of its decision in the matter.

17.5. **COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY**

SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

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

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

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

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

COUNSEL PRIOR TO ITS EXECUTION.

20. **Governmental Immunity:** By executing this contract City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

The Business Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name City as an additional insured and waive subrogation in favor of City.

The Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of City.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of City. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name City as an additional insured on a claims occurred basis. City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that

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

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

Company certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Company shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Company.

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

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

24. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

25. **Independent Contractor:** It is expressly understood and agreed that Company shall perform all

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

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

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

Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Contract are reasonable.

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

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

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

30. To the extent that Tex. Gov't Code section 2270.002 applies to this Contract, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Contract. If Tex. Gov't Code section 2270.002 does not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

31. **Records Retention and Production of Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Contract that is in the custody or possession of Company on request of City, and (3) on completion of the Contract, either (i) provide at no cost to City all contracting information related to the Contract that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

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

33. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of

this Contract and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY: CORE & MAIN LP

By: _____

Name:_____

Title:_____

STATE OF_____§

§

COUNTY OF_____§

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

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

_____
Notary Public, State of Texas

EXHIBIT "A"

Bid Proposal for Copy of Copy of Midland Gateway Install II

CUSTOMER

CITY OF MIDLAND
1606 ORCHARD
MIDLAND, TX 79701
Contact: Tony Goyang
tgoyang@midlandtexas.gov

Job
Copy of Copy of Midland Gateway Install II
Bid Date: 01/08/2021
Bid #: 1632717

CONTACT

Sales Representative
Arnold Osuna
(M) 915-449-0418
(T) 915-590-6922
(F) 915-590-7034
Arnold.Osuna@coreandmain.com

Core & Main
930 Pendale Rd
El Paso, TX 79907
(T) 915-590-6922

NOTES

A Mobilization Fee will apply in case all proposed gateways are not installed on first deployment.
Pricing does not include any permit required by City
Written permission to install collectors on proposed sites must be obtained before start of project

Bid Proposal for Copy of Copy of Midland Gateway Install II

CITY OF MIDLAND
Bid Date: 01/08/2021
Core & Main 1632717

Core & Main
930 Pendale Rd
El Paso, TX 79907
Phone: 915-590-6922
Fax: 915-590-7034

Seq#	Qty	Description	Units	Price	Ext Price
10		**MIDLAND R900V4 GATEWAY**			
20		**INSTALLATION AT 20 CUSTOMER**			
30		**LOCATIONS**			
50	20	TOWER SYSTEMS TOWER INSTALL	EA	19,188.89	383,777.80
70		**INSTALL NEPTUNE R900V4**			
80		**GATEWAYS INCLUDING ANTENNA,**			
90		**UPS', COAX, CONNECTORS,**			
100		**AND SOLAR SYSTEMS**			
110		**ON A COMBINATION OF 5 C&M**			
120		**AND 13 CUSTOMER PROVIDED**			
130		**ASSETS. SEE APPENDIX A**			
140		**FOR A SITE LIST**			
160		**R900V4 GATEWAYS**			
170		**INCLUDING ANTENNA, UPS',**			
180		**COAX, CONNECTORS**			
190		**AND SOLAR SYSTEM**			
210	20	NEPTUNE 13458-000 GATEWAY V4 CELLULAR (CDMA/GPRS)	EA	10,500.00	210,000.00
				Sub Total	**593,777.80**
				Tax	0.00
				Total	**593,777.80**

Branch Terms:

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES UPON THIRTY (30) CALENDAR DAYS' NOTICE TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: https://coreandmain.com/TandC/

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____day of_____, 20___.

_____	_____
Principal	Surety
By_____	By _____
Address_____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____day of_____, 20___.

_____	_____
Principal	Surety
By_____	By _____
Address_____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

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

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

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

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)……..	$ 13.55	
ELECTRICIAN.....	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	$ 12.36	

Structures.....$ 13.52

LABORER
- Asphalt Raker.....$ 12.28
- Flagger.....$ 9.30
- Laborer, Common.....$ 10.30
- Laborer, Utility.....$ 11.80
- Work Zone Barricade Servicer.....$ 10.30

POWER EQUIPMENT OPERATOR:
- Asphalt Distributer.....$ 14.87
- Asphalt Paving Machine.....$ 13.40
- Broom and Sweeper.....$ 11.21
- Crane, Lattice Boom 80 Tons or Less.....$ 16.82
- Crawler Tractor Operator……...$ 13.96
- Excavator, 50,000 lbs or less.....$ 13.46
- Front End Loader Operator, Over 3 CY.....$ 12.77
- Front End Loader, 3CY or less.....$ 12.28
- Loader/Backhoe.....$ 14.18
- Mechanic.....$ 20.14
- Milling Machine.....$ 15.54
- Motor Grader, Rough.....$ 16.15
- Motor Grader, Fine.....$ 17.49
- Pavement Marking Machine…….....$ 16.42
- Reclaimer/Pulverizer…….....$ 12.85
- Roller, Asphalt.....$ 10.95
- Roller, Other.....$ 10.36
- Scraper.....$ 10.61
- Spreader Box.....$ 12.60

Servicer.....$ 13.98

Steel Worker (Reinforcing).....$ 13.50

TRUCK DRIVER
- Lowboy-Float.....$ 14.46
- Single Axle.....$ 12.74
- Single or Tandem Axle Dump……$ 11.33
- Tandem Axle Tractor with Semi.....$ 12.49

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

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

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

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

City Council Meeting

Item Number: 5

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Mark Widmann, Director

Subject: **Motion authorizing the Interim City Manager to execute Direct Case Rate Practitioner Agreements with Anesthesia Medical Group of Permian Basin, Midland Emergency Management, PLLC, Permian Basin Anesthesia, PLLC; and a Direct Case Rate Facility Agreement with Midland Memorial Hospital; and to execute any other documents and to take any other actions necessary to give effect to said agreements (ADMINISTRATIVE SERVICES)**

Purpose:

The purpose of the agreements is to provide Healthcare Services to Covered Individuals under the City's health plans in the most cost-efficient setting.

Recommended City Council Action:

Approve

Fiscal Impact:

The City's health plan shall be limited to the fee schedule rate of between 115% to 350% of the Provider's specific Medicare allowable amount. Future increases are limited to the annual Medicare rate increase which is much less than the non-Medicare annual medical inflation.

Discussion:

The Facility and Practitioners agreed to accept the amount assigned in the fee schedule as payment in full for Cover Services provided to Covered Individuals. The Facility and Practitioners may only collect co-payments, co-insurance, deductible, and charges for non-covered services at the time of service. The providers agree not to balance bill the patient for any amounts other than the Deductible, Co-payments and/or Covered Individual's Benefit Percentage.

The national average increase in medical costs was 6%-9% depending on geographical areas.

The 2020 Medicare reimbursement to hospitals was increased 3.4%, as a result the City would have a net savings of approximately 2.6% - 5.6%.

Morris Williams Jr.

City Manager's Office

DIRECT CASE RATE PRACTITIONER AGREEMENT
By and Between
City of Midland
and
Anesthesia Medical Group of Permian Basin

THIS Practitioner AGREEMENT, "Agreement" made and entered into on and effective January 1, 2021, is by and between City of Midland hereinafter referred to as "THE CITY"; and Anesthesia Medical Group of Permian Basin, hereafter referred to as the "Practitioner" and shall continue for a period of 2 years, subject to the provisions set forth below.

I. RECITALS

WHEREAS, THE CITY, desires to make appropriate Healthcare Service available at a reasonable cost to the eligible plan participants who are covered by the healthcare benefit plans that have been established by THE CITY; and

WHEREAS, the Practitioner is a hospital, Practitioner, and/or other healthcare providing entity organized specifically to facilitate the provision of Healthcare Services to individuals; and

WHEREAS, THE CITY desires to contract with the Practitioner to arrange for the provision of Healthcare Services to Covered Individuals pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, and in consideration of the premises and the mutual covenants herein contained, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

II. DEFINITIONS

For the purposes of this Agreement, certain terms are defined as follows:

2.1 **Ancillary Practitioner:** Durable medical equipment suppliers, home health agencies, infusion therapists, physical therapists, occupational therapists, outpatient surgery centers, ambulatory surgical centers, allied health professionals, chiropractic practitioner and laboratories.

2.2 **Clean Claim:** A billing form UB-92 or HCFA 1500 or any successor form which provides the beneficiary's name and identification number, claim date, date of birth, group name and number; Practitioner's name and identification number; dates and location of services, description of procedures, diagnosis code, secondary diagnosis code, most current ICD version, procedure codes, DRG, units, modifiers and amount billed for each procedure, where applicable, and includes itemized claim statements and/or beneficiaries' medical records if requested by payer within 20 calendar days after payer's receipt of a claim. A "Clean Claim" does not include a claim where coordination of benefits is actively pursued, medical claims review is necessary, subrogation is pursued, where work related or where pre-existing conditions may exist. Outpatient claims in excess of fifteen thousand dollars ($15,000.00) and inpatient claims in excess of twenty thousand dollars ($20,000.00) will require itemized bills.

2.3 **Covered Individuals Benefit Plan Percentage:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner up to The Plan's out-of-pocket maximum.

2.4 **Co-Payment:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner at the time of service. Co-Payments are usually connected with specific benefits and may be used instead of The Plan deductible and Covered Individuals Benefit Percentage.

2.5 **Coordination of Benefits (COB):** A process by which two (2) or more health benefit plans, providing the same Covered Individual the same or similar health benefits, share the aggregate benefits on the actual billed charges the individual receives for an illness or injury. One plan will be determined primary and the other secondary.

2.6 **Covered Services:** Medically necessary services or supplies specified in the Covered Individual's Plan for which benefits will be paid when provided by a Practitioner acting within the scope of his/her license pursuant to this agreement.

2.7 **Deductible:** The amount of eligible expenses which must be paid by *a* Covered Individual before benefits become payable by The Plan.

2.8 **Emergency or Emergency Services:** Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in: 1) placing the patient's health in serious jeopardy; 2) serious impairment of bodily functions; 3) serious dysfunction of any bodily organ or part; 4) serious disfigurement; or 5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

2.9 **Fee Schedule:** The schedule, attached hereto as Attachment A and incorporated herein by reference, which specifies the maximum amount payable to the Practitioner for providing Covered Services to Covered Individuals. The fee schedules services will be paid at the network benefit percentage and deductible. The Practitioner will not balance bill the Covered Individual

2.10 **Healthcare Service:** A service the Practitioner is licensed to provide and which he/she customarily provides to individuals; or those inpatient and outpatient services that a Healthcare Facility is licensed, equipped and staffed to provide, and which it customarily provides to individuals.

2.11 **Integration of Benefits:** A process by which two (2) or more health benefit plans providing the same individual the same or similar health benefits limit the aggregate benefits the individual receives for an illness or injury to the amount payable by The Plan.

2.12 **Medically Necessary Treatment:** Medical or surgical services which a Covered Individual requires for the identification or treatment of illness, injury, disease or impairment, or skilled care that is (a) consistent with the Covered Individual's diagnosis or symptoms and (b) appropriate with regards to standards of good medical practice, and as defined by Medicare and or

2.13 **THE CITY:** The City of Midland, the entity responsible for the administration or payment of claims under The Plan.

2.14 **Practitioner Agreement:** An Agreement between the Practitioner and THE CITY.

2.15 **Skilled Care:** The recognition and utilization of professional methods and procedures in the assessment, observation, or treatment of an illness or injury; and must be performed by or under the supervision of the Practitioner.

2.16 **Utilization Management:** A program which may include, without limitation, evaluation of the necessity, appropriateness, and efficiency of the use of Healthcare Services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

2.17 **Practitioner:** A Physician or a person acting within the scope of applicable state licensing/certification requirements, including, but not limited to, the following designations: Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Optometry (OD), State Licensed Durable and Medical Device/Equipment Organizations, Certified Nurse Midwife (CNM), Certified Professional Midwife (CPM), Registered Respiratory Therapist (RRT), Certified Respiratory Therapist (CRT), Licensed Physical Therapist (LPT), Licensed Aquatic Therapist (LAT), Licensed Psychologist, Doctor of Chiropractic (DC), Doctor of Podiatric Medicine (DPM), Registered Nurse (RN), Licensed Vocational Nurse (LVN), Licensed Practical Nurse (LPN), Speech Therapist, Audiologist, Occupational Therapist, Licensed or Registered Dietitian (LD or RD), Certified Registered Nurse Anesthetist (CRNA), Advanced Nurse Practitioner (ANP) or Registered Nurse First Assistant (RNFA).

III. THE CITY'S RESPONSIBILITIES

3.1 THE CITY shall define and determine all eligibility requirements for Covered Individuals. THE CITY shall establish procedures to verify the eligibility of Covered Individuals seeking services from the Practitioner, including ID cards and an 800 number. The eligibility procedures shall be set out or referenced in The Plan.

3.2 The contents, description, and nature of the benefits provided by The Plan(s), and dissemination to the Practitioner and to Covered Individuals of all such information, whether or not required by law, shall be the sole responsibility of THE CITY and shall be in accordance with federal, state, and local law.

3.3 THE CITY shall designate an independent Third-Party Administrator to adjudicate/process/pay all claims under this agreement. The Administrator shall provide utilization management services, determine medical necessity, and all other services as defined but this agreement.

IV. PRACTITIONER RESPONSIBILITIES

4.1 The Practitioner shall provide medically necessary Healthcare Services to Covered Individuals in a manner similar to and within the same time availability in which the Practitioner provides such services to any other individuals, and will not differentiate or discriminate against Covered Individuals as a result of this Agreement.

4.2 The Practitioner shall provide Healthcare Services to Covered Individuals in the most cost-effective manner.

4.3 The Practitioner shall maintain currently and for the duration of this Agreement, professional liability insurance coverage in such amount at least equal to or greater than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate. For dependent/independent Practitioners, amounts at least equal to or greater than two hundred thousand dollars ($200,000) per occurrence and six hundred thousand dollars ($600,000) in the aggregate. Evidence of such coverage shall be provided to THE CITY upon request. The Practitioner shall agree to give THE CITY not less than thirty days prior written notice of any cancellation, non-renewal, or material alterations of such coverage.

4.4 The Practitioner shall prepare and maintain all appropriate medical, financial, administrative and other records which involve transactions relating to Covered Individuals receiving Healthcare Services. The Practitioner agrees to maintain records on Covered Individuals in accordance with prudent record-keeping procedures and as required by any applicable federal, state, or local laws, rules or regulations.

4.5 The Practitioner agrees to allow THE CITY or its designee upon reasonable notice during normal business hours to have, without charge, access to and the right to examine, audit, excerpt, copy and transcribe any books, documents, papers, and records within its possession, which involve transactions relating to this Agreement. The Practitioner agrees to provide THE CITY or its designee with appropriate working space. Upon request, photocopies of such records shall be provided to THE CITY or its designee at $.10/copy, not to exceed $20.00/record. This provision shall survive the termination of this Agreement.

4.6 The Practitioner shall comply, with the requirements of all laws and regulations applicable to THE CITY's business, and shall maintain in effect all licenses, permits and all governmental and board authorizations and approvals as necessary for the Practitioner's business operations and for the provision of Healthcare Services.

4.7 The Practitioner shall immediately send written notice to THE CITY of any legal, governmental, or other action taken against the Practitioner, which could materially impair the ability of the Practitioner to carry out the duties and obligations of this Agreement, including, but not limited to, actions related to 1) any revocation, suspensions, or limitation in staff privileges; 2) any disciplinary action taken by a hospital; and 3) suspension from participation in the Medicare or Medicaid program as a result of alleged fraud or abuse.

4.8 The Practitioner affirms that the application, which is hereby incorporated by reference, contains true and correct information and the Practitioner acknowledges that THE CITY is relying on such information.

4.9 The Practitioner shall permit THE CITY or its designee to confer directly with the Practitioner's agents and employees regarding Healthcare Services provided to Covered Individuals.

4.10 The Practitioner warrants that all persons or entities providing Healthcare Services under this agreement are licensed to perform such services by all appropriate licensing agencies in the State of Texas.

4.11 The Practitioner shall make his/her best efforts to inform the Covered Individual that lesser benefits may be available under The Plan in the event a Network Practitioner refers or admits the Covered Individual to a healthcare Practitioner other than a Network Practitioner.

4.12 The Practitioner shall make his/her best effort to refer and admit Covered Individuals to other Network Practitioner except when 1) an emergency exists and the Network Practitioner is not available; 2) the Healthcare Service is not geographically available in a timely fashion; or 3) the Covered Individual refuses to accept the recommendation of a Network Practitioner and the Practitioner documents that the Covered Individual elected to receive the Healthcare Service from a non-network Practitioner.

4.13 The Practitioner shall comply and assist with implementing THE CITY's Administrator's Utilization Management plan or program as long as the Utilization Management plan or program complies with or does not conflict with the requirements of any government or regulatory compliance board.

4.14 The Practitioner acknowledges that THE CITY does not warrant or guarantee that the Practitioner will be utilized by any particular number of Covered Individuals.

4.15 The Practitioner acknowledges that THE CITY may remove the Practitioner from participation under this Agreement at any time with or without cause by giving thirty (30) days written notice to the Practitioner.

4.16 The Practitioner agrees to assist THE CITY in contacting the appropriate individuals for services not performed by the Practitioner, e.g., emergency room, laboratory, anesthesiologist, etc.

4.17 The Practitioner agrees to deliver Healthcare Services in the most cost-efficient setting. A Healthcare Service will not be considered Medically Necessary if the Covered Individual's symptoms or conditions indicate that it would be safe to provide the service or supplies in a less comprehensive setting. The fact that any particular Practitioner may prescribe, order, recommend, or approve a service, supply or level of care does not, of itself, make such treatment Medically Necessary. The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations. The Practitioner will cooperate with THE CITY quality improvement activities and allow THE CITY to use the Practitioner's performance data.

4.18 The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations.

V. REIMBURSEMENT AND BILLING

5.1 The Practitioner shall agree to accept the amount specified on the fee schedule (Attachment A) as payment in full for Covered Services provided to Covered Individuals, provided however that THE CITY makes payment to Practitioner within the timeframe specified in this agreement. The fee schedule is effective regardless if City of Midland is the primary, secondary or tertiary payor. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Practitioner shall implement an assignment of benefits procedure for claims payment to be made directly to the Practitioner. The Practitioner may only collect co-payment, co-insurance, deductible, and charges for non-covered services at the time of service.

5.2 The Practitioner will be solely responsible for collection of any deductibles, coinsurance, co-payments, and charges for non-Medically Necessary Services that are the Covered Individual's responsibility, provided that the total collected may not exceed the amount specified on the fee

schedule (Attachment A). The collection effort for the Co-payment should be at the time of service. The Practitioner agrees not to balance bill the patient for any amounts other than the Deductible, Co-payments and/or Covered Individual's Benefit Percentage.

5.3 The Practitioner shall not seek payment from the Covered Individual for Healthcare Services which are not Medically Necessary except when a Covered Individual request the Practitioner to provide Healthcare Services that are not Medically Necessary and agrees to reimburse the Practitioner for those provided Healthcare Services. The fee schedule (Attachment A) will apply to non-Medically Necessary services. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Practitioner can negotiate with the patient regarding the patient's payment for services in the event that Practitioner and THE CITY have a disagreement over the necessity of proposed services provided that the Practitioner has informed the patient about this dispute and the fact that the patient will be personally responsible for payment. Nothing with the provision of the agreement prohibits the Practitioner from pursuing the patient for collection of fees for services determined to be Medically Necessary in the event the payor fails to pay the claim for such services within 90 days or in the event of any bankruptcy, receivership, or insolvency of the payer.

5.4 The Practitioner agrees to refund all uncontested duplicate or erroneous claim payments regardless of the cause upon thirty (30) days written notice. Appeal rights will be sent in writing to Practitioner with the refund request. The Practitioner will have 45 days to file an appeal on the refund request. All payments made to the Practitioner are considered final after 180 days.

VI. DISCLAIMER

6.1 The benefits described are subject to all plan limitations, pre-existing information, filing deadlines, exclusions and eligibility requirements. All benefits are based on the plan document language. If a patient is on continuation of coverage ("COC" or "COBRA"), coverage could terminate retroactively if the individual's contribution is not made within COC time guidelines.

6.2 If a Covered Individual is receiving care or is about to receive care and is identified as not actively at work, continuation of coverage benefits may be offered, but must be accepted and paid per the COC time guidelines for Practitioner services to be considered eligible for benefit payment.

6.3 Notification is the determination only of the medical necessity of a proposed treatment based on the information provided at the time the precertification is issued. Precertification does not verify or certify:

(1) Eligibility of any individual for coverage;
(2) Benefit coverage for services rendered pursuant to the precertification;
(3) Network status of the Practitioner(s).

VII. INDEMNIFICATION

7.1 Each party will be responsible for its own acts or omissions that result in injury or damage to individuals or property that arise as a consequence of the party's performance of this Agreement whether or not as a result of negligence. This provision shall survive the termination of this Agreement.

VIII. CONFIDENTIALITY

8.1 The Practitioner and THE CITY understand and agree that all information and records related to Covered Individuals are privileged and confidential. To the extent provided by law, the parties agree to keep confidential and not disclose patient identifiable information to any third party without the prior written consent of the Covered Individual, except that information required for Utilization Management, quality assurance and claims adjudication will be released to THE CITY and/or its

designee. The Practitioner shall conform to all confidentiality and/or privacy requirements of state and federal law.

8.2 All information and materials provided by THE CITY to the Practitioner will remain proprietary to THE CITY including but not limited to contracts, reimbursement rates and methodology, and any operations manuals. This statement shall survive the termination of this Agreement.

IX. TERM AND TERMINATION OF AGREEMENT

9.1 **Term:** The initial term of this Agreement, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Agreement shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

9.2 **Legislative or Administrative Changes:** In the event that there is a change in the federal or state statutes or regulations or in the application thereof, any of which materially affects the reimbursement which the Practitioner may receive for its services furnished to Covered Individuals, either party with notice may propose a new basis for compensation for the Practitioner's services furnished pursuant to this Agreement. If such notice of new basis is given and if the parties are unable to agree upon a new basis for compensation within sixty days thereafter, either party may terminate this Agreement by thirty days' notice to the other on any future date specified in such notice.

9.3 **Effect of Termination:** Upon termination of this Agreement, neither party shall have any further obligation unless noted hereunder, except that termination of this Agreement shall not affect the rights and obligations of the parties hereto 1) arising out of transactions occurring prior to termination, including without limitation (a) THE CITY's obligation pursuant to this Agreement to render, payment to the Practitioner for its services, and (b) the Practitioner's obligation for continuity of care through patient discharge including medically appropriate transfer of care or other medically appropriate transition of care with adherence to contracted fee schedule; and 2) obligations, promises and covenants expressly made to extend beyond the term of this Agreement, including without limitation confidentiality of information, indemnities, and releases.

X. GENERAL PROVISIONS

10.1 **Assignment:** This Agreement shall be binding upon and inure to the benefit of the respective legal successors and assignees of the parties. However, neither this Agreement, or any rights or obligations hereunder may be assigned, delegated, or transferred in whole or in part without the prior written consent of the other party.

10.2 **Force Majeure:** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including without limitation, acts of God, acts of any public enemy, flood, strikes, statutory or other laws, regulations, rules, or orders of the federal, state, or local government or any agency thereof.

10.3 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue:** Venue for any cause of action arising under this agreement shall be in Midland County, Texas.

10.5 **Intent of the Parties:** It is the intent of the parties that this Agreement is to be effective only in regard to their rights and obligations with respect to each other, the Covered Individual(s) and THE CITY's stop loss carrier(s).

10.6 **Non-Exclusive Participation:** None of the provisions of this Agreement shall prevent THE CITY or the Practitioner from participating in or contracting with any other organization, health maintenance organization, or any other health delivery or insurance program.

10.7 **Notice:** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be hand delivered or sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page. Such address may be changed from time to time by written notice to the other party.

10.8 **Severability:** In case any one or more of the provision of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall be construed liberally in order to effectuate the purposes of this Agreement, and the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

10.9 **Waiver:** Failure by either parties following notice of a breach or a default, to enforce any of the provisions of this Agreement, shall not thereafter be construed as a waiver of any subsequent breach or default of any of the provisions of this Agreement.

10.10 **Appeal Rights:** If any of the parties who receive a copy of the City's Claim Administrators Utilization Management Department's determination disagree with the decision, they may appeal in writing to THE CITY Claim Administrator within thirty (30) days of the date of the initial date of the denial letter but, prior to the completion of the procedure or discharge from the hospital. The available medical information must be provided to the City's Claim Administrator at no cost to The Plan. The Claims Administrator's determination will be reviewed by an appropriate Practitioner specialist who has not previously reviewed the case. When all medical information necessary to render a determination is received, all parties who were notified of the original recommendation will be notified of the reconsideration decision within five (5) working days.

10.11 **Right to Cure:** Both parties agree to meet and confer in good faith to resolve any problems, disputes or issues of breach that may arise under this Agreement. The non-conforming party is entitled to ten (10) days right to cure the alleged defect after receiving notice pursuant to Section 10.7 herein. Said notice shall include reasonable detail of the event(s) which constitutes the alleged problem, dispute or issue of breach.

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

10.13 To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Practitioner hereby verifies that Practitioner does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Practitioner shall be deemed to have not made such verification.

10.14 **Records Retention and Production of Information:** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Practitioner shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Practitioner on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Practitioner, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

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

10.16 **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 Attachments, 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 Attachments.

Each party to this Agreement warrants that it has the full power and authority to enter into this Agreement and the Individual signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

THE CITY: City of Midland 300 N. Loraine Midland, TX 79701	Practitioner: Anesthesia Medical Group of Permian Basin PO Box 4157 Midland, TX 79704
Signature Robert Patrick, Interim City Manager	Signature
Name (Printed) & Title	Name (Printed) & Title 2086643011
Date	Tax Identification Number
	Date

ATTACHMENT A

CONTRACT RATES

Preferred Provider: Anesthesia Medical Group of Permian Basin

Effective Date of Contract Rates January 1, 2021

Physical Address:

Billing Address: PO Box 4157, Midland, Texas 79704

Tax ID: 208643011

Specialty: Anesthesiology

Telephone: (432) 699-0306

E-mail Address

NPI Number: 1669596672

Note: All claims processed under the Tax ID listed above will process according to the terms of this Contract.

Effective July 1, 2018, for Reference Based Pricing Health Plan ("RBPHP"). A Reference Based Pricing Health Plan is a Plan that has modified the terms of its Health Benefit Plan to recognize reference-based pricing and communicate such changes to its Covered Persons.

A. Anesthesiology Services and Supplied (billed on a 1500 Claim Form or electronic equivalent):

Payment options.

The allowable amount for anesthesia services will be based 350% of the Medicare allowable rate for anesthesia.

B. Term and Termination:

1. The initial term of this Attachment, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Attachment shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

2. This Attachment may be terminated by either party upon ninety (90) days written advance notice to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on the most recent date shown below:

THE CITY:	Practitioner:
City of Midland 300 N. Loraine Midland, TX 79701	
Signature	Signature
Robert Patrick, Interim City Manager	
Name (Printed) & Title	Name (Printed) & Title
Date	Date

ATTACHMENT B

Reference Based Pricing
Medicare Equivalent

Medicare is the only nationally accepted reference available and is used by 95% of all reference based pricing programs in the market.

While Medicare pays or covers about 85 percent of all claims, THE CITY'S Administrator (through our third-party vendor) can reprice almost all claims by including the use of Enhanced Ambulatory Patient Groupings (EAPGs) and All Patient Refined Diagnostic Related Groups (APR-DRG).

- EAPGs are a grouping method 3M developed to parallel Medicare's Ambulatory Patient Classification (APC) system for grouping hospital outpatient claims for a general population (rather than the primarily geriatric population Medicare APCs serve). Similarly, APR DRGs are 3M's parallel to Medicare's MS-DRG system for grouping hospital inpatient claims. Again, the APR DRG grouping method is designed for general patient populations and takes into account severity and comorbidities.

If there is a need to further expand the resources necessary to reprice claims, THE CITY'S Administrator program is flexible and will be able to add the following:

- Medicare Equivalency Tool - Creates a price for care NOT covered by Medicare
    - Medicare develops pricing/rates for some services that they do not cover. Example: Wellness code instead of office visit
- Medicare Approximation Tool - Creates a price for facilities that do NOT take Medicare
- Medicare Care Crosswalk Tool - Creates a price for care NOT covered by Medicare in a particular setting by using a crosswalk to an alternative setting that is covered by Medicare.

Medicare Data:

- Acute Care Hospital data
    - Major releases in October and January of each year
    - Individual hospital factors are pulled monthly
- Critical Access Hospital data
    - Regular updates from Noridian through Freedom of Information Request
- Regulations
    - Constantly monitored and updated as necessary

DIRECT CASE RATE PRACTITIONER AGREEMENT
By and Between
City of Midland
and
Midland Emergency Management PLLC

THIS Practitioner AGREEMENT, "Agreement" made and entered into on and effective January 1, 2021, is by and between City of Midland hereinafter referred to as "THE CITY"; and Midland Emergency Management PLLC, hereafter referred to as the "Practitioner" and shall continue for a period of 2 years, subject to the provisions set forth below.

I. RECITALS

WHEREAS, THE CITY, desires to make appropriate Healthcare Service available at a reasonable cost to the eligible plan participants who are covered by the healthcare benefit plans that have been established by THE CITY; and

WHEREAS, the Practitioner is a hospital, Practitioner, and/or other healthcare providing entity organized specifically to facilitate the provision of Healthcare Services to individuals; and

WHEREAS, THE CITY desires to contract with the Practitioner to arrange for the provision of Healthcare Services to Covered Individuals pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, and in consideration of the premises and the mutual covenants herein contained, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

II. DEFINITIONS

For the purposes of this Agreement, certain terms are defined as follows:

2.1 **Ancillary Practitioner:** Durable medical equipment suppliers, home health agencies, infusion therapists, physical therapists, occupational therapists, outpatient surgery centers, ambulatory surgical centers, allied health professionals, chiropractic practitioner and laboratories.

2.2 **Clean Claim:** A billing form UB-92 or HCFA 1500 or any successor form which provides the beneficiary's name and identification number, claim date, date of birth, group name and number; Practitioner's name and identification number; dates and location of services, description of procedures, diagnosis code, secondary diagnosis code, most current ICD version, procedure codes, DRG, units, modifiers and amount billed for each procedure, where applicable, and includes itemized claim statements and/or beneficiaries' medical records if requested by payer within 20 calendar days after payer's receipt of a claim. A "Clean Claim" does not include a claim where coordination of benefits is actively pursued, medical claims review is necessary, subrogation is pursued, where work related or where pre-existing conditions may exist. Outpatient claims in excess of fifteen thousand dollars ($15,000.00) and inpatient claims in excess of twenty thousand dollars ($20,000.00) will require itemized bills.

2.3 **Covered Individuals Benefit Plan Percentage:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner up to The Plan's out-of-pocket maximum.

2.4 **Co-Payment:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner at the time of service. Co-Payments are usually connected with specific benefits and may be used instead of The Plan deductible and Covered Individuals Benefit Percentage.

2.5 **Coordination of Benefits (COB):** A process by which two (2) or more health benefit plans, providing the same Covered Individual the same or similar health benefits, share the aggregate benefits on the actual billed charges the individual receives for an illness or injury. One plan will be determined primary and the other secondary.

2.6 **Covered Services:** Medically necessary services or supplies specified in the Covered Individual's Plan for which benefits will be paid when provided by a Practitioner acting within the scope of his/her license pursuant to this agreement.

2.7 **Deductible:** The amount of eligible expenses which must be paid by *a* Covered Individual before benefits become payable by The Plan.

2.8 **Emergency or Emergency Services:** Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in: 1) placing the patient's health in serious jeopardy; 2) serious impairment of bodily functions; 3) serious dysfunction of any bodily organ or part; 4) serious disfigurement; or 5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

2.9 **Fee Schedule:** The schedule, attached hereto as Attachment A and incorporated herein by reference, which specifies the maximum amount payable to the Practitioner for providing Covered Services to Covered Individuals. The fee schedules services will be paid at the network benefit percentage and deductible. The Practitioner will not balance bill the Covered Individual

2.10 **Healthcare Service:** A service the Practitioner is licensed to provide and which he/she customarily provides to individuals; or those inpatient and outpatient services that a Healthcare Facility is licensed, equipped and staffed to provide, and which it customarily provides to individuals.

2.11 **Integration of Benefits:** A process by which two (2) or more health benefit plans providing the same individual the same or similar health benefits limit the aggregate benefits the individual receives for an illness or injury to the amount payable by The Plan.

2.12 **Medically Necessary Treatment:** Medical or surgical services which a Covered Individual requires for the identification or treatment of illness, injury, disease or impairment, or skilled care that is (a) consistent with the Covered Individual's diagnosis or symptoms and (b) appropriate with regards to standards of good medical practice, and as defined by Medicare and or

2.13 **THE CITY:** The City of Midland, the entity responsible for the administration or payment of claims under The Plan.

2.14 **Practitioner Agreement:** An Agreement between the Practitioner and THE CITY.

2.15 **Skilled Care:** The recognition and utilization of professional methods and procedures in the assessment, observation, or treatment of an illness or injury; and must be performed by or under the supervision of the Practitioner.

2.16 **Utilization Management:** A program which may include, without limitation, evaluation of the necessity, appropriateness, and efficiency of the use of Healthcare Services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

2.17 **Practitioner:** A Physician or a person acting within the scope of applicable state licensing/certification requirements, including, but not limited to, the following designations: Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Optometry (OD), State Licensed Durable and Medical Device/Equipment Organizations, Certified Nurse Midwife (CNM), Certified Professional Midwife (CPM), Registered Respiratory Therapist (RRT), Certified Respiratory Therapist (CRT), Licensed Physical Therapist (LPT), Licensed Aquatic Therapist (LAT), Licensed Psychologist, Doctor of Chiropractic (DC), Doctor of Podiatric Medicine (DPM), Registered Nurse (RN), Licensed Vocational Nurse (LVN), Licensed Practical Nurse (LPN), Speech Therapist, Audiologist, Occupational Therapist, Licensed or Registered Dietitian (LD or RD), Certified Registered Nurse Anesthetist (CRNA), Advanced Nurse Practitioner (ANP) or Registered Nurse First Assistant (RNFA).

III. THE CITY'S RESPONSIBILITIES

3.1 THE CITY shall define and determine all eligibility requirements for Covered Individuals. THE CITY shall establish procedures to verify the eligibility of Covered Individuals seeking services from the Practitioner, including ID cards and an 800 number. The eligibility procedures shall be set out or referenced in The Plan.

3.2 The contents, description, and nature of the benefits provided by The Plan(s), and dissemination to the Practitioner and to Covered Individuals of all such information, whether or not required by law, shall be the sole responsibility of THE CITY and shall be in accordance with federal, state, and local law.

3.3 THE CITY shall designate an independent Third-Party Administrator to adjudicate/process/pay all claims under this agreement. The Administrator shall provide utilization management services, determine medical necessity, and all other services as defined but this agreement.

IV. PRACTITIONER RESPONSIBILITIES

4.1 The Practitioner shall provide medically necessary Healthcare Services to Covered Individuals in a manner similar to and within the same time availability in which the Practitioner provides such services to any other individuals, and will not differentiate or discriminate against Covered Individuals as a result of this Agreement.

4.2 The Practitioner shall provide Healthcare Services to Covered Individuals in the most cost-effective manner.

4.3 The Practitioner shall maintain currently and for the duration of this Agreement, professional liability insurance coverage in such amount at least equal to or greater than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate. For dependent/independent Practitioners, amounts at least equal to or greater than two hundred thousand dollars ($200,000) per occurrence and six hundred thousand dollars ($600,000) in the aggregate. Evidence of such coverage shall be provided to THE CITY upon request. The Practitioner shall agree to give THE CITY not less than thirty days prior written notice of any cancellation, non-renewal, or material alterations of such coverage.

4.4 The Practitioner shall prepare and maintain all appropriate medical, financial, administrative and other records which involve transactions relating to Covered Individuals receiving Healthcare Services. The Practitioner agrees to maintain records on Covered Individuals in accordance with prudent record-keeping procedures and as required by any applicable federal, state, or local laws, rules or regulations.

4.5 The Practitioner agrees to allow THE CITY or its designee upon reasonable notice during normal business hours to have, without charge, access to and the right to examine, audit, excerpt, copy and transcribe any books, documents, papers, and records within its possession, which involve transactions relating to this Agreement. The Practitioner agrees to provide THE CITY or its designee with appropriate working space. Upon request, photocopies of such records shall be provided to THE CITY or its designee at $.10/copy, not to exceed $20.00/record. This provision shall survive the termination of this Agreement.

4.6 The Practitioner shall comply, with the requirements of all laws and regulations applicable to THE CITY's business, and shall maintain in effect all licenses, permits and all governmental and board authorizations and approvals as necessary for the Practitioner's business operations and for the provision of Healthcare Services.

4.7 The Practitioner shall immediately send written notice to THE CITY of any legal, governmental, or other action taken against the Practitioner, which could materially impair the ability of the Practitioner to carry out the duties and obligations of this Agreement, including, but not limited to, actions related to 1) any revocation, suspensions, or limitation in staff privileges; 2) any disciplinary action taken by a hospital; and 3) suspension from participation in the Medicare or Medicaid program as a result of alleged fraud or abuse.

4.8 The Practitioner affirms that the application, which is hereby incorporated by reference, contains true and correct information and the Practitioner acknowledges that THE CITY is relying on such information.

4.9 The Practitioner shall permit THE CITY or its designee to confer directly with the Practitioner's agents and employees regarding Healthcare Services provided to Covered Individuals.

4.10 The Practitioner warrants that all persons or entities providing Healthcare Services under this agreement are licensed to perform such services by all appropriate licensing agencies in the State of Texas.

4.11 The Practitioner shall make his/her best efforts to inform the Covered Individual that lesser benefits may be available under The Plan in the event a Network Practitioner refers or admits the Covered Individual to a healthcare Practitioner other than a Network Practitioner.

4.12 The Practitioner shall make his/her best effort to refer and admit Covered Individuals to other Network Practitioner except when 1) an emergency exists and the Network Practitioner is not available; 2) the Healthcare Service is not geographically available in a timely fashion; or 3) the Covered Individual refuses to accept the recommendation of a Network Practitioner and the Practitioner documents that the Covered Individual elected to receive the Healthcare Service from a non-network Practitioner.

4.13 The Practitioner shall comply and assist with implementing THE CITY's Administrator's Utilization Management plan or program as long as the Utilization Management plan or program complies with or does not conflict with the requirements of any government or regulatory compliance board.

4.14 The Practitioner acknowledges that THE CITY does not warrant or guarantee that the Practitioner will be utilized by any particular number of Covered Individuals.

4.15 The Practitioner acknowledges that THE CITY may remove the Practitioner from participation under this Agreement at any time with or without cause by giving thirty (30) days written notice to the Practitioner.

4.16 The Practitioner agrees to assist THE CITY in contacting the appropriate individuals for services not performed by the Practitioner, e.g., emergency room, laboratory, anesthesiologist, etc.

4.17 The Practitioner agrees to deliver Healthcare Services in the most cost-efficient setting. A Healthcare Service will not be considered Medically Necessary if the Covered Individual's symptoms or conditions indicate that it would be safe to provide the service or supplies in a less comprehensive setting. The fact that any particular Practitioner may prescribe, order, recommend, or approve a service, supply or level of care does not, of itself, make such treatment Medically Necessary. The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations. The Practitioner will cooperate with THE CITY quality improvement activities and allow THE CITY to use the Practitioner's performance data.

4.18 The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations.

V. REIMBURSEMENT AND BILLING

5.1 The Practitioner shall agree to accept the amount specified on the fee schedule (Attachment A) as payment in full for Covered Services provided to Covered Individuals, provided however that THE CITY makes payment to Practitioner within the timeframe specified in this agreement. The fee schedule is effective regardless if City of Midland is the primary, secondary or tertiary payor. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Practitioner shall implement an assignment of benefits procedure for claims payment to be made directly to the Practitioner. The Practitioner may only collect co-payment, co-insurance, deductible, and charges for non-covered services at the time of service.

5.2 The Practitioner will be solely responsible for collection of any deductibles, coinsurance, co-payments, and charges for non-Medically Necessary Services that are the Covered Individual's responsibility, provided that the total collected may not exceed the amount specified on the fee

schedule (Attachment A). The collection effort for the Co-payment should be at the time of service. The Practitioner agrees not to balance bill the patient for any amounts other than the Deductible, Co-payments and/or Covered Individual's Benefit Percentage.

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5.4 The Practitioner agrees to refund all uncontested duplicate or erroneous claim payments regardless of the cause upon thirty (30) days written notice. Appeal rights will be sent in writing to Practitioner with the refund request. The Practitioner will have 45 days to file an appeal on the refund request. All payments made to the Practitioner are considered final after 180 days.

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6.2 If a Covered Individual is receiving care or is about to receive care and is identified as not actively at work, continuation of coverage benefits may be offered, but must be accepted and paid per the COC time guidelines for Practitioner services to be considered eligible for benefit payment.

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(2) Benefit coverage for services rendered pursuant to the precertification;
(3) Network status of the Practitioner(s).

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designee. The Practitioner shall conform to all confidentiality and/or privacy requirements of state and federal law.

8.2 All information and materials provided by THE CITY to the Practitioner will remain proprietary to THE CITY including but not limited to contracts, reimbursement rates and methodology, and any operations manuals. This statement shall survive the termination of this Agreement.

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9.2 **Legislative or Administrative Changes:** In the event that there is a change in the federal or state statutes or regulations or in the application thereof, any of which materially affects the reimbursement which the Practitioner may receive for its services furnished to Covered Individuals, either party with notice may propose a new basis for compensation for the Practitioner's services furnished pursuant to this Agreement. If such notice of new basis is given and if the parties are unable to agree upon a new basis for compensation within sixty days thereafter, either party may terminate this Agreement by thirty days' notice to the other on any future date specified in such notice.

9.3 **Effect of Termination:** Upon termination of this Agreement, neither party shall have any further obligation unless noted hereunder, except that termination of this Agreement shall not affect the rights and obligations of the parties hereto 1) arising out of transactions occurring prior to termination, including without limitation (a) THE CITY's obligation pursuant to this Agreement to render, payment to the Practitioner for its services, and (b) the Practitioner's obligation for continuity of care through patient discharge including medically appropriate transfer of care or other medically appropriate transition of care with adherence to contracted fee schedule; and 2) obligations, promises and covenants expressly made to extend beyond the term of this Agreement, including without limitation confidentiality of information, indemnities, and releases.

X. GENERAL PROVISIONS

10.1 **Assignment:** This Agreement shall be binding upon and inure to the benefit of the respective legal successors and assignees of the parties. However, neither this Agreement, or any rights or obligations hereunder may be assigned, delegated, or transferred in whole or in part without the prior written consent of the other party.

10.2 **Force Majeure:** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including without limitation, acts of God, acts of any public enemy, flood, strikes, statutory or other laws, regulations, rules, or orders of the federal, state, or local government or any agency thereof.

10.3 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue:** Venue for any cause of action arising under this agreement shall be in Midland County, Texas.

10.5 **Intent of the Parties:** It is the intent of the parties that this Agreement is to be effective only in regard to their rights and obligations with respect to each other, the Covered Individual(s) and THE CITY's stop loss carrier(s).

10.6 **Non-Exclusive Participation:** None of the provisions of this Agreement shall prevent THE CITY or the Practitioner from participating in or contracting with any other organization, health maintenance organization, or any other health delivery or insurance program.

10.7 **Notice:** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be hand delivered or sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page. Such address may be changed from time to time by written notice to the other party.

10.8 **Severability:** In case any one or more of the provision of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall be construed liberally in order to effectuate the purposes of this Agreement, and the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

10.9 **Waiver:** Failure by either parties following notice of a breach or a default, to enforce any of the provisions of this Agreement, shall not thereafter be construed as a waiver of any subsequent breach or default of any of the provisions of this Agreement.

10.10 **Appeal Rights:** If any of the parties who receive a copy of the City's Claim Administrators Utilization Management Department's determination disagree with the decision, they may appeal in writing to THE CITY Claim Administrator within thirty (30) days of the date of the initial date of the denial letter but, prior to the completion of the procedure or discharge from the hospital. The available medical information must be provided to the City's Claim Administrator at no cost to The Plan. The Claims Administrator's determination will be reviewed by an appropriate Practitioner specialist who has not previously reviewed the case. When all medical information necessary to render a determination is received, all parties who were notified of the original recommendation will be notified of the reconsideration decision within five (5) working days.

10.11 **Right to Cure:** Both parties agree to meet and confer in good faith to resolve any problems, disputes or issues of breach that may arise under this Agreement. The non-conforming party is entitled to ten (10) days right to cure the alleged defect after receiving notice pursuant to Section 10.7 herein. Said notice shall include reasonable detail of the event(s) which constitutes the alleged problem, dispute or issue of breach.

10.12 **Exclusivity:** Both parities agree that this agreement is exclusive between THE CITY and the Practitioner which may not be extended to any other parties.

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

10.14 To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Practitioner hereby verifies that Practitioner does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Practitioner shall be deemed to have not made such verification.

10.15 **Records Retention and Production of Information:** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Practitioner shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Practitioner on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Practitioner, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

10.16 **Public Information:** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Practitioner agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the Practitioner or vendor agrees that the

contract can be terminated if the Practitioner or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

10.17 **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 Attachments, 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 Attachments.

Each party to this Agreement warrants that it has the full power and authority to enter into this Agreement and the Individual signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

THE CITY:	Practitioner:
City of Midland 300 N. Loraine Midland, TX 79701	Midland Emergency Management, PLLC PO Box 4157 Midland, TX 79704
Signature	Signature
Robert Patrick, Interim City Manager	
Name (Printed) & Title	Name (Printed) & Title
	75-2547359
Date	Tax Identification Number
	Date

ATTACHMENT A

CONTRACT RATES

Preferred Provider: Midland Emergency Management PLLC

Effective Date of Contract Rates January 1, 2021

Physical Address:

Billing Address: PO Box 4157, Midland, Texas 79704

Tax ID: 75-2547359

Specialty: Emergency Medicine

Telephone: (432) 638-2266

E-mail Address

NPI Number:

Note: All claims processed under the Tax ID listed above will process according to the terms of this Contract.

Effective July 1, 2018, for Reference Based Pricing Health Plan ("RBPHP"). A Reference Based Pricing Health Plan is a Plan that has modified the terms of its Health Benefit Plan to recognize reference-based pricing and communicate such changes to its Covered Persons.

A. Emergency Medical Services and Supplied (billed on a 1500 Claim Form or electronic equivalent):

Payment options.

The allowable amount for anesthesia services will be based 300% of the Medicare allowable rate for Emergency Medical Services.

B. Term and Termination:

1. The initial term of this Attachment, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Attachment shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

2. This Attachment may be terminated by either party upon ninety (90) days written advance notice to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on the most recent date shown below:

THE CITY:	Practitioner:
City of Midland 300 N. Loraine Midland, TX 79701	Midland Emergency Management PLLC PO Box 4157 Midland, TX 79704
Signature Robert Patrick, Interim City Manager	Signature
Name (Printed) & Title	Name (Printed) & Title
Date	Date

ATTACHMENT B

Reference Based Pricing
Medicare Equivalent

Medicare is the only nationally accepted reference available and is used by 95% of all reference based pricing programs in the market.

While Medicare pays or covers about 85 percent of all claims, THE CITY'S Administrator (through our third-party vendor) can reprice almost all claims by including the use of Enhanced Ambulatory Patient Groupings (EAPGs) and All Patient Refined Diagnostic Related Groups (APR-DRG).

- EAPGs are a grouping method 3M developed to parallel Medicare's Ambulatory Patient Classification (APC) system for grouping hospital outpatient claims for a general population (rather than the primarily geriatric population Medicare APCs serve). Similarly, APR DRGs are 3M's parallel to Medicare's MS-DRG system for grouping hospital inpatient claims. Again, the APR DRG grouping method is designed for general patient populations and takes into account severity and comorbidities.

If there is a need to further expand the resources necessary to reprice claims, THE CITY'S Administrator program is flexible and will be able to add the following:

- Medicare Equivalency Tool - Creates a price for care NOT covered by Medicare
    - Medicare develops pricing/rates for some services that they do not cover. Example: Wellness code instead of office visit
- Medicare Approximation Tool - Creates a price for facilities that do NOT take Medicare
- Medicare Care Crosswalk Tool - Creates a price for care NOT covered by Medicare in a particular setting by using a crosswalk to an alternative setting that is covered by Medicare.

Medicare Data:

- Acute Care Hospital data
    - Major releases in October and January of each year
    - Individual hospital factors are pulled monthly
- Critical Access Hospital data
    - Regular updates from Noridian through Freedom of Information Request
- Regulations
    - Constantly monitored and updated as necessary

DIRECT CASE RATE PRACTITIONER AGREEMENT
By and Between
City of Midland
and
Permian Basin Anesthesia, PLLC

THIS Practitioner AGREEMENT, "Agreement" made and entered into on and effective January 1, 2021, is by and between City of Midland hereinafter referred to as "THE CITY"; and Permian Basin Anesthesia, PLLC, hereafter referred to as the "Practitioner" and shall continue for a period of 2 years, subject to the provisions set forth below.

I. RECITALS

WHEREAS, THE CITY, desires to make appropriate Healthcare Service available at a reasonable cost to the eligible plan participants who are covered by the healthcare benefit plans that have been established by THE CITY; and

WHEREAS, the Practitioner is a hospital, Practitioner, and/or other healthcare providing entity organized specifically to facilitate the provision of Healthcare Services to individuals; and

WHEREAS, THE CITY desires to contract with the Practitioner to arrange for the provision of Healthcare Services to Covered Individuals pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, and in consideration of the premises and the mutual covenants herein contained, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

II. DEFINITIONS

For the purposes of this Agreement, certain terms are defined as follows:

2.1 **Ancillary Practitioner:** Durable medical equipment suppliers, home health agencies, infusion therapists, physical therapists, occupational therapists, outpatient surgery centers, ambulatory surgical centers, allied health professionals, chiropractic practitioner and laboratories.

2.2 **Clean Claim:** A billing form UB-92 or HCFA 1500 or any successor form which provides the beneficiary's name and identification number, claim date, date of birth, group name and number; Practitioner's name and identification number; dates and location of services, description of procedures, diagnosis code, secondary diagnosis code, most current ICD version, procedure codes, DRG, units, modifiers and amount billed for each procedure, where applicable, and includes itemized claim statements and/or beneficiaries' medical records if requested by payer within 20 calendar days after payer's receipt of a claim. A "Clean Claim" does not include a claim where coordination of benefits is actively pursued, medical claims review is necessary, subrogation is pursued, where work related or where pre-existing conditions may exist. Outpatient claims in excess of fifteen thousand dollars ($15,000.00) and inpatient claims in excess of twenty thousand dollars ($20,000.00) will require itemized bills.

2.3 **Covered Individuals Benefit Plan Percentage:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner up to The Plan's out-of-pocket maximum.

2.4 **Co-Payment:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner at the time of service. Co-Payments are usually connected with specific benefits and may be used instead of The Plan deductible and Covered Individuals Benefit Percentage.

2.5 **Coordination of Benefits (COB):** A process by which two (2) or more health benefit plans, providing the same Covered Individual the same or similar health benefits, share the aggregate benefits on the actual billed charges the individual receives for an illness or injury. One plan will be determined primary and the other secondary.

2.6 **Covered Services:** Medically necessary services or supplies specified in the Covered Individual's Plan for which benefits will be paid when provided by a Practitioner acting within the scope of his/her license pursuant to this agreement.

2.7 **Deductible:** The amount of eligible expenses which must be paid by *a* Covered Individual before benefits become payable by The Plan.

2.8 **Emergency or Emergency Services:** Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in: 1) placing the patient's health in serious jeopardy; 2) serious impairment of bodily functions; 3) serious dysfunction of any bodily organ or part; 4) serious disfigurement; or 5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

2.9 **Fee Schedule:** The schedule, attached hereto as Attachment A and incorporated herein by reference, which specifies the maximum amount payable to the Practitioner for providing Covered Services to Covered Individuals. The fee schedules services will be paid at the network benefit percentage and deductible. The Practitioner will not balance bill the Covered Individual

2.10 **Healthcare Service:** A service the Practitioner is licensed to provide and which he/she customarily provides to individuals; or those inpatient and outpatient services that a Healthcare Facility is licensed, equipped and staffed to provide, and which it customarily provides to individuals.

2.11 **Integration of Benefits:** A process by which two (2) or more health benefit plans providing the same individual the same or similar health benefits limit the aggregate benefits the individual receives for an illness or injury to the amount payable by The Plan.

2.12 **Medically Necessary Treatment:** Medical or surgical services which a Covered Individual requires for the identification or treatment of illness, injury, disease or impairment, or skilled care that is (a) consistent with the Covered Individual's diagnosis or symptoms and (b) appropriate with regards to standards of good medical practice, and as defined by Medicare and or

2.13 **THE CITY:** The City of Midland, the entity responsible for the administration or payment of claims under The Plan.

2.14 **Practitioner Agreement:** An Agreement between the Practitioner and THE CITY.

2.15 **Skilled Care:** The recognition and utilization of professional methods and procedures in the assessment, observation, or treatment of an illness or injury; and must be performed by or under the supervision of the Practitioner.

2.16 **Utilization Management:** A program which may include, without limitation, evaluation of the necessity, appropriateness, and efficiency of the use of Healthcare Services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

2.17 **Practitioner:** A Physician or a person acting within the scope of applicable state licensing/certification requirements, including, but not limited to, the following designations: Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Optometry (OD), State Licensed Durable and Medical Device/Equipment Organizations, Certified Nurse Midwife (CNM), Certified Professional Midwife (CPM), Registered Respiratory Therapist (RRT), Certified Respiratory Therapist (CRT), Licensed Physical Therapist (LPT), Licensed Aquatic Therapist (LAT), Licensed Psychologist, Doctor of Chiropractic (DC), Doctor of Podiatric Medicine (DPM), Registered Nurse (RN), Licensed Vocational Nurse (LVN), Licensed Practical Nurse (LPN), Speech Therapist, Audiologist, Occupational Therapist, Licensed or Registered Dietitian (LD or RD), Certified Registered Nurse Anesthetist (CRNA), Advanced Nurse Practitioner (ANP) or Registered Nurse First Assistant (RNFA).

III. THE CITY'S RESPONSIBILITIES

3.1 THE CITY shall define and determine all eligibility requirements for Covered Individuals. THE CITY shall establish procedures to verify the eligibility of Covered Individuals seeking services from the Practitioner, including ID cards and an 800 number. The eligibility procedures shall be set out or referenced in The Plan.

3.2 The contents, description, and nature of the benefits provided by The Plan(s), and dissemination to the Practitioner and to Covered Individuals of all such information, whether or not required by law, shall be the sole responsibility of THE CITY and shall be in accordance with federal, state, and local law.

3.3 THE CITY shall designate an independent Third-Party Administrator to adjudicate/process/pay all claims under this agreement. The Administrator shall provide utilization management services, determine medical necessity, and all other services as defined but this agreement.

IV. PRACTITIONER RESPONSIBILITIES

4.1 The Practitioner shall provide medically necessary Healthcare Services to Covered Individuals in a manner similar to and within the same time availability in which the Practitioner provides such services to any other individuals, and will not differentiate or discriminate against Covered Individuals as a result of this Agreement.

4.2 The Practitioner shall provide Healthcare Services to Covered Individuals in the most cost-effective manner.

4.3 The Practitioner shall maintain currently and for the duration of this Agreement, professional liability insurance coverage in such amount at least equal to or greater than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate. For dependent/independent Practitioners, amounts at least equal to or greater than two hundred thousand dollars ($200,000) per occurrence and six hundred thousand dollars ($600,000) in the aggregate. Evidence of such coverage shall be provided to THE CITY upon request. The Practitioner shall agree to give THE CITY not less than thirty days prior written notice of any cancellation, non-renewal, or material alterations of such coverage.

4.4 The Practitioner shall prepare and maintain all appropriate medical, financial, administrative and other records which involve transactions relating to Covered Individuals receiving Healthcare Services. The Practitioner agrees to maintain records on Covered Individuals in accordance with prudent record-keeping procedures and as required by any applicable federal, state, or local laws, rules or regulations.

4.5 The Practitioner agrees to allow THE CITY or its designee upon reasonable notice during normal business hours to have, without charge, access to and the right to examine, audit, excerpt, copy and transcribe any books, documents, papers, and records within its possession, which involve transactions relating to this Agreement. The Practitioner agrees to provide THE CITY or its designee with appropriate working space. Upon request, photocopies of such records shall be provided to THE CITY or its designee at $.10/copy, not to exceed $20.00/record. This provision shall survive the termination of this Agreement.

4.6 The Practitioner shall comply, with the requirements of all laws and regulations applicable to THE CITY's business, and shall maintain in effect all licenses, permits and all governmental and board authorizations and approvals as necessary for the Practitioner's business operations and for the provision of Healthcare Services.

4.7 The Practitioner shall immediately send written notice to THE CITY of any legal, governmental, or other action taken against the Practitioner, which could materially impair the ability of the Practitioner to carry out the duties and obligations of this Agreement, including, but not limited to, actions related to 1) any revocation, suspensions, or limitation in staff privileges; 2) any disciplinary action taken by a hospital; and 3) suspension from participation in the Medicare or Medicaid program as a result of alleged fraud or abuse.

4.8 The Practitioner affirms that the application, which is hereby incorporated by reference, contains true and correct information and the Practitioner acknowledges that THE CITY is relying on such information.

4.9 The Practitioner shall permit THE CITY or its designee to confer directly with the Practitioner's agents and employees regarding Healthcare Services provided to Covered Individuals.

4.10 The Practitioner warrants that all persons or entities providing Healthcare Services under this agreement are licensed to perform such services by all appropriate licensing agencies in the State of Texas.

4.11 The Practitioner shall make his/her best efforts to inform the Covered Individual that lesser benefits may be available under The Plan in the event a Network Practitioner refers or admits the Covered Individual to a healthcare Practitioner other than a Network Practitioner.

4.12 The Practitioner shall make his/her best effort to refer and admit Covered Individuals to other Network Practitioner except when 1) an emergency exists and the Network Practitioner is not available; 2) the Healthcare Service is not geographically available in a timely fashion; or 3) the Covered Individual refuses to accept the recommendation of a Network Practitioner and the Practitioner documents that the Covered Individual elected to receive the Healthcare Service from a non-network Practitioner.

4.13 The Practitioner shall comply and assist with implementing THE CITY's Administrator's Utilization Management plan or program as long as the Utilization Management plan or program complies with or does not conflict with the requirements of any government or regulatory compliance board.

4.14 The Practitioner acknowledges that THE CITY does not warrant or guarantee that the Practitioner will be utilized by any particular number of Covered Individuals.

4.15 The Practitioner acknowledges that THE CITY may remove the Practitioner from participation under this Agreement at any time with or without cause by giving thirty (30) days written notice to the Practitioner.

4.16 The Practitioner agrees to assist THE CITY in contacting the appropriate individuals for services not performed by the Practitioner, e.g., emergency room, laboratory, anesthesiologist, etc.

4.17 The Practitioner agrees to deliver Healthcare Services in the most cost-efficient setting. A Healthcare Service will not be considered Medically Necessary if the Covered Individual's symptoms or conditions indicate that it would be safe to provide the service or supplies in a less comprehensive setting. The fact that any particular Practitioner may prescribe, order, recommend, or approve a service, supply or level of care does not, of itself, make such treatment Medically Necessary. The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations. The Practitioner will cooperate with THE CITY quality improvement activities and allow THE CITY to use the Practitioner's performance data.

4.18 The Practitioner may freely communicate with patients about their treatment, regardless of benefit coverage limitations.

V. REIMBURSEMENT AND BILLING

5.1 The Practitioner shall agree to accept the amount specified on the fee schedule (Attachment A) as payment in full for Covered Services provided to Covered Individuals, provided however that THE CITY makes payment to Practitioner within the timeframe specified in this agreement. The fee schedule is effective regardless if City of Midland is the primary, secondary or tertiary payor. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Practitioner shall implement an assignment of benefits procedure for claims payment to be made directly to the Practitioner. The Practitioner may only collect co-payment, co-insurance, deductible, and charges for non-covered services at the time of service.

5.2 The Practitioner will be solely responsible for collection of any deductibles, coinsurance, co-payments, and charges for non-Medically Necessary Services that are the Covered Individual's responsibility, provided that the total collected may not exceed the amount specified on the fee

schedule (Attachment A). The collection effort for the Co-payment should be at the time of service. The Practitioner agrees not to balance bill the patient for any amounts other than the Deductible, Co-payments and/or Covered Individual's Benefit Percentage.

5.3 The Practitioner shall not seek payment from the Covered Individual for Healthcare Services which are not Medically Necessary except when a Covered Individual request the Practitioner to provide Healthcare Services that are not Medically Necessary and agrees to reimburse the Practitioner for those provided Healthcare Services. The fee schedule (Attachment A) will apply to non-Medically Necessary services. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Practitioner can negotiate with the patient regarding the patient's payment for services in the event that Practitioner and THE CITY have a disagreement over the necessity of proposed services provided that the Practitioner has informed the patient about this dispute and the fact that the patient will be personally responsible for payment. Nothing with the provision of the agreement prohibits the Practitioner from pursuing the patient for collection of fees for services determined to be Medically Necessary in the event the payor fails to pay the claim for such services within 90 days or in the event of any bankruptcy, receivership, or insolvency of the payer.

5.4 The Practitioner agrees to refund all uncontested duplicate or erroneous claim payments regardless of the cause upon thirty (30) days written notice. Appeal rights will be sent in writing to Practitioner with the refund request. The Practitioner will have 45 days to file an appeal on the refund request. All payments made to the Practitioner are considered final after 180 days.

VI. DISCLAIMER

6.1 The benefits described are subject to all plan limitations, pre-existing information, filing deadlines, exclusions and eligibility requirements. All benefits are based on the plan document language. If a patient is on continuation of coverage ("COC" or "COBRA"), coverage could terminate retroactively if the individual's contribution is not made within COC time guidelines.

6.2 If a Covered Individual is receiving care or is about to receive care and is identified as not actively at work, continuation of coverage benefits may be offered, but must be accepted and paid per the COC time guidelines for Practitioner services to be considered eligible for benefit payment.

6.3 Notification is the determination only of the medical necessity of a proposed treatment based on the information provided at the time the precertification is issued. Precertification does not verify or certify:

(1) Eligibility of any individual for coverage;
(2) Benefit coverage for services rendered pursuant to the precertification;
(3) Network status of the Practitioner(s).

VII. INDEMNIFICATION

7.1 Each party will be responsible for its own acts or omissions that result in injury or damage to individuals or property that arise as a consequence of the party's performance of this Agreement whether or not as a result of negligence. This provision shall survive the termination of this Agreement.

VIII. CONFIDENTIALITY

8.1 The Practitioner and THE CITY understand and agree that all information and records related to Covered Individuals are privileged and confidential. To the extent provided by law, the parties agree to keep confidential and not disclose patient identifiable information to any third party without the prior written consent of the Covered Individual, except that information required for Utilization Management, quality assurance and claims adjudication will be released to THE CITY and/or its

designee. The Practitioner shall conform to all confidentiality and/or privacy requirements of state and federal law.

8.2 All information and materials provided by THE CITY to the Practitioner will remain proprietary to THE CITY including but not limited to contracts, reimbursement rates and methodology, and any operations manuals. This statement shall survive the termination of this Agreement.

IX. TERM AND TERMINATION OF AGREEMENT

9.1 **Term:** The initial term of this Agreement, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Agreement shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

9.2 **Legislative or Administrative Changes:** In the event that there is a change in the federal or state statutes or regulations or in the application thereof, any of which materially affects the reimbursement which the Practitioner may receive for its services furnished to Covered Individuals, either party with notice may propose a new basis for compensation for the Practitioner's services furnished pursuant to this Agreement. If such notice of new basis is given and if the parties are unable to agree upon a new basis for compensation within sixty days thereafter, either party may terminate this Agreement by thirty days' notice to the other on any future date specified in such notice.

9.3 **Effect of Termination:** Upon termination of this Agreement, neither party shall have any further obligation unless noted hereunder, except that termination of this Agreement shall not affect the rights and obligations of the parties hereto 1) arising out of transactions occurring prior to termination, including without limitation (a) THE CITY's obligation pursuant to this Agreement to render, payment to the Practitioner for its services, and (b) the Practitioner's obligation for continuity of care through patient discharge including medically appropriate transfer of care or other medically appropriate transition of care with adherence to contracted fee schedule; and 2) obligations, promises and covenants expressly made to extend beyond the term of this Agreement, including without limitation confidentiality of information, indemnities, and releases.

X. GENERAL PROVISIONS

10.1 **Assignment:** This Agreement shall be binding upon and inure to the benefit of the respective legal successors and assignees of the parties. However, neither this Agreement, or any rights or obligations hereunder may be assigned, delegated, or transferred in whole or in part without the prior written consent of the other party.

10.2 **Force Majeure:** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including without limitation, acts of God, acts of any public enemy, flood, strikes, statutory or other laws, regulations, rules, or orders of the federal, state, or local government or any agency thereof.

10.3 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue:** Venue for any cause of action arising under this agreement shall be in Midland County, Texas.

10.5 **Intent of the Parties:** It is the intent of the parties that this Agreement is to be effective only in regard to their rights and obligations with respect to each other, the Covered Individual(s) and THE CITY's stop loss carrier(s).

10.6 **Non-Exclusive Participation:** None of the provisions of this Agreement shall prevent THE CITY or the Practitioner from participating in or contracting with any other organization, health maintenance organization, or any other health delivery or insurance program.

10.7 **Notice:** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be hand delivered or sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page. Such address may be changed from time to time by written notice to the other party.

10.8 **Severability:** In case any one or more of the provision of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall be construed liberally in order to effectuate the purposes of this Agreement, and the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

10.9 **Waiver:** Failure by either parties following notice of a breach or a default, to enforce any of the provisions of this Agreement, shall not thereafter be construed as a waiver of any subsequent breach or default of any of the provisions of this Agreement.

10.10 **Appeal Rights:** If any of the parties who receive a copy of the City's Claim Administrators Utilization Management Department's determination disagree with the decision, they may appeal in writing to THE CITY Claim Administrator within thirty (30) days of the date of the initial date of the denial letter but, prior to the completion of the procedure or discharge from the hospital. The available medical information must be provided to the City's Claim Administrator at no cost to The Plan. The Claims Administrator's determination will be reviewed by an appropriate Practitioner specialist who has not previously reviewed the case. When all medical information necessary to render a determination is received, all parties who were notified of the original recommendation will be notified of the reconsideration decision within five (5) working days.

10.11 **Right to Cure:** Both parties agree to meet and confer in good faith to resolve any problems, disputes or issues of breach that may arise under this Agreement. The non-conforming party is entitled to ten (10) days right to cure the alleged defect after receiving notice pursuant to Section 10.7 herein. Said notice shall include reasonable detail of the event(s) which constitutes the alleged problem, dispute or issue of breach.

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

10.13 To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Practitioner hereby verifies that Practitioner does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Practitioner shall be deemed to have not made such verification.

10.14 **Records Retention and Production of Information:** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Practitioner shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Practitioner on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Practitioner, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

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

10.16 **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 Attachments, 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 Attachments.

Each party to this Agreement warrants that it has the full power and authority to enter into this Agreement and the Individual signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

THE CITY: City of Midland 300 N. Loraine Midland, TX 79701	Practitioner: Permian Basin Anesthesia, PLLC PO Box 41757 Midland, TX 79704
Signature Robert Patrick, Interim City Manager	Signature
Name (Printed) & Title	Name (Printed) & Title 843768160
Date	Tax Identification Number Date

ATTACHMENT A

CONTRACT RATES

Preferred Provider: Permian Basin Anesthesia, PLLC

Effective Date of Contract Rates January 1, 2021

Physical Address:

Billing Address: PO Box 4157, Midland, Texas 79704

Tax ID: 843768160

Specialty: Anesthesiology

Telephone: (432) 699-0225

E-mail Address

NPI Number: 1861027286

Note: All claims processed under the Tax ID listed above will process according to the terms of this Contract.

Effective July 1, 2018, for Reference Based Pricing Health Plan ("RBPHP"). A Reference Based Pricing Health Plan is a Plan that has modified the terms of its Health Benefit Plan to recognize reference-based pricing and communicate such changes to its Covered Persons.

A. Anesthesiology Services and Supplied (billed on a 1500 Claim Form or electronic equivalent):

Payment options.

The allowable amount for anesthesia services will be based 350% of the Medicare allowable rate for anesthesia.

B. Term and Termination:

1. The initial term of this Attachment, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Attachment shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

2. This Attachment may be terminated by either party upon ninety (90) days written advance notice to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on the most recent date shown below:

THE CITY:	Practitioner:
City of Midland 300 N. Loraine Midland, TX 79701	Permian Basin Anesthesia, PLLC PO Box 41757 Midland, TX 79704
Signature	Signature
Robert Patrick, Interim City Manager	
Name (Printed) & Title	Name (Printed) & Title
Date	Date

ATTACHMENT B

Reference Based Pricing
Medicare Equivalent

Medicare is the only nationally accepted reference available and is used by 95% of all reference based pricing programs in the market.

While Medicare pays or covers about 85 percent of all claims, THE CITY'S Administrator (through our third-party vendor) can reprice almost all claims by including the use of Enhanced Ambulatory Patient Groupings (EAPGs) and All Patient Refined Diagnostic Related Groups (APR-DRG).

- EAPGs are a grouping method 3M developed to parallel Medicare's Ambulatory Patient Classification (APC) system for grouping hospital outpatient claims for a general population (rather than the primarily geriatric population Medicare APCs serve). Similarly, APR DRGs are 3M's parallel to Medicare's MS-DRG system for grouping hospital inpatient claims. Again, the APR DRG grouping method is designed for general patient populations and takes into account severity and comorbidities.

If there is a need to further expand the resources necessary to reprice claims, THE CITY'S Administrator program is flexible and will be able to add the following:

- Medicare Equivalency Tool - Creates a price for care NOT covered by Medicare
    - Medicare develops pricing/rates for some services that they do not cover. Example: Wellness code instead of office visit
- Medicare Approximation Tool - Creates a price for facilities that do NOT take Medicare
- Medicare Care Crosswalk Tool - Creates a price for care NOT covered by Medicare in a particular setting by using a crosswalk to an alternative setting that is covered by Medicare.

Medicare Data:

- Acute Care Hospital data
    - Major releases in October and January of each year
    - Individual hospital factors are pulled monthly
- Critical Access Hospital data
    - Regular updates from Noridian through Freedom of Information Request
- Regulations
    - Constantly monitored and updated as necessary

DIRECT CASE RATE FACILITY AGREEMENT
By and Between
City of Midland
and
Midland Memorial Hospital

THIS Facility AGREEMENT, "Agreement" made and entered into on and effective January 1, 2021, is by and between City of Midland hereinafter referred to as "THE CITY"; and Midland Memorial Hospital, hereafter referred to as the "Facility" and shall continue for a period of 2 years, subject to the provisions set forth below.

I. RECITALS

WHEREAS, THE CITY, desires to make appropriate Healthcare Service available at a reasonable cost to the eligible plan participants who are covered by the healthcare benefit plans that have been established by THE CITY; and

WHEREAS, the Facility is a hospital, Facility, and/or other healthcare providing entity organized specifically to facilitate the provision of Healthcare Services to individuals; and

WHEREAS, THE CITY desires to contract with the Facility to arrange for the provision of Healthcare Services to Covered Individuals pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, and in consideration of the premises and the mutual covenants herein contained, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

II. DEFINITIONS

For the purposes of this Agreement, certain terms are defined as follows:

2.1 **Ancillary Practitioner:** Durable medical equipment suppliers, home health agencies, infusion therapists, physical therapists, occupational therapists, outpatient surgery centers, ambulatory surgical centers, allied health professionals, chiropractic practitioner and laboratories.

2.2 **Clean Claim:** A billing form UB-92 or HCFA 1500 or any successor form which provides the beneficiary's name and identification number, claim date, date of birth, group name and number; Facility's name and identification number; dates and location of services, description of procedures, diagnosis code, secondary diagnosis code, most current ICD version, procedure codes, DRG, units, modifiers and amount billed for each procedure, where applicable, and includes itemized claim statements and/or beneficiaries' medical records if requested by payer within 20 calendar days after payer's receipt of a claim. A "Clean Claim" does not include a claim where coordination of benefits is actively pursued, medical claims review is necessary, subrogation is pursued, where work related or where pre-existing conditions may exist. Outpatient claims in excess of fifteen thousand dollars ($15,000.00) and inpatient claims in excess of twenty thousand dollars ($20,000.00) will require itemized bills.

2.3 **Covered Individuals Benefit Plan Percentage:** A specific amount that is the Covered Individual's responsibility to pay to the Facility up to The Plan's out-of-pocket maximum.

2.4 **Co-Payment:** A specific amount that is the Covered Individual's responsibility to pay to the Practitioner at the time of service. Co-Payments are usually connected with specific benefits and may be used instead of The Plan deductible and Covered Individuals Benefit Percentage.

2.5 **Coordination of Benefits (COB):** A process by which two (2) or more health benefit plans, providing the same Covered Individual the same or similar health benefits, share the aggregate benefits on the actual billed charges the individual receives for an illness or injury.

One plan will be determined primary and the other secondary.

2.6 **Covered Services:** Medically necessary services or supplies specified in the Covered Individual's Plan for which benefits will be paid when provided by a Practitioner acting within the scope of his/her license pursuant to this agreement.

2.7 **Deductible:** The amount of eligible expenses which must be paid by *a* Covered Individual before benefits become payable by The Plan.

2.8 **Emergency or Emergency Services:** Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in: 1) placing the patient's health in serious jeopardy; 2) serious impairment of bodily functions; 3) serious dysfunction of any bodily organ or part; 4) serious disfigurement; or 5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

2.9 **Fee Schedule:** The schedule, attached hereto as Attachment A and incorporated herein by reference, which specifies the maximum amount payable to the Practitioner for providing Covered Services to Covered Individuals. The fee schedules services will be paid at the network benefit percentage and deductible. The Practitioner will not balance bill the Covered Individual

2.10 **Healthcare Service:** A service the Practitioner is licensed to provide and which he/she customarily provides to individuals; or those inpatient and outpatient services that a Healthcare Facility is licensed, equipped and staffed to provide, and which it customarily provides to individuals.

2.11 **Integration of Benefits:** A process by which two (2) or more health benefit plans providing the same individual the same or similar health benefits limit the aggregate benefits the individual receives for an illness or injury to the amount payable by The Plan.

2.12 **Medically Necessary Treatment:** Medical or surgical services which a Covered Individual requires for the identification or treatment of illness, injury, disease or impairment, or skilled care that is (a) consistent with the Covered Individual's diagnosis or symptoms and (b) appropriate with regards to standards of good medical practice, and as defined by Medicare and or

2.13 **THE CITY:** The City of Midland, the entity responsible for the administration or payment of claims under The Plan.

2.14 **Facility Agreement:** An Agreement between the Facility and THE CITY.

2.15 **Skilled Care:** The recognition and utilization of professional methods and procedures in the assessment, observation, or treatment of an illness or injury; and must be performed by or under the supervision of the Practitioner.

2.16 **Utilization Management:** A program which may include, without limitation, evaluation of the necessity, appropriateness, and efficiency of the use of Healthcare Services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

2.17 **Practitioner:** A Physician or a person acting within the scope of applicable state licensing/certification requirements, including, but not limited to, the following designations: Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Optometry (OD), State Licensed Durable and Medical Device/Equipment Organizations, Certified Nurse Midwife (CNM), Certified Professional Midwife (CPM), Registered Respiratory Therapist (RRT), Certified Respiratory Therapist (CRT), Licensed Physical Therapist (LPT), Licensed Aquatic Therapist (LAT), Licensed Psychologist, Doctor of Chiropractic (DC), Doctor of Podiatric Medicine (DPM), Registered Nurse (RN), Licensed Vocational Nurse (LVN), Licensed Practical Nurse (LPN), Speech Therapist, Audiologist, Occupational Therapist, Licensed or Registered Dietitian (LD or RD), Certified Registered Nurse Anesthetist (CRNA), Advanced Nurse Practitioner (ANP) or Registered Nurse First Assistant (RNFA).

III. THE CITY'S RESPONSIBILITIES

3.1 THE CITY shall define and determine all eligibility requirements for Covered Individuals. THE CITY shall establish procedures to verify the eligibility of Covered Individuals seeking services from the Facility, including ID cards and an 800 number. The eligibility procedures shall be set out or referenced in The Plan.

3.2 The contents, description, and nature of the benefits provided by The Plan(s), and dissemination to the Facility and to Covered Individuals of all such information, whether or not required by law, shall be the sole responsibility of THE CITY and shall be in accordance with federal, state, and local law.

3.3 THE CITY shall designate an independent Third-Party Administrator to adjudicate/process/pay all claims under this agreement. The Administrator shall provide utilization management services, determine medical necessity, and all other services as defined but this agreement.

IV. FACILITY RESPONSIBILITIES

4.1 The Facility shall provide medically necessary Healthcare Services to Covered Individuals in a manner similar to and within the same time availability in which the Facility provides such services to any other individuals, and will not differentiate or discriminate against Covered Individuals as a result of this Agreement.

4.2 The Facility shall provide Healthcare Services to Covered Individuals in the most cost-effective manner.

4.3 The Facility shall maintain currently and for the duration of this Agreement, professional liability insurance coverage in such amount at least equal to or greater than one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) in the aggregate. For dependent/independent Facility(ies), amounts at least equal to or greater than two hundred thousand dollars ($200,000) per occurrence and six hundred thousand dollars ($600,000) in the aggregate. Evidence of such coverage shall be provided to THE CITY upon request. The Facility shall agree to give THE CITY not less than thirty days prior written notice of any cancellation, non-renewal, or material alterations of such coverage.

4.4 The Facility shall prepare and maintain all appropriate medical, financial, administrative and other records which involve transactions relating to Covered Individuals receiving Healthcare Services. The Facility agrees to maintain records on Covered Individuals in accordance with prudent record-keeping procedures and as required by any applicable federal, state, or local laws, rules or regulations.

4.5 The Facility agrees to allow THE CITY or its designee upon reasonable notice during normal business hours to have, without charge, access to and the right to examine, audit, excerpt, copy and transcribe any books, documents, papers, and records within its possession, which involve transactions relating to this Agreement. The Facility agrees to provide THE CITY or its designee with appropriate working space. Upon request, photocopies of such records shall be provided to THE CITY or its designee at $.10/copy, not to exceed $20.00/record. This provision shall survive the termination of this Agreement.

4.6 The Facility shall comply, with the requirements of all laws and regulations applicable to THE CITY's business, and shall maintain in effect all licenses, permits and all governmental and board authorizations and approvals as necessary for the Facility's business operations and for the provision of Healthcare Services.

4.7 The Facility shall immediately send written notice to THE CITY of any legal, governmental, or other action taken against the Facility, which could materially impair the ability of the Facility to carry out the duties and obligations of this Agreement, including, but not limited to, actions related to 1) any revocation, suspensions, or limitation in staff privileges; 2) any disciplinary action taken by a hospital; and 3) suspension from participation in the Medicare or Medicaid program as a result of alleged fraud or abuse.

4.8 The Facility affirms that the application, which is hereby incorporated by reference, contains true and correct information and the Facility acknowledges that THE CITY is relying on such information.

4.9 The Facility shall permit THE CITY or its designee to confer directly with the Facility's agents and employees regarding Healthcare Services provided to Covered Individuals.

4.10 The Facility warrants that all persons or entities providing Healthcare Services under this agreement are licensed to perform such services by all appropriate licensing agencies in the State of Texas.

4.11 The Facility shall make his/her best efforts to inform the Covered Individual that lesser benefits may be available under The Plan in the event a Network Facility refers or admits the Covered Individual to a healthcare Facility other than a Network Facility.

4.12 The Facility shall make his/her best effort to refer and admit Covered Individuals to other Network Facility except when 1) an emergency exists and the Network Facility is not available; 2) the Healthcare Service is not geographically available in a timely fashion; or 3) the Covered Individual refuses to accept the recommendation of a Network Facility and the Facility documents that the Covered Individual elected to receive the Healthcare Service from a non-network Facility.

4.13 The Facility shall comply and assist with implementing THE CITY's Administrator's Utilization Management plan or program as long as the Utilization Management plan or program complies with or does not conflict with the requirements of any government or regulatory compliance board.

4.14 The Facility acknowledges that THE CITY does not warrant or guarantee that the facility will be utilized by any particular number of Covered Individuals.

4.15 The Facility acknowledges that THE CITY may remove the Facility from participation under this Agreement at any time with or without cause by giving thirty (30) days written notice to the Facility.

4.16 The Facility agrees to assist THE CITY in contacting the appropriate individuals for services not performed by the Facility, e.g., emergency room, laboratory, anesthesiologist, etc.

4.17 The Facility agrees to deliver Healthcare Services in the most cost-efficient setting. A Healthcare Service will not be considered Medically Necessary if the Covered Individual's symptoms or conditions indicate that it would be safe to provide the service or supplies in a less comprehensive setting. The fact that any particular Facility may prescribe, order, recommend, or approve a service, supply or level of care does not, of itself, make such treatment Medically Necessary. The Facility may freely communicate with patients about their treatment, regardless of benefit coverage limitations. The Facility will cooperate with THE CITY quality improvement activities and allow THE CITY to use the Facility's performance data.

4.18 The Facility may freely communicate with patients about their treatment, regardless of benefit coverage limitations.

V. REIMBURSEMENT AND BILLING

5.1 The Facility shall agree to accept the amount specified on the fee schedule (Attachment A) as payment in full for Covered Services provided to Covered Individuals, provided however that THE CITY makes payment to Facility within the timeframe specified in this agreement. The fee schedule is effective regardless if City of Midland is the primary, secondary or tertiary payor. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Facility shall implement an assignment of benefits procedure for claims payment to be made directly to the Facility. The Facility may only collect co-payment, co-insurance, deductible, and charges for non-covered services at the time of service.

5.2 The Facility will be solely responsible for collection of any deductibles, coinsurance, co-payments, and charges for non-Medically Necessary Services that are the Covered Individual's responsibility, provided that the total collected may not exceed the amount specified on the fee schedule (Attachment A). The collection effort for the Co-payment should be at the time of service. The

Facility agrees not to balance bill the patient for any amounts other than the Deductible, Co-payments and/or Covered Individual's Benefit Percentage.

5.3 The Facility shall not seek payment from the Covered Individual for Healthcare Services which are not Medically Necessary except when a Covered Individual request the Facility to provide Healthcare Services that are not Medically Necessary and agrees to reimburse the Facility for those provided Healthcare Services. The fee schedule (Attachment A) will apply to non-Medically Necessary services. The fee schedule paid will be the lessor of billed charges or the amount specified on the fee schedule (Attachment A). The Facility can negotiate with the patient regarding the patient's payment for services in the event that Facility and THE CITY have a disagreement over the necessity of proposed services provided that the Facility has informed the patient about this dispute and the fact that the patient will be personally responsible for payment. Nothing with the provision of the agreement prohibits the Facility from pursuing the patient for collection of fees for services determined to be Medically Necessary in the event the payor fails to pay the claim for such services within 90 days or in the event of any bankruptcy, receivership, or insolvency of the payer.

5.4 The Facility agrees to refund all uncontested duplicate or erroneous claim payments regardless of the cause upon thirty (30) days written notice. Appeal rights will be sent in writing to Facility with the refund request. The Facility will have 45 days to file an appeal on the refund request. All payments made to the Facility are considered final after 180 days.

VI. DISCLAIMER

6.1 The benefits described are subject to all plan limitations, pre-existing information, filing deadlines, exclusions and eligibility requirements. All benefits are based on the plan document language. If a patient is on continuation of coverage ("COC" or "COBRA"), coverage could terminate retroactively if the individual's contribution is not made within COC time guidelines.

6.2 If a Covered Individual is receiving care or is about to receive care and is identified as not actively at work, continuation of coverage benefits may be offered, but must be accepted and paid per the COC time guidelines for Facility services to be considered eligible for benefit payment.

6.3 Notification is the determination only of the medical necessity of a proposed treatment based on the information provided at the time the precertification is issued. Precertification does not verify or certify:

(1) Eligibility of any individual for coverage;
(2) Benefit coverage for services rendered pursuant to the precertification;
(3) Network status of the Facility(s).

VII. INDEMNIFICATION

7.1 Each party will be responsible for its own acts or omissions that result in injury or damage to individuals or property that arise as a consequence of the party's performance of this Agreement whether or not as a result of negligence. This provision shall survive the termination of this Agreement.

VIII. CONFIDENTIALITY

8.1 The Facility and THE CITY understand and agree that all information and records related to Covered Individuals are privileged and confidential. To the extent provided by law, the parties agree to keep confidential and not disclose patient identifiable information to any third party without the prior written consent of the Covered Individual, except that information required for Utilization Management, quality assurance and claims adjudication will be released to THE CITY and/or its designee. The Facility shall conform to all confidentiality and/or privacy requirements of state and federal law.

8.2 All information and materials provided by THE CITY to the Facility will remain proprietary to THE CITY including but not limited to contracts, reimbursement rates and methodology, and any operations manuals. This statement shall survive the termination of this Agreement.

IX. TERM AND TERMINATION OF AGREEMENT

9.1 **Term:** The initial term of this Agreement, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Agreement shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.

9.2 **Legislative or Administrative Changes:** In the event that there is a change in the federal or state statutes or regulations or in the application thereof, any of which materially affects the reimbursement which the Facility may receive for its services furnished to Covered Individuals, either party with notice may propose a new basis for compensation for the Facility's services furnished pursuant to this Agreement. If such notice of new basis is given and if the parties are unable to agree upon a new basis for compensation within sixty days thereafter, either party may terminate this Agreement by thirty days' notice to the other on any future date specified in such notice.

9.3 **Effect of Termination:** Upon termination of this Agreement, neither party shall have any further obligation unless noted hereunder, except that termination of this Agreement shall not affect the rights and obligations of the parties hereto 1) arising out of transactions occurring prior to termination, including without limitation (a) THE CITY's obligation pursuant to this Agreement to render, payment to the Facility for its services, and (b) the Facility's obligation for continuity of care through patient discharge including medically appropriate transfer of care or other medically appropriate transition of care with adherence to contracted fee schedule; and 2) obligations, promises and covenants expressly made to extend beyond the term of this Agreement, including without limitation confidentiality of information, indemnities, and releases.

X. GENERAL PROVISIONS

10.1 **Assignment:** This Agreement shall be binding upon and inure to the benefit of the respective legal successors and assignees of the parties. However, neither this Agreement, or any rights or obligations hereunder may be assigned, delegated, or transferred in whole or in part without the prior written consent of the other party.

10.2 **Force Majeure:** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including without limitation, acts of God, acts of any public enemy, flood, strikes, statutory or other laws, regulations, rules, or orders of the federal, state, or local government or any agency thereof.

10.3 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue:** Venue for any cause of action arising under this agreement shall be in Midland County, Texas.

10.5 **Intent of the Parties:** It is the intent of the parties that this Agreement is to be effective only in regard to their rights and obligations with respect to each other, the Covered Individual(s) and THE CITY's stop loss carrier(s).

10.6 **Non-Exclusive Participation:** None of the provisions of this Agreement shall prevent THE CITY or the Facility from participating in or contracting with any other organization, health maintenance organization, or any other health delivery or insurance program.

10.7 **Notice:** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be hand delivered or sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page. Such address may be changed from time to time by written notice to the other party.

10.8 **Severability:** In case any one or more of the provision of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall be construed liberally in order to effectuate the purposes of this Agreement, and the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

10.9 **Waiver:** Failure by either parties following notice of a breach or a default, to enforce any of the provisions of this Agreement, shall not thereafter be construed as a waiver of any subsequent breach or default of any of the provisions of this Agreement.

10.10 **Appeal Rights:** If any of the parties who receive a copy of the City's Claim Administrators Utilization Management Department's determination disagree with the decision, they may appeal in writing to THE CITY Claim Administrator within thirty (30) days of the date of the initial date of the denial letter but, prior to the completion of the procedure or discharge from the hospital. The available medical information must be provided to the City's Claim Administrator at no cost to The Plan. The Claims Administrator's determination will be reviewed by an appropriate Facility specialist who has not previously reviewed the case. When all medical information necessary to render a determination is received, all parties who were notified of the original recommendation will be notified of the reconsideration decision within five (5) working days.

10.11 **Right to Cure:** Both parties agree to meet and confer in good faith to resolve any problems, disputes or issues of breach that may arise under this Agreement. The non-conforming party is entitled to ten (10) days right to cure the alleged defect after receiving notice pursuant to Section 10.7 herein. Said notice shall include reasonable detail of the event(s) which constitutes the alleged problem, dispute or issue of breach.

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

10.13 To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Facility hereby verifies that Facility does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 2270.002 does not apply to this Agreement, such verification is not required, and Facility shall be deemed to have not made such verification.

10.14 **Records Retention and Production of Information:** To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, Facility shall (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Facility on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Facility, or (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to City.

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

10.16 **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 Attachments, 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 Attachments.

Each party to this Agreement warrants that it has the full power and authority to enter into this Agreement and the Individual signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

THE CITY: City of Midland 300 N. Loraine Midland, TX 79701	Facility: Midland Memorial Hospital
Signature	Signature
Robert Patrick, Interim City Manager Name (Printed) & Title	Name (Printed) & Title
Date	751584559 Tax Identification Number
	Date

ATTACHMENT A
CONTRACT RATES

Preferred Provider: Midland Memorial Hospital Effective Date of Contract Rates: January 1, 2021

Physical Address:

Billing Address:

Tax ID: 751584559

Specialty: Hospital

Telephone:

E-mail Address

NPI Number:

Note: All claims processed under the Tax ID listed above will process according to the terms of this Contract.

A. Inpatient Service Rates (billed on a UB claim form or electronic equivalent):

Scheduled rate of 150% of Provider's specific Medicare allowable amount in effect as of the date of discharge of the Covered Inpatient Medical Service, or Medicare Equivalent allowable. Medicare Equivalent is set forth in Addendum A (attached and incorporated herein). The scheduled rate may be greater than the Provider's Customary Billed Charges for the Covered Inpatient Medical Service. Provider's specific Medicare allowable is inclusive of add-ons for Indirect Medical Education, Disproportionate Share, Value Based Purchasing, Uncompensated Care, Outlier Amounts, Carve-Out Amounts and other Pass-Through Amounts.

The Diagnostic Related Group's (DRG's) 765, 766, 767, 768, 769, 770, 774, 775, 776, 777, 778, 779, 780, 781, 782, 789, 790, 791, 792, 793, 794 and 795 will be the lesser of Provider's Customary Billed Charges or 150% of Provider's specific Medicare allowable amount in effect as of the date of discharge of the Covered Inpatient Medical Service, or Medicare Equivalent allowable.

B. Hospital Outpatient or Other Medical Services Rates (billed on a UB claim form or electronic equivalent):

The allowable rate will be the scheduled rate of 275% of the Provider's specific Medicare allowable amount in effect as of the date of service of the Covered Outpatient Medical Service, or Medicare Equivalent allowable. The scheduled rate may be greater than the Provider's Customary Billed Charges for the Covered Outpatient Medical Service. THE CITY'S Administrator recognizes Provider's Provider-Based Facility designation with the Centers of Medicare & Medicaid Services ("CMS") however THE CITY will not reimburse according to the applicable Provider-Based reimbursement methodologies. Provider will not bill THE CITY as a Provider- Based Facility.

C. Outpatient Outlier Provision:

High Cost Drugs with provider cost in excess of the reimbursement will be reimbursed at the lesser of Provider's Customary Discounted Eligible Charges as listed in Appendix A or 115% of Provider Cost.

D. Physician Services and Supplies Rates (billed on a 1500 claim form or electronic equivalent):

The allowable amount for all CRT codes will be based upon the lessor of provider's customary billed charges or the RBRVS values created by Ingenix and adopted by THE CITY'S Administrator multiplied by the Administrator's conversion factor for physician services and supplies under this

Agreement. The allowable amount for anesthesia services will be based on THE CITY'S Administrator anesthesia conversion factor multiplied by the sum of adding the time units and the base units as set forth in the American Society of Anesthesiologists' *Relative Value Guide.* The allowable amount *for* mid-level Facility(ies) will be 85% of the allowable amount for physicians. The allowable amount for Licensed Counselors and Social Workers will be 65% of the allowable amount for physicians. For all procedure codes not given a relative value by Ingenix, the allowable is 85% of Customary Billed Charges. Fee schedule and conversion factors are available upon request.

E. The Provider's specific Medicare allowable amounts will change annually to reflect updates made by CMS, but shall not include reductions for Sequestration.

F. <u>Service Lines Reporting and Rate Review:</u>

When service lines are added, the parties agree to meet in good faith and evaluate and establish the rates for those service lines. The payment methodologies outlined in Attachment B will be utilized.

G. <u>Term and Termination:</u>

1. The initial term of this Attachment, subject to the terms and conditions hereof, shall be two years. At the expiration of the initial term, this Attachment shall continue from year to year under its then existing conditions unless and until a party hereto gives the other no less than 90 days written notice of termination prior to expiration of the initial term or of the one year renewal term then in effect.
2. This Attachment may be terminated by either party upon ninety (90) days written advance notice to the other party.

It is agreed that employers and employees accessing the rates in this Agreement shall have access to transparency tools providing information regarding the cost of services.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on the most recent date shown below:

THE CITY: City of Midland 300 N. Loraine Midland, TX 79701	Facility: Midland Memorial Hospital
Signature Robert Patrick, Interim City Manager	Signature
Name (Printed) & Title	Name (Printed) & Title
Date	Date

ATTACHMENT B

Reference Based Pricing
Medicare Equivalent

Medicare is the only nationally accepted reference available and is used by 95% of all reference based pricing programs in the market.

While Medicare pays or covers about 85 percent of all claims, THE CITY'S Administrator (through our third-party vendor) can reprice almost all claims by including the use of Enhanced Ambulatory Patient Groupings (EAPGs) and All Patient Refined Diagnostic Related Groups (APR-DRG).

- EAPGs are a grouping method 3M developed to parallel Medicare's Ambulatory Patient Classification (APC) system for grouping hospital outpatient claims for a general population (rather than the primarily geriatric population Medicare APCs serve). Similarly, APR DRGs are 3M's parallel to Medicare's MS-DRG system for grouping hospital inpatient claims. Again, the APR DRG grouping method is designed for general patient populations and takes into account severity and comorbidities.

If there is a need to further expand the resources necessary to reprice claims, THE CITY'S Administrator program is flexible and will be able to add the following:

- Medicare Equivalency Tool - Creates a price for care NOT covered by Medicare
    - Medicare develops pricing/rates for some services that they do not cover. Example: Wellness code instead of office visit
- Medicare Approximation Tool - Creates a price for facilities that do NOT take Medicare
- Medicare Care Crosswalk Tool - Creates a price for care NOT covered by Medicare in a particular setting by using a crosswalk to an alternative setting that is covered by Medicare.

Medicare Data:

- Acute Care Hospital data
    - Major releases in October and January of each year
    - Individual hospital factors are pulled monthly
- Critical Access Hospital data
    - Regular updates from Noridian through Freedom of Information Request
- Regulations
    - Constantly monitored and updated as necessary

City Council Meeting

Item Number: 6

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Justine Ruff, Director

Subject: Motion authorizing the execution of a Land Lease Agreement for Airport Hangar Facility with OGM, LLC, regarding certain City-owned real property described as a 0.322-acre tract located in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas. (AIRPORTS)

Purpose:

Motion authorizing City Council to execute Land Lease Agreement for Airport Hangar Facility with OGM, LLC, 0.322 acre lease tract located in Lot 4B, Block 11, Midland International Air & Space Port, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas (Lot O)

Recommended City Council Action:

Approve

Fiscal Impact:

The City/Airport will receive $.45 per square foot for the lease space for the lease term, and the improvements to the lease space will become City property at the end of the lease.
$6,507 annually
$542.32 monthly

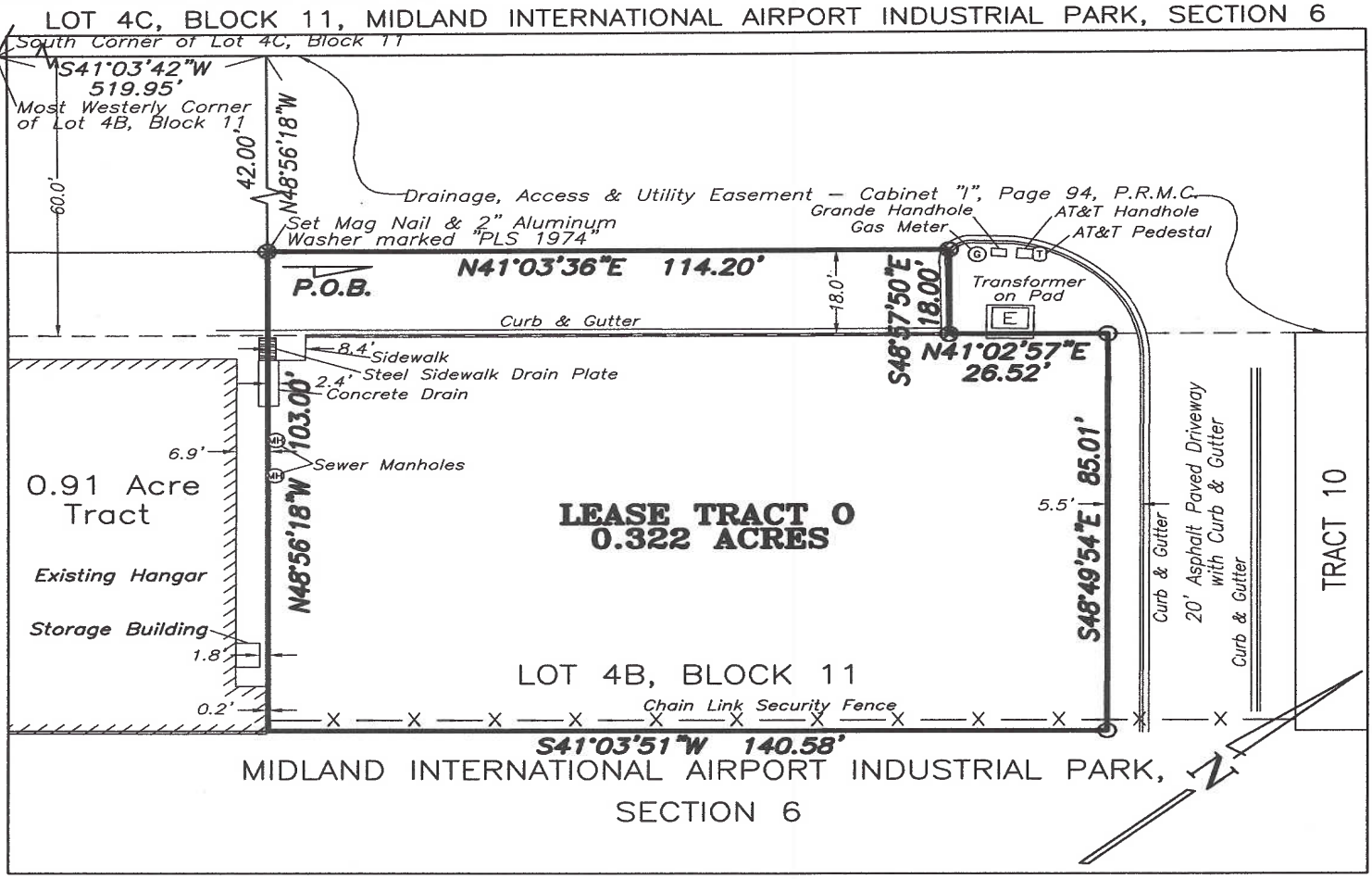
Discussion:

OGM LLC is requesting a Land Lease Agreement of Lot “O” in the new hangar development area for the construction of a private hangar. The Airport Land Lease Agreement is for a term of 40 years with CIP adjustments every 36 months. Once this agreement is executed, OGM

LLC, will submit building plans to both the Director of Airports and the City Building Official for approval. Once approved, a building permit will be issued, and construction will begin. At the end of the 40-year term, all hangar improvements will revert to the City of Midland.

Robert Patrick

City Manager's Office



○ = Set 1/2" Iron Rod with Plastic Cap marked "PLS 1974" ⊗ = Cut "+" in Concrete Unless Noted Otherwise
Drawing File: PSC–MIAHangarLeases; Crd File: Mia83_93.Crd; Drawn by: Gene M. Rodriguez; Scale: 1"=30'; Date: 1/26/21

LEGAL DESCRIPTION OF A 0.322 ACRE LEASE TRACT LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

(Plat as recorded in Cabinet "I", Page 94, Plat Records of Midland County, Texas)

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,675,748.97' E= 1,711,961.72') a mag nail and 2" aluminum washer marked "PLS 1974" set at the North corner of a 0.91 Acre Tract previously surveyed on January 22, 2014 and the West corner of this tract, from whence the most Westerly corner of said Lot 4B, Block 11 bears N48°56'18"W, a distance of 42.00 feet and S41°03'42"W, a distance of 519.95 feet;

THENCE N41°03'42"E, a distance of 114.20 feet to a cross cut in concrete set at an exterior corner of this tract;

THENCE S48°57'50"E, a distance of 18.00 feet to a cross cut in concrete set at an interior corner of this tract;

THENCE N41°02'57"E, a distance of 26.52 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at an exterior corner of this tract;

THENCE S48°49'54"E, a distance of 85.01 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the East corner of this tract;

THENCE S41°03'51"W, a distance of 140.58 feet to the South corner of this tract and the East corner of said 0.91 Acre Tract;

THENCE N48°56'11"W with the Northeast boundary line of said 0.91 Acre Tract, a distance of 103.00 feet to the PLACE OF BEGINNING. (Tract contains 14,012 square feet or 0.322 acres.)

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/93 NAD, Central Zone, with a combine grid factor of 0.9998821, and a theta angle equal to −0°58'03.674" at City of Midland Station "WINDECKER" with published values of Y= 10,673,330.16 and X= 1,713,751.73 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on January 22 & 25, 2021.

J. Stan Piper
Registered Professional Land Surveyor #1974

STATE OF TEXAS — REGISTERED — PROFESSIONAL LAND SURVEYOR

Prepared for:
Parkhill, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79701

FIRM NO. 10155200
PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

City Council Meeting

Item Number: 7

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: Motion approving a proposed Preliminary Plat of West 191 Industrial Park, Section 6, being a plat of a 33.95-acre tract of land located in Section 31, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas (Generally located on the north side of State Highway 191, approximately 171-feet east of North Farm-to-Market Road 1788, Extraterritorial Jurisdiction) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Newton Engineering, PC, is proposing to plat a 33.95-acre tract of land located in Section 31, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, into six (6) lots for industrial, retail, and office use. The property is located at 1706 N F M 1788.

This plat requires City Council Approval Per City of Midland Ordinance, Section 11-2-3, Platting Procedures.

11. Approval by the Council.

(a) Approval by the Council shall be required prior to consideration of a final plat by the commission for any preliminary plat which:

(6) Is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site or sites intended for both

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not have significant fiscal impact to the City's budget.

Discussion:

RR, Regional Retail District (Ordinance No. 8541) and ETJ, Extraterritorial Jurisdiction.

The Preliminary Plat attached hereto has been circulated to all City departments for review.

Surrounding Zoning and Land Use:

The properties to the north and west are located in the ETJ, Extraterritorial Jurisdiction and are the locations of industrial uses and vacant land. The properties to the east and south are zoned RR, Regional Retail District (Ordinance No. 8936) and the location of vacant land.

This request has been routed to all respective departments for internal review. The comments are below.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Provide the following general note on the plat face:

Initial Impact Fees will be assessed during the final platting process. Implementation and collection of impact fees will take place during the building permit process. Additional impact fees or increases in fees may not be assessed against the tract unless the number of service units to be developed on the tract increases.

ROW: See Transportation comments

PAVING: State Highway 191 Frontage road is TxDOT facility, built and maintained by TxDOT, no improvements required.

WATER: All public utilities are to be constructed to City standard, serving all lots with looped system. Surety required for all outstanding public improvements, construct all public improvements prior to platting, or request a deferral. Water pressure and volume studies are required for all developments over 5 acres, serving 20 residences or more or multi-family sites, per Policy Statement.

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 1, 2019 - Fire hydrants shall be spaced no more than 400' apart, hydrant top or bonnet shall be color coded per
NFPA (less than 500gpm RED, 500-999gpm YELLOW, 1000-1499gpm GREEN, Greater than 1500GPM BLUE)

PRO RATA: None

SEWER: All public utilities are to be constructed to City standards, serving all lots within the subdivision and to adjacent lot lines along exterior roadways. Surety required for all outstanding public improvements, construct all public improvements prior to platting, or request a deferral. Sewer capacity studies are required for all developments over 5 acres, serving 20 residences or more or multi-family sites, per Policy Statement.

DRAINAGE: Drainage study approved by City of Midland on 11/20/19

EASEMENTS: Show existing and proposed. All new easements for water and sewer must be labeled as “Public Water and Wastewater Utility Easement”. Easement where water and sewer mains run parallel to each other within the same easement should be at a minimum 25-ft wide to accommodate required spacing between lines.

SIDEWALKS: Required along arterials and collectors at platting, but adjacent roads do not have curb and gutter so request a deferral.

DIMENSION: * * *

OTHER: Label water and sewer mains that are proposed as “proposed”.

TRANSPORTATION: (Approved with Conditions)

TxDOT comments, "Access should try to be managed in accordance with current Access Management Standards. Post development drainage/runoff should not be changed/increased from pre-development conditions. When the additional ROW on FM 1788 was acquired, access was acquired with it (See attached). Any additional access locations would need to go through a request to Surplus Right of Way through the district which must be approved by the Transportation Commission. The normal driveway permit process is not sufficient."

FIRE: (Approved)

Future development will be required to meet IFC 2015 ed and locally adopted city ordinances.

Code Compliance: (Approved)

Plat identifies the non-permitted well location with a 135 ft. radius for non-permitted wells. No occupied structures allowed in the 135 ft. radius. In the past Planning Dept. at Councils request the operator and the developer identify that the issues such as flowlines and access to wells have been worked out. Need to verify location of flowlines and have them in the roadways buried at the 7ft level per the City Engineering requirements.

CODE: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain

requirements if necessary.

SURVEYOR: (Approved)

No comments.

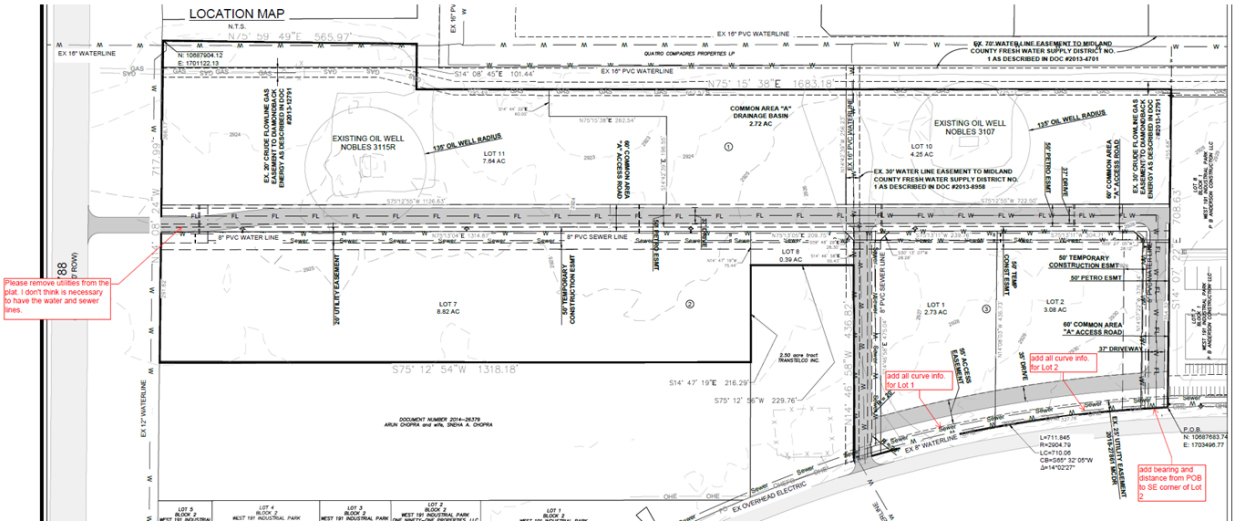
Colorado River Municipal Water District:

No Comments.

GIS:

See comments in red.

I wrote my comments in red. Please see below.



PLANNING:

Remove utility lines and contour lines from final plat.

Provide curve lengths for the proposed right-of-way and Lots 1 and 2 located along State Highway 191.

Please provide the amount of acreage located outside of the city limits.

This proposed plat is located within the RR, Regional Retail District and the ETJ, Extraterritorial Jurisdiction.

This plat requires a City Council Public Hearing as it is over 25 acres.

Provide documentation of ownership as Midland Central Appraisal District has the following SUSHIR LTD, 26 SAPHIRE ODESSA, TX 79762 information on record.

The south half of County Road 77 is owned by FM 1788 LLC a Nevada LLC. This property owner will need to sign the final plat application and mylar if this property is to be included as part of the plat. The property owner information will also need to be included on the plat face.

This plat will require an AOZ-4 determination. Because of the AOZ-4 Airport Overlay District, the following note from 11-11-11 A (2) Permits and Variances needs to be added to the final plat for approval:

> "Any Person who desires to erect a new Structure or rebuild, replace, or enlarge an existing Structure or establish a new use or substantially change an existing use in AOZ-4 must apply for and receive a permit. A permit shall be granted unless the new Structure or the new use would be a Height Hazard or a prohibited land use as set forth in Sections 11-11-8, 11-11-9, and Table 1 of this Chapter or would otherwise violate this Chapter. Applications for permits shall be submitted to and issued by the Administrative Agency."

Rename the drainage basin as common Area B.

A declaration of covenants will need to be approved and recorded prior to final plat submittal since there are proposed common areas. Change the declaration of restrict covenant section on plat face appropriately.

Ensure the signature blocks for the owner's certification and acknowledgement area correct.

All department's comments must be addressed as a condition of final plat approval subject to the following conditions.

Staff recommends approval of the preliminary plat of West 191 Industrial Park, Section 6, subject to conditions A through C.

Conditions:

A. That the technical items listed above are addressed.

B. That the required public improvements are adequately met.

C. All plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filling for recording with the County Clerk of Midland County, Texas.

Attachments:

Proposed Preliminary Plat
Application
Map

City Manager's Office

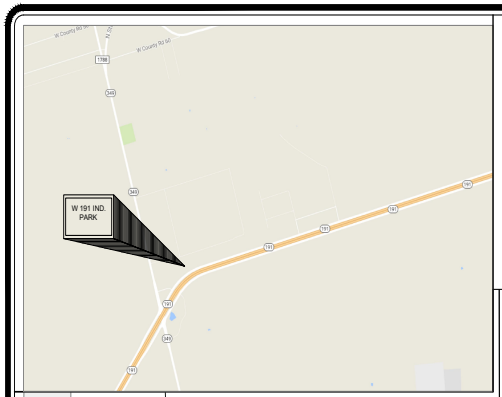
PRELIMINARY PLAT

WEST 191 INDUSTRIAL PARK, SECTION 6

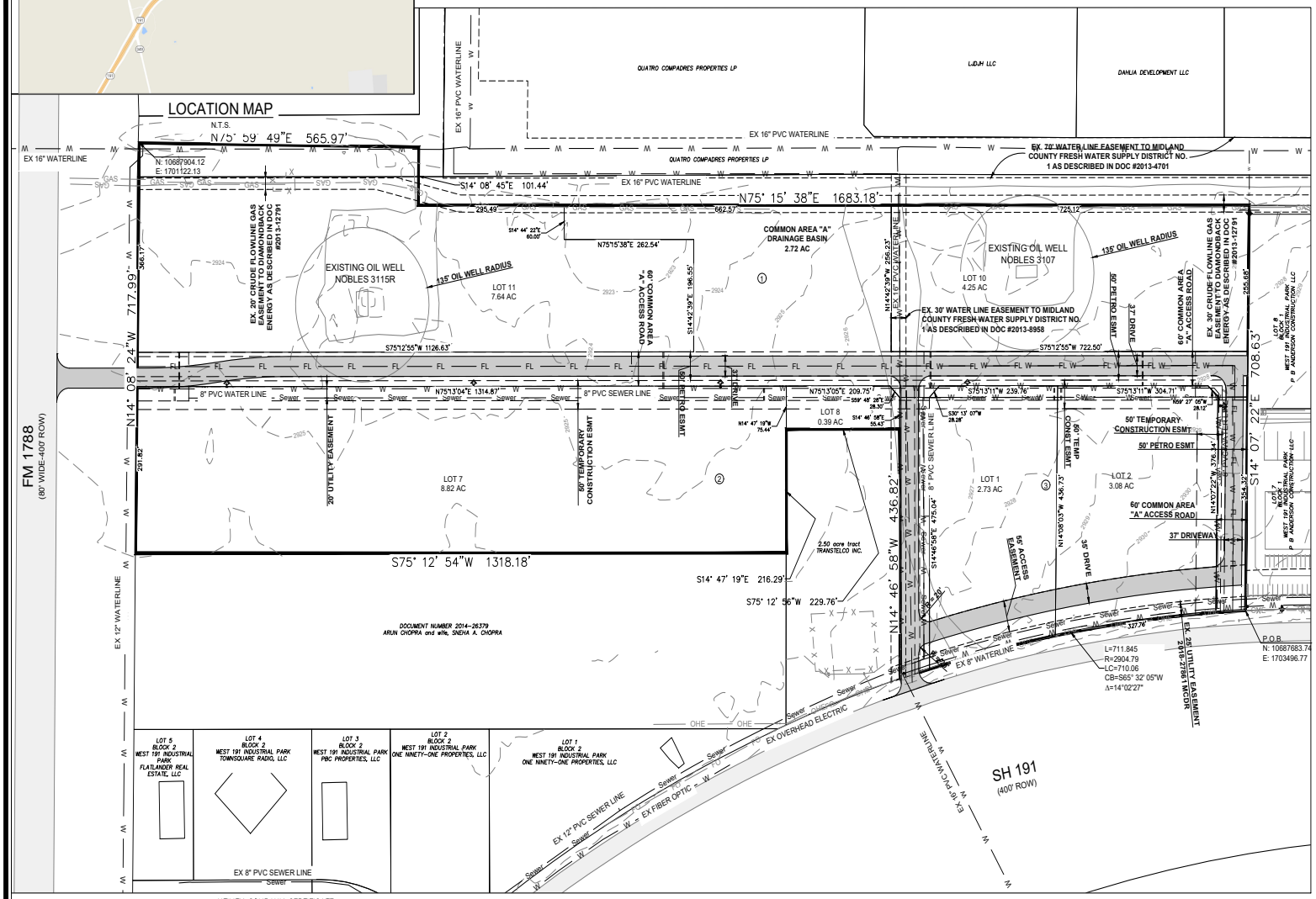
A PLAT OF A 33.95 ACRES TRACT OUT OF A 151.18 TRACT OF LAND
IN SECTION 31, BLOCK 40, T-1-S, T&P RR CO SURVEY
AS DESCRIBED IN DOCUMENT # 2018-22508, MCDR
CITY AND COUNTY OF MIDLAND, TEXAS

LEGEND
- RR Spike Found
- 1/2" Iron rod found
- 1/2" Iron rod set
- Water Line
- Sewer Line
- Overhead Electric
- Existing Fence Line
- Power Pole
- Oil Flow Line

GRAPHIC SCALE
100 0 100 200
(IN FEET)
1 INCH = 100 FT.



LOCATION MAP
N.T.S.



OWNER'S CERTIFICATE

STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, PB ANDERSON PROPERTIES, LLC and Whirlwind Properties, are the record owners of a 33.95 acre tract out of a 151.18 tract of land in Section 31, Block 40, T-1-S, T&P RR CO Survey as described in Document #2018-22508 Midland County Deed Record City and County of Midland, Texas and being more particularly shown hereon:

Now, therefore, know all men by these present:

That I, Robert Anderson and Scott Dickerson, does hereby adopt this plat designating the hereinabove described property as WEST 191 INDUSTRIAL PARK SECTION 6, an addition to the City of Midland, Texas, and hereby dedicate to the public use forever of the streets and easements shown hereon.

WITNESS our hands at Midland, Texas, this the _____day of _____, 2020

PB ANDERSON PROPERTIES, LLC
ROBERT ANDERSON, PRESIDENT

WHIRLWIND PROPERTIES,LLC
SCOTT DICKERSON, MANAGING MEMBER

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

This plat was acknowledged before me on _____, 2020 by Mike Jackson.

Notary Public, State of Texas

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF MIDLAND

This plat was acknowledged before me on _____, 2020 by Scott Dickerson. _____

Notary Public, State of Texas

OWNER:

ANDERSON CONSTRUCTION
10716 HWY 191
MIDLAND, TEXAS 79705
(432)561-5880

THE DECLARATION OF RESTRICTIVE CONVENANT OF THE SANTA ROSA BUILDING OWNERS' ASSOCIATION, INC IS FILED IN DOCUMENT NUMBER

_____

PLAT FILED FOR RECORD MIDLAND COUNTY, TEXAS

_____CABINET_____

_____PAGE_____

UTILITY COMPANY CERTIFICATE:
This plat has been checked for accessibility of utilities.

Signed: _____ Oncor Electric Delivery Company
Signed: _____ Suddenlink
Signed: _____ AT&T
Signed: _____ Grande Communications
Signed: _____ Atmos Energy

SURVEYOR'S CERTIFICATE:

That I, Charles P. Rutherford, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown were found properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

7.7

Charles P. Rutherford, R.P.L.S. No. 1977 *DATE*

STATE OF TEXAS
C. P. Rutherford
1977
REGISTERED
PROFESSIONAL
LAND SURVEYOR

CERTIFICATE OF APPROVAL:
For approval by the Commission:

This is to certify that the above and foregoing plat of W 191 INDUSTRIAL PARK SECTION 6 was approved by proper action of the Planning and Zoning Commission of the City of Midland, Texas. on this _____ day of _____, 2020.

Signed: _____ Josh Sparks, Chairman

Signed: _____ Cristina Odenborg Burns, Secretary

NOTE:
1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. NO BUILDING PERMIT SHALL BE ISSUED BY THE CITY OF MIDLAND UNTIL ALL REQUIREMENTS OF THE SUBDIVISION ORDINANCE HAVE BEEN COMPLIED WITH OR FINANCIALLY GUARANTEED FOR THE AREA TO BE SERVED BY THE BUILDING PERMIT MAY BE OBTAINED.
3. BEARINGS/DISTANCES/COORDINATES REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
4. THE AREA SHOWN ON THIS PLAT IS IN FLOOD ZONE X ACCORDING TO FIRM MAP NUMBER 48329C0200F DATED DECEMBER 6, 1999

PACKET
February 9, 202

W 191 IND PARK SECTION 6

SCALE: 1" = 100'	DRAWN BY: JMN
DATE: December 2019	FILE NAME:

NEWTON ENGINEERING, PC
T-13856
3209 Caldera Blvd.
Midland, Texas 79705
(432)770-0499

PRELIMINARY PLAT | PROJECT NUMBER 19-MED4251

MIDLAND Planning Division

Preliminary Plat Application

Project Number: SUB-19-0246
Case Number: P-19-0755

Proposed Subdivision Plat Name: West 191 Industrial Park Section 6

Legal Description (attached sealed Metes and Bounds): SEE ATTACHED

Property Owner Printed Name: Anderson Construction		Phone (432) 561-5880 Email robert@andersonhomestx.com	
Address 10716 Hwy 191 Suite 1	City MIDLAND	State TX	Zip 79707

Developer *(if different than Owner)* Printed Name: SAME AS OWNER		Phone ( ) Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)* Firm: NEWTON ENGINEERING, PC Printed Name: JOHN NEWTON		Phone (432) 770-0499 Email JOHN@NEWTONCIVIL.COM	
Address 3209 CALDERA BLVD	City MIDLAND	State TX	Zip 79705

Current Zoning: RR

Reason for Platting: TO DIVIDE LOTS FOR INDUSTRIAL, RETAIL AND OFFICE USE

Plat Information	Total Acreage: 33.95 ACRES
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ☒ Commercial ☐ Extraterritorial Jurisdiction (ETJ)	
Number of Lots: 5	Number of Multi-Family Dwelling Units: 0

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

DEC 12 2019

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☒ No

If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved,*** or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature *(by property owner only – authorized agent must sign affidavit below)*

Property Owner (signature): Robert Anderson	Date: 12/11/19

Property Owner (printed) : Robert Anderson

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Chase Dunnam who, being by me duly sworn, upon oath says: That (s)he is authorized by Robert Anderson, 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.

Chase Dunnam
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 12 day of December, 20 19, to certify which witness my hand and seal of office.

DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

Dalia Salinas
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

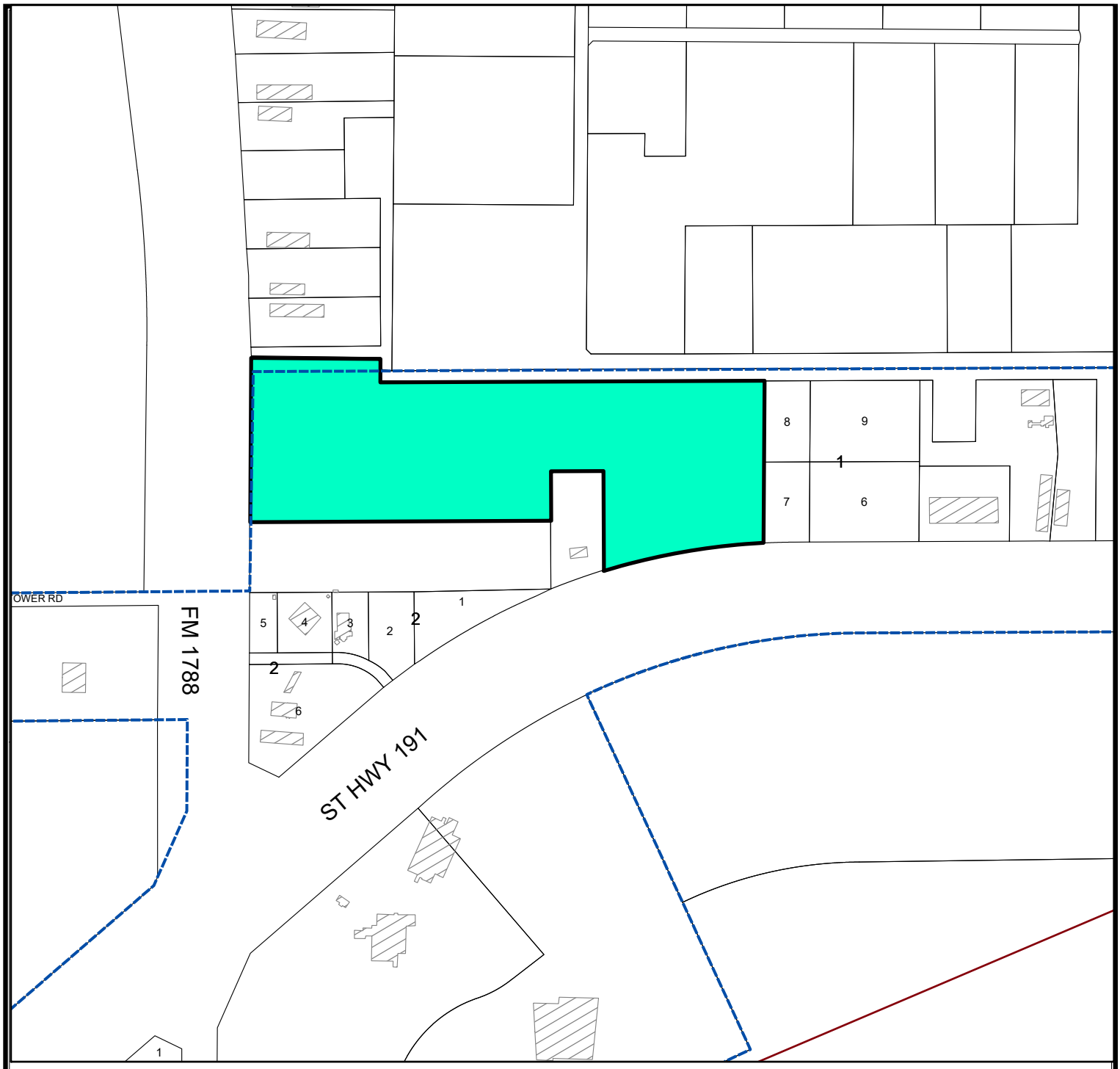
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ 1 Copy of Dimensioned Plat	☑ Plat in Digital Format (PDF/JPEG)
☑ Application Fee	☑ 1 Copy of Plat (11x17)	
Check # 616		

Received By: ES	Date:

RECEIVED
DEC 11 2019
CITY OF MIDLAND
PLANNING DIVISION OFFICE

Application will not be considered for scheduling until reviewed by a planner



LOCATION MAP

SUB-19-0246

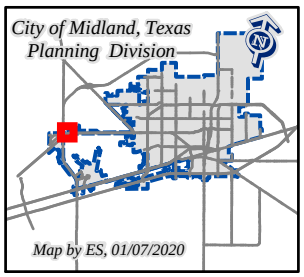
Scale: 1" = 400'

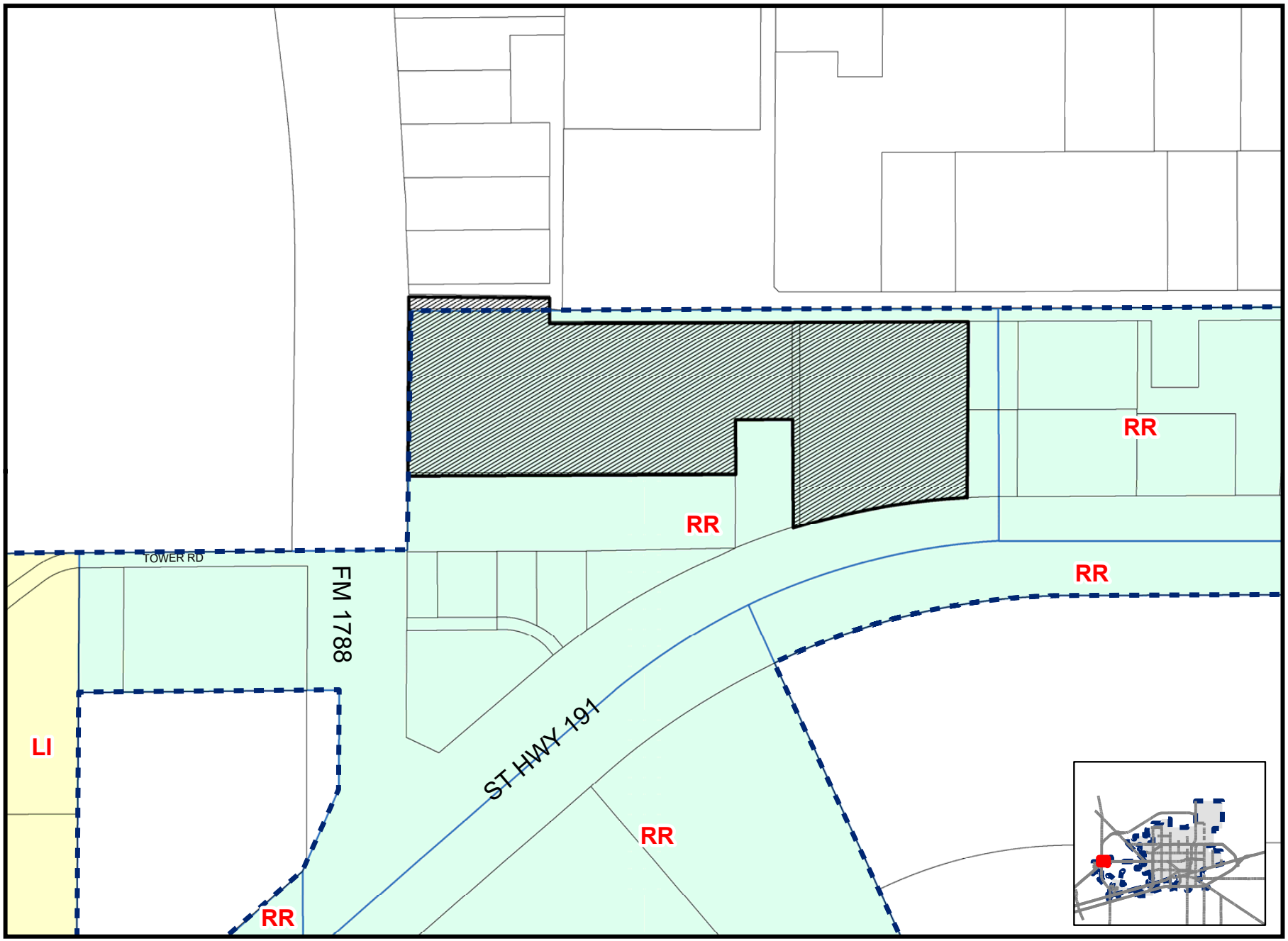
Consider a proposed Preliminary Plat of West 191 Industrial Park, Section 6, being of a plat 33.95 acre tract of land in Section 31, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas

(Generally located on the north side of State Highway 191, approximately 171-feet east of North Farm-to-Market Road 1788. Council District 4 and ETJ, Extraterritorial Jurisdiction)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS





Map By ES, 01/07/2020

SUB-19-0246

Scale: 1" = 200'

ZONING MAP

MI
PRI
OF
LOT, NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.

City Council Meeting

Item Number: 8

Meeting Date: February 9, 2021

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 2021 CDBG Grant application cycle (DEVELOPMENT SERVICES)

Purpose:

The CDBG office shall establish priorities, guidance, and timelines for grant processes according to HUD guidelines the 2020-2024 Action Plan/Consolidated Plan.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No fiscal Impact

Discussion:

I have prepared the attached schedule for your consideration.

Robert Patrick

City Manager's Office

Schedule for 2021 CDBG Application Cycle, 2021- 2022 Action Plan

DESCRIPTION OF EVENT	DATE
Inform public of schedule	February 9
Application training to prospective applicants	As needed
Community meetings –TBD	March 2021
Community Development Week	March 29 – April 2
Project applications / Proposals due date	April 23
Public Hearing #1 (City Hall) – Review past performance; present CDBG proposals.	May 11, 10:00 a.m.
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 8, 10:00 a.m.
Publish Draft Action Plan; allow 30-Days for public review and comment	June 11 to July 11
Final Approval (City Hall) – Council considers approval of Action Plan.	July 13
Submit Action Plan to HUD.	By August 13
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, 2021

Prepared 02/04/21

City Council Meeting

Item Number: 9

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Matt Carr, City Engineer

Subject: **RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO PURCHASE AN APPROXIMATE 0.076-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 104A, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BEAL PARKWAY AND THOMASON DRIVE); AUTHORIZING THE INTERIM CITY MANAGER TO OBTAIN AN APPRAISAL, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID REAL PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD A CLOSING; AUTHORIZING THE EMPLOYMENT OF LEGAL COUNSEL; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (ENGINEERING SERVICES)**

Purpose:

Resolution authorizing the Interim City Manager to purchase an approximate 0.076-acre tract of land out of Lot 1, Block 104a, Wilshire Park Addition, Section 9, City and County of Midland, Texas (generally located at the southeast corner of the intersection of Beal Parkway and Thomason Drive); authorizing the Interim City Manager to obtain an appraisal, negotiate, execute and file all documents necessary to purchase said real property, purchase a title insurance policy and hold a closing; authorizing the employment of legal counsel; and ordering the City Secretary to record, or ensure that the title company records, the instrument of conveyance.

Recommended City Council Action:

Approval

Fiscal Impact:

Funds are available in the Non-Departmental budget in the General fund for all costs, to include purchase price, legal fees, appraisals, as well as any other professional fees, to effectuate the acquisition of this property.

Discussion:

Beal Parkway was extended from Anetta Drive to Thomason Drive in 2017. Authorization for ROW and easement acquisition was given by Resolution No. 2015-397. At that time, five (5) parcels were authorized to be acquired for the construction project.

The Beal Parkway construction plans included an additive alternate to construct a roundabout at the intersection of Beal Parkway and Thomason. The ROW acquisition process for the roundabout was unsuccessful because the landowner was unwilling to consider a reasonable verbal offer from the City. The City decided to construct a traditional intersection in lieu of a roundabout.

In 2020, Thomason Drive Mill & Inlay project was designed for the Roadway Bond program. The design included the construction of a roundabout at the intersection of Beal Parkway. This is the same roundabout design that was included, but not awarded, in the previous Beal Parkway project.

It was the expectation that the City would be able to acquire the ROW for the roundabout because the ownership was changed or in the process of being changed. With this new development, Staff proceeded with completion of the construction plans, advertised for bids, and obtained approval of project award.

As of the date of this memo, the acquisition of the property from the “new owner” has not occurred and is not expected to occur until the summer. This delay jeopardizes the commencement of the awarded paving project and delays the placement of asphalt.

To expedite the commencement of the construction project, the current plan is to attempt to acquire the property from the original owner at a price negotiated by the Interim City Manager. The timing of this acquisition is dictating the selected process of acquisition.

Staff supports accepting this resolution. Attached is a location map showing the proposed Right-of-Way for acquisition.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO PURCHASE AN APPROXIMATE 0.076-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 104A, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BEAL PARKWAY AND THOMASON DRIVE); AUTHORIZING THE INTERIM CITY MANAGER TO OBTAIN AN APPRAISAL, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID REAL PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD A CLOSING; AUTHORIZING THE EMPLOYMENT OF LEGAL COUNSEL; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE

WHEREAS, the City Council finds it to be in the public interest to authorize the Interim City Manager to purchase, on behalf of the City of Midland, an approximate 0.076-acre tract of land out of Lot 1, Block 104A, Wilshire Park Addition, Section 9, City and County of Midland, Texas (the "Property"), said Property being more fully described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein for all purposes; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Interim City Manager to obtain an appraisal, negotiate, execute and file all documents necessary to acquire the Property, purchase a title insurance policy and hold a closing; and

WHEREAS, the City Council finds it to be in the public interest to employ the law firm of Rendall Sikes, PLLC (the "Firm") to provide legal services related to all matters concerning the acquisition of the Property;

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

SECTION ONE. That the Interim City Manager is hereby authorized and directed to purchase the Property on behalf of the City of Midland.

SECTION TWO. That the Interim City Manager is hereby authorized and directed

to obtain an appraisal, negotiate, execute and file all documents necessary to acquire the Property, purchase a title insurance policy and hold a closing at a title company selected by the Interim City Manager.

SECTION THREE. That the Firm is hereby employed by the City to provide legal services related to all matters concerning the acquisition of the Property.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay for said Property, appraisal, title insurance policy, closing costs, legal fees, and any other fees or costs related to the acquisition of the Property out of funds available in the in the Non-Departmental budget in the General Fund upon receipt of proper invoice or statement therefor approved by the Interim City Manager.

SECTION FIVE. That the City Secretary is hereby authorized and directed to file, or ensure that the title company files, the instrument of conveyance acquired in accordance with this resolution in the Deed Records of Midland County, Texas. A copy of said instrument of conveyance shall be maintained on file in the City Secretary's 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., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

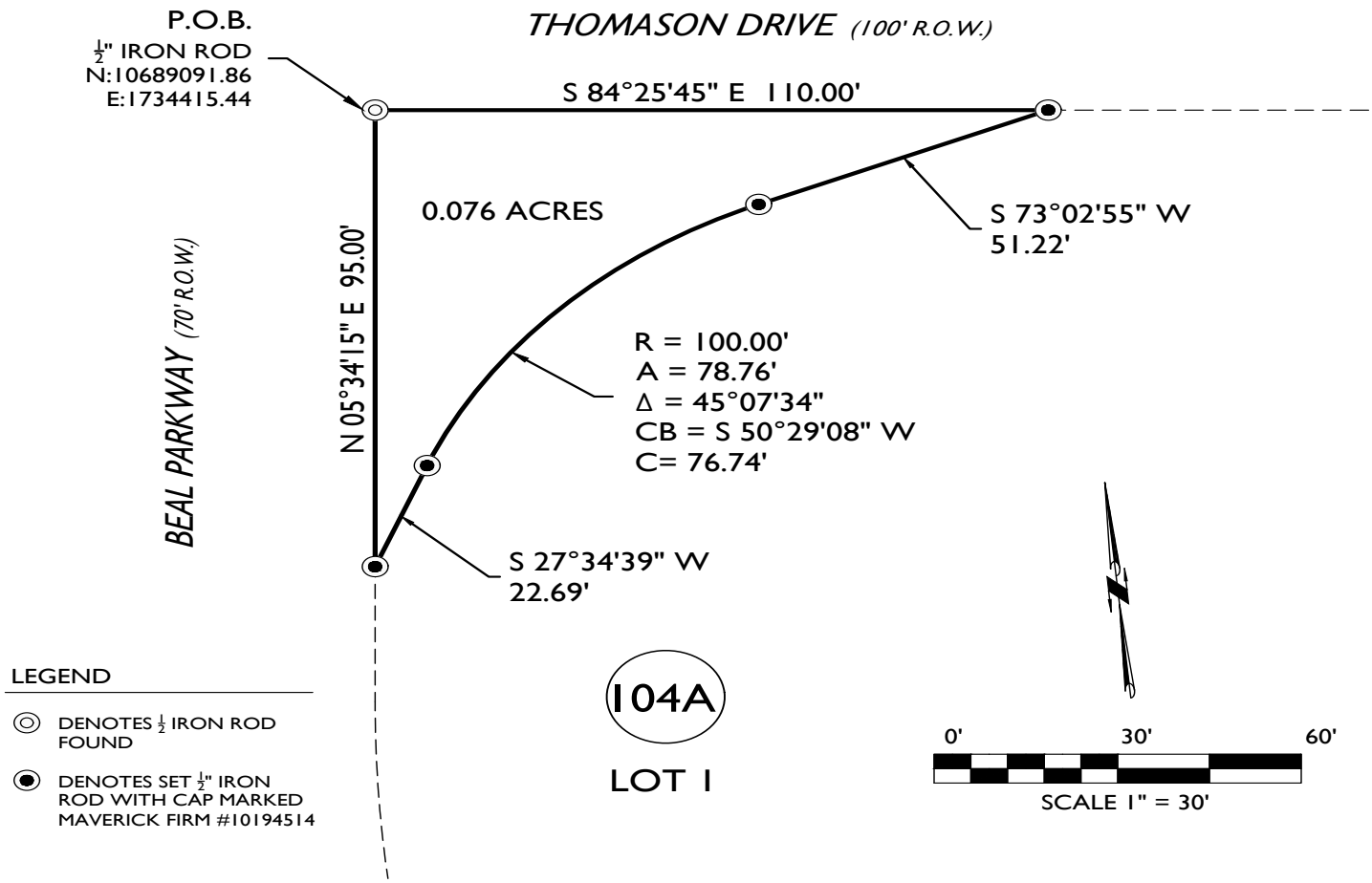


EXHIBIT "A"

DESCRIPTION OF A 0.076 ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 104A, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, AS RECORDED IN CABINET C ON PAGE 91 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBES AS FOLLOWS;

BEGINNING *AT N.(Y):1068909.86, E.(X):1734415.44 A ONE-HALF INCH IRON ROD FOUND AT THE NORTHWEST CORNER OF SAID LOT 1 AND BEING THE NORTHWEST CORNER HEREOF;*

THENCE *S. 84°25'45" E., ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 110.00 FEET TO A ONE-HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"(RPC) SET FOR THE NORTHEAST CORNER HEREOF;*

THENCE *S. 73°02'55" W., CROSSING SAID LOT 1, A DISTANCE OF 51.22 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT WITH A RADIUS OF 100.00 FEET, A DELTA ANGLE OF 45°07'34", A CHORD BEARING AND DISTANCE OF S. 50°29'08" W., 76.74 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE 78.76 FEET, TO AN "RPC" SET AT THE POINT OF TANGENCY HEREOF;*

THENCE *S. 27°34'39" W., A DISTANCE OF 22.69 FEET TO AN "RPC" SET AT A POINT ON THE WEST LINE OF SAID LOT 1 FOR THE SOUTHWEST CORNER HEREOF;*

THENCE N. 05°34'15" E., ALONG SAID WEST LINE DISTANCE OF 95.00 FEET TO THE ***POINT OF BEGINNING****, CONTAINING 0.076 ACRES.*

BASIS OF BEARING, COORDINATES AND DISTANCES ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID NAD 83, US SURVEY FOOT.

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEGE AND BELIEF.

GREGORY W. SHOULTS RPLS #5356
Maverick Engineering (TX Firm #10194514)
1909 W. Wall Street, Suite K
Midland, TX 79701

21 DECEMBER 2020

STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

MAVERICK
ENGINEERING / SURVEY / WATER RESOURCES
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

PACKET 9.7 February 9, 2021

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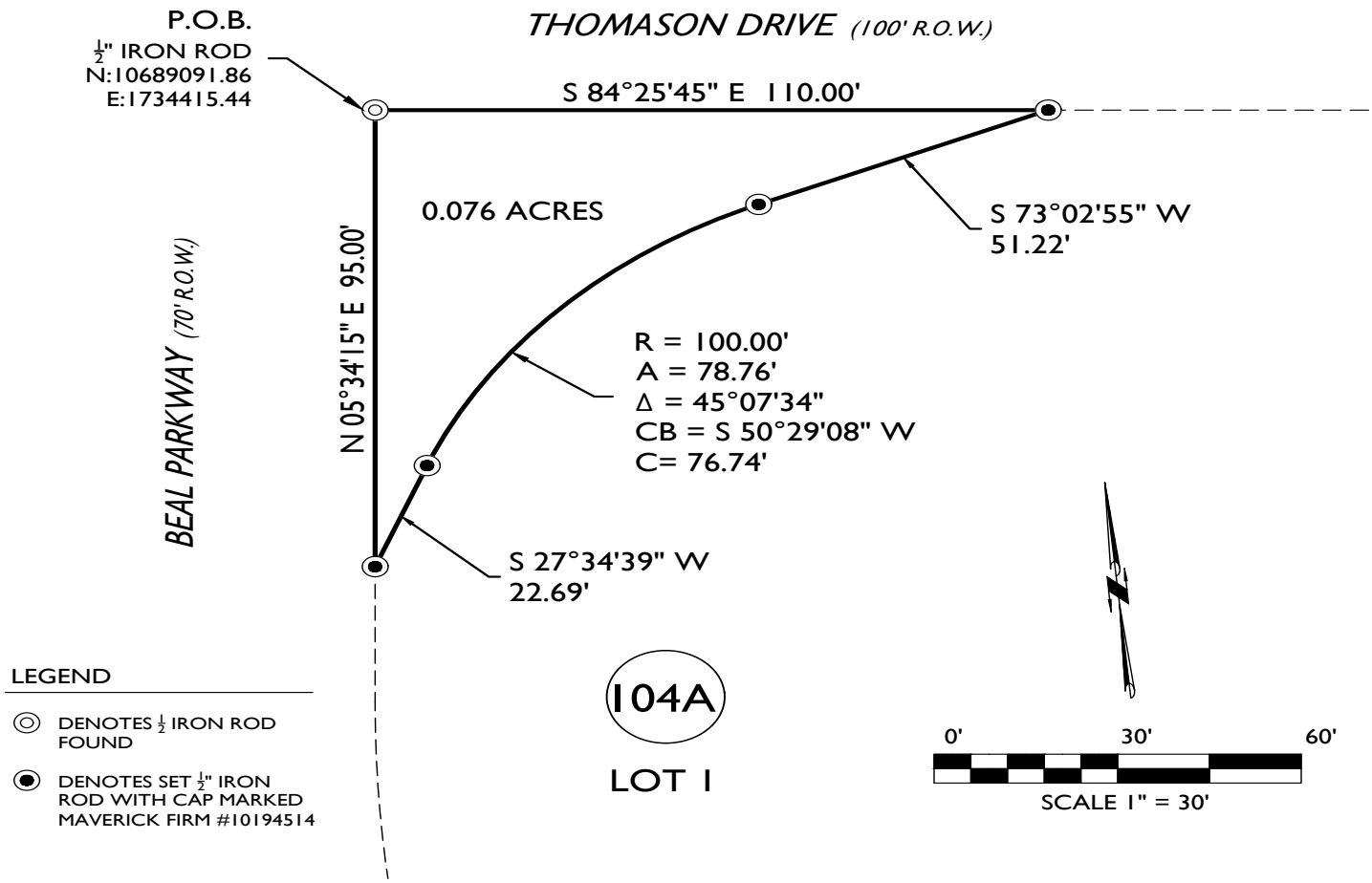
Location Map - Property Acquisition
0.076 Acre Tract

PACKET 9.8

February 9, 2021

N W E S

0 0.01 0.02 0.04 Miles



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I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEGE AND BELIEF.

GREGORY W. SHOULTS RPLS #5356
Maverick Engineering (TX Firm #10194514)
1909 W. Wall Street, Suite K
Midland, TX 79701

STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

21 DECEMBER 2020

PACKET 9.9 February 9, 2021

MAVERICK
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RESOLUTION NO. 2015-397

RESOLUTION AUTHORIZING THE CITY MANAGER TO ACQUIRE, ON BEHALF OF THE CITY OF MIDLAND, ANY REAL PROPERTY INTERESTS NECESSARY OR APPROPRIATE, BY ANY INSTRUMENTS OF CONVEYANCE NECESSARY OR APPROPRIATE, FOR THE USE AND BENEFIT OF THE PUBLIC FOR STREET, ROAD, PEDESTRIAN ACCESS, DRAINAGE AND PUBLIC UTILITY PURPOSES, AND FOR ANY OTHER ANCILLARY PUBLIC USE AS IS USUAL AND CUSTOMARY IN CONNECTION THEREWITH, FROM A POINT AT OR NEAR THE INTERSECTION OF BEAL PARKWAY AND ANETTA DRIVE TO A POINT AT OR NEAR THE INTERSECTION OF THOMASON DRIVE AND WEST ILLINOIS AVENUE; AUTHORIZING THE CITY MANAGER TO OBTAIN APPRAISALS, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO ACQUIRE SAID REAL PROPERTY INTERESTS, PURCHASE TITLE INSURANCE POLICIES AND HOLD THE CLOSINGS FOR SAID ACQUISITIONS; AUTHORIZING PAYMENT FOR SAID APPRAISALS, TITLE INSURANCE POLICIES AND CLOSING COSTS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY HAS RECORDED, ALL INSTRUMENTS OF CONVEYANCE

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to acquire, on behalf of the City of Midland, any real property interests necessary or appropriate, by any instruments of conveyance necessary or appropriate, for the use and benefit of the public for street, road, pedestrian access, drainage and public utility purposes, and for any other ancillary public use as is usual and customary in connection therewith, from a point at or near the intersection of Beal Parkway and Anetta Drive to a point at or near the intersection of Thomason Drive and West Illinois Avenue; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to obtain appraisals, negotiate, execute and file all documents necessary to acquire said real property interests, purchase title insurance policies and hold the closings for said acquisitions;

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

SECTION ONE. That the City Manager is hereby authorized and directed to acquire, on behalf of the City of Midland, any real property interests necessary or appropriate, by any instruments of conveyance necessary or appropriate, for the use and benefit of the public for street, road, pedestrian access, drainage and public utility purposes, and for any other ancillary public use as is usual and customary in connection therewith, from a point at or near the intersection of Beal Parkway and Anetta Drive to a point at or near the intersection of Thomason Drive and West Illinois Avenue.

SECTION TWO. That the City Manager is hereby authorized and directed to obtain appraisals, negotiate, execute and file all documents necessary to acquire said real property interests, purchase title insurance policies and hold the closings for said acquisitions at Lone Star Abstract and Title Co., Inc.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said appraisals, title insurance policies and closing costs out of funds that are available in the Engineering Services Operation Budget upon receipt of proper invoice or statement therefor approved by the City Manager.

SECTION FOUR. That the City Secretary is hereby authorized and directed to file, or ensure that the title company has filed, all instruments of conveyance acquired in accordance with this Resolution in the Deed Records of Midland County, Texas. Copies of said instruments of conveyance shall be maintained on file in the City Secretary's Office.

On motion of Council member Lacy, seconded by Council member Sparks, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 15th day of December, A.D., 2015, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

2015-397

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: 12/15/2015

TO: City Council / City Manager

FROM: Matt Carr, City Engineer

SUBJECT: Consider a resolution authorizing the City Manager to negotiate and acquire any Right-of-Way necessary for public use along Beal Parkway from Anetta Drive to Thomason Drive, to seek an appraisal, and upon final acceptance of the agreement by City Council to execute any documents, paperwork, titles, deeds, etc. necessary to complete the Right-of-Way acquisition; and ordering recordation by the City Secretary. (District #4 — Lacy)

Purpose:

Consider a resolution authorizing the City Manager to negotiate and acquire any Right-of-Way necessary for public use along Beal Parkway from Anetta Drive to Thomason Drive, to seek an appraisal, and upon final acceptance of the agreement by City Council to execute any documents, paperwork, titles, deeds, etc. necessary to complete the Right-of-Way acquisition; and ordering recordation by the City Secretary. (District #4 — Lacy)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The final cost to the City shall be based upon City Council approval of an amount agreed upon by the City Manager and the current property owner.

Funds are available from Engineering Services Operating Budget for costs associated with closing cost for donations and dedications.

Discussion:

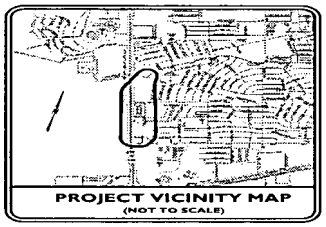
The Beal Parkway will be extended from Anetta Drive to Thomason Drive. With the completion of the construction drawings of Beal Parkway, all required ROW acquisitions have been identified. City staff is now preparing to negotiate and acquire up to five (5) parcels for public use.

Staff supports accepting this resolution. Attached is a location map showing the proposed Right-of-Way for acquisition.

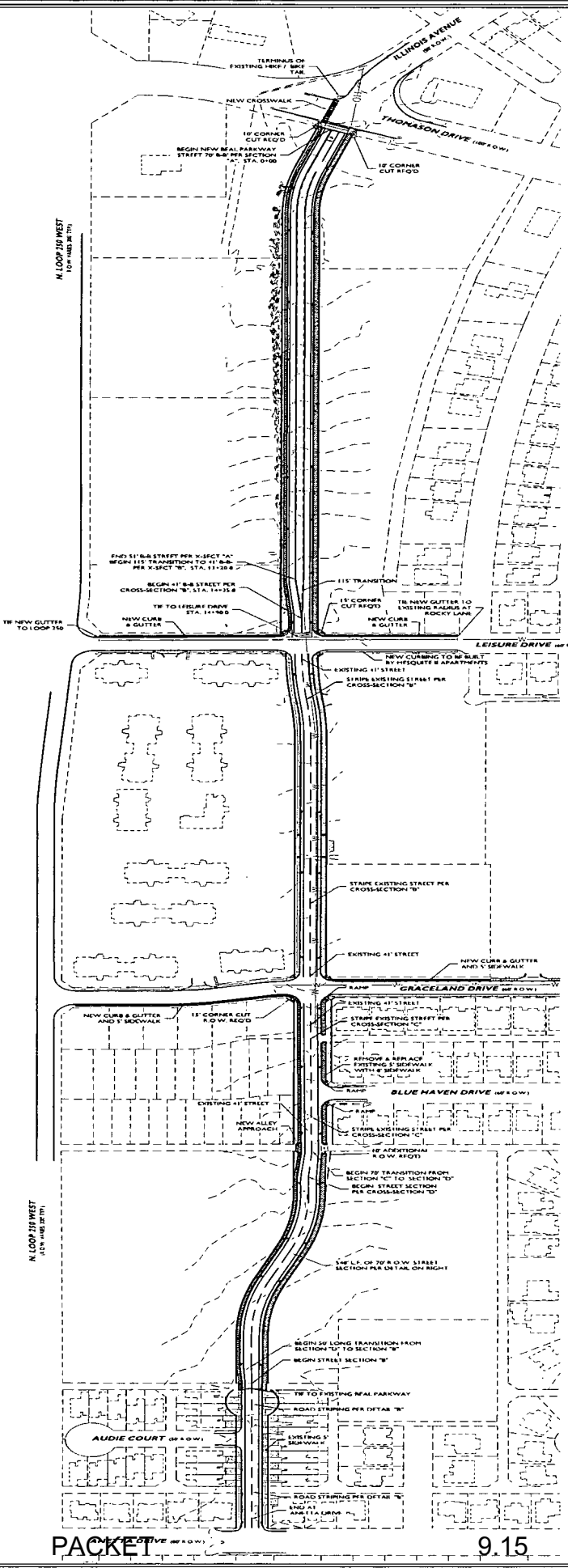
BEAL PARKWAY

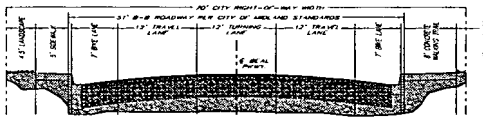
PROPOSED CORRIDOR IMPROVEMENTS

- 2,050 FEET EXTENSION OF BEAL PARKWAY TO CONNECT ILLINOIS AVENUE TO ANETTA DRIVE
- 4,135 FEET OF NEW BIKE LANES FROM ILLINOIS AVENUE TO ANETTA DRIVE
- 8' WIDE SIDEWALK / TRAIL ALONG EAST SIDE OF BEAL PARKWAY (950' EXISTING, 2,050' NEW, 860' WIDENED FROM 5') TO EXTEND EXISTING TRAIL SYSTEM TO ANETTA DRIVE, WITH FUTURE EXTENSION TO BEAL PARK AT COMPLETION OF FLOYD ACRES SUBDIVISION.

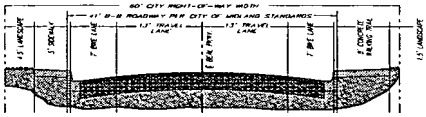


PROJECT VICINITY MAP
(NOT TO SCALE)

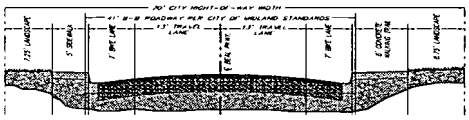




A 70' RIGHT-OF-WAY, 51' B-B STREET SECTION
SCALE: 1"=10' HORIZ., 1"=3' VERT.



B 60' RIGHT-OF-WAY, 41' B-B STREET SECTION
SCALE: 1"=10' HORIZ., 1"=3' VERT.



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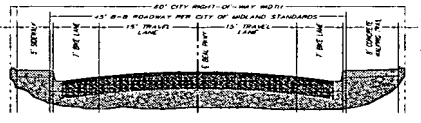


D 60' RIGHT-OF-WAY, 41' B-B STREET SECTION
SCALE: 1"=10' HORIZ., 1"=3' VERT.

MAVERICK ENGINEERING

City Council Meeting

Item Number: 10

Meeting Date: February 9, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Pinnacle Midstream II LLC, regarding city-owned property described as Section 20, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas

(UTILITIES)

Purpose:

Pinnacle Midstream II LLC is requesting a 30' wide right of way to place a twelve inch (12) private carrier, steel construction, natural gas pipeline on City of Midland owned real property known as the Plant Farm. Applicant will need a 20' wide temporary workspace for construction. This section of the proposed pipeline route is 5,349.05 feet long and will run beside other pipeline easements in the area.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate (324.18 rods x $20/rod): $6,483.60

Surface Damages: (324.18 rods x $10/rod): $3,241.40

Total Collected: $10,725.00

Discussion:

This private use, steel construction gas line is 12 inches (12) in diameter and buried thirty-six inches (36) deep.

All fees have been collected.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement

Robert Patrick

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: February 10, 2021

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Interim City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Pinnacle Midstream II LLC

Licensee's Representative: **Michael Hillerman**

Licensee's Mailing Address: 4400 Post Oak Parkway, Suite 150
Houston, Texas 77027

Property: See **Exhibits A and B** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of SIX THOUSAND FOUR HUNDRED EIGHTY-THREE and 60/100 Dollars ($6,483.60) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Licensee shall pay a one-time surface damage fee to Licensor in the amount of THREE THOUSAND TWO HUNDRED FORTY-ONE and 40/100 Dollars ($12,103.90), payable on or prior to the Commencement Date.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of SIX THOUSAND FOUR HUNDRED EIGHTY-THREE and 60/100 Dollars ($6,483.60), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the pipeline location as shown on **Exhibits A and B** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a private carrier steel construction pipeline, not to exceed twelve (12) inches in diameter, for the transportation of natural gas, to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to twenty (20) feet after the pipeline is laid. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations

hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and

name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS

LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

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

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR,

LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, Interim City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
PINNACLE MIDSTREAM II LLC

By:_____
Printed Name: Michael Hillerman
Title: Chief Operating Officer

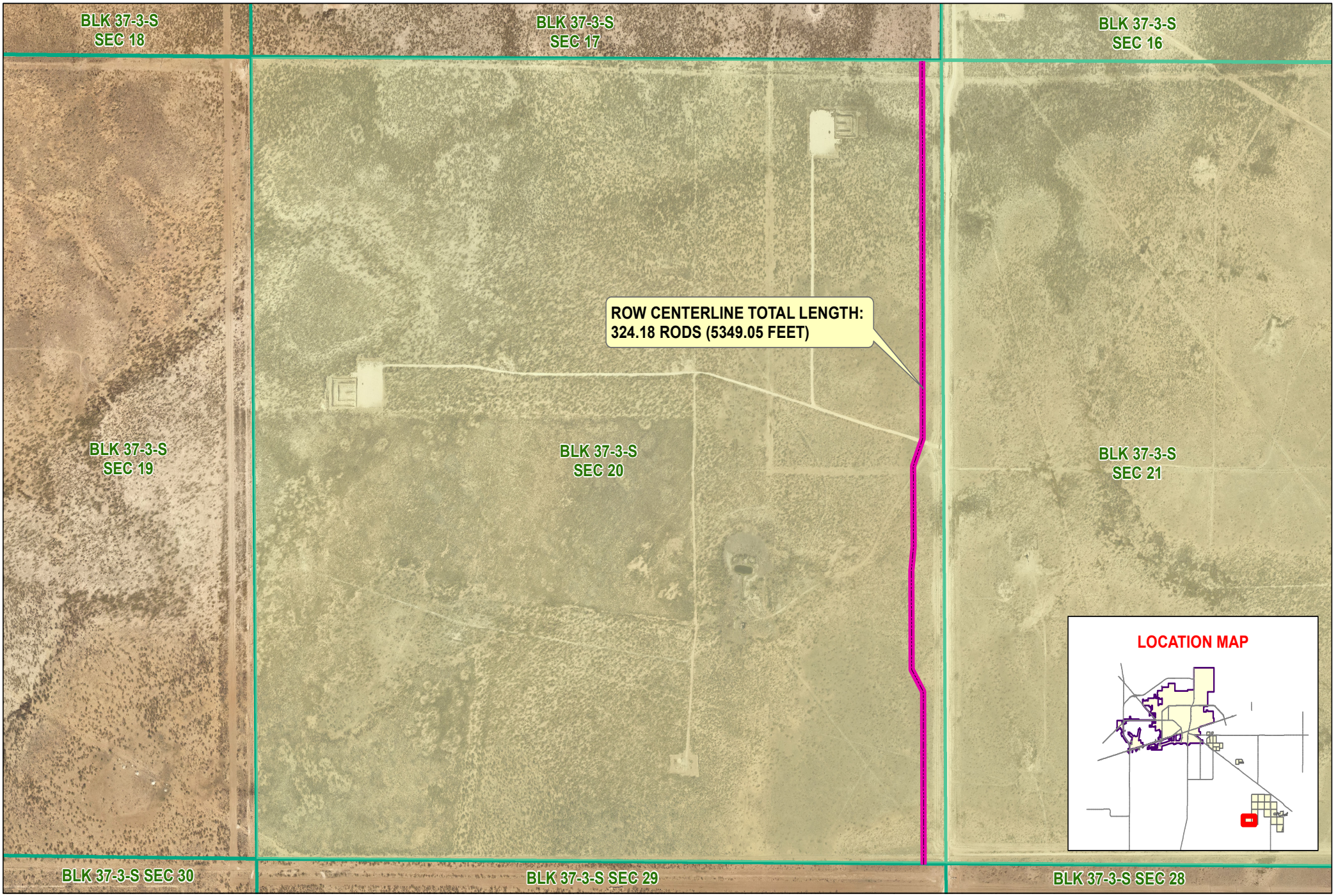
THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2021 personally appeared Michael Hillerman an officer of Pinnacle Midstream II LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

_____
Notary Public, State of _____

Reference No. 21-329-002



Date: 1/15/2021

Legend

- Proposed ROW
- City Owned Parcels
- Survey Section

PACKET

10.15

Holland Proposed ROW

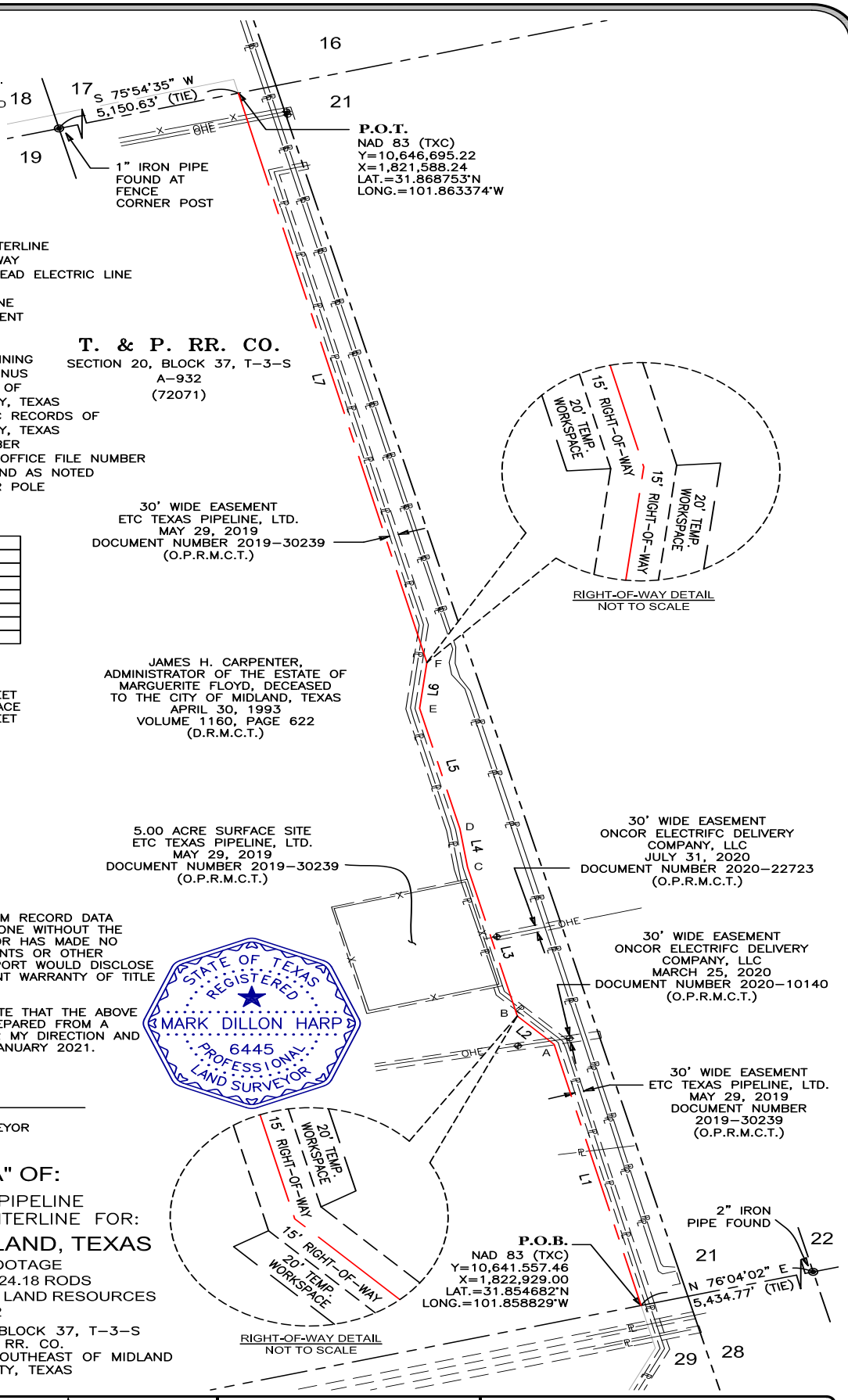
February 9, 2021

0 250 500 Feet

©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

NOTES:

1. COORDINATES SHOWN ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM OF 1983 (HPGN), TEXAS CENTRAL ZONE 4203. DISTANCES ARE GRID.
2. LOCATION OF PIPELINES SHOWN ARE BASED ON THE USE OF SCARS AND PIPELINE MARKERS. PIPELINES WERE COVERED.
3. LATITUDE AND LONGITUDE ARE WGS84 COORDINATES.
4. CALL BEFORE YOU DIG - TEXAS811.ORG
5. PROPOSED PIPELINE WILL BE A 12" HIGH PRESSURE GAS LINE



LEGEND

——— – ———	PROPOSED CENTERLINE OF RIGHT-OF-WAY
——— OHE ———	EXISTING OVERHEAD ELECTRIC LINE
——— – – ———	SECTION LINE
——PL——PL——	EXISTING PIPELINE
— — — — — —	EXISTING EASEMENT
——— ———	EXISTING PAD
——X——X——	FENCE
P.O.B.	POINT OF BEGINNING
P.O.T.	POINT OF TERMINUS
D.R.M.C.T.	DEED RECORDS OF MIDLAND COUNTY, TEXAS
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS
A-#	ABSTRACT NUMBER
(#)	GENERAL LAND OFFICE FILE NUMBER
◉	MONUMENT FOUND AS NOTED
⌖	EXISTING POWER POLE

CENTERLINE TABLE

LINE	BEARING	DISTANCE
L1	N 14°40'08" W	1143.45'
L2	N 45°37'16" W	171.43'
L3	N 14°42'17" W	651.98'
L4	N 08°51'05" W	165.30'
L5	N 14°44'06" W	527.81'
L6	N 07°06'57" E	195.63'
L7	N 14°34'52" W	2493.45'

TOTAL LENGTH OF CENTERLINE
5,349.05 FEET OR 324.18 RODS
TOTAL AREA OF RIGHT-OF-WAY
3.68 ACRES OR 160,472 SQUARE FEET
TOTAL AREA OF TEMPORARY WORKSPACE
2.44 ACRES OR 106,510 SQUARE FEET

ANGLE CHANGE TABLE

PI	RIGHT ANGLE
A	149°02'52"
B	210°54'59"
C	185°51'12"
D	174°06'59"
E	201°51'03"
F	158°18'11"

THIS SURVEY PLAT WAS PREPARED FROM RECORD DATA FURNISHED BY THE CLIENT AND WAS DONE WITHOUT THE BENEFIT OF A TITLE REPORT. SURVEYOR HAS MADE NO INVESTIGATION OR SEARCH FOR EASEMENTS OR OTHER MATTERS OF RECORD THAT A TITLE REPORT WOULD DISCLOSE AND THIS SURVEY DOES NOT REPRESENT WARRANTY OF TITLE OR A GUARANTEE OF OWNERSHIP.

I, MARK DILLON HARP, DO HEREBY STATE THAT THE ABOVE AND FOREGOING SURVEY PLAT WAS PREPARED FROM A SURVEY MADE ON THE GROUND, UNDER MY DIRECTION AND SUPERVISION DURING THE MONTH OF JANUARY 2021.

STATE OF TEXAS REGISTERED MARK DILLON HARP 6445 PROFESSIONAL LAND SURVEYOR

MARK DILLON HARP
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS NO. 6445

EXHIBIT "A" OF:

A PROPOSED PIPELINE
RIGHT-OF-WAY CENTERLINE FOR:

THE CITY OF MIDLAND, TEXAS

CENTERLINE FOOTAGE
5,349.05 FEET OR 324.18 RODS
HOLLAND RIGHT OF WAY & LAND RESOURCES
A.F.E. 02

SITUATED IN SECTION 20, BLOCK 37, T-3-S
OF THE T. & P. RR. CO.
AND LOCATED APPROX. 15.4 SOUTHEAST OF MIDLAND
IN MIDLAND COUNTY, TEXAS

DATE:	01/13/2021
DRAWN BY:	AW
CHECKED BY:	DH
FIELD CREW:	RD
PROJECT NO:	2020121659
SCALE:	1" = 500'
SHEET:	1 OF 2
REVISION:	NONE

PACKET

0 250' 500'
1" = 500 FEET

Holland RIGHT OF WAY & LAND RESOURCES

HOLLAND
10.16 RIGHT OF WAY &
LAND RESOURCES

FSC INC SURVEYORS+ENGINEERS
550 Bailey Ave., 205 - Fort Worth, TX 76107
Ph: 817.349.9800 - Fax: 979.732.5271
TBPE Firm 17957 | TBPLS Firm 10193887
www.fsc.net

February 9, 2024

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EXHIBIT "B"
CENTERLINE DESCRIPTION OF A PROPOSED 30 FOOT PIPELINE RIGHT-OF-WAY
The City of Midland, Texas
Section 20, Block 37, T-3-S of the T. & P. RR. Co. Survey, Midland County, Texas

Being a proposed centerline of a 30 foot pipeline right-of-way situated in Section 20, Block 37, T-3-S of the T. & P. RR. Co. Survey in Midland County, Texas and being part of a tract described in a deed to The City of Midland, Texas on April 30, 1993 and recorded in Volume 1160, Pages 622 of the Deed Records of Midland County, Texas, and being more particularly described as follows, to wit:

BEGINNING at a point (Y = 10,641,557.46, X = 1,822,929.00) in the south line of said City of Midland tract, same being the south line of said Section 20 and in the north line of a tract described in three deeds with 1/3 interest each to The LHS Ranch, L.L.C. all on February 8, 1999 and recorded in Volume 1645, Pages 326, 328, and 330 of the Deed Records of Midland County, Texas, same being the north line of said Section 29, Block 37, T-3-S, from which a 2 inch iron pipe found for the common corner of Sections 28, 27, 22, and 21, all in Block 37, T-3-S, bears North 76 degrees 04 minutes 02 seconds East, a distance of 5,434.77 feet;

THENCE over and across said City of Midland tract and said Section 20, the following seven (7) courses and distances:

1. North 14 degrees 40 minutes 08 seconds West, a distance of 1,143.45 feet to a point;
2. North 45 degrees 37 minutes 16 seconds West, a distance of 171.43 feet to a point;
3. North 14 degrees 42 minutes 17 seconds West, a distance of 651.98 feet to a point;
4. North 08 degrees 51 minutes 05 seconds West, a distance of 165.30 feet to a point;
5. North 14 degrees 44 minutes 06 seconds West, a distance of 527.81 feet to a point;
6. North 07 degrees 06 minutes 57 seconds East, a distance of 195.63 feet to a point;
7. North 14 degrees 34 minutes 52 seconds West, a distance of 2,493.45 feet to the **POINT OF TERMINUS** (Y = 10,646,695.22, X = 1,821,588.24) in the north line of said City of Midland tract, same being the north line of said Section 20 and in the south line of a tract described in a deed to Jay H. Floyd, Jr. on July 11, 1968 and recorded in Volume 501, Page 539 of the Deed Records of Midland County, Texas, same being the south line of Section 17, Block 37, T-3-S, from which a 1 inch iron pipe found at a fence corner post for the common corner of Sections 17, 18, 19, and 20, all in Block 37, T-3-S, bears South 75 degrees 54 minutes 35 seconds West, a distance of 5,150.63 feet. Said centerline having a total length of 5,349.05 feet or 324.18 rods.

All bearings, distances and coordinates are grid and refer to the Texas State Plane Coordinate System of 1983 (HPGN), Texas Central Zone 4203.

This Field Notes Description constitutes a legal document, and, unless it appears in its entirety, in its original form does not constitute a legal document. This is not in any way a "boundary survey". It is strongly recommended, for the continuity of future surveys, that this document be incorporated in *all* future conveyances, *without any revisions or deletions.*

This herein survey description was prepared from record data furnished by the client and was done without the benefit of a title report. Surveyor has made no investigation or search for easements or other matters of record that a title report would disclose and this survey does not represent warranty of title or a guarantee of ownership.

Mark Dillon Harp
Registered Professional Land Surveyor No. 6445
Project No. 2020121659

Date: 01/13/2021

550 Bailey Avenue • Suite 205 • Fort Worth, TX 76107 • Office 817.349.9800 • Fax 979.732.5271 • fscinc.net

PINNMID-02 TUSSERY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/17/2020

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

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

PRODUCER
Fort Worth-Alliant Insurance Services, Inc.
6100 Western Pl Ste 100
Fort Worth, TX 76107

CONTACT NAME: Teresa Ussery
PHONE (A/C, No, Ext): (817) 877-1884 FAX (A/C, No): (817) 654-3552
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Federal Insurance Company	20281
INSURER B : Texas Mutual Insurance Company	22945
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Pinnacle Midstream II LLC
4400 Post Oak Blvd
Suite 1450
Houston, TX 77027

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X	X	3606-41-32	11/16/2020	11/16/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS	X	X	7361-81-38	11/16/2020	11/16/2021	BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$ 10,000,000
	EXCESS LIAB CLAIMS-MADE	X	X	7819-17-77	11/16/2020	11/16/2021	AGGREGATE	$ 10,000,000
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A	X	0002031385	5/1/2020	5/1/2021	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

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

Policies shown above include Blanket Additional Insured (except WC) and Blanket Waiver of Subrogation endorsements that provide such coverage to the certificate holder when a written contract between the named insured and the certificate holder requires such status.

We have requested the insurance carrier to specifically schedule the Holder as recipient of Notice of 30 Days Cancellation.

CERTIFICATE HOLDER

City of Midland, Texas
P.O. Box 1152
Midland, TX 79702

PACKET 10.18

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

February 9, 2021

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City Council Meeting

Item Number: 11

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT WITH CHAMBERS TRACTOR SERVICE OF MIDLAND, TEXAS, FOR THE DEMOLITION OF A STRUCTURE LOCATED ON LOT 3, BLOCK 2, SOLOMON ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING PAYMENT (GENERAL SERVICES)

Purpose:

Approval of a resolution authorizing the Interim City Manager to execute, on behalf of the City of Midland, a contract for the demolition of a structure located at 5117 Alysheba, Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY21 General Fund Operating Budget

Discussion:

Interim City Manager authorized the issuance of a request for proposals for the demolition of a structure located at 5117 Alysheba, Midland, Texas. One Hundred twenty-four (124) request for proposals were issued. Staff recommends authorizing the Interim City Manager to execute, on behalf of the City of Midland, a contract for the demolition of a structure located at 5117 Alysheba, Midland, Texas.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT WITH CHAMBERS TRACTOR SERVICE OF MIDLAND, TEXAS, FOR THE DEMOLITION OF A STRUCTURE LOCATED ON LOT 3, BLOCK 2, SOLOMON ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING PAYMENT

WHEREAS, the Interim City Manager approved the specifications and advertised a request for competitive bids for the demolition of a structure located on Lot 3, Block 2, Solomon Estates Addition, City and County of Midland, Texas (the "Project"); and

WHEREAS, Bid No. 21001781 was opened on January 27, 2021, with the lowest responsible bidder and the bidder whose proposal is determined to be the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for bids being Chambers Tractor Service of Midland, Texas ("Contractor"), as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

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

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

SECTION ONE. That the Interim 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 with Contractor for said Project, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of the contract executed in accordance with this resolution from funds available in the FY21 General Fund Operating Budget upon receipt of proper invoices or statements approved by the Interim City Manager.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Charles Harrington, Development Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 21001781 **Demolition of Property at 5117 Alysheba** **OPENED** January 27, 2021			Chambers Tractor Service 1500 E. County Road 130 Midland, TX 79706 Raymond Chambers 432-528-3517		Master Truck & Trailer 3000 Garden City Hwy Midland, TX 79701 Cory Hardy 432-686-0768		FEHRS Metal Building 377 CR 307 Seminole, TX 79360 John Friessen 432-201-0005	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
		Base Bid						
1	1	Structure shall be removed in total and concrete slab shall be left in place	$65,000.00	$65,000.00	Not Stated	Not Stated	$130,240.00	$130,240.00
2	1	Landfill Fees	$14,000.00	$14,000.00	$35,000.00	$35,000.00	$10,000.00	$10,000.00
	1	Total	$79,000.00	**$79,000.00**	$98,000.00	**$98,000.00**	$140,240.00	**$140,240.00**
		Alternate Bid						
1	1	Structure shall be removed in total and concrete slab shall be removed with all demolished materials being removed from the site	$70,000.00	$70,000.00	Not Stated	Not Stated	$140,650.00	$140,650.00
2	1	Landfill Fees	$22,000.00	$22,000.00	$35,000.00	$35,000.00	$20,000.00	$20,000.00
		Total Cost for Alt. Bid	$92,000.00	**$92,000.00**	$98,000.00	**$98,000.00**	$160,650.00	**$160,650.00**
3	1	Delivery		Not Stated		30 days		30 days

Bidding Summary:

124 **Bid requests were issued.**

3 **Bids listed above**

8 **NO RESPONSE were received.**

113 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 21001781 **Demolition of Property at 5117 Alysheba** **OPENED** January 27, 2021			Chambers Tractor Service 1500 E. County Road 130 Midland, TX 79706 Raymond Chambers 432-528-3517		Master Truck & Trailer 3000 Garden City Hwy Midland, TX 79701 Cory Hardy 432-686-0768		FEHRS Metal Building 377 CR 307 Seminole, TX 79360 John Friessen 432-201-0005	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
		Base Bid						
1	1	Structure shall be removed in total and concrete slab shall be left in place	$65,000.00	$65,000.00	Not Stated	Not Stated	$130,240.00	$130,240.00
2	1	Landfill Fees	$14,000.00	$14,000.00	$35,000.00	$35,000.00	$10,000.00	$10,000.00
	1	Total	$79,000.00	**$79,000.00**	$98,000.00	**$98,000.00**	$140,240.00	**$140,240.00**
		Alternate Bid						
1	1	Structure shall be removed in total and concrete slab shall be removed with all demolished materials being removed from the site	$70,000.00	$70,000.00	Not Stated	Not Stated	$140,650.00	$140,650.00
2	1	Landfill Fees	$22,000.00	$22,000.00	$35,000.00	$35,000.00	$20,000.00	$20,000.00
		Total Cost for Alt. Bid	$92,000.00	**$92,000.00**	$98,000.00	**$98,000.00**	$160,650.00	**$160,650.00**
3	1	Delivery		Not Stated		30 days		30 days

Bidding Summary:

124 **Bid requests were issued.**

3 **Bids listed above**

8 **NO RESPONSE were received.**

113 **Bidders did not respond.**

City Council Meeting

Item Number: 12

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 11, CORRECTION PLAT OF WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WINDHAVEN DRIVE), 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a bar for Fair to Midland located at 1115 Tradewinds Boulevard, Midland, TX 79706.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

Surrounding Zoning and Land Use:

The property is located at 1115 Tradewinds Boulevard, in the RR, Regional Retail District. The property to the north is zoned RR, Regional Retail District, and the location of a bar. The property to the east is zoned O-2, Office District, and the location of a medical office. The property to the south is zoned RR, Regional Retail District, and the location of a hotel. The property to the west, across Windhaven Drive, is zoned RR, Regional Retail District, and the location of a vacant lot.

Discussion:

Fair to Midland, LLC is requesting a Specific Use Designation with term, for the property located at 1115 Tradewinds Boulevard to be able to sell all alcoholic beverages for on premises consumption, within a bar. The property is zoned RR, Regional Retail District, which allows the consumption of alcoholic beverages with the approval of a Specific Use Designation.

The floor plan attached hereto as “Exhibit A” illustrates that the establishment, will have a total square footage of 11,913 square feet, with an alcohol serviceable area of 8,912 square feet.

The proposed site plan provides adequate access and internal circulation.

The restaurant has the following hours of operation and alcohol service:

> **Sunday through Saturday from 11:00 a.m. to 2:00 a.m., of the following 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 schools or churches within 300 feet of the property.

This request has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Engineering: (Approved)

No objection.

Building Code: (Approved with Conditions)

The SUD for Fair to Midland is acceptable. The property must adhere to the current maximum occupant load of 592 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Fire: (Approved)

No comments.

Transportation: (Approved)

No objections.

Code Administration: (Approved)

No comments.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive plan, Chapter 6 Character Plan - Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections” (Tall City tomorrow, page 137).

This request was recommended for approval at the January 4, 2021 Planning and Zoning Commission meeting and approved at the January 26, 2021 City Council meeting.

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to Conditions A through F.

Conditions:

A. **That the serviceable area of the bar shall be limited to approximately 8,912 square feet as shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

    Sunday through Saturday from 11:00 a.m. to 2:00 a.m., of the following day.

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. That the establishment shall meet all requirements of the Fire Department and Code Administration.

E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

F. That in accordance with Section 9.07.E.3 of the zoning ordinance, the bar shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of January 20, 2021, staff has not received any letters of objections.

Attachments:

Site and Floor Plans (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 11, CORRECTION PLAT OF WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WINDHAVEN DRIVE), 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 11, Correction Plat of Westridge Park Addition, Section 27, 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 8,912 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 Sunday through Saturday from 11:00 a.m. to 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

BUSINESS FOOTPRINT

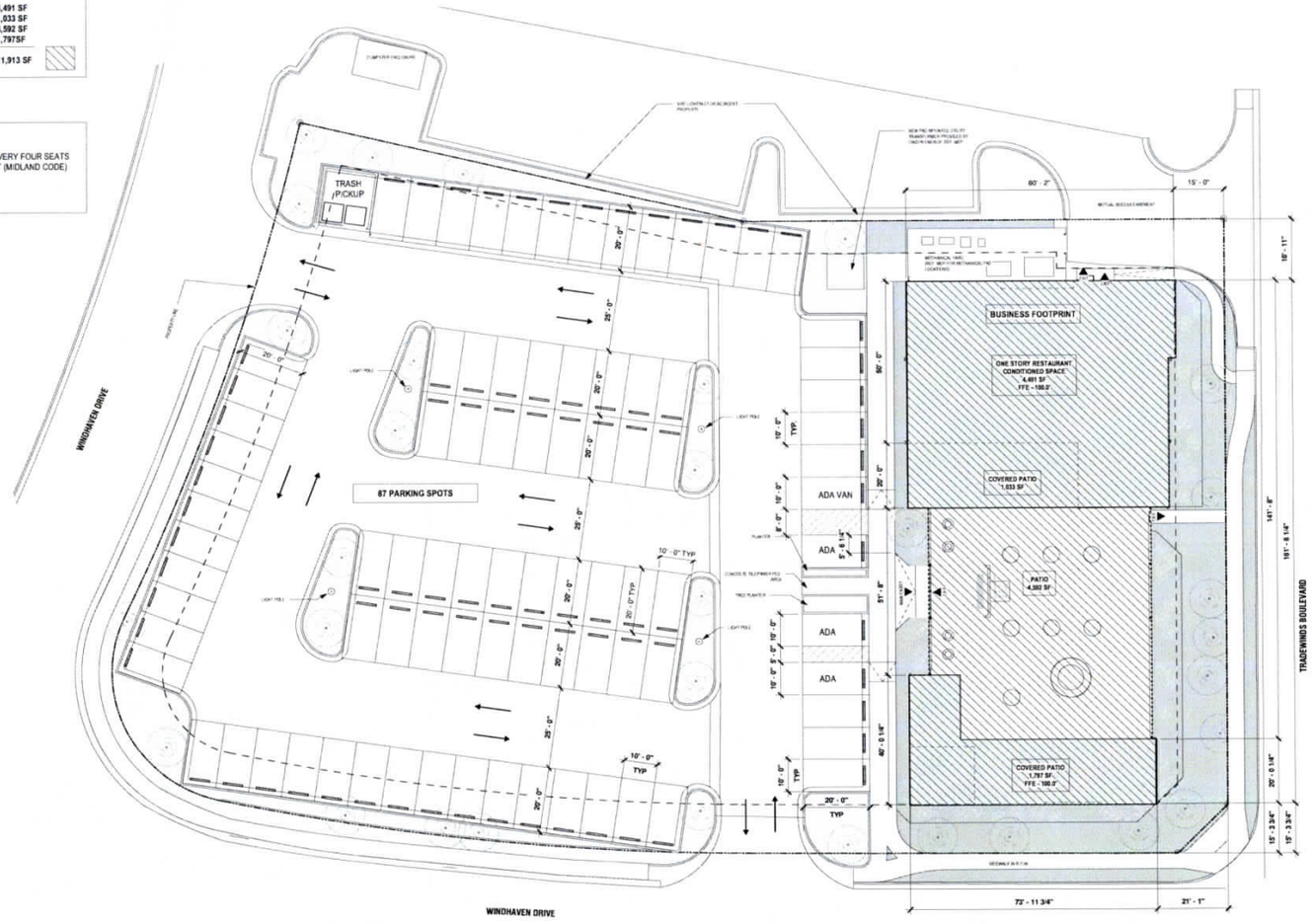
INTERIOR CONDITIONED SPACE:	4,491 SF
COVERED PATIO (ATTACHED)	1,033 SF
PATIO	4,592 SF
COVERED PATIO	1,797SF
TOTAL:	11,913 SF

PARKING CALCULATIONS

TOTAL SEATS SHOWN: 318

REQUIRED: ONE PARKING SPACE FOR EVERY FOUR SEATS UNDER MAXIMUM SEATING ARRANGEMENT (MIDLAND CODE)

PARKING SPACES REQUIRED: 80
PARKING SPACES SHOWN: 87



1 SITE PLAN & PARKING - SPECIFIC USE PERMIT
SCALE: 1/16" = 1'-0"

12/2021 11:37:36 AM THIS DRAWING IS THE PROPERTY OF THOUGHTBARN AND MAY NOT BE REPRODUCED OR USED WITHOUT WRITTEN PERMISSION

ANOTHER EXCITING PROJECT BY: THOUGHTBARN LLC

DESIGN
THOUGHTBARN LLC
4905 RED BLUFF RD - STUDIO A
AUSTIN TX 78702
O: 512.386.1579
INFO@THOUGHTBARN.COM
WWW.THOUGHTBARN.COM

DRAFT

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF LUCY BEGG TX REG ARCH #36395 ON THE DATE SHOWN ON THE DATE STAMP. IT IS NOT TO BE USED FOR CONSTRUCTION OR PERMITTING PURPOSES.

PROJECT
FAIR TO MIDLAND

1108 WINDHAVEN DR.
MIDLAND, TX, 79706

STAGE
SPECIFIC USE PERMIT

REVISIONS

#	DESCRIPTION	DATE

DRAWN BY: Author
CHECKED BY: Checker

DRAWING
SUP - SITE PLAN, DIMENSIONED

SCALE: As indicated
DATE: 09.09.20

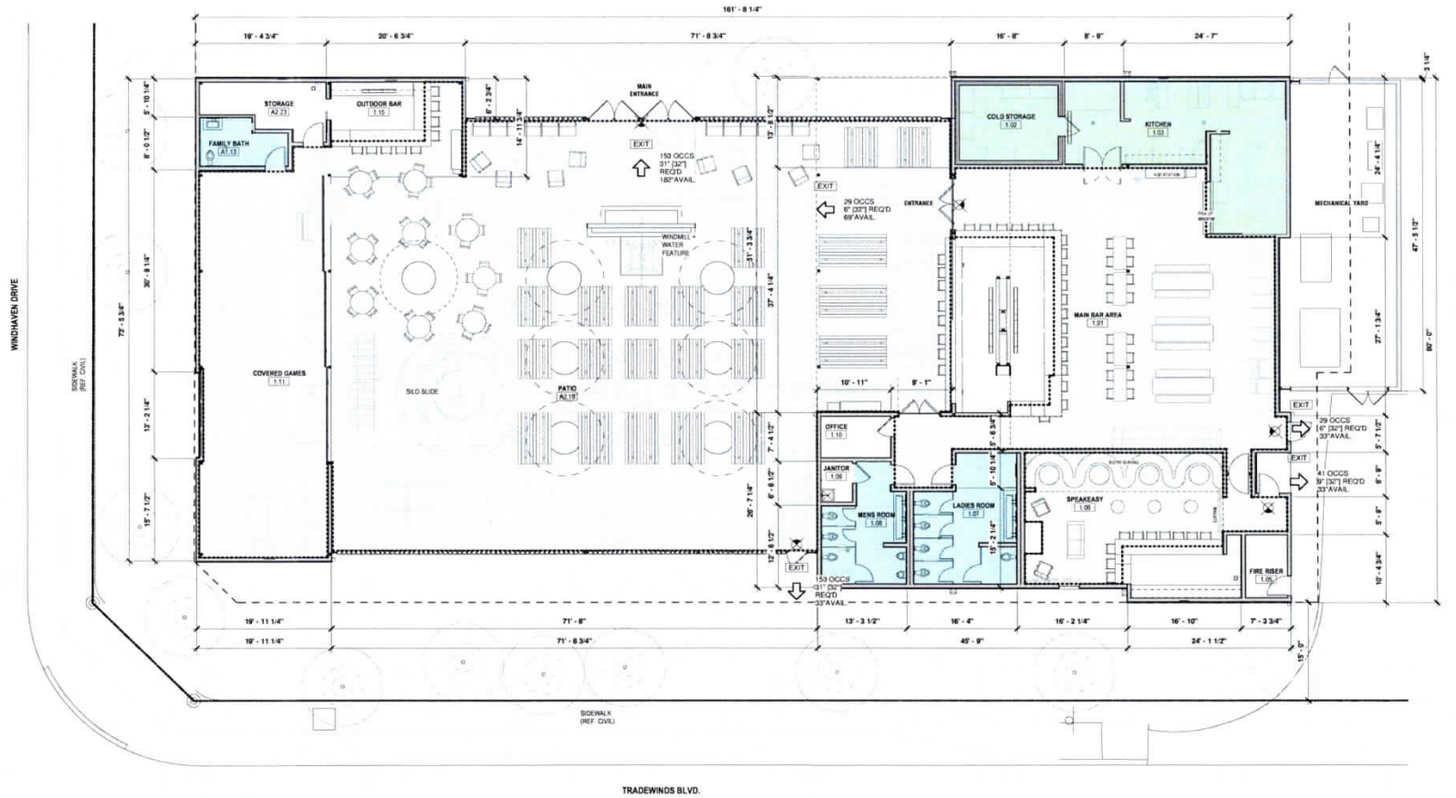
PAGE NUMBER
N/A

SQUARE FOOTAGE	
SERVICEABLE SF:	8,912 SF (shaded)
TOTAL BUSINESS SF:	11,913 SF

KITCHEN AREA	
WITH COLD ROOM:	756 SF
WITHOUT COLD ROOM:	552 SF

BATHROOM FIXTURES	
MENS ROOM:	3 TOILETS / 2 URINALS 3 BATHROOM SINKS
LADIES ROOM:	5 TOILETS 3 BATHROOM SINKS
FAMILY BATHROOM*:	1 TOILET 1 HANDWASH SINK

*IN EXCESS OF REQUIRED FIXTURES



1 **DIMENSION PLAN - SPECIFIC USE PERMIT**
SCALE: 1/8" = 1'-0"

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SCALE: As indicated
DATE: 09.09.20

PAGE NUMBER
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BUSINESS FOOTPRINT

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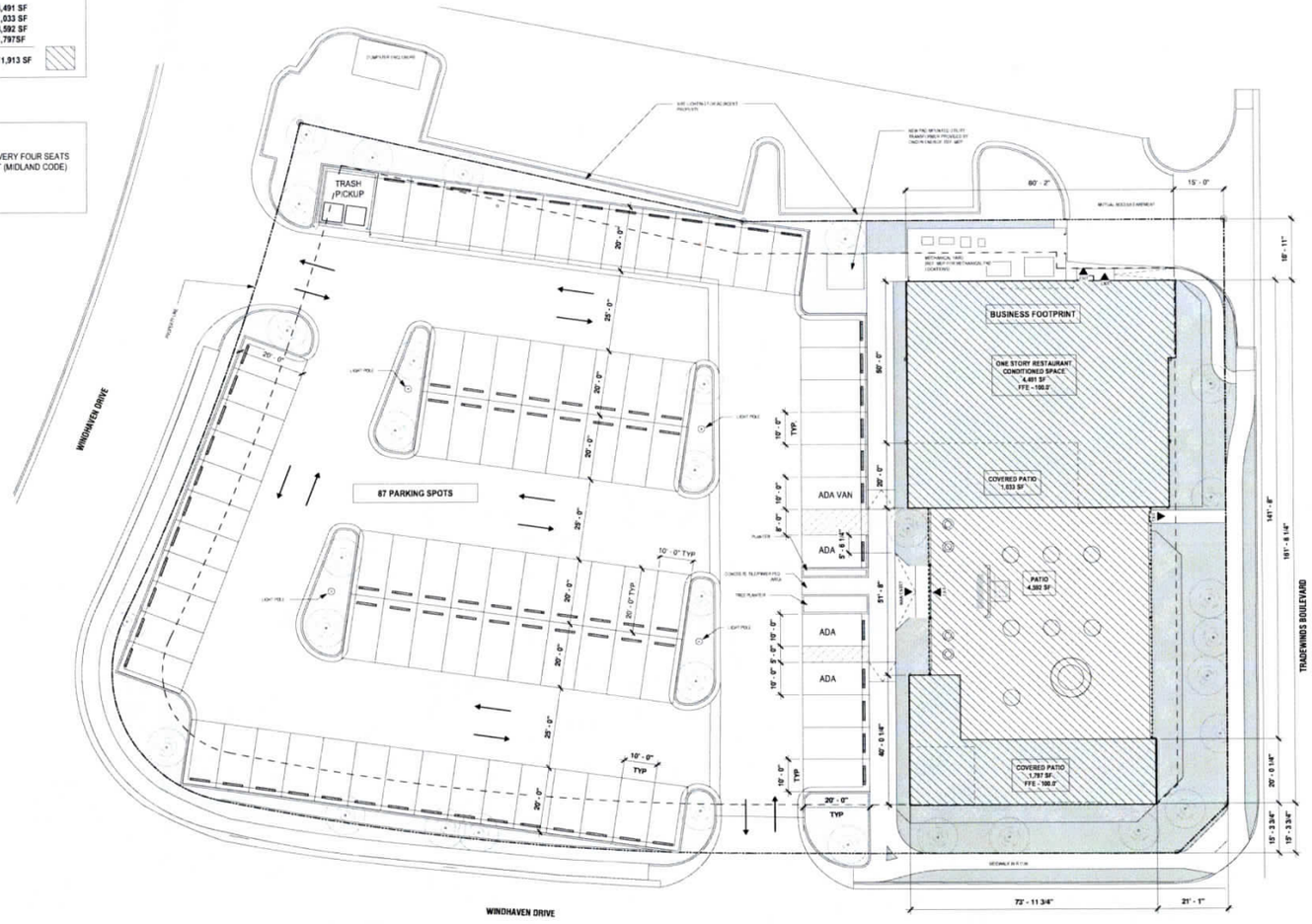

N

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PROJECT
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1108 WINDHAVEN DR.
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STAGE
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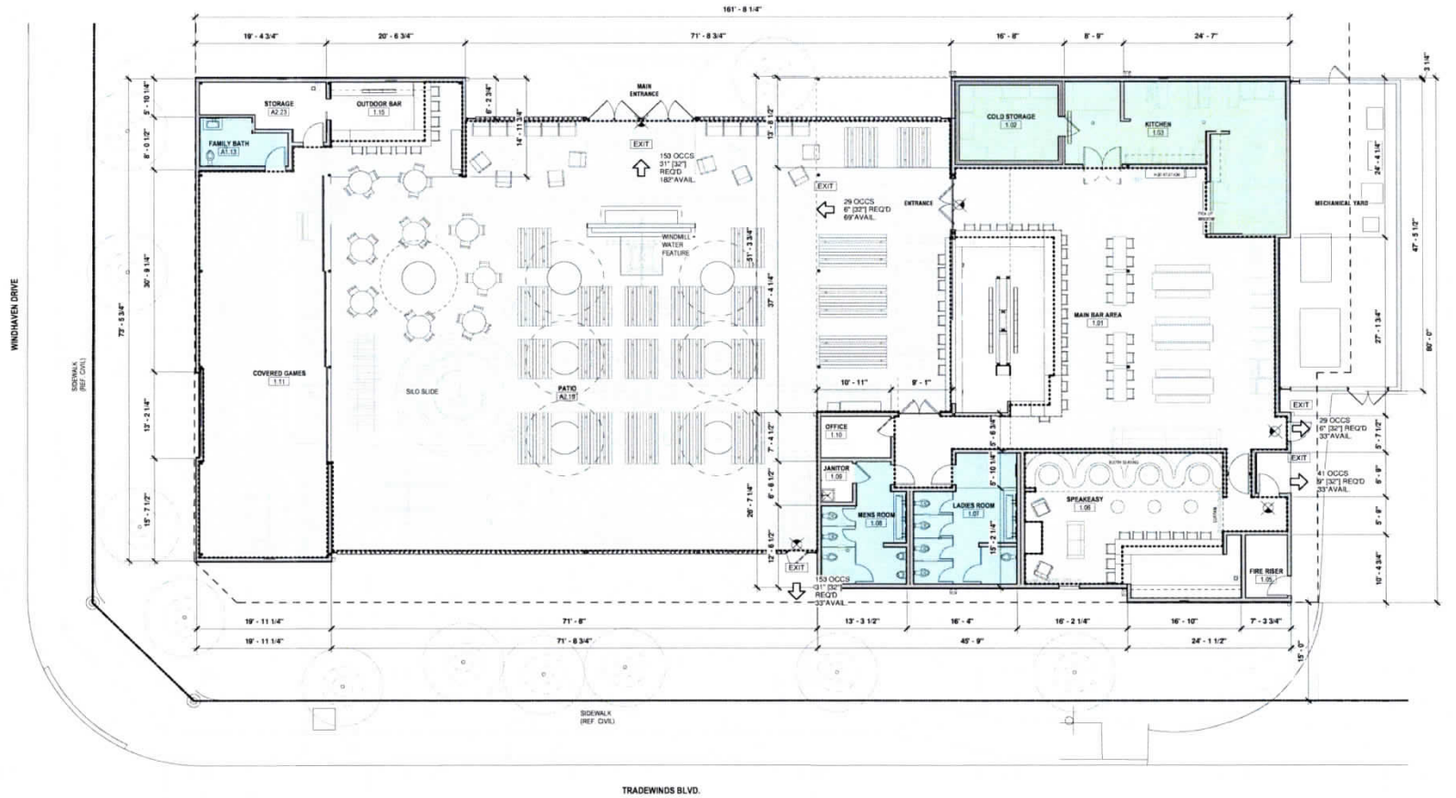

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PROJECT
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STAGE
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DRAWING
SUP - PLAN, DIMENSIONED

SCALE: As indicated | DATE: 09.09.20

PAGE NUMBER
N/A 02

MIDLAND
Planning Division

Specific Use Permit with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-20-0091

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Fair to Midland, LLC		Phone (512) 294-2951 Email chris@kpghospitality.com	
Address 1221 W 6th St., Ste. C	City Austin	State TX	Zip 78703-5276

Property Owner Printed Name: 1115 Tradewinds, LLC		Phone (512) 294-2951 Email chris@kpghospitality.com	
Address 1221 W 6th St., Ste. C	City Austin	State TX	Zip 78703-5276

Representative *(if different from Applicant or Property Owner)* Firm: BrackinSchwartz PLLC Printed Name: Marcus Schwartz and/or Catherine Chamblee		Phone (512) 549-8904 Email marcus@txliquorlaw.com	
Address 511 W 7th St.	City Austin	State TX	Zip 78701

Street Address: 1115 Tradewinds Boulevard, Midland, TX 79706

Business Name: Fair to Midland

Legal Description
Lot: 002 Block: 011 Subdivision: Westridge Park, Sec. 27, correction plat

Current Zoning: RR - Regional Retail District

Reason for Request: To serve alcoholic beverages (beer, wine, and liquor)

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Bar with food service and games/amusements/art installations

Proposed/Current Days and Hours of Operation: 11 am - 2 am; Sun - Sat

Proposed Days and Hours of Alcohol Service: 11 am - 2 am; Sun - Sat

Total Square Footage of Business: 11,913

Square Footage of Alcohol Serviceable Area: 8,912

Restroom Fixtures:	**Toilets/Urinals:**	**Bathroom Sinks:**
Men	3 / 2	3
Women	**Toilets:** 5	**Bathroom Sinks:** 3

Additionally - 1 Family Restroom with 1 toilet and 1 sink

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
  - 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: 11/24/20
Applicant (printed): Chris Horne (Fair to Midland, LLC)	
Property Owner (signature):	Date: 11/24/20
Property Owner (printed) : Chris Horne (1115 Tradewinds, LLC)	

The Specific Use Permit with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Marcus Schwartz who, being by me duly sworn, upon oath says: That (s)he is authorized by 1115 Tradewinds, LLC, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 2nd day of December, 20 20, to certify which witness my hand and seal of office.

JESSICA REEDY SOLE
My Notary ID # 126422744
Expires February 25, 2024

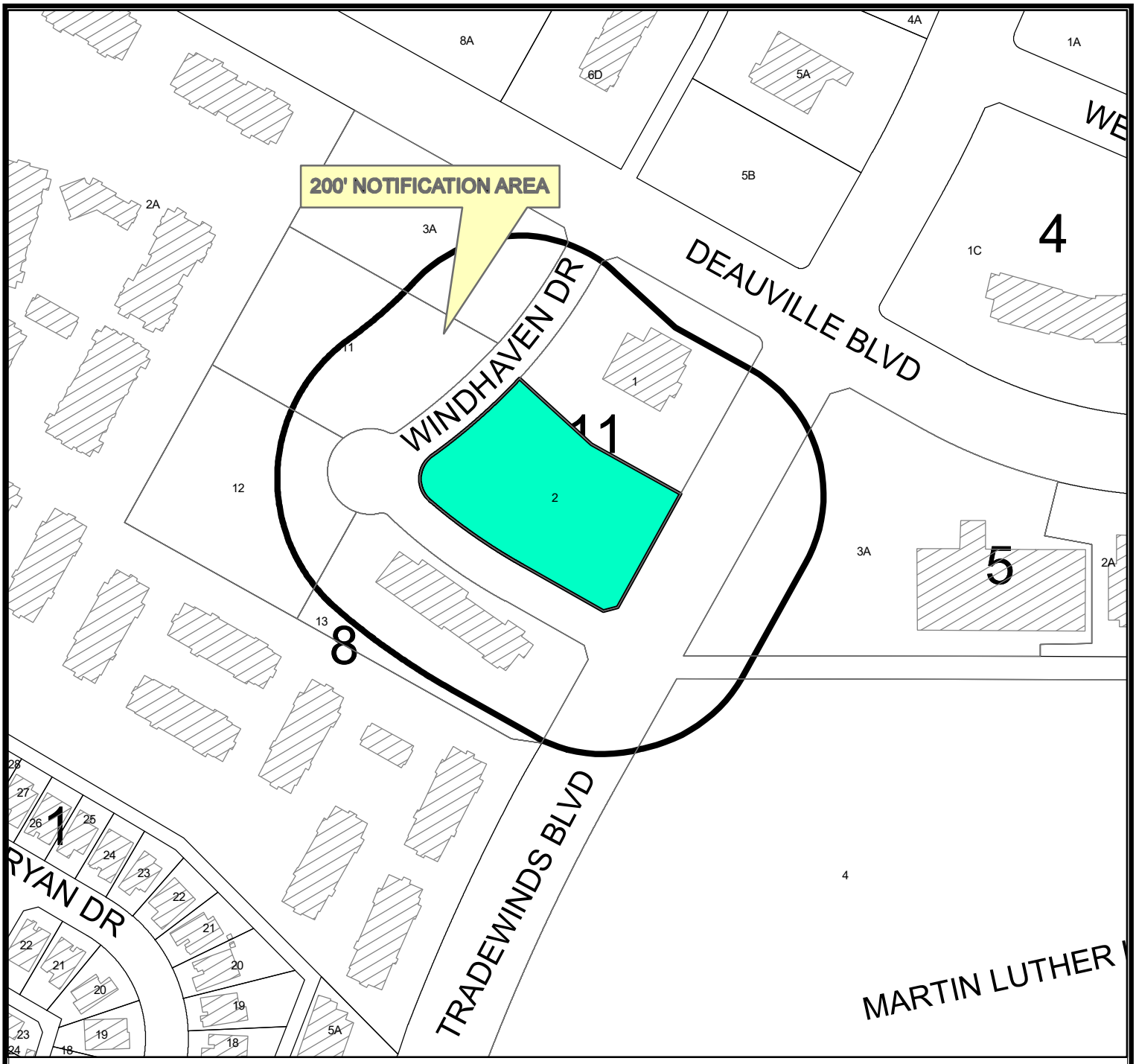
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check # 4551	☐ Plans in Digital Format (PDF/JPEG)
Received By: DM	Date: RECEIVED DEC 0 3 2020

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****



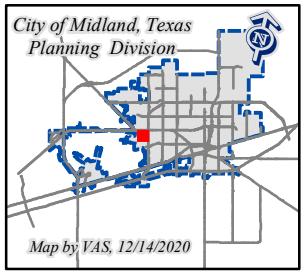
LOCATION MAP

SUD-20-0091 **Scale: 1" = 200'**

Consider a request by Fair to Midland, LLC for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages, for on premises consumption in a bar, on Lot 2, Block 11, Correction Plat of Westridge Park, Section 27, City and County of Midland, Texas.
Generally located on the northwest corner of the intersection of Tradewinds Boulevard and Windhaven Drive. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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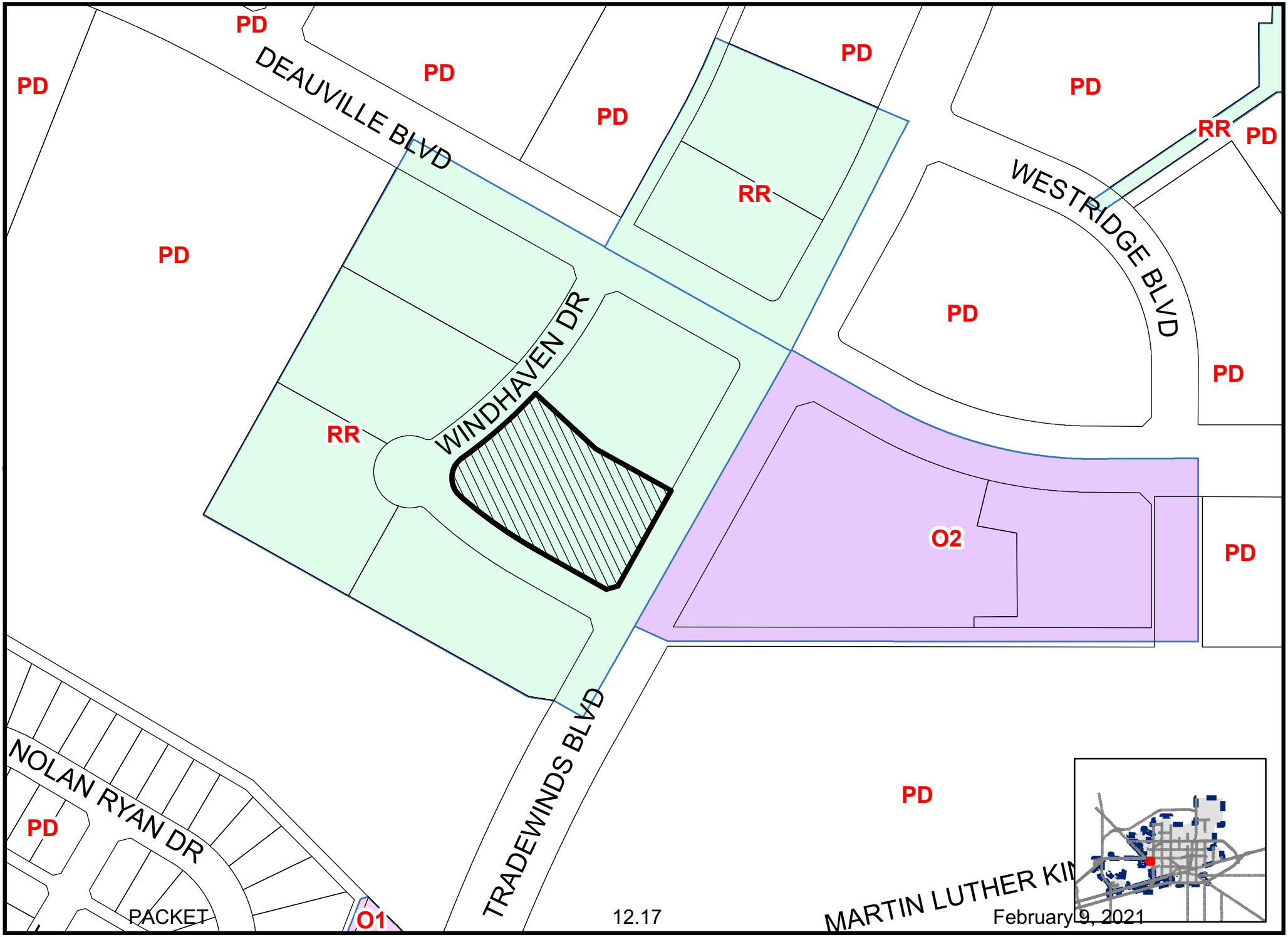
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By VAS, 12/14/2020

SUD-20-0091

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 13

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 56A, BELMONT ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 360 FEET EAST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jennifer Cobbs, is requesting to amend the PD, Planned Development District for a Shopping Center for the Walmart located at 200 West Interstate 20 to update the exterior wall signs.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

PD, Planned Development District for a Shopping Center. (Ordinance No. 8239)

Surrounding Zoning and Land Use:

The properties to the north are zoned PD, Planned Development Districts for Shopping Centers and RR, Regional Retail District and the locations of shopping centers and hotels. The properties to the east are zoned PD, Planned Development District for a Housing Development and PD, Planned Development District for a Shopping Center and the locations of single family housing and vacant land, respectively. The property to the south across Interstate 20 is zoned RR, Regional Retail District and the location of a gas station. The properties to the west are zoned PD, Planned Development District for a Shopping Center and RR, Regional Retail District and the locations of gas stations.

Analysis:

The applicant is requesting to amend the PD, Planned Development District for a Shopping Center, which is governed by Ordinance No. 8239, to update the signage on the Walmart building. The current signage on the building is approximately 821 square feet. The applicant is now proposing to reduce the signage to approximately 602 square feet but will increase the quantity and alter the locations of the signs.

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No objection.

Engineering: (Approved)

No objections to zoning/zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objection to zone change.

Planning:

Based on section 11-7a-7-H-3-j, this property would be allowed to have a total of 360 square feet of signage and that no individual sign can exceed 180 square feet in area. Although the applicant is proposing more signage than allowed per the city code, it is an overall reduction of 219 square feet from what is allowed under the current ordinance regulating the Planned Development District.

Additionally, based on section 11-7a-7.H.3.e, the signage on the rear side of this building would not conform to the present sign code. This section of the code states that “No wall sign shall be permitted on the rear of the building where said sign would be adjacent to a residential use.” Because there is residential zoning and uses to the east of this development, signage on the rear of this building is in violation of the zoning district. However, Ordinance No. 8239 allowed 124 square feet. They are now proposing 78 square feet.

This request was recommended for approval at the January 19, 2021 Planning and Zoning Commission meeting and approved at the January 26, 2021 City Council meeting.

Therefore, staff recommends approval of this zone change, subject to conditions A through J.

Conditions:

A. **That this property shall be subject to the regulations of the RR, Regional Retail District, except as otherwise stated below.**

B. **That the development shall conform to the conditions shown on the attached Exhibits "A, B, and C”.**

C. **That the maximum floor area of this building shall not exceed 205,000 square feet, excluding the outdoor garden center, which shall not exceed 25, 000 square feet in area.**

D. **That in addition to the uses allowed in the RR, Regional Retail District, this property may also be used for a garden center and an automotive center, when developed according to the attached Exhibits. The automotive center shall be limited to tire sales, a lubrication center and minor tune- up and repair. The repair of major automotive systems shall not be allowed.**

E. **That the landscaping shown on Exhibit "C" shall be installed within 180 days of the issuance of a Certificate of Occupancy. All plant materials shall be the minimum size shown on the Exhibits at the time of planting. All landscaping shall be irrigated with an underground sprinkler system, and shall be maintained in a healthy, growing condition.**

F. That the minimum height of the masonry fence surrounding the garden center shall be eight feet, and the minimum total height of this fence, including the decorative screening fence, shall be 20 feet.

G. That the parking plan shown on Exhibit "A" shall be considered illustrative. The minimum number of spaces shall be determined through the building permit process. No parking is required for the auto center, and one parking space shall be provided for every 1,000 square feet occupied by the outdoor garden center.

H. That all outdoor lighting shall conform to the City of Midland Outdoor Lighting Policy, including the use of full cut- off light fixtures.

I. That the signs in the attached elevations (Exhibit B) shall be considered illustrative and that the total wall signage shall not exceed 602 square feet.

J. That the rear signage shall be limited to a maximum of 78 square feet.

Letters of Objection:

Staff has not received any letters of objection as of January 20, 2021.

Attachments:

Site Plan (Exhibit A)
Elevations (Exhibit B)
Landscape Plans (Exhibit C)
Proposed sign plan elevations
Application
Maps
Ordinance No. 8239

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 56A, BELMONT ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 360 FEET EAST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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 1B, Block 56A, Belmont Addition, Section 9, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the Property shall conform to the conditions shown in Exhibits "A", "B" and "C", which are attached hereto and incorporated herein for all purposes.

B. The maximum floor area of the building on the Property shall not exceed 205,000 square feet, excluding the outdoor garden center, which shall not exceed 25,000 square feet in area.

C. That in addition to the uses allowed in the RR, Regional Retail District, this Property may also be used for a garden center and an automotive center, when developed according to the attached exhibits. The automotive center shall be limited to tire sales, a lubrication center and minor tune-up and repair. The repair of major automotive systems shall not be allowed.

D. The landscaping shown on Exhibit "C" shall be installed within 180 days of the issuance of a Certificate of Occupancy. All plant materials shall be the minimum size shown on the Exhibits at the time of planting. All landscaping shall be irrigated with an underground sprinkler system, and shall be maintained in a healthy, growing condition.

E. That the minimum height of the masonry fence surrounding the garden center shall be eight feet, and the minimum total height of this fence, including the decorative screening fence, shall be 20 feet.

F. That the parking plan shown on Exhibit "A" shall be considered illustrative. The minimum number of spaces shall be determined through the building permit process. No parking is required for the auto center, and one parking space shall be provided for every 1,000 square feet occupied by the outdoor garden center.

G. That all outdoor lighting shall conform to the City of Midland Outdoor Lighting Policy, including the use of full cut-off light fixtures.

H. That the signs shown in Exhibit "B" shall be considered illustrative, and the total area of the wall signage shall not exceed 602 square feet.

I. That the rear signage shall be limited to a maximum of 78 square feet.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

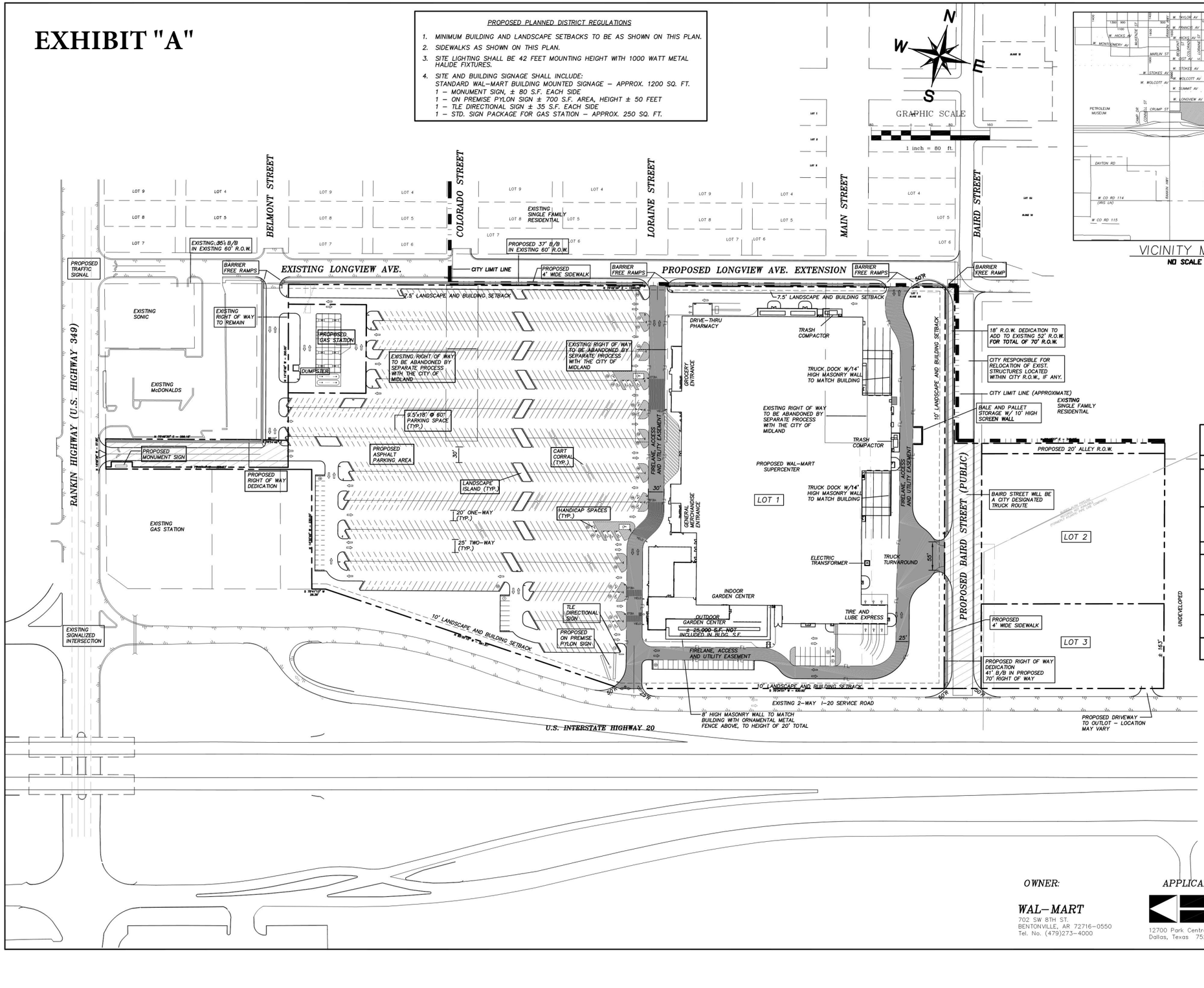
APPROVED ONLY AS TO FORM:

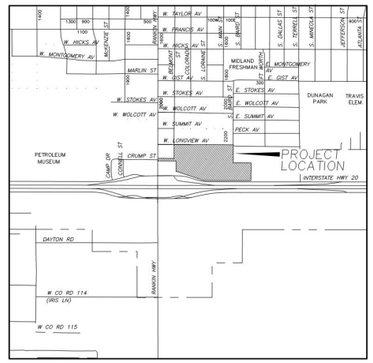
_____
John Ohnemiller, City Attorney

EXHIBIT "A"

PROPOSED PLANNED DISTRICT REGULATIONS

1. MINIMUM BUILDING AND LANDSCAPE SETBACKS TO BE AS SHOWN ON THIS PLAN.
2. SIDEWALKS AS SHOWN ON THIS PLAN.
3. SITE LIGHTING SHALL BE 42 FEET MOUNTING HEIGHT WITH 1000 WATT METAL HALIDE FIXTURES.
4. SITE AND BUILDING SIGNAGE SHALL INCLUDE:
   STANDARD WAL-MART BUILDING MOUNTED SIGNAGE – APPROX. 1200 SQ. FT.
   1 – MONUMENT SIGN, ± 80 S.F. EACH SIDE
   1 – ON PREMISE PYLON SIGN ± 700 S.F. AREA, HEIGHT ± 50 FEET
   1 – TLE DIRECTIONAL SIGN ± 35 S.F. EACH SIDE
   1 – STD. SIGN PACKAGE FOR GAS STATION – APPROX. 250 SQ. FT.





VICINITY MAP
NO SCALE

SITE DATA SUMMARY

EXISTING ZONING: LR-2	PROPOSED ZONING: PD-SC
LOT 1 – WAL-MART	± 20.31 ACRES
LOT 2 – DETENTION	± 2.31 ACRES
LOT 3 – FUT. DEV.	± 1.39 ACRES
R.O.W. DEDICATION	± 1.45 ACRES
TOTAL	± 25.46 ACRES
PROPOSED USE	WAL-MART SUPERCENTER WITH DRIVE-THRU PHARMACY, TIRE AND LUBE EXPRESS, AND OUTDOOR GARDEN CENTER
BLDG. AREA	± 205,000 S.F.
BUILDING HEIGHT: MAXIMUM BY CODE	28'-9" W/8' ALLOWED FOR PARAPET
PROPOSED	40' TO HIGHEST POINT
LOT COVERAGE: MAXIMUM BY CODE	75%
PROPOSED	30%
PARKING REQ. (5.0 SP./1000 SF)	1,016
PROV. (5.0/1000 SF)	1,016 +
HANDICAP SP. REQ.	21
PROV.	21

OWNER:

WAL-MART
702 SW 8TH ST.
BENTONVILLE, AR 72716-0550
Tel. No. (479)273-4000

APPLICANT:

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972)770-1300
Fax No. (972)239-3820

No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART

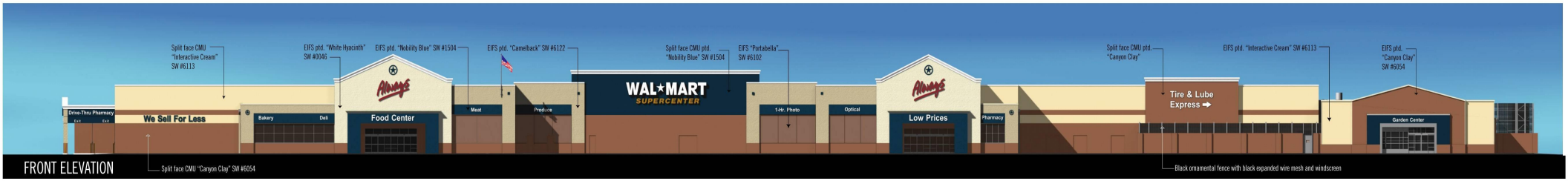
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

PRELIMINARY
SITE PLAN

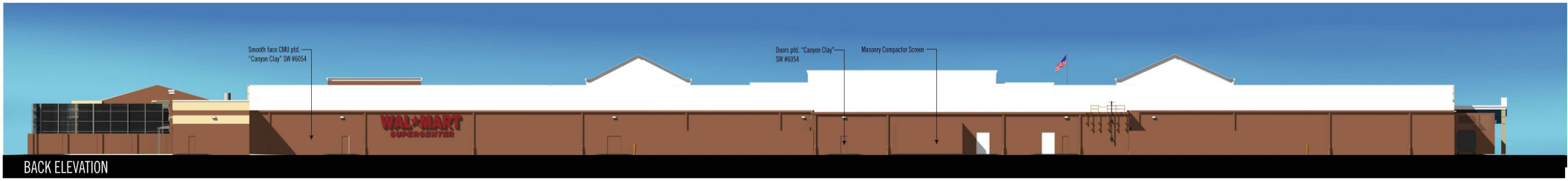
Scale: AS NOTED
Designed by: MAM
Drawn by: DLC
Checked by: JRH
Date: APRIL 2004
Project No. 63362112

SHEET
C-1

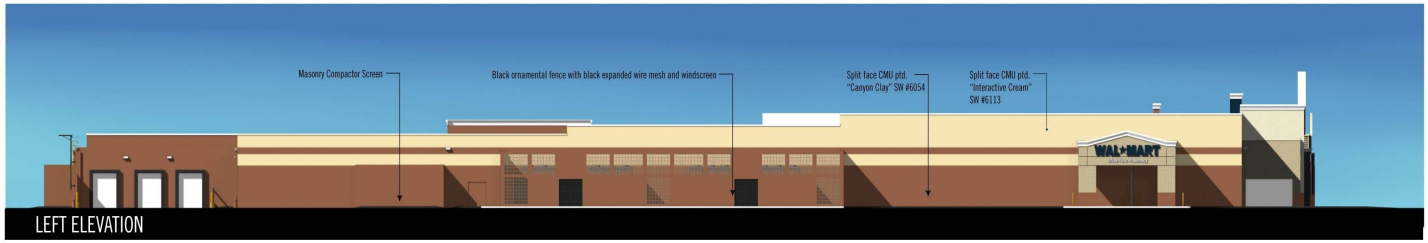
EXHIBIT "B"



FRONT ELEVATION



BACK ELEVATION



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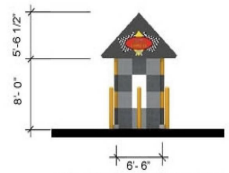
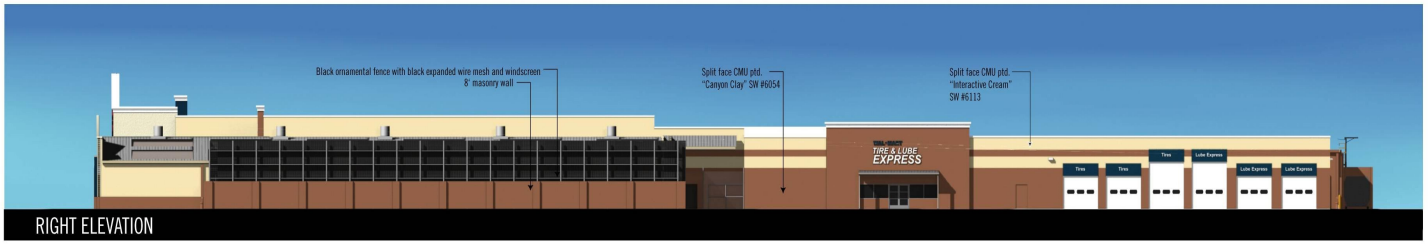
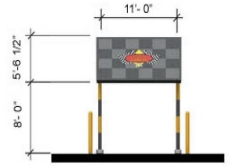


FRONT ELEVATION
NOT TO SCALE



RIGHT ELEVATION

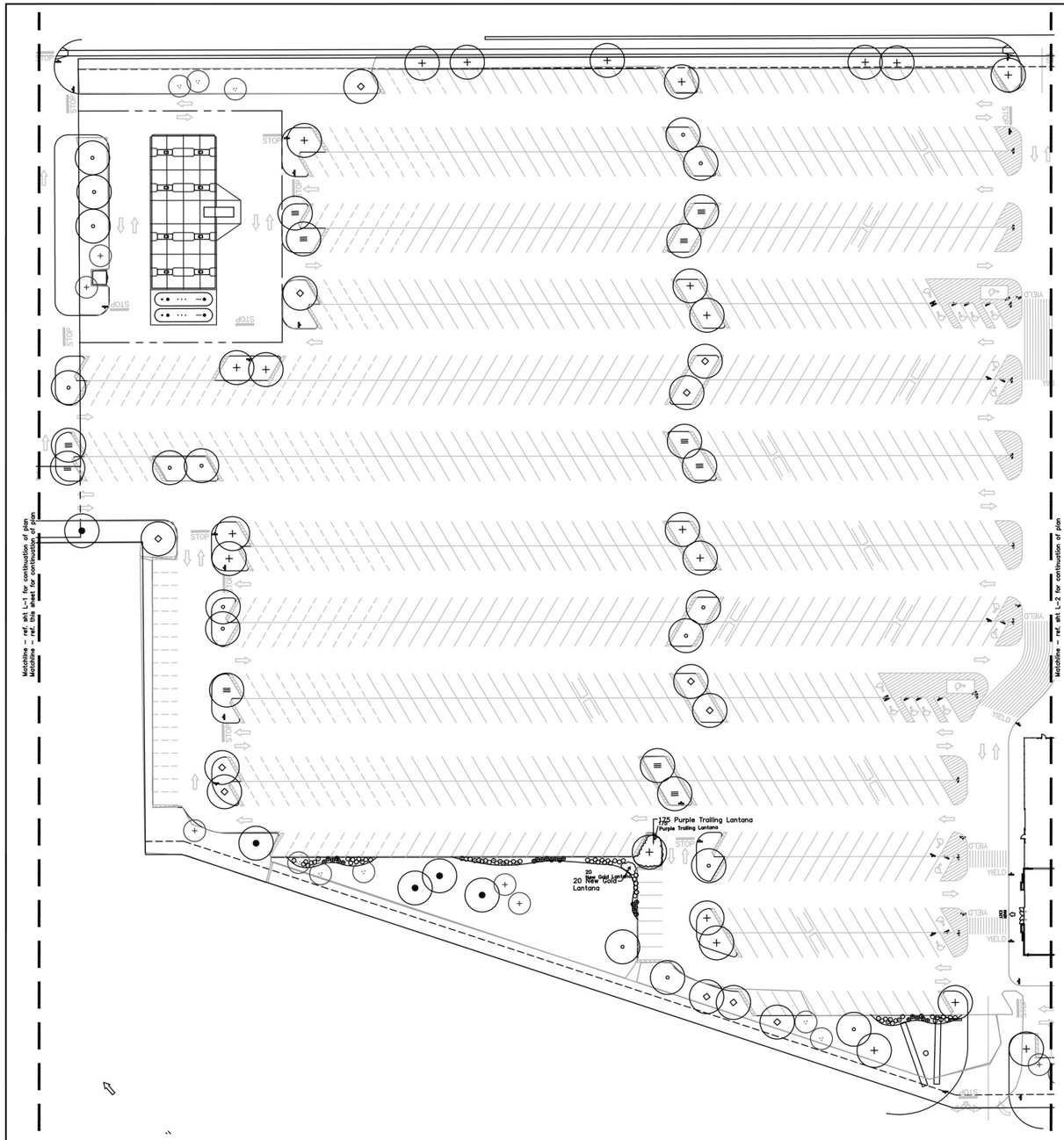


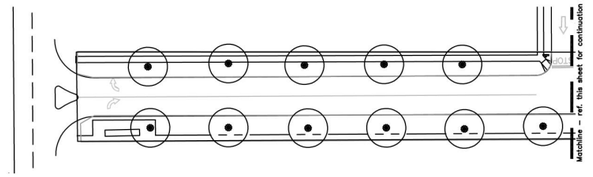
SIDE ELEVATION
NOT TO SCALE
TLE KIOSK SIGNAGE = 65.33 S.F.

Wal★Mart | Midland, TX #3645 | Taylor Scott Architects

April 27, 2004

www.taylorscott.com copyright 2004 Taylor Scott Architects Inc.
WAL★MART STORES, INC.
TAYLOR SCOTT ARCHITECTS, INC.





Legend

+	Live Oak
○	Cedar Elm
◇	Chinese Pistache
≡	Bur Oak
✺	Mexican Sycamore
∴	Lavender Crapemyrtle
+	Tree Yaupon
○	Cenizo
○	Dwf. Burford Holly
⊕	Red Yucca

Note:
See sheet L-2 for Landscape Calculations and Plant List.

EXHIBIT "C"

No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART
SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

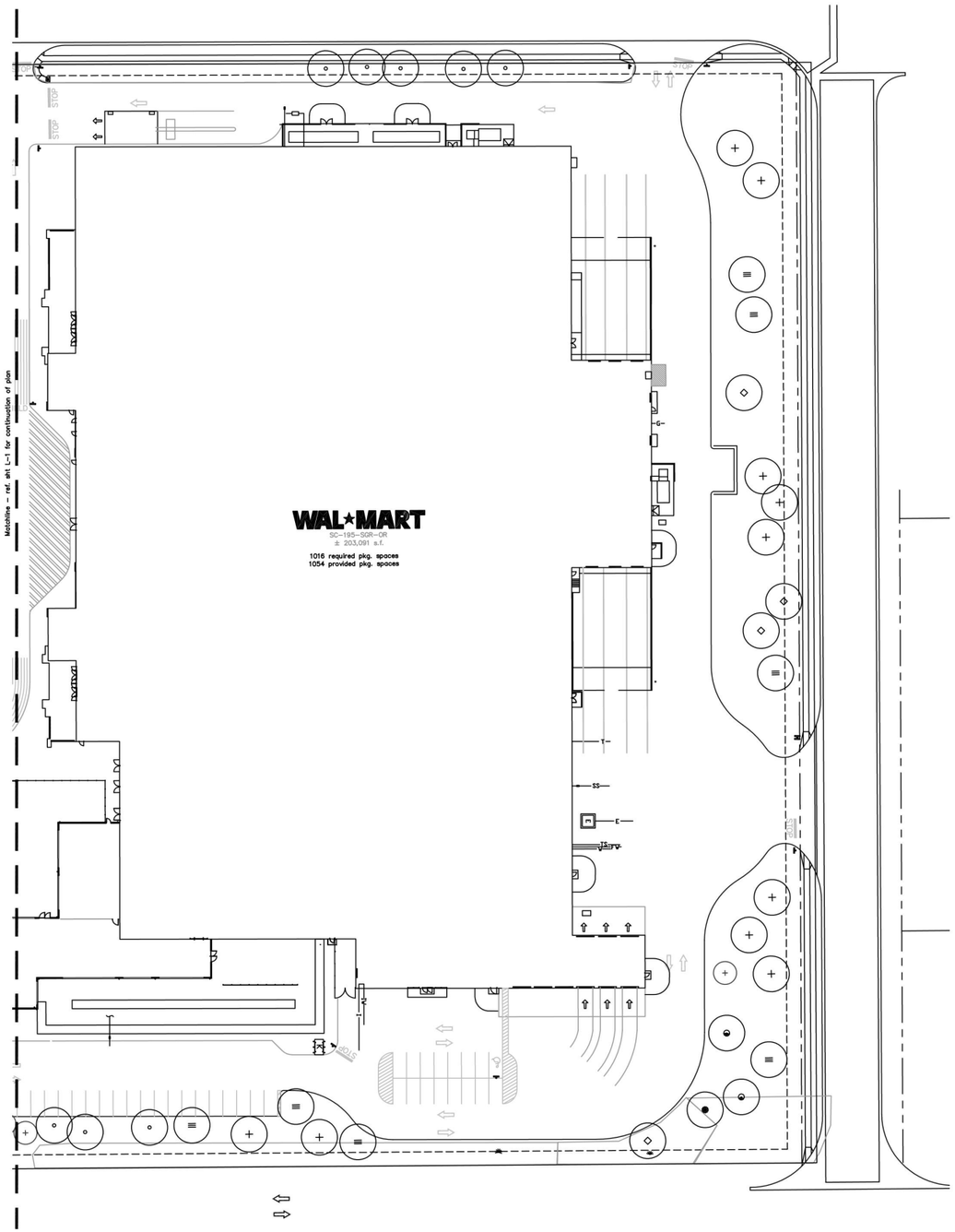
Landscape Plan

Scale: 1" = 40'
Designed by: JFM
Drawn by:
Checked by:
Date: APRIL 2004
Project No. 63362112

SHEET
L-1

STATE OF TEXAS
JOHN F. MURPHY
973
REGISTERED
LANDSCAPE ARCHITECT

Land Resource Design
Landscape Architecture
John F. Murphy, RLA, CCS
2708 S. Lamar Blvd. Suite 110 Austin, TX 78704 512-443-3012 tel. 512-443-3089 fax
1324 S. Beckham Ave. Suite 244 Tyler, TX 75701 903-533-0898 tel./ fax landlaw-internet.com



Legend

- Live Oak
- Cedar Elm
- Chinese Pistache
- Bur Oak
- Mexican Sycamore
- Lavender Crapemyrtle
- Tree Yaupon
- Cenizo
- Dwf. Burford Holly
- Red Yucca

Landscape Calculations* Based on Draft Landscape Ordinance

Total Site Area		914,820 sf		
Landscape Area	Req.	91,482 sf	Prov.	91,694 sf

Streetyard Landscape	Required	Provided
I-20 Street Frontage 1222 ft.	41 Trees (3" ca.)	41
Parking Lot		
1054 spaces	53 trees (1:20)	53 trees

Landscape Notes

1. Solid sod all islands and peninsulas with 609 Buffalo Grass.
2. Hydromulch all perimeter and disturbed areas with Sahara Bermuda Grass.
3. All landscaping will be watered with an underground automatic irrigation system.

Plant List

No.	Common Name	Botanical Name	Size
30	Live Oak	Quercus virginiana	3" Cal. B & B
18	Bur Oak	Quercus macrocarpa	3" Cal. B & B
8	Lavender Crapemyrtle	Lagerstroemia indica 'Red'	B & B 10' Ht 3 Trunk min.
16	Chinese Pistache	Pistacia chinensis	3" Cal. B & B
24	Cedar Elm	Ulmus crassifolia	3" Cal. B & B
8	Tree Yaupon	Ilex vomitoria 'multi trunk'	B & B 8' Ht 3 Trunk min.
19	Mexican Sycamore	Platanus mexicana	45 Gal. 2 3/4" cal.
19	Red Yucca	Hesperaloe parviflora	5 Gal. 36" oc
33	Cenizo	Leucophyllum frutescens	5 Gal. 36" oc
33	Dwarf Burford Holly	Ilex cornuta 'Burford'	5 Gal. 36" oc
175	Purple Trailing Lantana	Lantana montevidensis	1 Gal. 18" oc
20	New Gold Lantana	Lantana 'New Gold'	1 Gal. 24" oc

STATE OF TEXAS
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1324 S. Beckham Ave. Suite 244 Tyler, TX 75701 903-533-8898 tel./ fax landlinear-internet.com

No.	Date	Revisions	App.

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Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART
SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

Landscape Plan

Scale: 1" = 40'
Designed by: JFM
Drawn by:
Checked by:
Date: APRIL 2004
Project No. 63362112

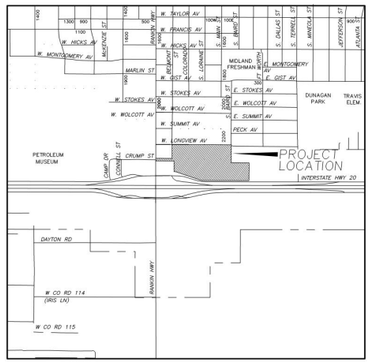
SHEET
L-2

PROPOSED PLANNED DISTRICT REGULATIONS

1. MINIMUM BUILDING AND LANDSCAPE SETBACKS TO BE AS SHOWN ON THIS PLAN.
2. SIDEWALKS AS SHOWN ON THIS PLAN.
3. SITE LIGHTING SHALL BE 42 FEET MOUNTING HEIGHT WITH 1000 WATT METAL HALIDE FIXTURES.
4. SITE AND BUILDING SIGNAGE SHALL INCLUDE:
   STANDARD WAL-MART BUILDING MOUNTED SIGNAGE – APPROX. 1200 SQ. FT.
   1 – MONUMENT SIGN, ± 80 S.F. EACH SIDE
   1 – ON PREMISE PYLON SIGN ± 700 S.F. AREA, HEIGHT ± 50 FEET
   1 – TLE DIRECTIONAL SIGN ± 35 S.F. EACH SIDE
   1 – STD. SIGN PACKAGE FOR GAS STATION – APPROX. 250 SQ. FT.

N W E S

GRAPHIC SCALE
80 0 40 80 160
1 inch = 80 ft.



VICINITY MAP
NO SCALE

BELMONT STREET
COLORADO STREET
LORAINE STREET
MAIN STREET
BAIRD STREET
RANKIN HIGHWAY (U.S. HIGHWAY 349)
EXISTING LONGVIEW AVE.
PROPOSED LONGVIEW AVE. EXTENSION
CITY LIMIT LINE
PROPOSED TRAFFIC SIGNAL
BARRIER FREE RAMPS
EXISTING 35½' B/B IN EXISTING 60' R.O.W.
PROPOSED 37' B/B IN EXISTING 60' R.O.W.
PROPOSED 4' WIDE SIDEWALK
EXISTING SINGLE FAMILY RESIDENTIAL
EXISTING SONIC
EXISTING McDONALDS
EXISTING GAS STATION
EXISTING RIGHT OF WAY TO REMAIN
PROPOSED GAS STATION
DUMPSTER
EXISTING RIGHT OF WAY TO BE ABANDONED BY SEPARATE PROCESS WITH THE CITY OF MIDLAND
9.5'x18' @ 60° PARKING SPACE (TYP.)
PROPOSED ASPHALT PARKING AREA
CART CORRAL (TYP.)
LANDSCAPE ISLAND (TYP.)
20' ONE-WAY (TYP.)
25' TWO-WAY (TYP.)
HANDICAP SPACES (TYP.)
PROPOSED MONUMENT SIGN
PROPOSED RIGHT OF WAY DEDICATION
EXISTING SIGNALIZED INTERSECTION
7.5' LANDSCAPE AND BUILDING SETBACK
10' LANDSCAPE AND BUILDING SETBACK
PROPOSED WAL-MART SUPERCENTER
DRIVE-THRU PHARMACY
TRASH COMPACTOR
GROCERY ENTRANCE
GENERAL MERCHANDISE ENTRANCE
TRUCK DOCK W/14' HIGH MASONRY WALL TO MATCH BUILDING
FIRELANE, ACCESS AND UTILITY EASEMENT
ELECTRIC TRANSFORMER
TRUCK TURNAROUND
INDOOR GARDEN CENTER
OUTDOOR GARDEN CENTER
± 25,000 S.F. NOT INCLUDED IN BLDG. S.F.
TIRE AND LUBE EXPRESS
TLE DIRECTIONAL SIGN
PROPOSED ON PREMISE PYLON SIGN
LOT 1
LOT 2
LOT 3
18' R.O.W. DEDICATION TO ADD TO EXISTING 52' R.O.W. FOR TOTAL OF 70' R.O.W.
CITY RESPONSIBLE FOR RELOCATION OF EXIST. STRUCTURES LOCATED WITHIN CITY R.O.W., IF ANY.
CITY LIMIT LINE (APPROXIMATE)
EXISTING SINGLE FAMILY RESIDENTIAL
BALE AND PALLET STORAGE W/ 10' HIGH SCREEN WALL
PROPOSED 20' ALLEY R.O.W.
BAIRD STREET WILL BE A CITY DESIGNATED TRUCK ROUTE
PROPOSED 4' WIDE SIDEWALK
PROPOSED RIGHT OF WAY DEDICATION 41' B/B IN PROPOSED 70' RIGHT OF WAY
PROPOSED BAIRD STREET (PUBLIC)
UNDEVELOPED
EXISTING 2-WAY I-20 SERVICE ROAD
8' HIGH MASONRY WALL TO MATCH BUILDING WITH ORNAMENTAL METAL FENCE ABOVE, TO HEIGHT OF 20' TOTAL
PROPOSED DRIVEWAY TO OUTLOT – LOCATION MAY VARY
U.S. INTERSTATE HIGHWAY 20

SITE DATA SUMMARY

EXISTING ZONING: LR-2	PROPOSED ZONING: PD-SC
LOT 1 – WAL-MART	± 20.31 ACRES
LOT 2 – DETENTION	± 2.31 ACRES
LOT 3 – FUT. DEV.	± 1.39 ACRES
R.O.W. DEDICATION	± 1.45 ACRES
TOTAL	± 25.46 ACRES
PROPOSED USE	WAL-MART SUPERCENTER WITH DRIVE-THRU PHARMACY, TIRE AND LUBE EXPRESS, AND OUTDOOR GARDEN CENTER
BLDG. AREA	± 205,000 S.F.
BUILDING HEIGHT: MAXIMUM BY CODE	28'-9" W/8' ALLOWED FOR PARAPET
PROPOSED	40' TO HIGHEST POINT
LOT COVERAGE: MAXIMUM BY CODE	75%
PROPOSED	30%
PARKING REQ. (5.0 SP./1000 SF)	1,016
PROV. (5.0/1000 SF)	1,016 +
HANDICAP SP. REQ.	21
PROV.	21

OWNER:
WAL-MART
702 SW 8TH ST.
BENTONVILLE, AR 72716-0550
Tel. No. (479)273-4000

APPLICANT:
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972)770-1300
Fax No. (972)239-3820

No.	Date	Revisions	App.

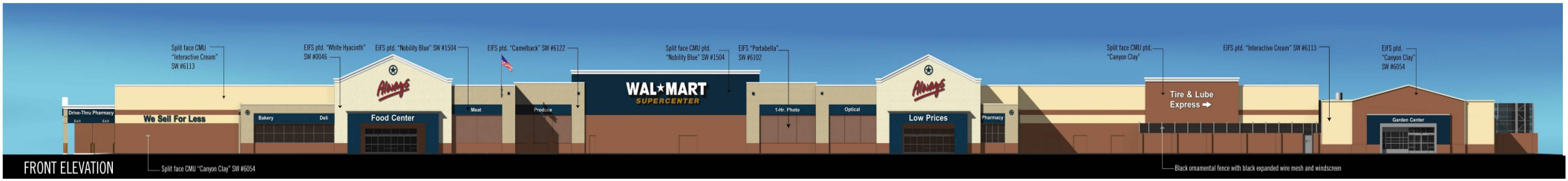
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

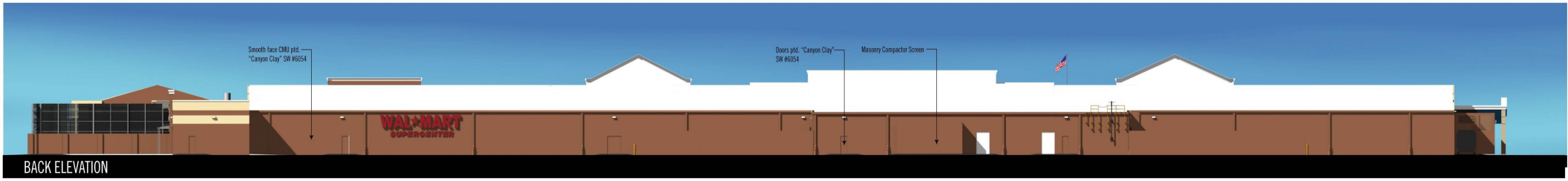
PRELIMINARY
SITE PLAN

Scale: AS NOTED
Designed by: MAM
Drawn by: DLC
Checked by: JRH
Date: APRIL 2004
Project No. 63362112

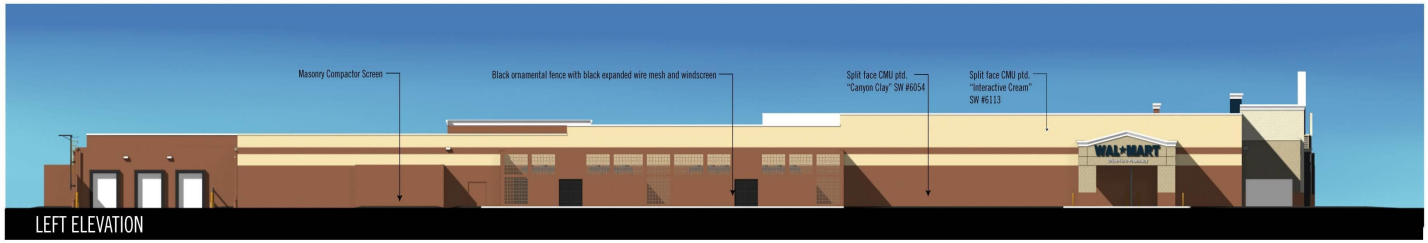
SHEET
C-1



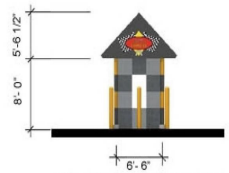
FRONT ELEVATION



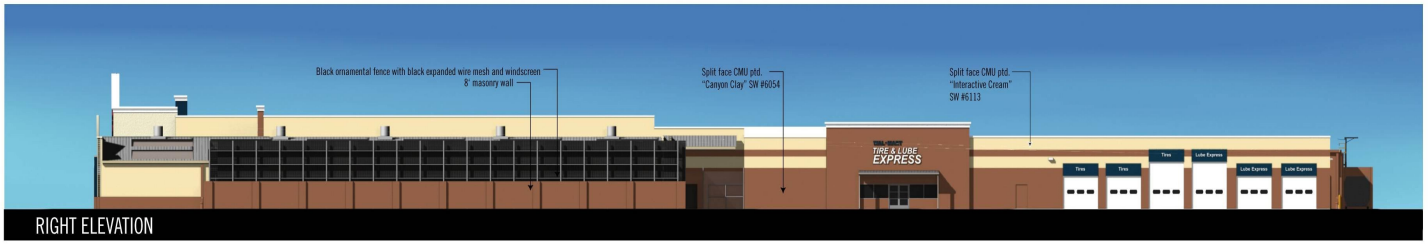
BACK ELEVATION



LEFT ELEVATION



FRONT ELEVATION
NOT TO SCALE



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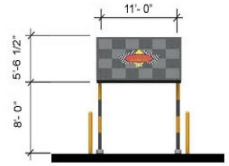

SIDE ELEVATION
NOT TO SCALE
TLE KIOSK SIGNAGE = 65.33 S.F.

Wal★Mart | Midland, TX #3645 | Taylor Scott Architects

April 27, 2004

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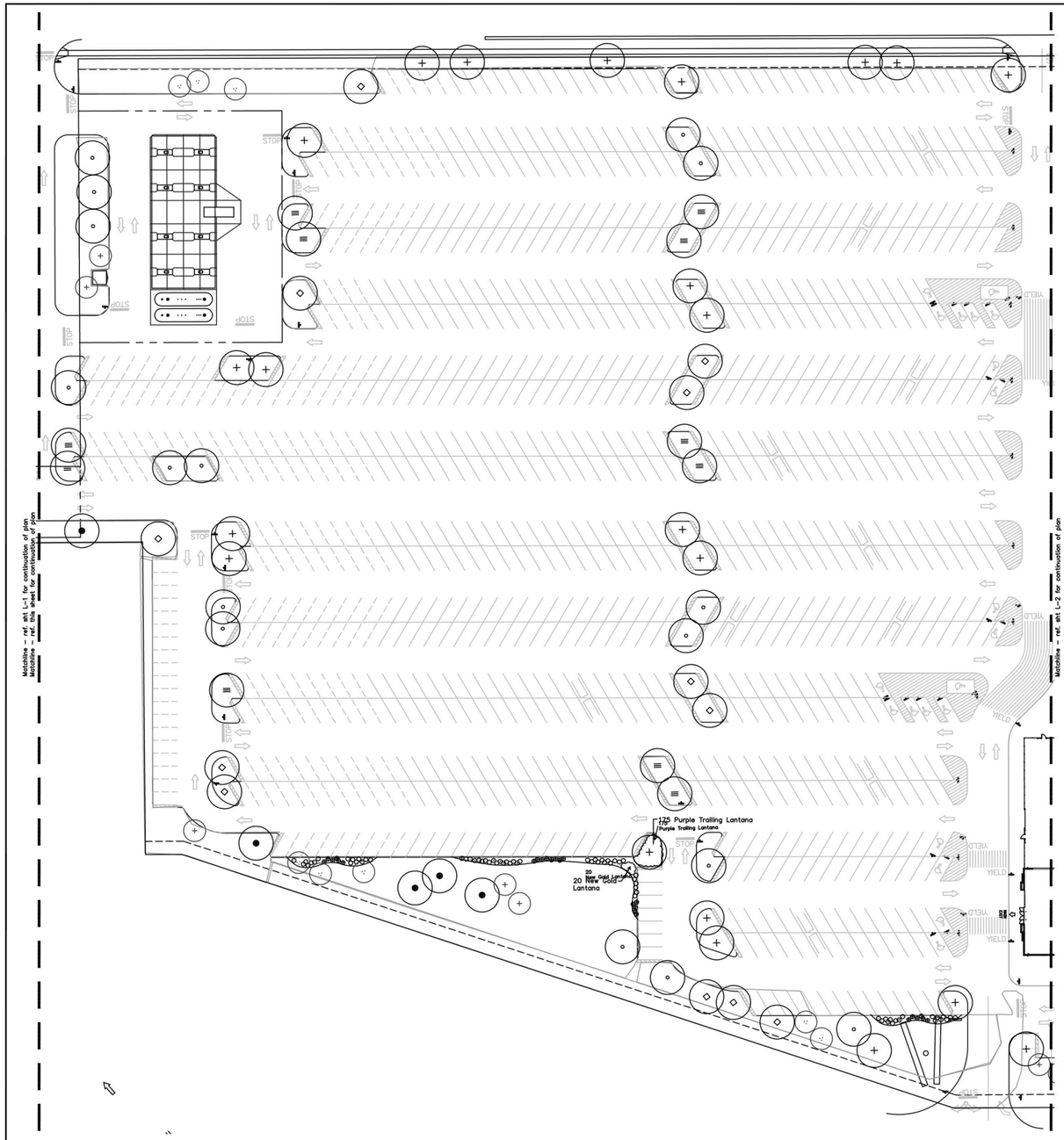
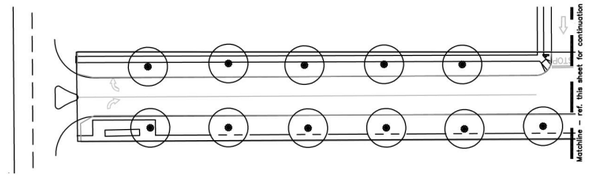
WAL★MART STORES, INC.
TSA TAYLOR SCOTT ARCHITECTS, INC.





Legend

+	Live Oak
○	Cedar Elm
◇	Chinese Pistache
≡	Bur Oak
✺	Mexican Sycamore
⁘	Lavender Crapemyrtle
+	Tree Yaupon
○	Cenizo
○	Dwf. Burford Holly
⊕	Red Yucca

Note:
See sheet L-2 for Landscape Calculations and Plant List.

No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART

SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

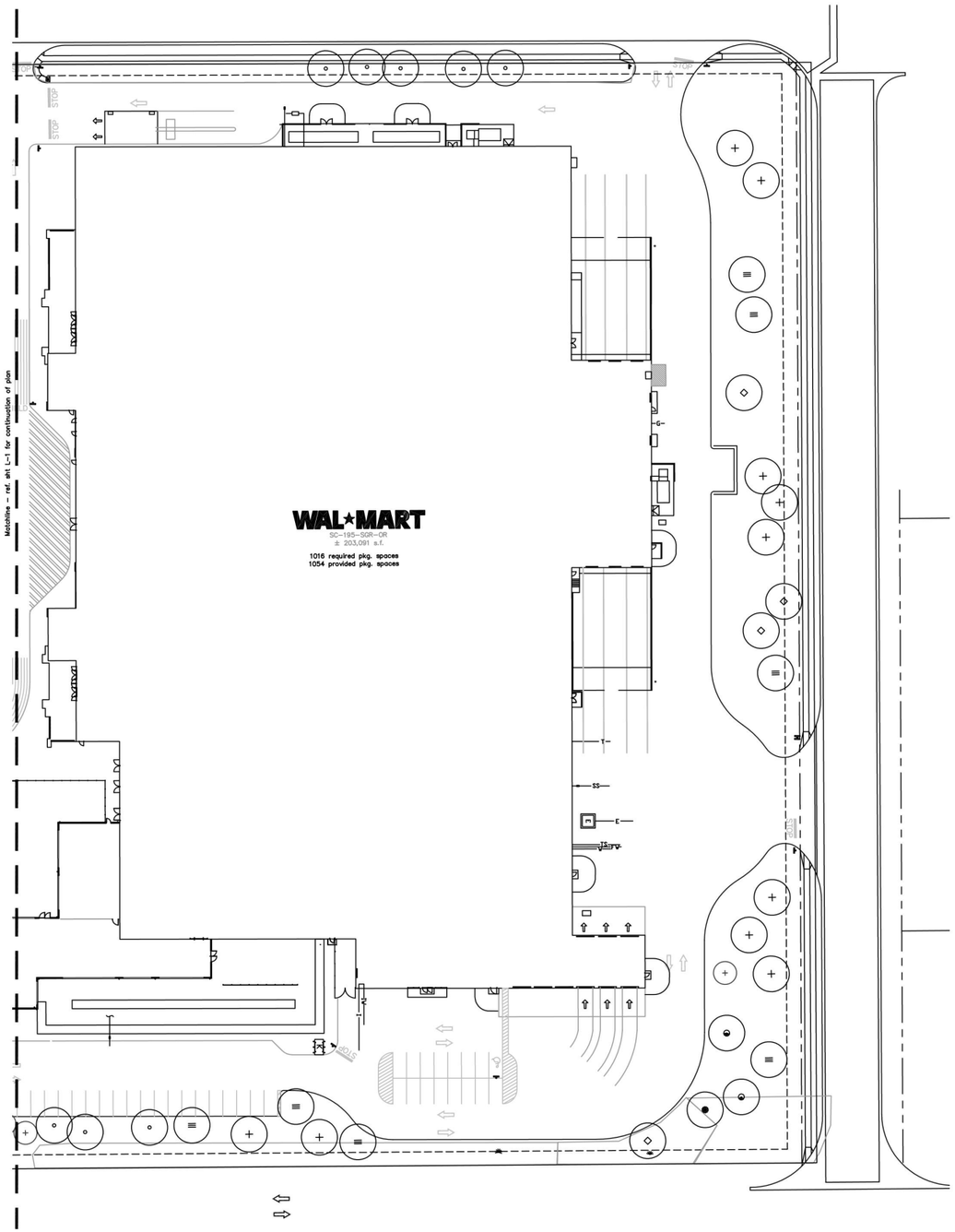
Landscape Plan

Scale:	1" = 40'
Designed by:	JFM
Drawn by:	
Checked by:	
Date:	APRIL 2004
Project No.	63362112

SHEET L-1

STATE OF TEXAS
JOHN F. MURPHY
973
REGISTERED
LANDSCAPE ARCHITECT

Land Resource Design
Landscape Architecture
John F. Murphy, RLA, CCS
2708 S. Lamar Blvd. Suite 110 Austin, TX 78704 512-443-3012 tel. 512-443-3089 fax
1324 S. Beckham Ave. Suite 244 Tyler, TX 75701 903-533-0868 tel./ fax landlaw-internet.com



Legend

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Landscape Calculations* Based on Draft Landscape Ordinance

Total Site Area		914,820 sf		
Landscape Area	Req.	91,482 sf	Prov.	91,694 sf

Streetyard Landscape	Required	Provided
I-20 Street Frontage 1222 ft.	41 Trees (3" ca.)	41
Parking Lot		
1054 spaces	53 trees (1:20)	53 trees

Landscape Notes

1. Solid sod all islands and peninsulas with 609 Buffalo Grass.
2. Hydromulch all perimeter and disturbed areas with Sahara Bermuda Grass.
3. All landscaping will be watered with an underground automatic irrigation system.

Plant List

No.	Common Name	Botanical Name	Size
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175	Purple Trailing Lantana	Lantana montevidensis	1 Gal. 18" oc
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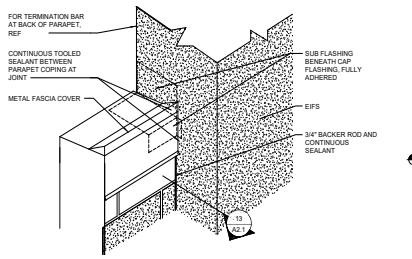
SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

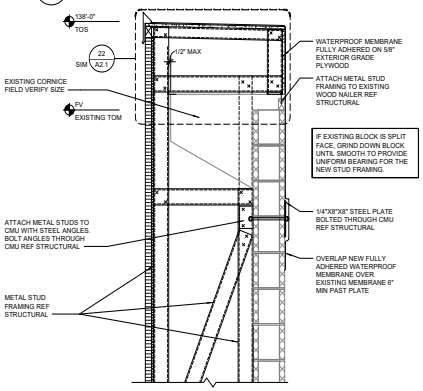
Landscape Plan

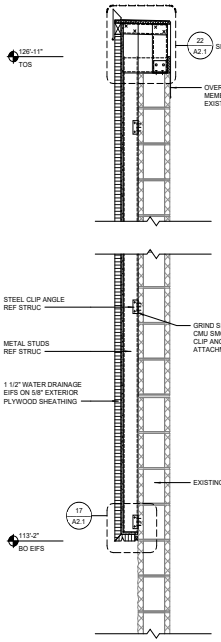
Scale: 1" = 40'
Designed by: JFM
Drawn by:
Checked by:
Date: APRIL 2004
Project No. 63362112

SHEET
L-2

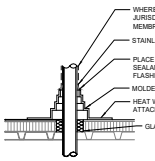


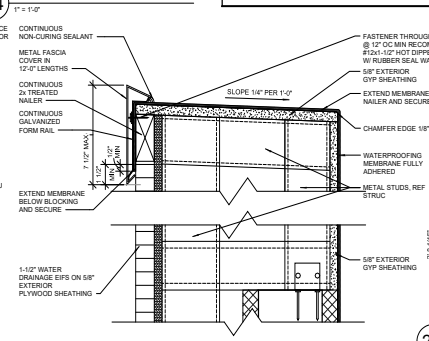
25 PARAPET STEP
NTS



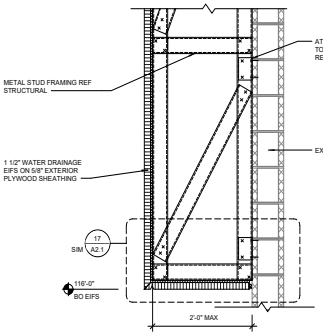


24 ROOF PENETRATION
1" = 1'-0"



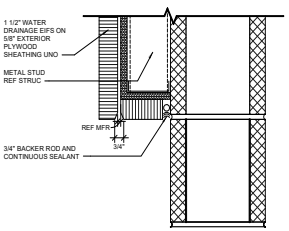


22 PARAPET CAP FLASHING
3" = 1'-0"

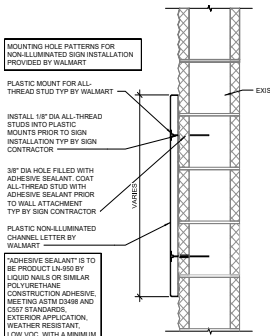


23 WALL SECTION
1" = 1'-0"

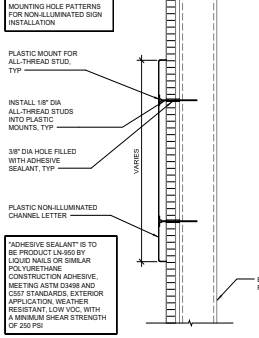
ALTERNATIVE WALL SECTION AT MAIN ID (SMALL CORNICE TO REMAIN)
18
1" = 1'-0"



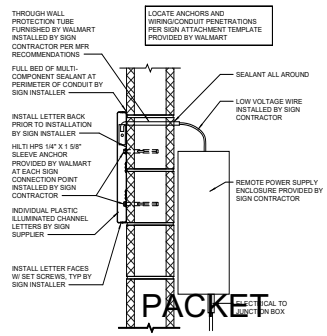
17 EIFS DETAIL
3" = 1'-0"



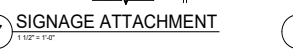
16 SIGN ATTACHMENT AT CMU WALL
1 1/2" = 1'-0"



SIGN ATTACHMENT AT EIFS AND METAL STUD WALL
15
1 1/2" = 1'-0"



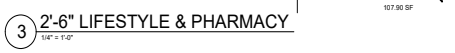
7 SIGNAGE ATTACHMENT
1 1/2" = 1'-0"



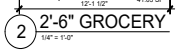
6 2'-0" AUTOMOTIVE (ARROW)
1/4" = 1'-0"

5 2'-0" AUTOMOTIVE
1/4" = 1'-0"

4 2'-6" OUTDOOR
1/4" = 1'-0"

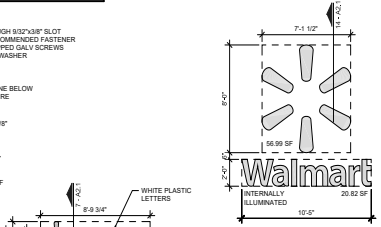


3 2'-6" LIFESTYLE & PHARMACY
1/4" = 1'-0"



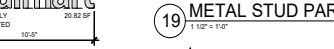
2 2'-6" GROCERY
1/4" = 1'-0"

1 12'-0" WALMART SIGN
1/4" = 1'-0"



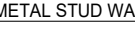
20 8'-0" WALMART SIGN
1/4" = 1'-0"

BUILDING PICKUP SIGNAGE 1'-6"
21
1/4" = 1'-0"



9 1'-6" VISION
1/4" = 1'-0"

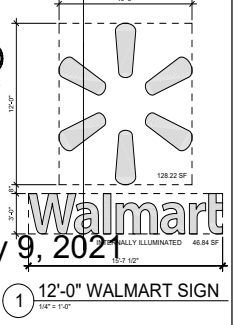
11 1'-0" ENTER (ETR)
1/4" = 1'-0"



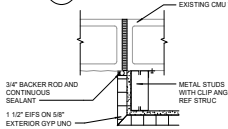
12 1'-6" PHARMACY DRIVE-THRU
1/4" = 1'-0"

10 1'-0" EXIT (ETR)
1/4" = 1'-0"

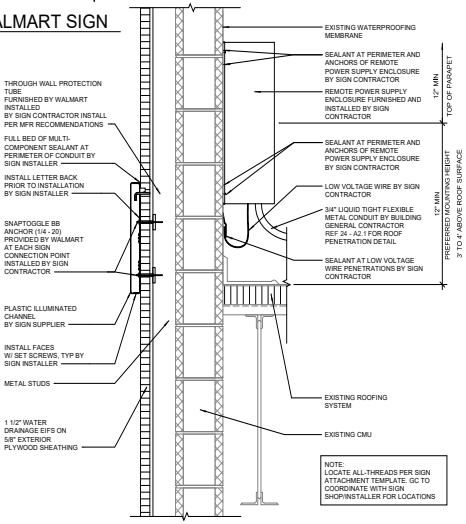
8 2'-6" AUTOMOTIVE
1/4" = 1'-0"



13 CORNER DETAIL
1 1/2" = 1'-0"



19 METAL STUD PARAPET
1 1/2" = 1'-0"



14 SIGNAGE ATTACHMENT
1 1/2" = 1'-0"

SIGNAGE GENERAL NOTES

1. SIGNAGE FURNISHED BY WAL-MART AND INSTALLED BY OTHERS.
2. ALL EXISTING WALMART EXTERIOR SIGNAGE IS TO REMAIN IN PLACE ON THE BUILDING UNTIL THE EXTERIOR SIGN COMPANY IS ONSITE. THE EXTERIOR SIGN COMPANY WILL REMOVE EXISTING SIGNAGE. GENERAL CONTRACTOR WILL THEN PERFORM THE PATCH AND REPAIR WORK NEEDED AT SIGN LOCATIONS, AND PAINTING WORK NOTED IN PLANS. ONCE COMPLETE, GENERAL CONTRACTOR WILL NOTIFY THE EXTERIOR SIGN CONTRACTOR THAT AREAS NOTED TO RECEIVE SIGNAGE ARE READY. THE EXTERIOR SIGN COMPANY WILL THEN INSTALL NEW SIGNAGE AS SHOWN ON THE PLANS.
   A. A TEMPORARY BANNER WILL BE INSTALLED BY THE EXTERIOR SIGN COMPANY PRIOR TO REMOVAL OF EXISTING EXTERIOR SIGNAGE. BANNER WILL REMAIN IN PLACE UNTIL ALL MODIFICATIONS AND/OR REPAIRS HAVE BEEN COMPLETED AND NEW SIGNAGE IS INSTALLED. GC SHALL PRIORITIZE MODIFICATIONS/REPAIRS REQUIRED FOR INSTALLATION OF NEW EXTERIOR SIGNS WHILE EXTERIOR SIGN COMPANY IS ON SITE
   B. TEMPORARY BANNER WILL BE APPROXIMATELY 125 SF (5'X25').
   C. EXTERIOR SIGN WORK NEEDS TO BE SCHEDULED, COORDINATED, AND COMPLETED DURING WEEK 6 OF THE CONSTRUCTION SCHEDULE.
3. GENERAL CONTRACTOR RESPONSIBILITIES
   A. BY END OF FIRST WEEK OF CONSTRUCTION, REVIEW EXISTING CONSTRUCTION WHERE SIGN(S) WILL BE INSTALLED. IF EXISTING CONDITIONS DO NOT MATCH SIGN ATTACHMENT DETAILS SHOWN, REQUEST APPROVAL FROM CONSTRUCTION MANAGER TO SUBMIT RFI IN ACCORDANCE WITH SECTION 01255. NOTE DIFFERENCES IN CONSTRUCTION, INCLUDING DIMENSIONS, AND INCLUDE PHOTOGRAPHS FOR CLARIFICATION.
   B. PROVIDE SUBSTRATE SUITABLE FOR INSTALLATION OF SIGNAGE. REFER TO DETAILS ON SHEET A2/A2.1. FOR LIGHTED (OLDGO SIGNS) COORDINATE TIMING OF WORK WITH WALMART SIGN CONTRACTOR.
   C. PROVIDE JUNCTION BOXES AND CIRCUITRY TO NEW "Walmart" and "spark" SIGNAGE. EXISTING (6) BOXES FROM "WAL+MART" SIGNAGE MAY BE REUSED.
   D. PROVIDE JUNCTION BOXES AND CIRCUITRY TO TENANT SIGNAGE LOCATION SHOWN. REFER TO ELECTRICAL
   E. INSTALL ACCESS DOORS AND FRAMES IN GYPSUM BOARD CEILINGS IF REQUIRED BY RELOCATION OF EXISTING TENANT SIGNAGE.
   F. VERIFY VOLTAGE AT CIRCUITS FEEDING LIGHTED SIGNAGE. REFER TO ELECTRICAL
   G. MAKE FINAL TERMINATIONS ON LIGHTED SIGNAGE
4. SIGNAGE CONTRACTOR RESPONSIBILITIES
   A. REMOVE ALL LIT (OLDGO SIGNS AND UNLIT EXTERIOR STUD MOUNTED BUILDING SIGNS. UNLESS NOTED OTHERWISE.
   B. MAKE REQUIRED EXTERIOR WALL PENETRATIONS, INSTALL CONDUIT, AND SEAL PENETRATIONS PER SPECIFICATION SECTION 07900.
   C. INSTALL SIGNAGE PER DETAILS ON SHEET A2/A2.1

EXISTING SIGNAGE SCHEDULE

FRONT SIGNAGE	QTY	LIGHTED	COLOR	SIZE	INDIVIDUAL AREA	TOTAL AREA
Walmart	1	LED	WHITE	5'-6"	299.04 SF	299.04 SF
* (spark)	1	LED	YELLOW			
Pickup	1	LED	WHITE	2'-6"	65.43 SF	65.43 SF
* (spark)	1	LED	YELLOW			
Home & Pharmacy	1	N/A	WHITE	2'-6"	94.90 SF	94.90 SF
Grocery	1	N/A	WHITE	2'-6"	41.05 SF	42.05 SF
Lawn & Garden	1	N/A	WHITE	2'-6"	58.35 SF	58.35 SF
Vision Center	1	N/A	WHITE	1'-6"	19.03 SF	19.03 SF
Auto Center -->	1	N/A	WHITE	2'-0"	33.95 SF	33.95 SF
TOTAL FRONT SIGNAGE						611.75 SF
REAR SIGNAGE						
Walmart	1	LED	WHITE	3'-6"		
* (spark)	1	LED	YELLOW	5'-2"	123.73 SF	123.73 SF
TOTAL REAR SIGNAGE						123.73 SF
PHARMACY DRIVE-THRU SIGNAGE						
Pharmacy Drive-Thru	1	N/A	WHITE	1'-6"	37.71 SF	37.71 SF
Enter	1	N/A	WHITE	1'-0"	3.20 SF	3.20 SF
Exit	1	N/A	WHITE	1'-0"	2.29 SF	2.29 SF
TOTAL PHARMACY DRIVE-THRU SIGNAGE						43.20 SF
AUTO CENTER SIGNAGE						
Auto Center	1	N/A	WHITE	2'-0"	30.74 SF	30.74 SF
Lube	2	N/A	WHITE	1'-0"	2.58 SF	5.16 SF
Tire	2	N/A	WHITE	1'-0"	2.98 SF	5.96 SF
TOTAL AUTO CENTER SIGNAGE						41.86 SF
TOTAL BUILDING SIGNAGE						820.54 SF

NEW & EXISTING SIGNAGE SCHEDULE

FRONT SIGNAGE	QTY	LIGHTED	COLOR	SIZE	INDIVIDUAL AREA	TOTAL AREA
Walmart	1	LED	WHITE	3'-0"	46.84 SF	46.84 SF
* (spark)	1	LED	YELLOW	12'-0"	128.22 SF	128.22 SF
Pickup (NEW)	1	LED	WHITE	1'-6"	23.55 SF	23.55 SF
* (spark) (NEW)	1	LED	YELLOW			
Lifestyle & Pharmacy	1	N/A	WHITE	2'-6"	107.90 SF	107.90 SF
Grocery	1	N/A	WHITE	2'-6"	41.05 SF	41.05 SF
Outdoor	1	N/A	WHITE	2'-6"	31.88 SF	31.88 SF
Vision	1	N/A	WHITE	1'-6"	8.18 SF	8.18 SF
Auto Center -->	1	N/A	WHITE	2'-0"	39.88 SF	39.88 SF
TOTAL FRONT SIGNAGE						427.90 SF
PHARMACY DRIVE-THRU SIGNAGE						
Pharmacy Drive-Thru	1	N/A	WHITE	1'-6"	37.71 SF	37.71 SF
Enter (ETR)	1	N/A	WHITE	1'-0"	3.20 SF	3.20 SF
Exit (ETR)	1	N/A	WHITE	1'-0"	2.29 SF	2.29 SF
TOTAL PHARMACY DRIVE-THRU SIGNAGE						43.20 SF
AUTO CENTER SIGNAGE						
Automotive	1	N/A	WHITE	2'-0"	27.90 SF	27.90 SF
Numerical Signs	6	N/A	WHITE	2'-6"	4.12 SF	24.72 SF
TOTAL AUTO CENTER SIGNAGE						52.62 SF
AUTO CENTER SIGNAGE						
Walmart	1	LED	WHITE	2'-0"	20.82 SF	20.82 SF
* (spark)	1	LED	YELLOW	8'-0"	56.99 SF	56.99 SF
TOTAL REAR SIGNAGE						77.81 SF
TOTAL BUILDING SIGNAGE						601.13 SF

CYNTERGY
818 SOUTH CINCINNATI
SUITE 200
TULSA, OK 74119
918.794.4100
www.cyntergy.com

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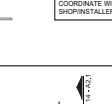
CONSULTANTS

Walmart
MIDLAND (S), TX
STORE NO.: 3645-252
USRN4-008976
JOB NUMBER:
PROTO
105 SC

ISSUE BLOCK

CHECKED BY:	RB/OP
DRAWN BY:	CRE
PROTO CYCLE:	09/25/2020
DOC DATE:	11/20/2020

DOCUMENTS WITHOUT SIGNATURE AND REQUIRED SEAL OF AOR/EOR ARE NOT FOR CONSTRUCTION



11/23/2020

JAMES EDWARD TURNER
ARCHITECT OF RECORD

EXTERIOR DETAILS

SHEET:
A2.1

Plotted: 2/9/2021 1:13:17 PM
C:\Users\jturner\Documents\Revit Projects\Walmart_3645-252_midland (S)_TX_R21_jturner.rvt

February 9, 2021

KEYNOTES	
7.04	METAL FASCIA COVER
7.06	WATER DRAINAGE EXTERIOR INSULATION AND FINISH SYSTEM

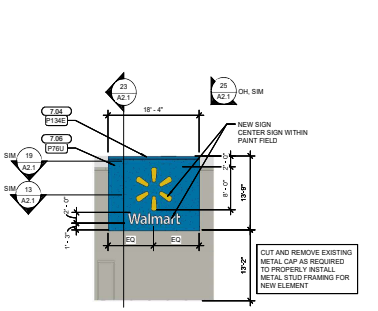
FINISH KEY	
P49E	DARK GRAY
P76U	WALMART BLUE (URETHANE-LIKE)
P134E	LIGHT GRAY
P135E	MEDIUM GRAY
P162E	BLACK GRAY

SHEET NOTES

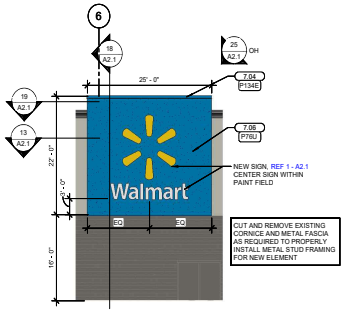
1. POWER WASH EXTERIOR WALL SURFACES AT AREAS REQUIRING FINISH APPLICATION PRIOR TO PAINTING.
2. PATCH AND REPAIR EXTERIOR WALL SURFACES, DAMAGED OR EXPOSED DUE TO REMOVAL OF BUILDING MOUNTED ITEMS, TO MATCH ADJACENT AS REQUIRED.
3. REPLACE SEALANT AND BACKER MATERIAL AT BUILDING CONTROL JOINTS AND EXPANSION JOINTS FILL AND SEAL JOINTS. REF SPEC 07900.
4. REFER TO DETAILS ON SHEET A2.1 FOR SUBSTRATE AND FINISH REQUIREMENTS AT LOCATIONS OF BUILDING MOUNTED SIGNS.
5. RESURFACE EXISTING EIFS WHERE NOTED.
6. PAINT EXTERIOR OF BUILDING AS SHOWN. AT WALL(S) WITH EXISTING SIGN(S) MASK AND PAINT AROUND SIGN CHARACTERS.
7. PAINT EXTERIOR OF BUILDING AS SHOWN. PRIOR TO PAINTING WALL AT LOCATION(S) OF NEW LIT ID/LOGO SIGN(S), COORDINATE SCOPE OF WORK WITH WALMART CM.
8. EXISTING PAINT TO REMAIN EXCEPT WHERE NOTED ON PLANS AND SHEET NOTES. REPAINT ANY AREAS AFFECTED BY CAULK REMOVAL AND REPAIR TO MATCH ADJACENT. TOUCH UP AREAS WITH SCUFF MARKS TO MATCH EXISTING PAINT FINISH.
9. NOT USED.
10. NOT USED.
11. NOT USED.
12. NOT USED.
13. NOT USED.
14. NOT USED.
15. NOT USED.
16. DO NOT PAINT LED WALL PACK HOUSINGS

DEMOLITION NOTES

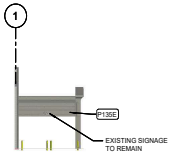
1. REMOVAL OF LIT ID/LOGO SIGNS AND UNLIT EXTERIOR STUD MOUNTED BUILDING SIGNS BY OTHERS.
2. GENERAL CONTRACTOR TO PATCH/REPAIR HOLES LEFT AFTER SIGNS ARE REMOVED AND REPAINT AS SCHEDULED
3. NOT USED.
4. NOT USED.
5. REMOVAL OF BUILDING MOUNTED ITEMS. SHOWN OR NOTED TO BE DEMOLISHED OR AS REQUIRED BY SCOPE OF WORK, SHALL OCCUR PRIOR TO PAINTING BUILDING. COORDINATE DEMOLITION WORK SO EXTERIOR PAINTING WILL OCCUR PRIOR TO INSTALLATION OF BUILDING MOUNTED ITEMS.



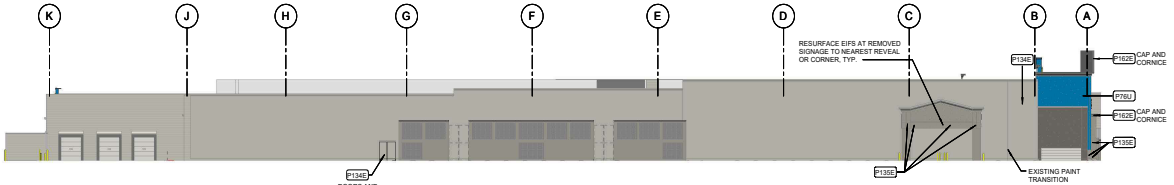
9 ENLARGED AUTO CENTER ELEVATION
1" = 10'-0"



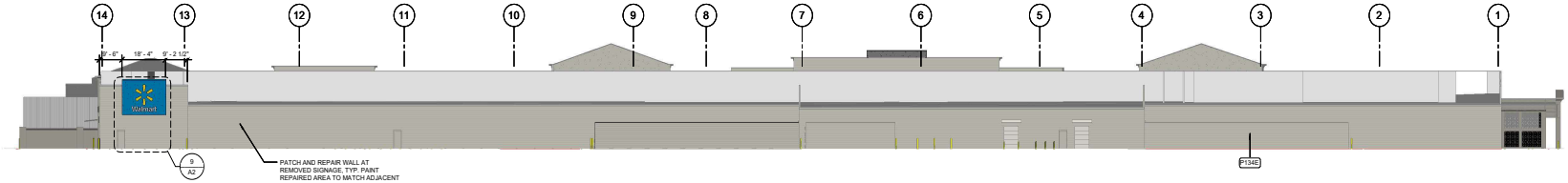
8 ENLARGED FRONT ELEVATION
1" = 10'-0"



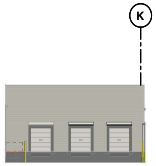
7 PHARMACY ELEVATION
1" = 20'-0"



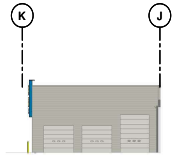
6 SIDE ELEVATION
1" = 20'-0"



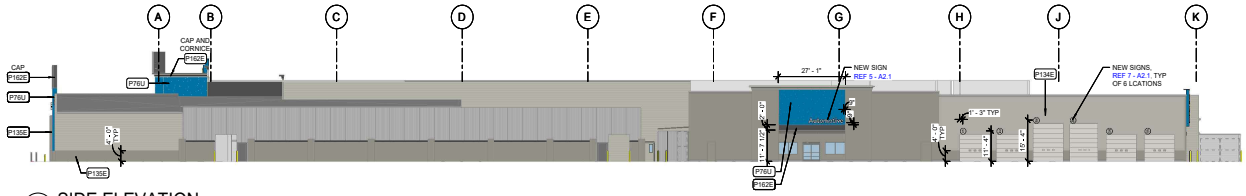
5 REAR ELEVATION
1" = 20'-0"



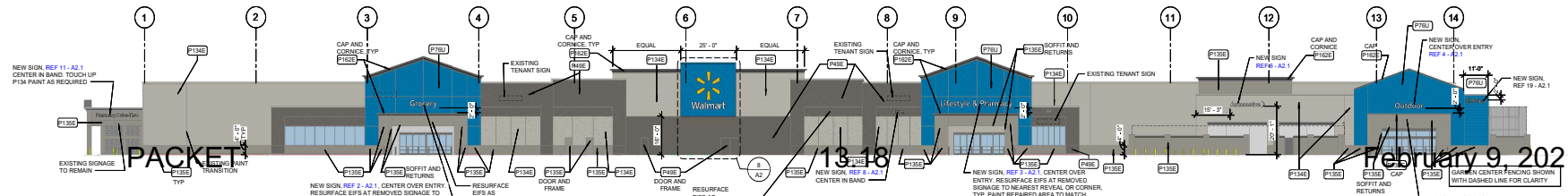
4 RECEIVING DOCK ELEVATION
1" = 20'-0"



3 AUTO CENTER ELEVATION
1" = 20'-0"



2 SIDE ELEVATION
1" = 20'-0"



1 FRONT ELEVATION
1" = 20'-0"

PACKET 13 18 February 9, 2021

CYNTERGY
818 SOUTH CINCINNATI
SUITE 200
TULSA, OK 74119
918.587.1000
www.cyntergy.com

STIPULATION FOR REUSE

CONSULTANTS

Walmart
MIDLAND (S), TX
STORE NO.: 3845-252
JOB NUMBER: USRNA-0087K
105 SC
PHOTO

ISSUE BLOCK

CHECKED BY:	OP
DRAWN BY:	LC
PROTO CYCLE:	09/25/2020
DOC DATE:	11/20/2020

DOCUMENTS WITHOUT SIGNATURE AND REQUIRED SEAL OF AOR/EOR ARE NOT FOR CONSTRUCTION

LICENSED PROFESSIONAL ENGINEER STATE OF TEXAS
11/23/2020

JAMES EDWARD TURNER
ARCHITECT OF RECORD

EXTERIOR ELEVATIONS

SHEET: A2

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-20-0206

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: JENNIFER COBBS C/O CYNTERGY		Phone (918)346-6818 Email jcobbs@cyntergy.com permits@cyntergy.com	
Address 810 S. CINCINNATI, 2ND FLOOR	City TULSA	State OK	Zip 74119

Property Owner Printed Name: WALMART R.E. BUS. TRUST		Phone (479)273-6705 Email hamidul.hoq@walmart.com	
Address 2608 SE J STREET	City BENTONVILLE	State AR	Zip 72716

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 200 W. INTERSTATE 20, MIDLAND, TX 79701

Legal Description ACRES: 19,8000, BLK: 56A, LOT: 01B, ADDN: BELMONT SEC 9
Lot: 01B Block: 56A Subdivision: BELMONT SEC 9

Current Zoning: PD, REGULATED BY ORDINANCE NO. 8239, W/ AN UNDERLYING ZONE OF LR-2, LOCAL RETAIL DISTRICT

Proposed Zone: (NO ZONING CHANGE, AMENDED SITE PLAN REVIEW ONLY)
(List by tracts if more than one district is requested)

Reason for Zone Change Request:
REQUESTING AMENDED PD SITE PLAN REVIEW, PROPOSED UPDATED EXTERIOR WALL SIGNS

Present Use of Property: MERCANTILE-RETAIL/GROCERY

Proposed Use of Property: MERCANTILE-RETAIL/GROCERY

How would this zone change affect the public health, safety and welfare?
THE SIGN CHANGES WOULD POSITIVELY AFFECT THE THE PUBLIC HEALTH, SAFETY, AND WELFARE. INCLUDED IN THE UPDATED SIGNS WILL BE A NEW PICKUP & SPARK SIGN INDICATING THE ONLINE GROCERY PICKUP IS AVAILABLE

Describe how conditions affecting the property have changed since present zoning designation: NO CHANGES 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): Jennifer Cobbs c/o Cyntergy	Date: 10/28/2020
Applicant (printed): JENNIFER COBBS C/O CYNTERGY	
Property Owner (signature):	Date: 10/30/20
Property Owner (printed) : HAMIDUL HOQ ON BEHALF OF WALMART	

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 JENNIFER COBBS who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by WALMART, 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.

Jennifer Cobbs c/o Cyntergy
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 2nd day of November, 2020, to certify which witness my hand and seal of office.

MISTY TUCKER NOTARY PUBLIC Commission # 15001866 My Commission Expires 02-24-2023 STATE OF OKLAHOMA

Misty Tucker
NOTARY PUBLIC, ~~MIDLAND COUNTY, TEXAS~~

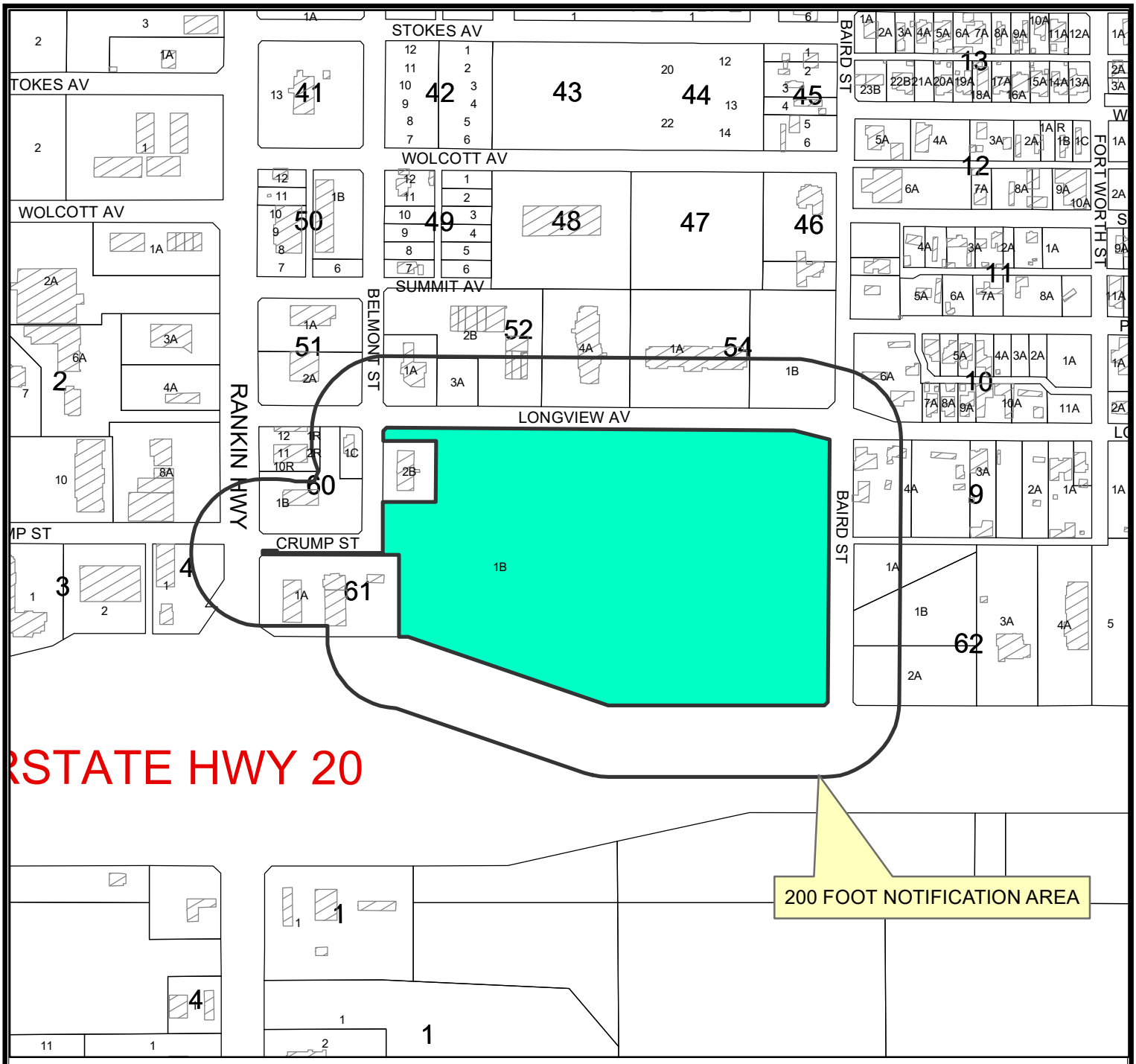
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☐ Application Fee	☑ Plans in Digital Format (PDF/JPEG)

Check #_____

Received By: Cristel Bruns Date: 12/3/2020

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

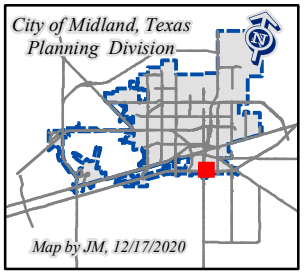
Z-20-0206 **Scale: 1" = 400'**

Consider a request by Jennifer Cobbs for a zone change from PD, Planned Development District for a Shopping Center to Amended PD, Planned Development District for a Shopping Center on Lot 1B, Block 56A, Belmont Addition, Section 9, City and County of Midland, Texas.

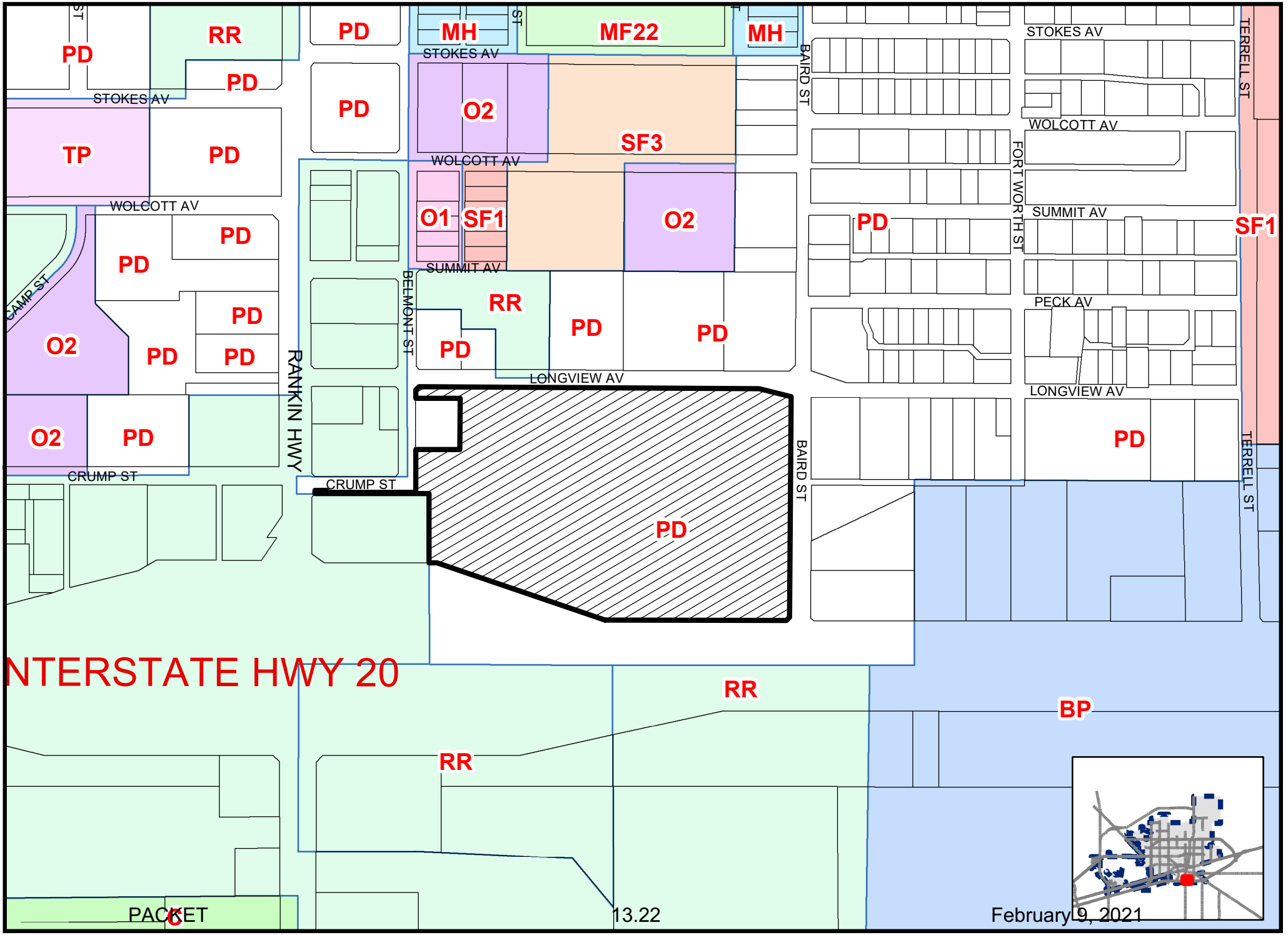
Generally located on the south side of West Longview Avenue, approximately 360 feet east of Rankin Highway. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 12/20/2020

Z-20-0206

Scale: 1" = 400'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 8239

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 25.460 ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 39, T-2-S, T & P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT AND BP, BUSINESS PARK DISTRICT TO BE USED AS PD, PLANNED DISTRICT FOR A SHOPPING CENTER; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Planned Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Shopping Center set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-2, Local Retail District and BP, Business Park District, and it shall be used as a PD, Planned District for a Shopping Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 25.460-acre tract of land out of Section 2, Block 39, T-2-S, T & P RR Co. Survey,

City and County of Midland, Texas. See metes and bounds description attached hereto and incorporated herein as Exhibit "D".

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. This property shall be subject to the regulations of the LR-2, Local Retail District, except as otherwise stated below.

B. Development of the property identified on Exhibit "A" as Lot 1 shall conform to the conditions shown on the attached site plans, Exhibits "A", "B", "C-1" and "C-2" in all respects.

C. The property located on the east side of Baird Street, identified on Exhibit "A" as Lots 2 and 3 shall be subject to future site plan review. No development can occur, and no building permit can be issued until a planned district site plan is approved in the same manner as prescribed for a zone change.

D. The maximum floor area of this building shall not exceed 205,000 square feet, excluding the outdoor garden center, which shall not exceed 25,000 square feet in area.

E. In addition to the uses allowed in the LR-2 District, this property may also be used for a garden center and an automotive center, when developed according to the attached Exhibits. The automotive center shall be limited to tire sales, a lubrication center and minor tune-up and repair. The repair of major automotive systems shall not be allowed.

F. The landscaping shown on Exhibits "C-1" and "C-2" shall be installed within 180 days of the issuance of a Certificate of Occupancy. All plant materials shall be the minimum size shown on the Exhibits at the time of planting. All landscaping shall be irrigated with an underground sprinkler system, and shall be maintained in a healthy, growing condition.

G. The minimum height of the masonry fence surrounding the garden center shall be eight feet, and the minimum total height of this fence, including the decorative screening fence, shall be 20 feet.

H. A gasoline sales facility shall be allowed at the location shown on Exhibit "A". The fence surrounding the dumpster at the gasoline station shall be a minimum of six feet in height.

I. The parking plan shown on Exhibit "A" shall be considered illustrative. The minimum number of spaces shall be determined through the building permit process. No parking is required for the auto center, and one parking space shall be provided for every 1,000 square feet occupied by the outdoor garden center.

J. All outdoor lighting shall conform to the City of Midland Outdoor Lighting Policy, including the use of full cut-off light fixtures.

K. All business signage shall conform to Exhibits "A" and "B". The maximum

' sign area for the gasoline station shall not exceed 200 square feet in area.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 11th day of May, A.D., 2004; and passed to second reading on motion of Council member Dingus, seconded by Council member Dufford, by the following vote:

Council members voting "AYE": Dingus, Dufford, Perry, Morgan, Canon, Simpson and Hailey

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Morgan, seconded by Council member Dufford, on the 25th day of May, A.D., 2004, at a regular meeting of the City Council:

Council members voting "AYE": Morgan, Dufford, Perry, Dingus, Canon, Simpson and Hailey

Council members voting "NAY": None

PASSED AND APPROVED THIS 25th day of May, A.D., 2004.

Michael J. Canon, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROPOSED PLANNED DISTRICT REGULATIONS

1. MINIMUM BUILDING AND LANDSCAPE SETBACKS TO BE AS SHOWN ON THIS PLAN.
2. SIDEWALKS AS SHOWN ON THIS PLAN.
3. SITE LIGHTING SHALL BE 42 FEET MOUNTING HEIGHT WITH 1000 WATT METAL HALIDE FIXTURES.
4. SITE AND BUILDING SIGNAGE SHALL INCLUDE:
   STANDARD WAL-MART BUILDING MOUNTED SIGNAGE – APPROX. 1200 SQ. FT.
   1 – MONUMENT SIGN, ± 80 S.F. EACH SIDE
   1 – ON PREMISE PYLON SIGN ± 700 S.F. AREA, HEIGHT ± 50 FEET
   1 – TLE DIRECTIONAL SIGN ± 35 S.F. EACH SIDE
   1 – STD. SIGN PACKAGE FOR GAS STATION – APPROX. 250 SQ. FT.

GRAPHIC SCALE
1 inch = 80 ft.

VICINITY MAP
NO SCALE

BELMONT STREET
COLORADO STREET
LORAINE STREET
MAIN STREET
BAIRD STREET
RANKIN HIGHWAY (U.S. HIGHWAY 349)
EXISTING LONGVIEW AVE.
PROPOSED LONGVIEW AVE. EXTENSION
CITY LIMIT LINE
PROPOSED TRAFFIC SIGNAL
BARRIER FREE RAMPS
PROPOSED 4' WIDE SIDEWALK
EXISTING 35½' B/B IN EXISTING 60' R.O.W.
PROPOSED 37' B/B IN EXISTING 60' R.O.W.
EXISTING SINGLE FAMILY RESIDENTIAL
EXISTING SONIC
EXISTING McDONALDS
EXISTING GAS STATION
EXISTING RIGHT OF WAY TO REMAIN
PROPOSED GAS STATION
DUMPSTER
EXISTING RIGHT OF WAY TO BE ABANDONED BY SEPARATE PROCESS WITH THE CITY OF MIDLAND
9.5'x18' @ 60° PARKING SPACE (TYP.)
PROPOSED ASPHALT PARKING AREA
CART CORRAL (TYP.)
LANDSCAPE ISLAND (TYP.)
20' ONE-WAY (TYP.)
25' TWO-WAY (TYP.)
HANDICAP SPACES (TYP.)
PROPOSED MONUMENT SIGN
PROPOSED RIGHT OF WAY DEDICATION
EXISTING SIGNALIZED INTERSECTION
10' LANDSCAPE AND BUILDING SETBACK
7.5' LANDSCAPE AND BUILDING SETBACK
DRIVE-THRU PHARMACY
TRASH COMPACTOR
GROCERY ENTRANCE
GENERAL MERCHANDISE ENTRANCE
TRUCK DOCK W/14' HIGH MASONRY WALL TO MATCH BUILDING
PROPOSED WAL-MART SUPERCENTER
LOT 1
FIRELANE, ACCESS AND UTILITY EASEMENT
ELECTRIC TRANSFORMER
TRUCK TURNAROUND
INDOOR GARDEN CENTER
OUTDOOR GARDEN CENTER
± 25,000 S.F. NOT INCLUDED IN BLDG. S.F.
TIRE AND LUBE EXPRESS
TLE DIRECTIONAL SIGN
PROPOSED ON PREMISE PYLON SIGN
8' HIGH MASONRY WALL TO MATCH BUILDING WITH ORNAMENTAL METAL FENCE ABOVE, TO HEIGHT OF 20' TOTAL
EXISTING 2-WAY I-20 SERVICE ROAD
U.S. INTERSTATE HIGHWAY 20
18' R.O.W. DEDICATION TO ADD TO EXISTING 52' R.O.W. FOR TOTAL OF 70' R.O.W.
CITY RESPONSIBLE FOR RELOCATION OF EXIST. STRUCTURES LOCATED WITHIN CITY R.O.W., IF ANY.
CITY LIMIT LINE (APPROXIMATE)
EXISTING SINGLE FAMILY RESIDENTIAL
BALE AND PALLET STORAGE W/ 10' HIGH SCREEN WALL
10' LANDSCAPE AND BUILDING SETBACK
PROPOSED 20' ALLEY R.O.W.
PROPOSED BAIRD STREET (PUBLIC)
BAIRD STREET WILL BE A CITY DESIGNATED TRUCK ROUTE
LOT 2
LOT 3
PROPOSED 4' WIDE SIDEWALK
PROPOSED RIGHT OF WAY DEDICATION 41' B/B IN PROPOSED 70' RIGHT OF WAY
UNDEVELOPED
PROPOSED DRIVEWAY TO OUTLOT – LOCATION MAY VARY

SITE DATA SUMMARY

EXISTING ZONING: LR–2	PROPOSED ZONING: PD–SC
LOT 1 – WAL–MART	± 20.31 ACRES
LOT 2 – DETENTION	± 2.31 ACRES
LOT 3 – FUT. DEV.	± 1.39 ACRES
R.O.W. DEDICATION	± 1.45 ACRES
TOTAL	± 25.46 ACRES
PROPOSED USE	WAL–MART SUPERCENTER WITH DRIVE–THRU PHARMACY, TIRE AND LUBE EXPRESS, AND OUTDOOR GARDEN CENTER
BLDG. AREA	± 205,000 S.F.
BUILDING HEIGHT: MAXIMUM BY CODE	28'–9" W/8' ALLOWED FOR PARAPET
PROPOSED	40' TO HIGHEST POINT
LOT COVERAGE: MAXIMUM BY CODE	75%
PROPOSED	30%
PARKING REQ. (5.0 SP./1000 SF)	1,016
PROV. (5.0/1000 SF)	1,016 +
HANDICAP SP. REQ.	21
PROV.	21

OWNER:
WAL–MART
702 SW 8TH ST.
BENTONVILLE, AR 72716–0550
Tel. No. (479)273–4000

APPLICANT:
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972)770–1300
Fax No. (972)239–3820

No.	Date	Revisions	App.

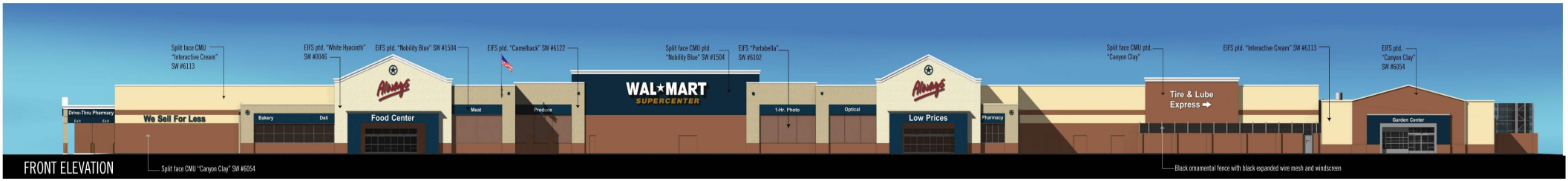
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

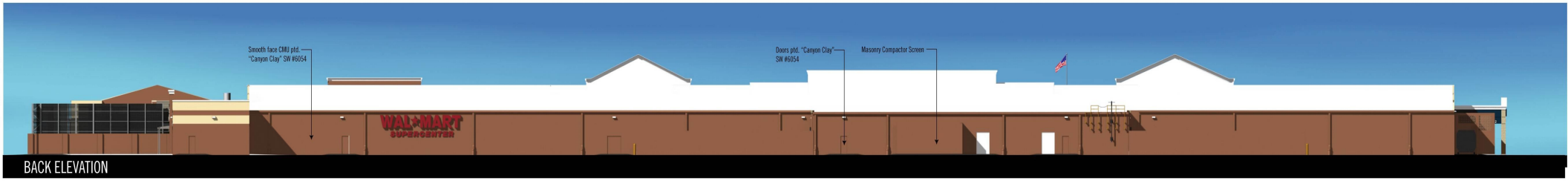
PRELIMINARY
SITE PLAN

Scale: AS NOTED
Designed by: MAM
Drawn by: DLC
Checked by: JRH
Date: APRIL 2004
Project No. 63362112

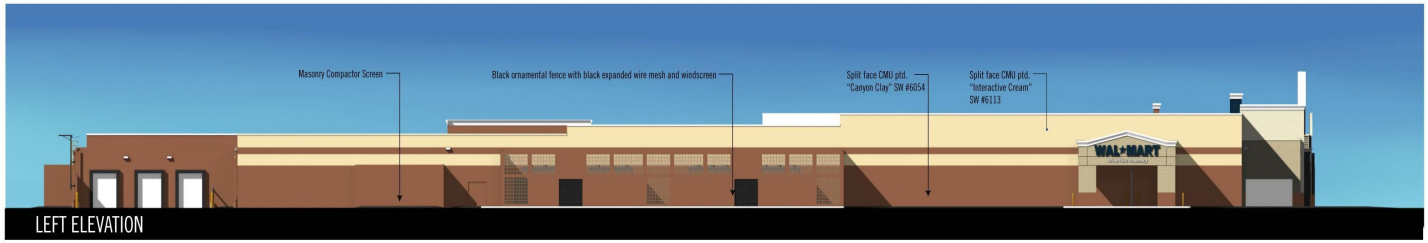
SHEET
C–1



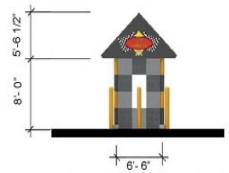
FRONT ELEVATION



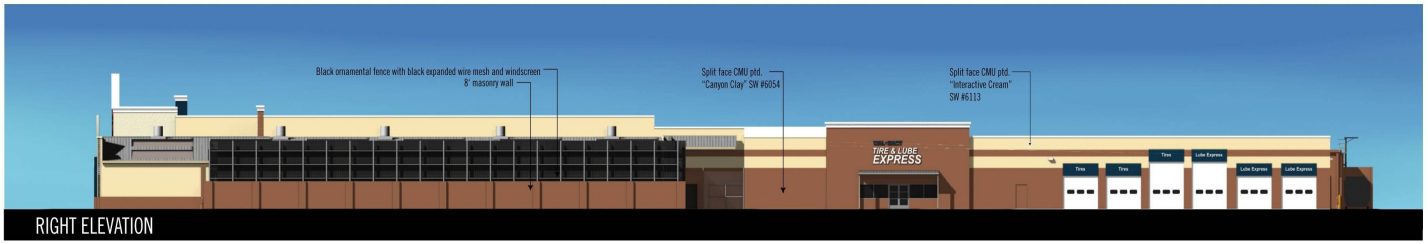
BACK ELEVATION



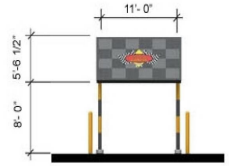
LEFT ELEVATION



FRONT ELEVATION
NOT TO SCALE



RIGHT ELEVATION

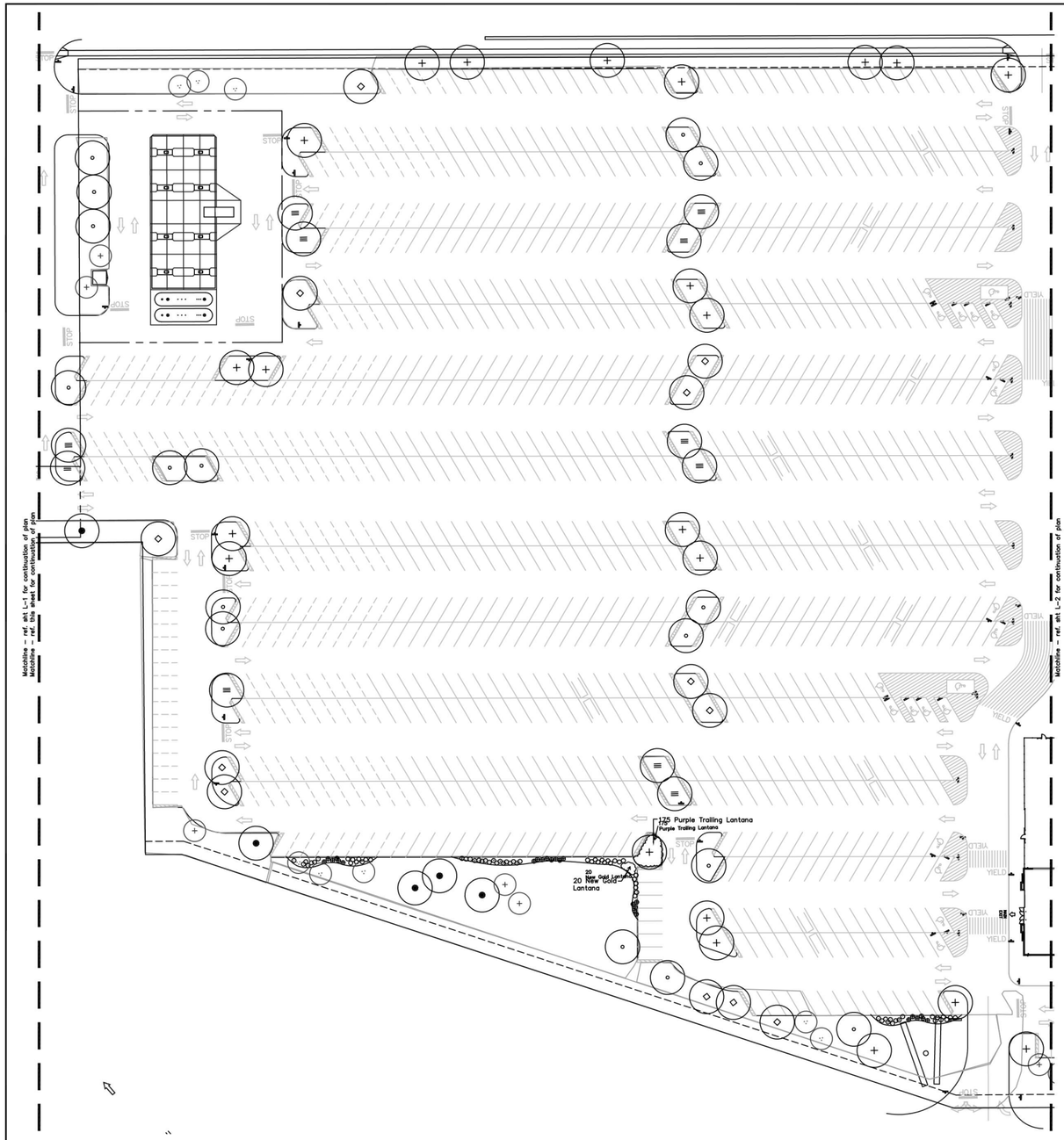


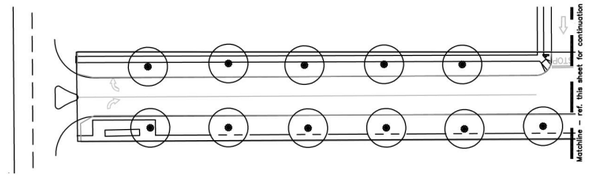
SIDE ELEVATION
NOT TO SCALE
TLE KIOSK SIGNAGE = 65.33 S.F.

Wal★Mart | Midland, TX #3645 | Taylor Scott Architects

April 27, 2004

www.taylorscott.com copyright 2004 Taylor Scott Architects Inc.
WAL★MART STORES, INC.
TAYLOR SCOTT ARCHITECTS, INC.





Legend

+	Live Oak
○	Cedar Elm
◇	Chinese Pistache
≡	Bur Oak
✺	Mexican Sycamore
⁘	Lavender Crapemyrtle
+	Tree Yaupon
○	Cenizo
○	Dwf. Burford Holly
⊕	Red Yucca

Note:
See sheet L-2 for Landscape Calculations and Plant List.

No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART

SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

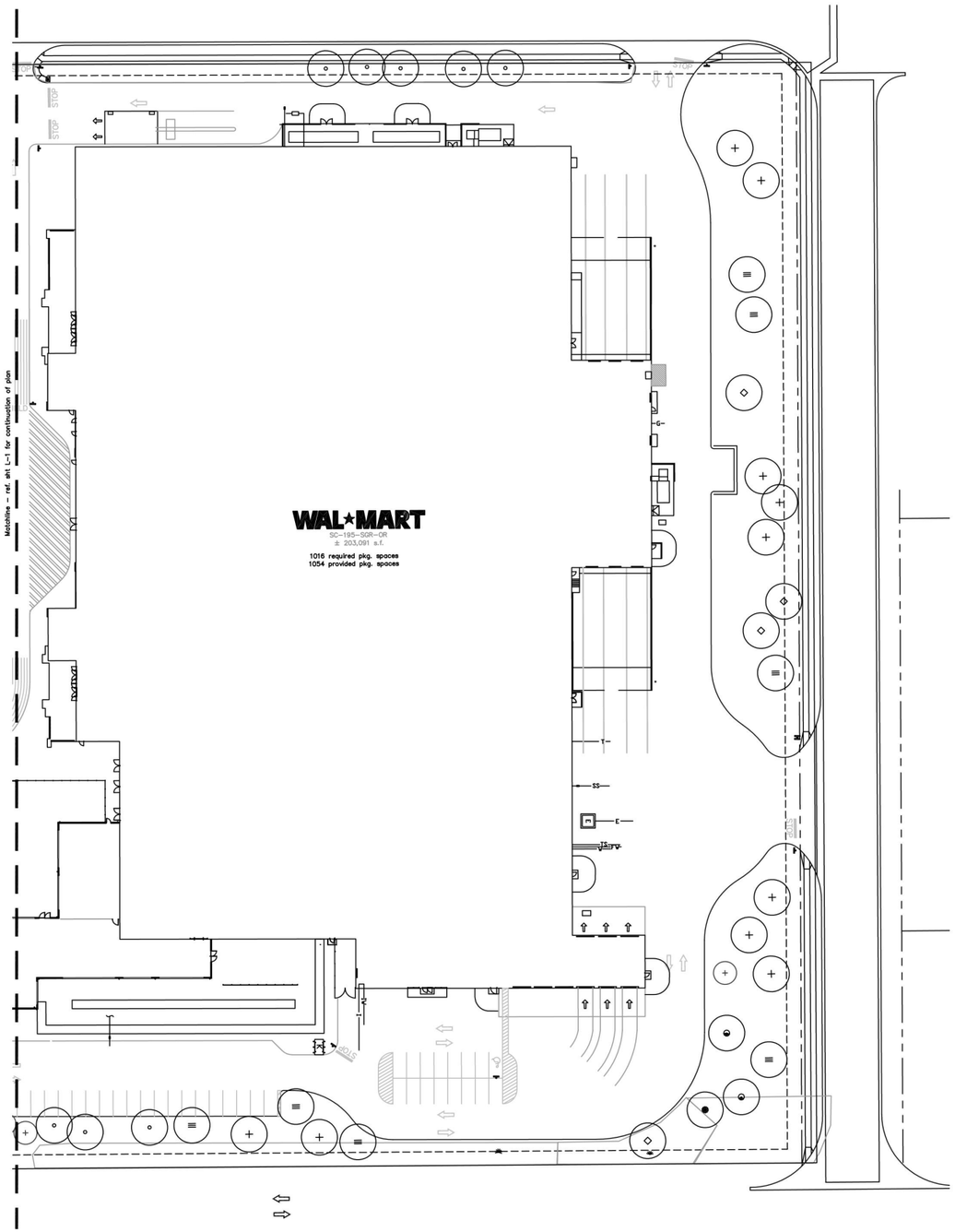
Landscape Plan

Scale:	1" = 40'
Designed by:	JFM
Drawn by:	
Checked by:	
Date:	APRIL 2004
Project No.	63362112

SHEET L-1

STATE OF TEXAS
JOHN F. MURPHY
973
REGISTERED
LANDSCAPE ARCHITECT

Land Resource Design
Landscape Architecture
John F. Murphy, RLA, CCS
2708 S. Lamar Blvd. Suite 110 Austin, TX 78704 512-443-3012 tel. 512-443-3089 fax
1324 S. Beckham Ave. Suite 244 Tyler, TX 75701 903-533-0898 tel./ fax landlaw-internet.com



Legend

- Live Oak
- Cedar Elm
- Chinese Pistache
- Bur Oak
- Mexican Sycamore
- Lavender Crapemyrtle
- Tree Yaupon
- Cenizo
- Dwf. Burford Holly
- Red Yucca

Landscape Calculations

* Based on Draft Landscape Ordinance

Total Site Area	914,820 sf		
Landscape Area	Req. 91,482 sf	Prov.	91,694 sf

Streetyard Landscape	Required	Provided
I-20 Street Frontage 1222 ft.	41 Trees (3" ca.)	41
Parking Lot		
1054 spaces	53 trees (1:20)	53 trees

Landscape Notes

1. Solid sod all islands and peninsulas with 609 Buffalo Grass.
2. Hydromulch all perimeter and disturbed areas with Sahara Bermuda Grass.
3. All landscaping will be watered with an underground automatic irrigation system.

Plant List

No.	Common Name	Botanical Name	Size
30	Live Oak	Quercus virginiana	3" Cal. B & B
18	Bur Oak	Quercus macrocarpa	3" Cal. B & B
8	Lavender Crapemyrtle	Lagerstroemia indica 'Red'	B & B 10' Ht 3 Trunk min.
16	Chinese Pistache	Pistacia chinensis	3" Cal. B & B
24	Cedar Elm	Ulmus crassifolia	3" Cal. B & B
8	Tree Yaupon	Ilex vomitoria 'multi trunk'	B & B 8' Ht 3 Trunk min.
19	Mexican Sycamore	Platanus mexicana	45 Gal. 2 3/4" cal.
19	Red Yucca	Hesperaloe parviflora	5 Gal. 36" oc
33	Cenizo	Leucophyllum frutescens	5 Gal. 36" oc
33	Dwarf Burford Holly	Ilex cornuta 'Burford'	5 Gal. 36" oc
175	Purple Trailing Lantana	Lantana montevidensis	1 Gal. 18" oc
20	New Gold Lantana	Lantana 'New Gold'	1 Gal. 24" oc

No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
13700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

WAL★MART

SC-195-SGR-OR, STORE #3645-00
I.H. 20 AND RANKIN HWY.
MIDLAND, TEXAS

Landscape Plan

Scale:	1" = 40'
Designed by:	JNF
Drawn by:	
Checked by:	
Date:	APRIL 2004
Project No.	63362112

SHEET
L-2

STATE OF TEXAS
JOHN F. MURPHY
973
REGISTERED
LANDSCAPE ARCHITECT

Land Resource Design
Landscape Architecture
John F. Murphy, RLA, CCS
2708 S. Lamar Blvd. Suite 110 Austin, TX 78704 512-443-3512 tel. 512-443-3588 fax
1324 S. Beckham Ave. Suite 244 Tyler, TX 75701 903-533-8698 tel./ fax landlaw-internet.com

FIELD NOTE DESCRIPTION

BEING a 25.460 acre tract of land out of the Southwest ¼ of Section 2, Block 39, T-2-S, T. & P. RR. Co. Survey, Midland County, Texas and said tract being part of a 16.8 acre tract of land conveyed to Tom Family Partnership, Ltd, et al by Special Warranty Deed recorded in volume 1238, Page 636 of the Deed Records of Midland County, Texas; also being part of a tract of land conveyed to L. G. Mackey, Jr., et al by Distribution Deed recorded in Volume 2082, Page 68 of the Official Public Records of Midland County, Texas; and also being all of Block 59, Belmont Addition, an addition to the City of Midland, Midland County, Texas, according to the Plat recorded in Plat Cabinet "B", Page 15 of the Plat Records of Midland County, Texas as conveyed to Midland Soup Kitchen Ministry by Deed recorded in Volume 1105, Page 001 of the Deed Records of Midland County, Texas; and also being all of Lots 1 through 6, Block 56, all of Lots 1 through 12, Block 57 and all of Lots 1 through 12, Block 58, all in said Belmont Addition; and also being that portion of Main Street (80 Ft. ROW), Loraine Street (60 Ft. ROW), Colorado Street (60 Ft. ROW) and two 20 Ft wide alleys, all located between said Blocks 56, 57, 58 and 59, of said Belmont Addition; and being more particularly described as follows:

BEGINNING at a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set in the East right-of-way line of State Highway 349 (Rankin Highway) common with the Northwest corner of Lot 1, Block 61, Belmont Addition, Section 5, an addition to the City of Midland, Midland County, Texas according to the Plat recorded in Plat Cabinet "D", Page 232 of the Plat Records of Midland County, Texas, for the most Westerly Southwest corner of this tract, from which a ½-inch re-bar found at or near the Southwest corner of said Lot 1 common with the Northwest end of a corner clip at the Northeast corner of the intersection of said State Highway 349 with Interstate Highway 2o bears S 14° 49' 39" E a distance of 200.00 feet;

THENCE N 14° 49' 39" W, along said East right-of-way line of State Highway 349, a distance of 57.80 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set for the most Westerly Northwest corner of this tract common with the Southwest corner of Lot 1-A, Block 60, Belmont Addition, Section 6, an addition to the City of Midland, Midland County, Texas according to the Plat recorded in Plat Cabinet "E", Page 70 of the Plat Records of Midland County, Texas, from which a ½-inch re-bar found in said East right-of-way line of State Highway 349, at or near the Southwest corner of Lot 7, Block 51, of said Belmont Addition bears N 14° 49' 39" W a distance of 358.91 feet;

THENCE N 75° 49' 30" E, along the South line of said Lot 1-A, a distance of 286.18 feet to a ½-inch re-bar found at or near the Southeast corner of said Lot 1-A, for an exterior corner of this tract;

THENCE N 76° 54' 48" E, along the South end of Belmont Street, as platted in said Belmont Addition, a distance of 60.11 feet to a 5/8-inch re-bar with aluminum cap

marked "Wal-Mart RPLS 4398" set at or near the Southwest corner of said Block 59, Belmont Addition, for an interior corner of this tract;

THENCE N 14° 18' 48" W, along the West line of said Block 59 common with the East right-of-way line of said Belmont Street, a distance of 300.00 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set at or near the Northwest corner of said Block 59 common with the Southeast corner of the intersection of said Belmont Street with Longview Avenue, for the most Northerly Northwest corner of this tract;

THENCE N 75° 49' 46" E, along the North line of said Blocks 56, 57, 58 and 59 common with the South right-of-way line of Longview Avenue, a distance of 1,265.00 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set at or near the Northeast corner of said Lot 1, Block 56, common with the Southwest corner of the intersection of said Longview Avenue with Baird Street, for the Northeast corner of this tract;

THENCE S 14° 10' 05" E, along the East line of said Block 56 common with the West right-of-way line of said Baird Street a distance of 300.00 feet to a ½-inch iron rod found at or near the Southeast corner of said Block 56, for an interior corner of this tract;

THENCE N 74° 52' 06" E, across the South end of Baird Street, as currently platted, a distance of 52.41 feet to a point in a metal fence at or near the Southwest corner of Lot 4A, Block 9, Bizzell-Kiser, Section 4, an addition to the City of Midland, Midland County, Texas, according to the Plat recorded in Plat Cabinet "F", Page 29 of the Plat Records of Midland County, Texas, for an exterior corner of this tract;

THENCE N 75° 47' 37" E, along the South line of Lots 4A and 3A of said Block 9, a distance of 346.63 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set for the most Easterly Northeast corner of this tract;

THENCE S 14° 18' 42" E, at 30.87 feet the Northwest corner of a 3.25 acre tract of land conveyed to Larry G. Cook by deed recorded in Volume 2187, Page 191 of the Official Public Records of Midland County, Texas, and continuing along the West line of said 3.25 acre tract, in all a distance of 470.52 feet to a railroad spike found in the North right-of-way line of Interstate Highway 20 common with the Southwest corner of said 3.25 acre tract, for the Southeast corner of this tract;

THENCE S 75° 34' 01" W, along the North right-of-way line of said Interstate Highway 20, a distance of 1,031.14 feet to a 4-inch concrete Tx-DOT highway monument, found for an exterior corner of this tract;

THENCE N 85° 35' 15" W, continuing along the North right-of-way line of said Interstate Highway 20, a distance of 591.51 feet to a 3-inch brass cap in concrete, a Tx-DOT monument found for an interior corner of this tract;

THENCE S 75° 41' 13" W, continuing along the North right-of-way line of said Interstate Highway 20, a distance of 26.36 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set for the most Southerly Southwest corner of this tract common with the Southeast corner of a 1.00 acre tract of land conveyed to West Texas Gas, Inc. by Warranty Deed recorded in Volume 1634, Page 327 of the Official Public Records of Midland County, Texas;

N 14° 30' 46" W, along the East line of said 1.00 acre tract, a distance of 230.00 feet to a 5/8-inch re-bar with aluminum cap marked "Wal-Mart RPLS 4398" set for an interior corner of this tract common with the Northeast corner of said 1.00 acre tract;

THENCE S 75° 41' 14" W, along the North line of said 1.00 acre tract and the North line of said Lot 1, Block 61, Belmont Addition, Section 5, a distance of 390.53 feet to the POINT OF BEGINNING and containing 25.460 acres of land.

City Council Agenda

Approved for Agenda:
MJohnston
City Manager's Office

MEETING DATE: **May 11, 2004**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Wal-Mart Supercenter**

Purpose:
Hold a public hearing at 11:03 A.M. and consider an ordinance on a request by Kimley-Horn and Associates for approval of a zone change from LR-2 District and BP District to Planned District for a Shopping Center.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact: N/A

Discussion:
The subject property represents the site of a second Wal-Mart Supercenter. The land is currently zoned LR-2, Local Retail District and BP, Business Park District. The applicant is requesting a zone change to Planned District for a Shopping Center. The purpose of the change is to allow an automotive center and a garden center within the store. These uses are not allowed under the current zoning; they are LR-3 District uses. However, we believe that these two uses can be integrated into this shopping center without causing any disruption to what the Comprehensive Plan generally defines as an LR-2 District location. Additionally, this site plan review replaces a similar administrative review applicable to all Interstate 20 frontages.

CDS

There are four site plans. Exhibit A is a plan view showing the building location and orientation. Exhibit B represents rendered elevation views of the proposed building, and Exhibits C-1 and C-2 are the landscaping plan. According to Exhibit A, the building will be located toward the east end of the property, facing west. The rear of the 203,000 square foot building will face Baird Street. However, masonry screening walls up to 14 feet in height should provide reasonable screening of the loading docks. The automotive center is located toward the southeast corner of the building, and the outdoor garden center is located in the southwest corner. The outdoor garden center will be enclosed with an eight-foot tall masonry fence, which is topped with a screening fence constructed of ornamental wire mesh and shade cloth that extends to a height of 20 feet. Exhibit B indicates that the building will be constructed of split face CMU, EIFS (an exterior coating) and glazing. We feel that significant attention was given to ensure that the building will be attractive, with no negative views from any direction. Finally, Exhibits C-1 and C-2 illustrate a landscaping plan that follows the guidelines developed by the Landscape Committee, who recently completed a draft landscaping ordinance. The staff is very pleased with the proposed landscaping plan. Landcaping covers just over 10 percent of the site, or over 91,000 square feet. Plant materials include three-inch caliper trees, five-gallon shrubs and grass.

We have not received any opposition to this proposal, and the Planning Commission recommended unanimous approval. We concur with the Commission's favorable recommendation, subject to the conditions contained in the attached ordinance.

Attachments:

April 19, 2004 Staff Report and Minutes
Proposed Ordinance and Site Plans

906
EZRIDER
Exit

NO
TRUCK
PARKING

MICROTEL

City Council Meeting

Item Number: 14

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 316-SQUARE FOOT PORTION OF LOT 2E, BLOCK 4, CORPORATE PLAZA, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 366 FEET EAST OF NORTH BIG SPRING STREET AND APPROXIMATELY 876 FEET NORTH OF CORPORATE DRIVE), WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN CONNECTION WITH A FOOD AND BEVERAGE SALES STORE FOR OFF-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 (DEVELOPMENT SERVICES)

Purpose:

The applicant is requesting a Specific Use Designation with Term for the sale of beer and wine for off-premises consumption, in connection with food and beverage sales stores, for a hotel market located inside the Home 2 Suites at 4104 N Big Spring, Midland, Texas 79705.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Analysis:

Current Zoning:

O-2, Office District.

Surrounding Zoning and Land Use:

The property is located at 4104 N Big Spring in the O-2, Office District. The property to the north is zoned PD, Planned Development District for an Office District and the location of a motel. The properties to the east and south are zoned O-2, Office District and the locations of vacant land and an office tower, respectively. The property to the west is zoned RR, Regional Retail District and is the location of vacant land and a retail establishment.

Discussion:

CY Houston Management Company, LLC is requesting a Specific Use Designation for the property located at 4104 N Big Spring, to be able to sell beer and wine for off premise consumption, within a hotel market. The property is zoned O-2, Office District, which allows the sale of beer and wine for off premises consumption in connection with food and beverage sales stores with the approval of a Specific Use Designation.

Home 2 Suites by Hilton Midland East is currently under construction. The floor plan attached hereto as “Exhibit A” illustrates that the area for the sale of beer and wine for off-premises consumption will be limited to 316 square feet.

The Hotel market is proposing the following hours of operation:

24 hours a day, 7 days a week.

In addition, the hotel market is requesting the following hours of alcohol sales:

Monday through Saturday: 7:00 a.m. to 12:00 a.m. (midnight)
Sunday: 12:00 p.m. (noon) to 12:00 a.m. (midnight)

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300 feet of the property.

This request has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Engineering: (Approved)

No objections.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objections.

Code Administration: (Approved with Conditions)

The SUD for Home 2 Suites is acceptable. The property must adhere to the current maximum occupant load of 214. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning:

This request was recommended for approval at the January 19, 2021 Planning and Zoning Commission Meeting and approved at the January 26, 2021 City Council meeting.

This request meets all requirements; therefore, staff recommends approval of a Specific Use Designation with Term for the sale beer and wine, for off premises consumption, in connection with food and beverage sales stores subject to Conditions A through F.

Conditions:

A. **That the sale of beer and wine for off-premises cinsumption shall be limited to approximately 316 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of beer and wine sales shall be limited to:**

    Monday through Saturday: 7:00 a.m. to 12:00 a.m. (midnight)
    Sunday: 12:00 p.m. (noon) to 12:00 a.m. (midnight)

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale of beer and wine shall conform to all applicable state and local laws.**

F. That in accordance with Section 9.07.E.3 of the City Code, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of January 20, 2021, staff has not received any letters of objections.

Attachments:

Floor Plan (Exhibit A)
Site Plan
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 316-SQUARE FOOT PORTION OF LOT 2E, BLOCK 4, CORPORATE PLAZA, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 366 FEET EAST OF NORTH BIG SPRING STREET AND APPROXIMATELY 876 FEET NORTH OF CORPORATE DRIVE), WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN CONNECTION WITH A FOOD AND BEVERAGE SALES STORE FOR OFF-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 316-square foot portion of Lot 2E, Block 4, Corporate Plaza, Section 26, 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 beer and wine in connection with a food and beverage sales store (the "Establishment") for off-premises consumption, together with the uses permitted in the present O-2, Office

District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the Establishment shall be limited to approximately 316 contiguous square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale of beer and wine shall conform to all applicable state and local laws.

C. That the days and hours of beer and wine sales shall be limited to the following:

Monday through Saturday from 7:00 a.m. to 12:00 a.m. (midnight); and
Sunday from 12:00 p.m. (noon) to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

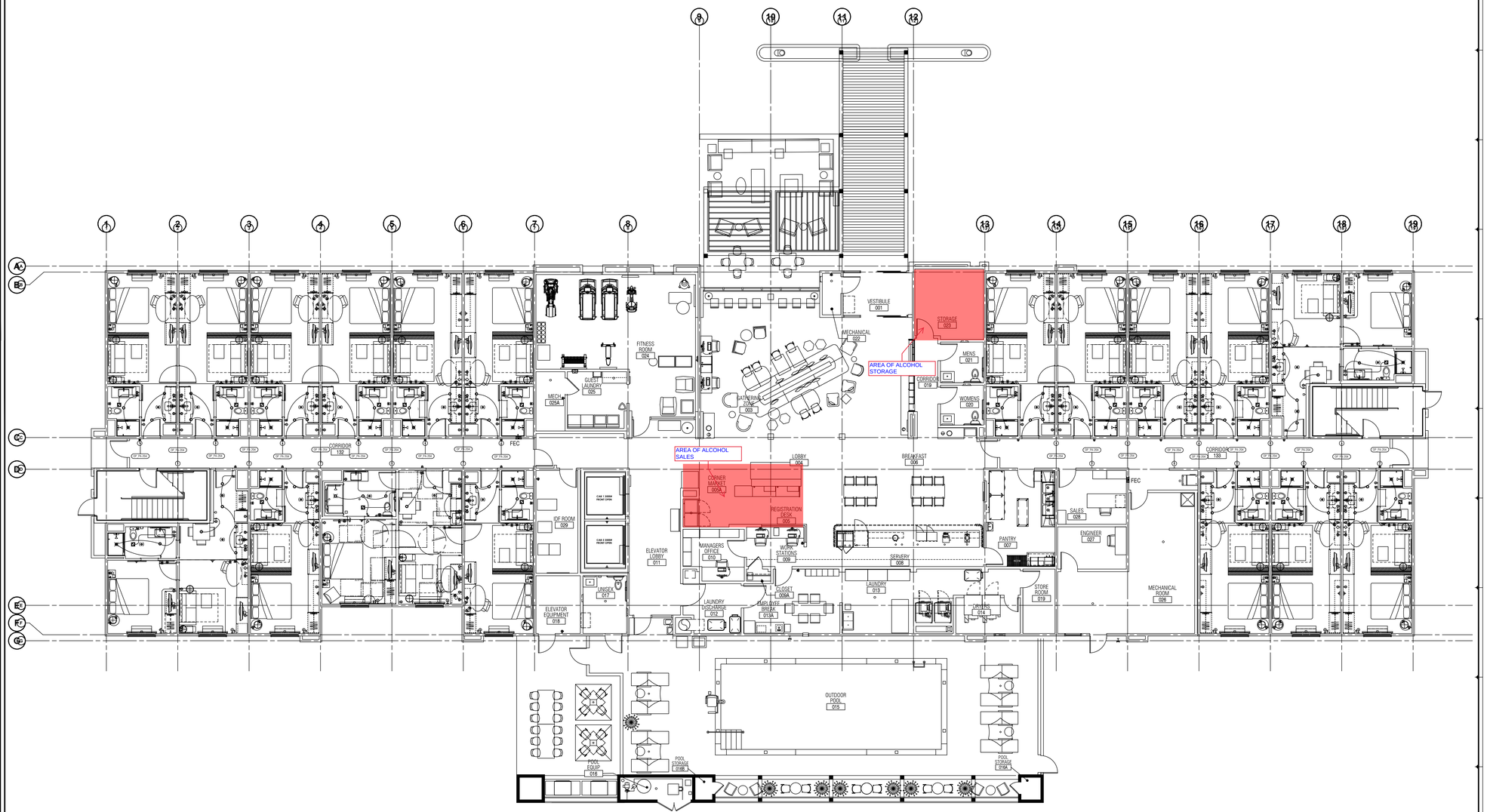
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

ROOM MATRIX						
Room Type	1st Flr	2nd Flr	3rd Flr	4th Flr		Total
KING STUDIO	8	19	19	19		65
KING STUDIO CONNECTED	6	6	6	6		24
KING STUDIO ACCESSIBLE	0	1	1	1		3
KING STUDIO CONN. EXTENDED	0	1	1	1		3
KING STUDIO CONN. TO ADA	1	1	1	1		4
KING ONE BEDROOM	2	2	2	2		8
KING ONE BEDROOM ACCESSIBLE	1	1	1	1		4
TOTAL	18	31	31	31		111
HEARING IMPAIRED	1	5	3	3		12



1 1st FLOOR FURNITURE PLAN
1/8" = 1'-0"

KEY NOTES:

1. THIS ELEVATOR CAR SHALL PROVIDE EMERGENCY ACCESS TO ALL FLOORS AND BE LARGE ENOUGH TO ACCOMMODATE AN AMBULANCE STRETCHER
2. OVERALL BUILDING DIMENSIONS BASED ON WOOD FRAME CONSTRUCTION. OVERALL DIMENSION WILL VARY BASED ON FINAL BUILDING CONSTRUCTION
3. EGRESS STAIR IN CONCRETE MASONRY STAIR ENCLOSURE
4. ALTERNATING TREAD STAIR FROM FOURTH FLOOR STAIR LANDING TO ROOF
5. LINE OF ROOF/ CANOPY ABOVE
6. VEHICULAR DROP OFF – REFER TO SITE PLAN AND DETAILS
7. MECHANICAL, ELECTRICAL AND PLUMBING CHASE
8. CARRY CARPET PATTERN INTO DOOR TO TRANSITION STRIP AS INDICATED – REFER TO SHEET A10.03 FOR TRANSITION DETAIL
9. FLOOR DRAIN
10. PTAC UNIT
11. STAND PIPE MUST NOT ENCROACH INTO AREA OF REFUGE
12. HOSE BIB -FROST FREE WHERE REQUIRED
13. HOTEL LAUNDRY EQUIPMENT – REFER TO ENLARGED PLAN
14. GUEST LAUNDRY EQUIPMENT – REFER TO ENLARGED PLAN
15. PROVIDE CONVENIENCE OUTLETS IN CORRIDORS FOR HOUSEKEEPING EQUIPMENT AT MINIMUM EVERY 50'
16. DASHED LINE INDICATES PATH OF FULLY CONCEALED ROOF LEADER FROM CANOPY ROOF TO EXTERIOR WALL CAVITY.
17. CANOPY ROOF OVERFLOW SCUPPER
18. ACCESSIBLE ICE MACHINE WITH REQUIRED ACCESSIBLE APPROACH AREA. PROVIDE FLOOR DRAIN CENTERED UNDER ICE MACHINE AND PROVIDE POSITIVE SLOPE TOWARDS DRAIN WITHOUT AFFECTING ACCESSIBLE REQUIREMENTS. INSULATE DRAIN PIPES. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL AND **HADG** FOR ADDITIONAL REQUIREMENTS FOR ICE MACHINE AREA
19. NOT USED
20. CANOPY/ TRELLIS BELOW
21. DRYER VENT LOUVER – REFER TO ELEVATIONS
22. 36" x 36" MOP SINK LOCATION
23. MAINTENANCE DESK
24. WIRE SHELVING SYSTEM – REFER TO FF&E
25. FIRE EXTINGUISHER (CABINET IN PUBLIC AREAS); INSTALLED SO THAT NO OPERABLE PART IS HIGHER THAN 48" A.F.F.
26. TPO MEMBRANE ROOF, SLOPE STRUCTURE TO DRAIN TOWARDS ROOF DRAINS/GUTTERS
27. TAPERED INSULATION CRICKET
28. ROOF LEADER AND OVERFLOW DRAIN. DRAIN TO BE AT GRADE WITH COWS TONGUE REF. PLUMBING DRAWINGS.
29. STAIR PENTHOUSE REF. STAIR SECTIONS FOR DETAILS.
30. ROOF PARAPET
31. GRAVEL STOP EDGE
32. EXHAUST FAN
33. MAKE UP AIR UNIT ON ROOF CURB
34. ELEVATOR OVER RUN/ PENTHOUSE
35. LAMINATED GLASS BEACON, REFER TO EXTERIOR ELEVATIONS
36. LAUNDRY CHUTE VENT
37. ALUMINUM GUTTER AND DOWNSPOUT
38. MECHANICAL EQUIPMENT SCREEN TO BE TALL ENOUGH TO FULLY HIDE EQUIPMENT--PROVIDE CLEARANCE AND ACCESS AS REQUIRED BY EQUIPMENT MANUFACTURER AND/OR LOCAL CODE PROVISIONS
39. KEYCARD READER ENTRANCE HARDWARE; MOUNTED SO THAT TOP OF READER IS A MAXIMUM OF 48" ABOVE GRADE OR FINISH FLOOR.
40. PUSH BUTTON INTERCOM OR HOUSE PHONE (OPTIONAL VIDEO MONITORING). MOUNT SO TOP OF DEVICE IS MAXIMUM OF 48" ABOVE GRADE. PROVIDE CLEAR FLOOR SPACE AS REQUIRED BY ACCESSIBILITY AT DEVICE.
41. SPLASHBLOCK
42. FRP WAINSCOT 4'-0" HIGH ON ALL SIDES INDICATED. PROVIDE APPROPRIATE VINYL EDGE TREATMENT
43. MECHANICAL LOUVER
44. FLUORESCENT FLOODLIGHT
45. EXPOSED CMU CORNER To HAVE 1" RADIUS BULLNOSE
46. WALKWAY/ PROTECTION PAD IN CONTRASTING COLOR TO ROOF
47. ALTERNATING TREAD STAIR TO UPPER ROOF
48. INDICATES DIRECTION OF CARPET PATTERN. REFER TO MFR FOR DIRECTION
49. LAUNDRY CHUTE LOCATION CONTAINED WITHIN 2-HOUR RATED SHAFT WITH RATED DOOR

SYMBOL / FIXTURES KEY:

- ACCESSIBLE ROOM
- C.F. ROOM - REFER TO ENLARGED GUESTROOM PLANS FOR POWER AND SIGNAL
- MAGNETIC DOOR HOLD OPENER TIED TO BUILDING ALARM SYSTEM – REFER TO DOOR SCHEDULE, ELEC. & ALARM DRAWINGS

GENERAL NOTES THIS SHEET:

1. REFER TO ENLARGED GUEST ROOM PLANS FOR DOOR TAGS & TYPES.
2. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR PASSENGER ELEVATORS, ELEVATOR LOBBIES & CORRIDORS.
3. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR STORAGE AREAS.
4. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR MECHANICAL, ELECTRICAL, & EQUIPMENT ROOMS.
5. FIRE EXTINGUISHERS, SMOKE DETECTORS & OTHER EMERGENCY DEVICES TO BE LOCATED PER LOCAL CODE. FIRE EXTINGUISHER LOCATIONS WIN THE PUBLIC SPACE SHALL BE CONTAINED WIN FULLY RECESSED CABINETS.
6. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR ROOFING MATERIALS.
7. ROOF SLOPES & NUMBER OF ROOF DRAINS PER LOCAL BUILDING CODES.
8. REFER TO STANDARDS FOR FIXTURE & EQUIPMENT REQ'S.
9. REFER TO **HADG** FOR FURTHER ADDITIONAL REQ'S FOR PUBLIC SPACES & EQUIPMENT.
10. FIRE ALARM SYSTEM SHALL HAVE PERMANENTLY INSTALLED AUDIBLE & VISIBLE ALARMS COMPLYING W/ NFPA 72 (1999 OR 2022 ADDITION) & AS REQ'D BY LOCAL AUTHORITIES. ALARMS MUST BE LOCATED IN PUBLIC & COMMON USE AREAS & GUEST ROOMS DESIGNATED AS "GUEST ROOMS W/ COMMUNICATIONS FEATURES" AT A MINIMUM. WHERE EMPLOYEE AREAS HAVE AUDIBLE ALARMS, THE WIRING SHALL BE DESIGNED SO VISIBLE ALARMS CAN BE INTEGRATED INTO THE SYSTEM. UNLESS GREATER STANDARDS ARE REQ'D BY LOCAL AUTHORITIES.

SCALE: 1/8" = 1'-0"

0 2' 8' 1' 4' 16'

SHEET NUMBER
A2.01A

TYPE SIX

TYPE-SIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST. #150
ARLINGTON, TX 76010
PROJECT MANAGER
hayes.hinkle@type-six.com
817-690-2195

HOME2 SUITES BY HILTON

4100 BIG SPRING ST.
MIDLAND, TX 79705

T6_1812

ARCHITECT
D. HAYES HINKLE

ISSUE DATE
5_29_2019

ISSUED FOR
Construction

REVISIONS

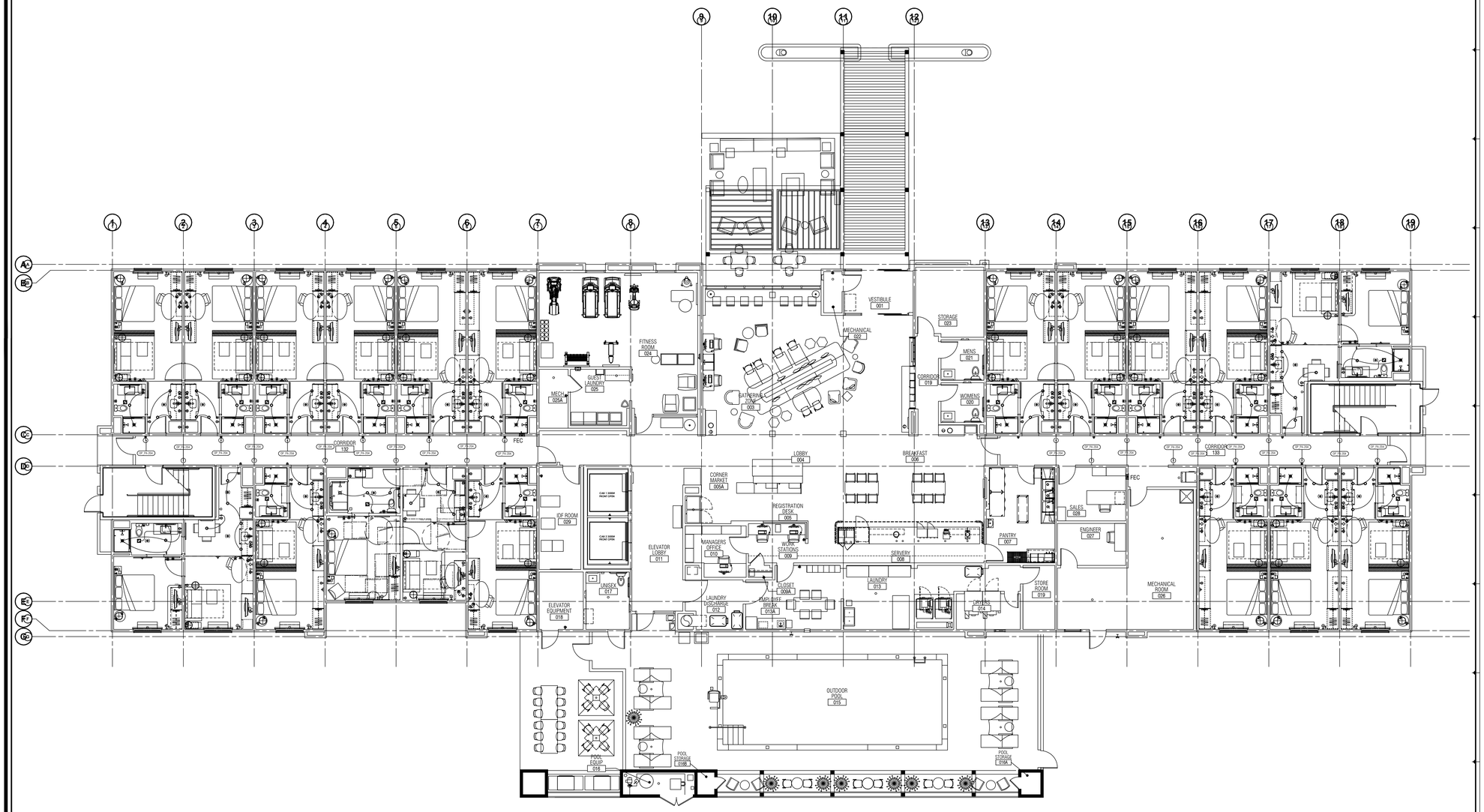
#	Description	Date

SHEET NAME
1st FLOOR FURNITURE PLAN

REGISTERED ARCHITECT D. HAYES HINKLE 26067 STATE OF TEXAS
05_29_2019

ROOM MATRIX

Room Type	1st Flr	2nd Flr	3rd Flr	4th Flr		Total
KING STUDIO	8	19	19	19		65
KING STUDIO CONNECTED	6	6	6	6		24
KING STUDIO ACCESSIBLE	0	1	1	1		3
KING STUDIO CONN. EXTENDED	0	1	1	1		3
KING STUDIO CONN. TO ADA	1	1	1	1		4
KING ONE BEDROOM	2	2	2	2		8
KING ONE BEDROOM ACCESSIBLE	1	1	1	1		4
TOTAL	18	31	31	31		111
HEARING IMPAIRED	1	5	3	3		12



1 1st FLOOR FURNITURE PLAN
1/8" = 1'-0"

KEY NOTES:

1. THIS ELEVATOR CAR SHALL PROVIDE EMERGENCY ACCESS TO ALL FLOORS AND BE LARGE ENOUGH TO ACCOMMODATE AN AMBULANCE STRETCHER
2. OVERALL BUILDING DIMENSIONS BASED ON WOOD FRAME CONSTRUCTION. OVERALL DIMENSION WILL VARY BASED ON FINAL BUILDING CONSTRUCTION
3. EGRESS STAIR IN CONCRETE MASONRY STAIR ENCLOSURE
4. ALTERNATING TREAD STAIR FROM FOURTH FLOOR STAIR LANDING TO ROOF
5. LINE OF ROOF/ CANOPY ABOVE
6. VEHICULAR DROP OFF – REFER TO SITE PLAN AND DETAILS
7. MECHANICAL, ELECTRICAL AND PLUMBING CHASE
8. CARRY CARPET PATTERN INTO DOOR TO TRANSITION STRIP AS INDICATED – REFER TO SHEET A10.03 FOR TRANSITION DETAIL
9. FLOOR DRAIN
10. PTAC UNIT
11. STAND PIPE MUST NOT ENCROACH INTO AREA OF REFUGE
12. HOSE BIB -FROST FREE WHERE REQUIRED
13. HOTEL LAUNDRY EQUIPMENT – REFER TO ENLARGED PLAN
14. GUEST LAUNDRY EQUIPMENT – REFER TO ENLARGED PLAN
15. PROVIDE CONVENIENCE OUTLETS IN CORRIDORS FOR HOUSEKEEPING EQUIPMENT AT MINIMUM EVERY 50'
16. DASHED LINE INDICATES PATH OF FULLY CONCEALED ROOF LEADER FROM CANOPY ROOF TO EXTERIOR WALL CAVITY.
17. CANOPY ROOF OVERFLOW SCUPPER
18. ACCESSIBLE ICE MACHINE WITH REQUIRED ACCESSIBLE APPROACH AREA. PROVIDE FLOOR DRAIN CENTERED UNDER ICE MACHINE AND PROVIDE POSITIVE SLOPE TOWARDS DRAIN WITHOUT AFFECTING ACCESSIBLE REQUIREMENTS. INSULATE DRAIN PIPES. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL AND **HADG** FOR ADDITIONAL REQUIREMENTS FOR ICE MACHINE AREA
19. NOT USED
20. CANOPY/ TRELLIS BELOW
21. DRYER VENT LOUVER – REFER TO ELEVATIONS
22. 36" x 36" MOP SINK LOCATION
23. MAINTENANCE DESK
24. WIRE SHELVING SYSTEM – REFER TO FF&E
25. FIRE EXTINGUISHER (CABINET IN PUBLIC AREAS); INSTALLED SO THAT NO OPERABLE PART IS HIGHER THAN 48" A.F.F.
26. TPO MEMBRANE ROOF, SLOPE STRUCTURE TO DRAIN TOWARDS ROOF DRAINS/GUTTERS
27. TAPERED INSULATION CRICKET
28. ROOF LEADER AND OVERFLOW DRAIN. DRAIN TO BE AT GRADE WITH CONS TONGUE REF. PLUMBING DRAWINGS.
29. STAIR PENTHOUSE REF. STAIR SECTIONS FOR DETAILS.
30. ROOF PARAPET
31. GRAVEL STOP EDGE
32. EXHAUST FAN
33. MAKE UP AIR UNIT ON ROOF CURB
34. ELEVATOR OVER RUN/ PENTHOUSE
35. LAMINATED GLASS BEACON, REFER TO EXTERIOR ELEVATIONS
36. LAUNDRY CHUTE VENT
37. ALUMINUM GUTTER AND DOWNSPOUT
38. MECHANICAL EQUIPMENT SCREEN TO BE TALL ENOUGH TO FULLY HIDE EQUIPMENT--PROVIDE CLEARANCE AND ACCESS AS REQUIRED BY EQUIPMENT MANUFACTURER AND/OR LOCAL CODE PROVISIONS
39. KEYCARD READER ENTRANCE HARDWARE; MOUNTED SO THAT TOP OF READER IS A MAXIMUM OF 48" ABOVE GRADE OR FINISH FLOOR.
40. PUSH BUTTON INTERCOM OR HOUSE PHONE (OPTIONAL VIDEO MONITORING). MOUNT SO TOP OF DEVICE IS MAXIMUM OF 48" ABOVE GRADE. PROVIDE CLEAR FLOOR SPACE AS REQUIRED BY ACCESSIBILITY AT DEVICE.
41. SPLASHBLOCK
42. FRP WAINSCOT 4'-0" HIGH ON ALL SIDES INDICATED. PROVIDE APPROPRIATE VINYL EDGE TREATMENT
43. MECHANICAL LOUVER
44. FLUORESCENT FLOODLIGHT
45. EXPOSED CMU CORNER To HAVE 1" RADIUS BULLNOSE
46. WALKWAY/ PROTECTION PAD IN CONTRASTING COLOR TO ROOF
47. ALTERNATING TREAD STAIR TO UPPER ROOF
48. INDICATES DIRECTION OF CARPET PATTERN. REFER TO MFR FOR DIRECTION
49. LAUNDRY CHUTE LOCATION CONTAINED WITHIN 2-HOUR RATED SHAFT WITH RATED DOOR

SYMBOL / FIXTURES KEY:

- ACCESSIBLE ROOM
- C.F. ROOM - REFER TO ENLARGED GUESTROOM PLANS FOR POWER AND SIGNAL
- MAGNETIC DOOR HOLD OPENER TIED TO BUILDING ALARM SYSTEM – REFER TO DOOR SCHEDULE, ELEC. & ALARM DRAWINGS

GENERAL NOTES THIS SHEET:

1. REFER TO ENLARGED GUEST ROOM PLANS FOR DOOR TAGS & TYPES
2. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR PASSENGER ELEVATORS, ELEVATOR LOBBIES & CORRIDORS.
3. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR STORAGE AREAS.
4. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR MECHANICAL, ELECTRICAL, & EQUIPMENT ROOMS.
5. FIRE EXTINGUISHERS, SMOKE DETECTORS & OTHER EMERGENCY DEVICES TO BE LOCATED PER LOCAL CODE. FIRE EXTINGUISHER LOCATIONS WIN THE PUBLIC SPACE SHALL BE CONTAINED WIN FULLY RECESSED CABINETS.
6. REFER TO HOME 2 SUITES BY HILTON STANDARDS MANUAL FOR ADDITIONAL REQ'S FOR ROOFING MATERIALS.
7. ROOF SLOPES & NUMBER OF ROOF DRAINS PER LOCAL BUILDING CODES.
8. REFER TO STANDARDS FOR FIXTURE & EQUIPMENT REQ'S.
9. REFER TO **HADG** FOR FURTHER ADDITIONAL REQ'S FOR PUBLIC SPACES & EQUIPMENT.
10. FIRE ALARM SYSTEM SHALL HAVE PERMANENTLY INSTALLED AUDIBLE & VISIBLE ALARMS COMPLYING W/ NFPA 72 (1999 OR 2022 ADDITION) & AS REQ'D BY LOCAL AUTHORITIES. ALARMS MUST BE LOCATED IN PUBLIC & COMMON USE AREAS & GUEST ROOMS DESIGNATED AS "GUEST ROOMS W/ COMMUNICATIONS FEATURES" AT A MINIMUM. WHERE EMPLOYEE AREAS HAVE AUDIBLE ALARMS, THE WIRING SHALL BE DESIGNED SO VISIBLE ALARMS CAN BE INTEGRATED INTO THE SYSTEM, UNLESS GREATER STANDARDS ARE REQ'D BY LOCAL AUTHORITIES.

SCALE: 1/8" = 1'-0"

0 1' 2' 4' 8' 16'

TYPE SIX

TYPE-SIX DESIGN AND DEVELOPMENT SERVICES

300 E. ABRAM ST. #150
ARLINGTON, TX 76010

PROJECT MANAGER
hayes.hinkle@type-six.com
817-690-2195

HOME2 SUITES BY HILTON

4100 BIG SPRING ST.
MIDLAND, TX 79705

T6_1812

ARCHITECT
D. HAYES HINKLE

ISSUE DATE
5_29_2019

ISSUED FOR
Construction

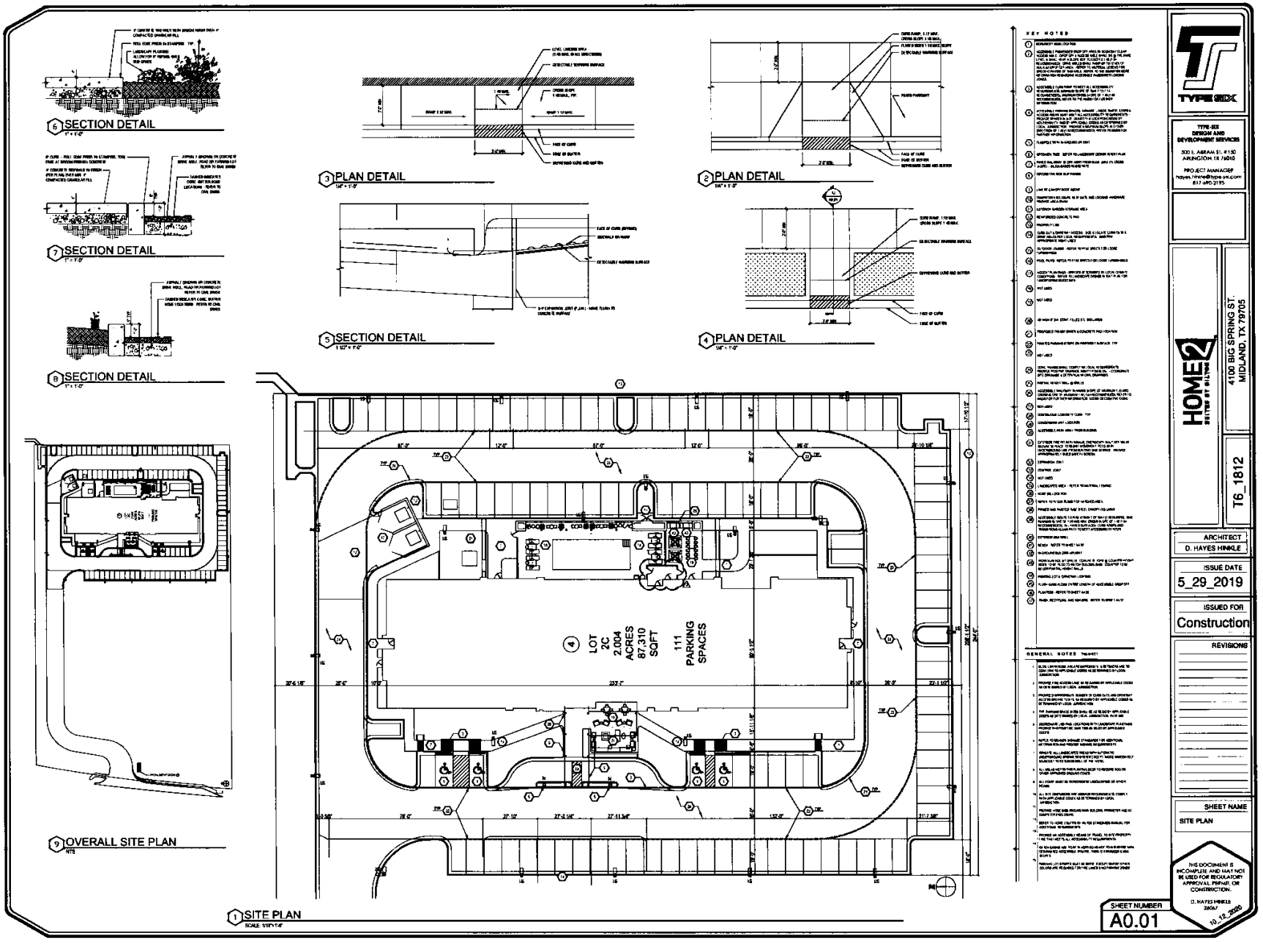
REVISIONS

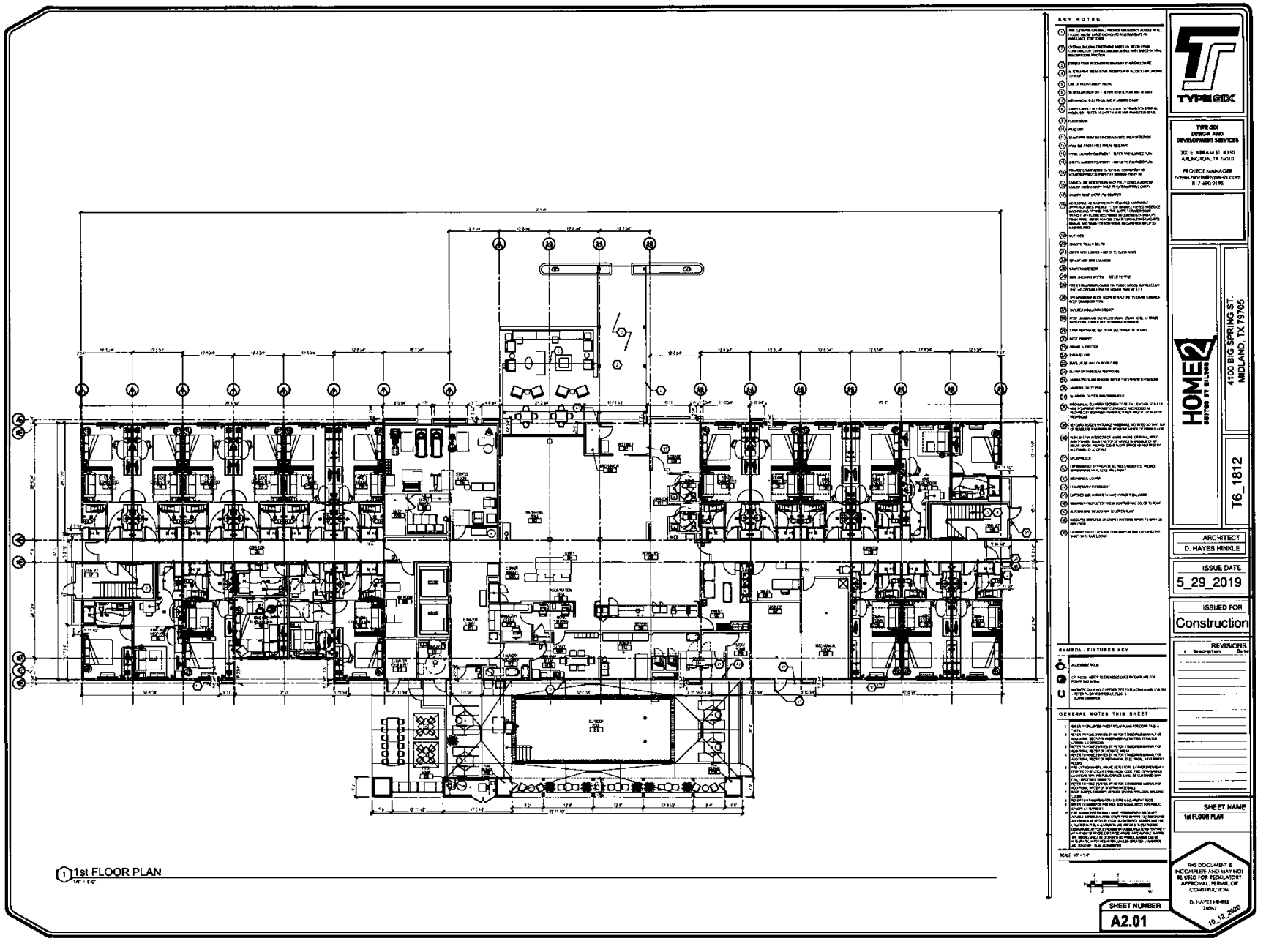
#	Description	Date

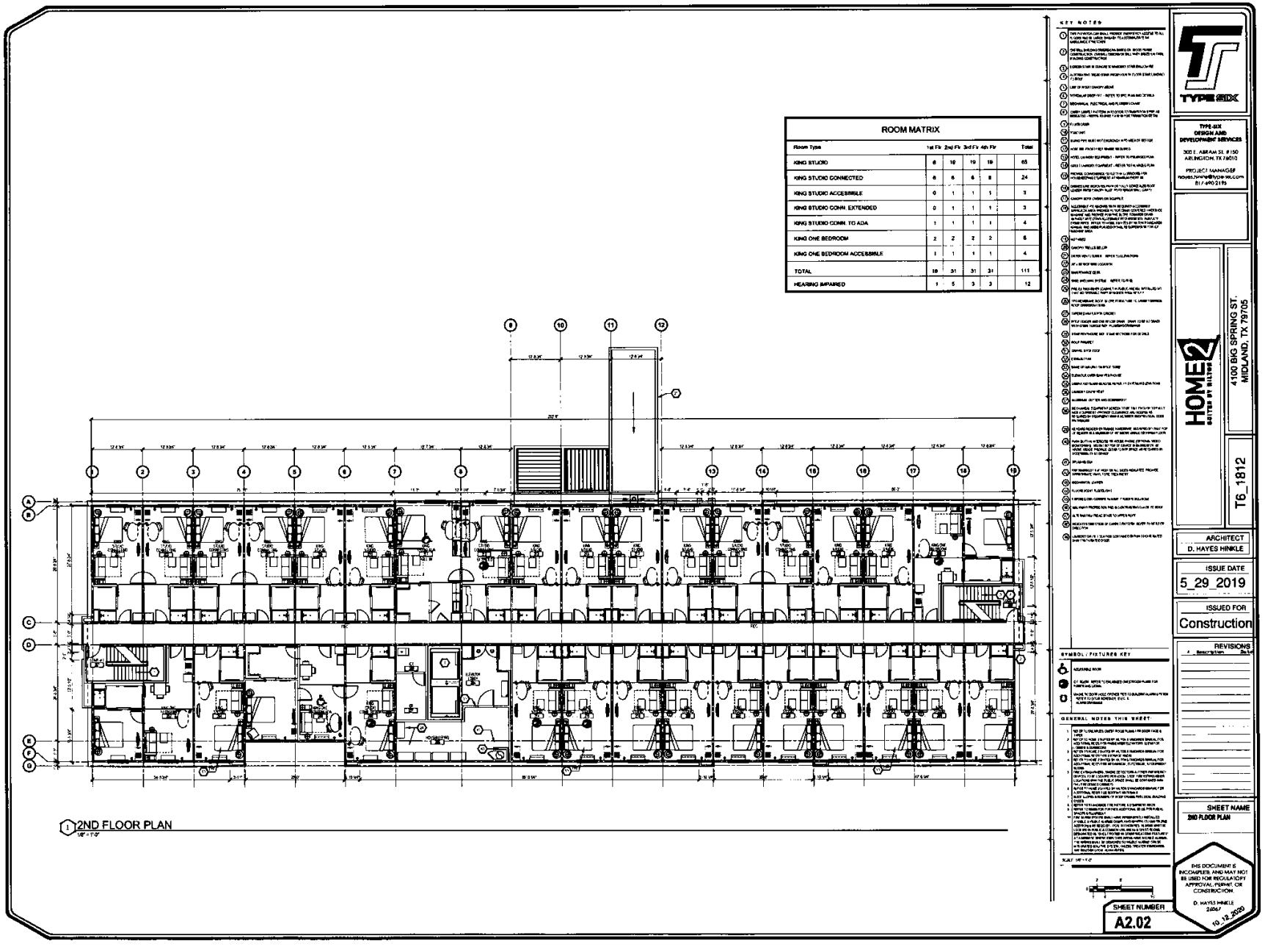
SHEET NAME
1st FLOOR FURNITURE PLAN

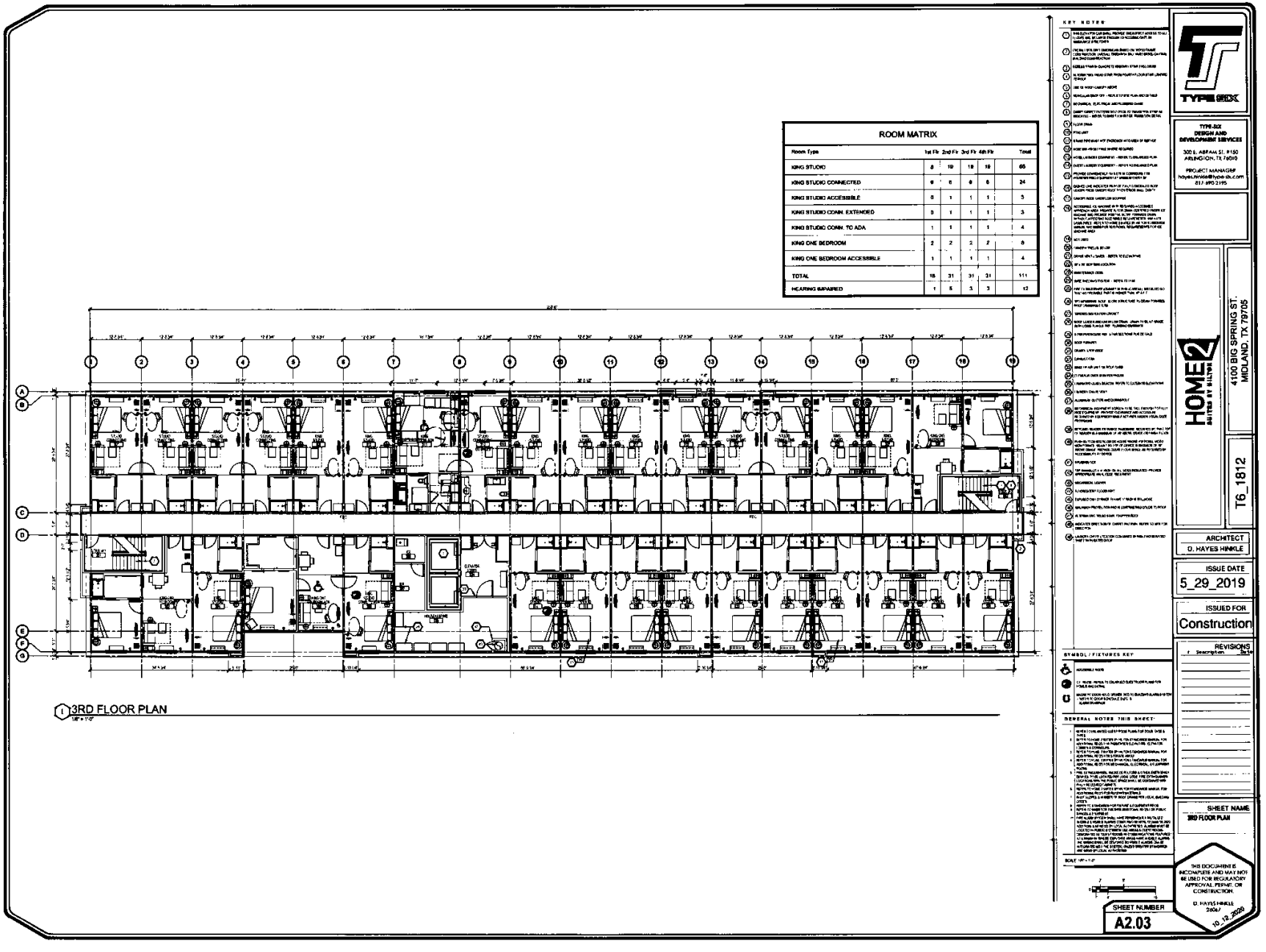
REGISTERED ARCHITECT D. HAYES HINKLE 26067 STATE OF TEXAS
05_29_2019

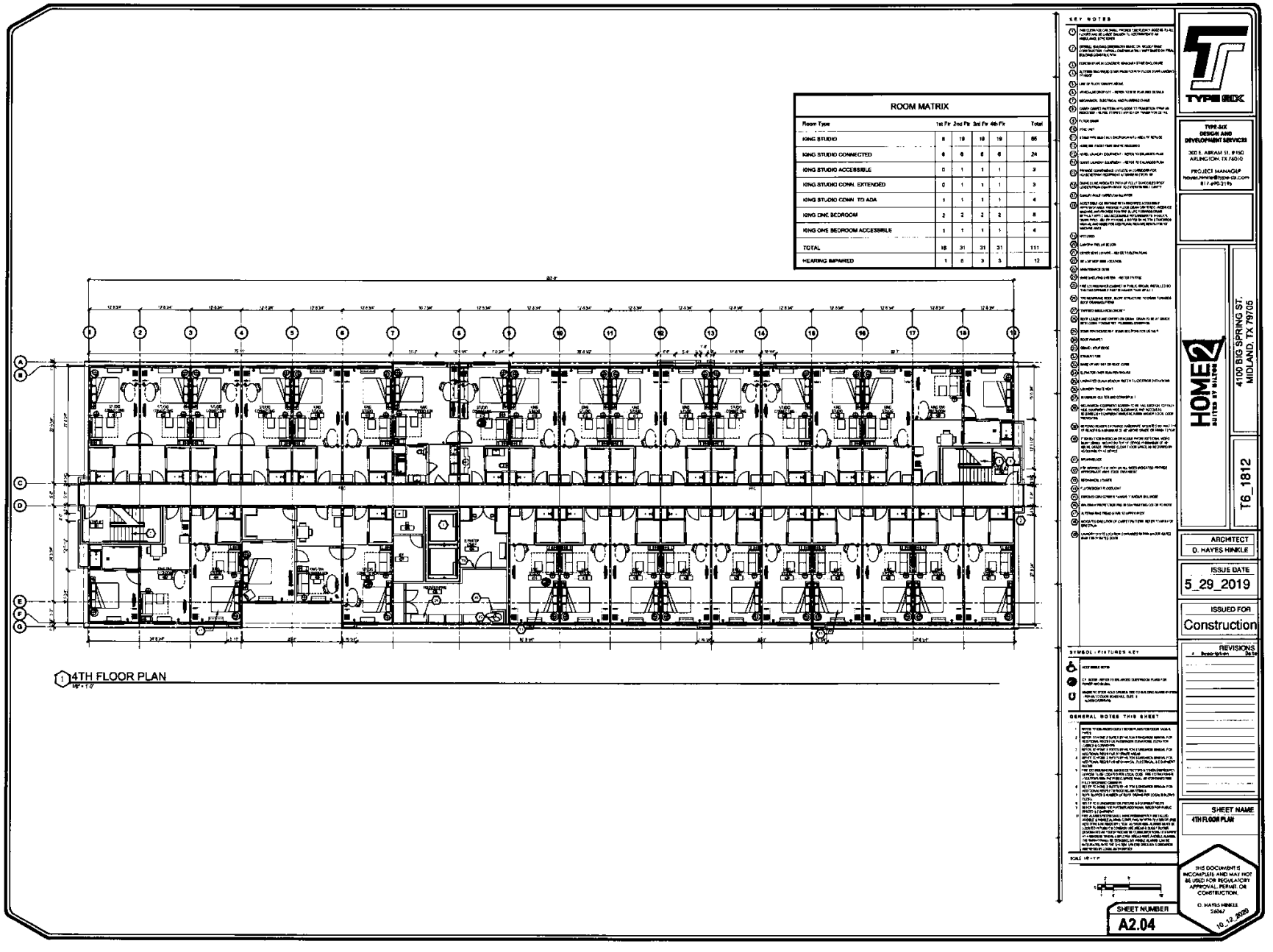
SHEET NUMBER
A2.01A


6 SECTION DETAIL
7 SECTION DETAIL
8 SECTION DETAIL
3 PLAN DETAIL
5 SECTION DETAIL
2 PLAN DETAIL
4 PLAN DETAIL
9 OVERALL SITE PLAN
1 SITE PLAN
4 LOT 2C 2.004 ACRES 87,310 SQFT 111 PARKING SPACES
KEY NOTES
GENERAL NOTES
TYPE IIIX
TYPE IIIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST. #150 ARLINGTON TX 76010
PROJECT MANAGER
hayes.hinkle@type-iiix.com
817.460.2195
HOME2 SUITES BY HILTON
4100 BIG SPRING ST. MIDLAND, TX 79705
T6_1812
ARCHITECT
D. HAYES HINKLE
ISSUE DATE
5_29_2019
ISSUED FOR
Construction
REVISIONS
SHEET NAME
SITE PLAN
THIS DOCUMENT IS INCOMPLETE AND MAY NOT BE USED FOR REGULATORY APPROVAL, PERMIT, OR CONSTRUCTION.
D. HAYES HINKLE
10.12.2020
SHEET NUMBER
A0.01


KEY NOTES
SYMBOL / FIXTURES KEY
GENERAL NOTES THIS SHEET
TYPE SIX
TYPE SIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST. # 135
ARLINGTON, TX 76010
PROJECT MANAGER
817-460-2195
HOME2 SUITES BY HILTON
4100 BIG SPRING ST.
MIDLAND, TX 79705
T6_1812
ARCHITECT
D. HAYES HINKLE
ISSUE DATE
5_29_2019
ISSUED FOR
Construction
REVISIONS
SHEET NAME
1st FLOOR PLAN
THIS DOCUMENT IS INCOMPLETE AND MAY NOT BE USED FOR REGULATORY APPROVAL, PERMIT, OR CONSTRUCTION.
D. HAYES HINKLE
28067
10-12-2020
SHEET NUMBER
A2.01
1 1st FLOOR PLAN


ROOM MATRIX
Room Type | 1st Flr | 2nd Flr | 3rd Flr | 4th Flr | Total
KING STUDIO | 8 | 10 | 19 | 19 | 65
KING STUDIO CONNECTED | 8 | 6 | 6 | 8 | 24
KING STUDIO ACCESSIBLE | 0 | 1 | 1 | 1 | 3
KING STUDIO CONN. EXTENDED | 0 | 1 | 1 | 1 | 3
KING STUDIO CONN. TO ADA | 1 | 1 | 1 | 1 | 4
KING ONE BEDROOM | 2 | 2 | 2 | 2 | 8
KING ONE BEDROOM ACCESSIBLE | 1 | 1 | 1 | 1 | 4
TOTAL | 18 | 31 | 31 | 31 | 111
HEARING IMPAIRED | 1 | 5 | 3 | 3 | 12
KEY NOTES
SYMBOL / FIXTURES KEY
GENERAL NOTES THIS SHEET
2ND FLOOR PLAN
TYPE SIX
TYPE SIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST. # 150
ARLINGTON, TX 76010
PROJECT MANAGER
817.460.2195
HOME2 SUITES BY HILTON
4100 BIG SPRING ST.
MIDLAND, TX 79705
T6_1812
ARCHITECT
D. HAYES HINKLE
ISSUE DATE
5_29_2019
ISSUED FOR
Construction
REVISIONS
SHEET NAME
2ND FLOOR PLAN
THIS DOCUMENT IS INCOMPLETE AND MAY NOT BE USED FOR REGULATORY APPROVAL, PERMIT OR CONSTRUCTION
D. HAYES HINKLE
24067
10.12.2020
SHEET NUMBER
A2.02


ROOM MATRIX
Room Type | 1st Flr | 2nd Flr | 3rd Flr | 4th Flr | Total
KING STUDIO | 8 | 19 | 18 | 19 | 65
KING STUDIO CONNECTED | 6 | 6 | 6 | 6 | 24
KING STUDIO ACCESSIBLE | 0 | 1 | 1 | 1 | 3
KING STUDIO CONN. EXTENDED | 0 | 1 | 1 | 1 | 3
KING STUDIO CONN. TO ADA | 1 | 1 | 1 | 1 | 4
KING ONE BEDROOM | 2 | 2 | 2 | 2 | 8
KING ONE BEDROOM ACCESSIBLE | 1 | 1 | 1 | 1 | 4
TOTAL | 18 | 31 | 31 | 31 | 111
HEARING IMPAIRED | 1 | 5 | 5 | 5 | 12
3RD FLOOR PLAN
TYPE SIX
TYPE-SIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST. #150 ARLINGTON, TX 76010
PROJECT MANAGER
hayes.hinkle@type-six.com
817-690-2195
HOME2 SUITES BY HILTON
4100 BIG SPRING ST. MIDLAND, TX 79705
T6_1812
ARCHITECT
D. HAYES HINKLE
ISSUE DATE
5_29_2019
ISSUED FOR
Construction
REVISIONS
SHEET NAME
3RD FLOOR PLAN
THIS DOCUMENT IS INCOMPLETE AND MAY NOT BE USED FOR REGULATORY APPROVAL, PERMIT, OR CONSTRUCTION.
D. HAYES HINKLE
24067
10.12.2020
SHEET NUMBER
A2.03


ROOM MATRIX
Room Type | 1st Flr | 2nd Flr | 3rd Flr | 4th Flr | | Total
KING STUDIO | 8 | 19 | 19 | 19 | | 65
KING STUDIO CONNECTED | 6 | 6 | 6 | 6 | | 24
KING STUDIO ACCESSIBLE | 0 | 1 | 1 | 1 | | 3
KING STUDIO CONN. EXTENDED | 0 | 1 | 1 | 1 | | 3
KING STUDIO CONN. TO ADA | 1 | 1 | 1 | 1 | | 4
KING ONE BEDROOM | 2 | 2 | 2 | 2 | | 8
KING ONE BEDROOM ACCESSIBLE | 1 | 1 | 1 | 1 | | 4
TOTAL | 18 | 31 | 31 | 31 | | 111
HEARING IMPAIRED | 1 | 5 | 3 | 3 | | 12
4TH FLOOR PLAN
KEY NOTES
SYMBOL / FIXTURES KEY
GENERAL NOTES THIS SHEET
TYPE SIX
TYPE SIX DESIGN AND DEVELOPMENT SERVICES
300 E. ABRAM ST., # 150
ARLINGTON, TX 76010
PROJECT MANAGER
hayes.hinkle@type-six.com
817-690-3195
HOME2 SUITES BY HILTON
4100 BIG SPRING ST.
MIDLAND, TX 79705
T6_1812
ARCHITECT
D. HAYES HINKLE
ISSUE DATE
5_29_2019
ISSUED FOR
Construction
REVISIONS
SHEET NAME
4TH FLOOR PLAN
THIS DOCUMENT IS INCOMPLETE AND MAY NOT BE USED FOR REGULATORY APPROVAL, PERMIT, OR CONSTRUCTION.
D. HAYES HINKLE
76047
10.12.2020
SHEET NUMBER
A2.04

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-21-0092

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: CY Houston Management Company, LLC		Phone (972) 934-8699 Ext 209 Email wbagwell@wirlp.com	
Address 15275 Quorum Drive	City Addison	State TX	Zip 75001

Property Owner Printed Name: Midspring Property LP		Phone (972) 934-8699 Email	
Address 13647 Montfort Dr	City Dallas	State TX	Zip 75240

Representative *(if different from Applicant or Property Owner)* Firm: BrackinSchwartz PLLC Printed Name: Catherine Chamblee, Esq		Phone (512) 549-8906 Email catherine@txliquorlaw.com	
Address 511 W 7th St	City Austin	State TX	Zip 78701

Street Address: 4104 North Big Spring St, Midland, TX 79705

Business Name: Home2 Suites by Hilton Midland East

Legal Description
Lot: 02D Block: 004 Subdivision: Corporate Plaza, Sec 26

Current Zoning: O-2

Reason for Request: Addition of an BQ Permit to sell beer and wine

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Hotel Market

Proposed/Current Days and Hours of Operation: 24 hours a day, 7 days a week

Proposed Days and Hours of Alcohol Service: Monday - Saturday: 7am - 12 am
Sunday: 10 am - 12 am with food; 12 pm -12 am without food

Total Square Footage of Business: 59,764

Square Footage of Alcohol Serviceable Area: 56,332

Restroom Fixtures:			
Men	**Toilets/Urinals:** 114 / 0	**Bathroom Sinks:** 114
Women	**Toilets:** 114	**Bathroom Sinks:** 114

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature): William Bagwell	Date: 12/03/2020
Applicant (printed): WILLIAM BAGWELL	
Property Owner (signature): William Bagwell	Date: 12/03/2020
Property Owner (printed): WILLIAM BAGWELL	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Catherine Brantley who, being by me duly sworn, upon oath says: That (s)he is authorized by William Bagwell, 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 4th day of December, 20 20, to certify which witness my hand and seal of office.

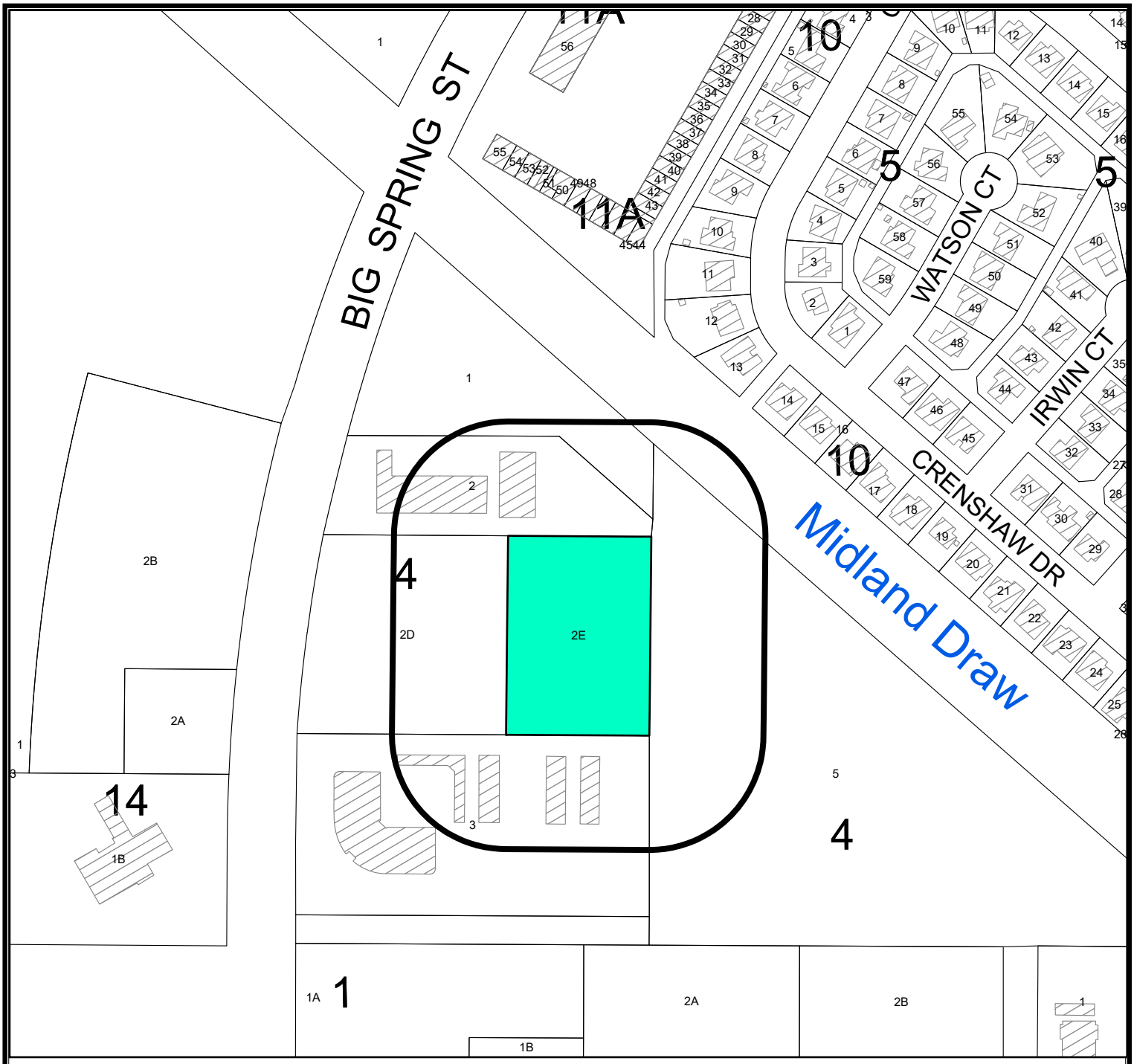
CERISSA FREY
Notary Public, State of Texas
Comm. Expires 09-20-2023
Notary ID 132183554

NOTARY PUBLIC, ~~MIDLAND~~ TRAVIS COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check #_____	☐ Plans in Digital Format (PDF/JPEG)
Received By:_____	Date:_____

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

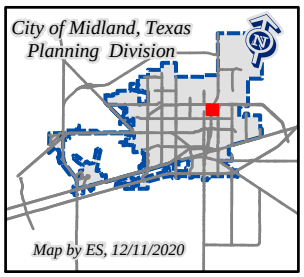
SUD-20-0092 **Scale: 1" = 250'**

Consider a request by CY Houston Management, LLC for a Specific Use Designation with Term for the Sale of beer and wine, for off premises consumption in a Hotel Market, on Lot 2E, Block 4, Corporate Plaza, Section 26, City and County of Midland, Texas.

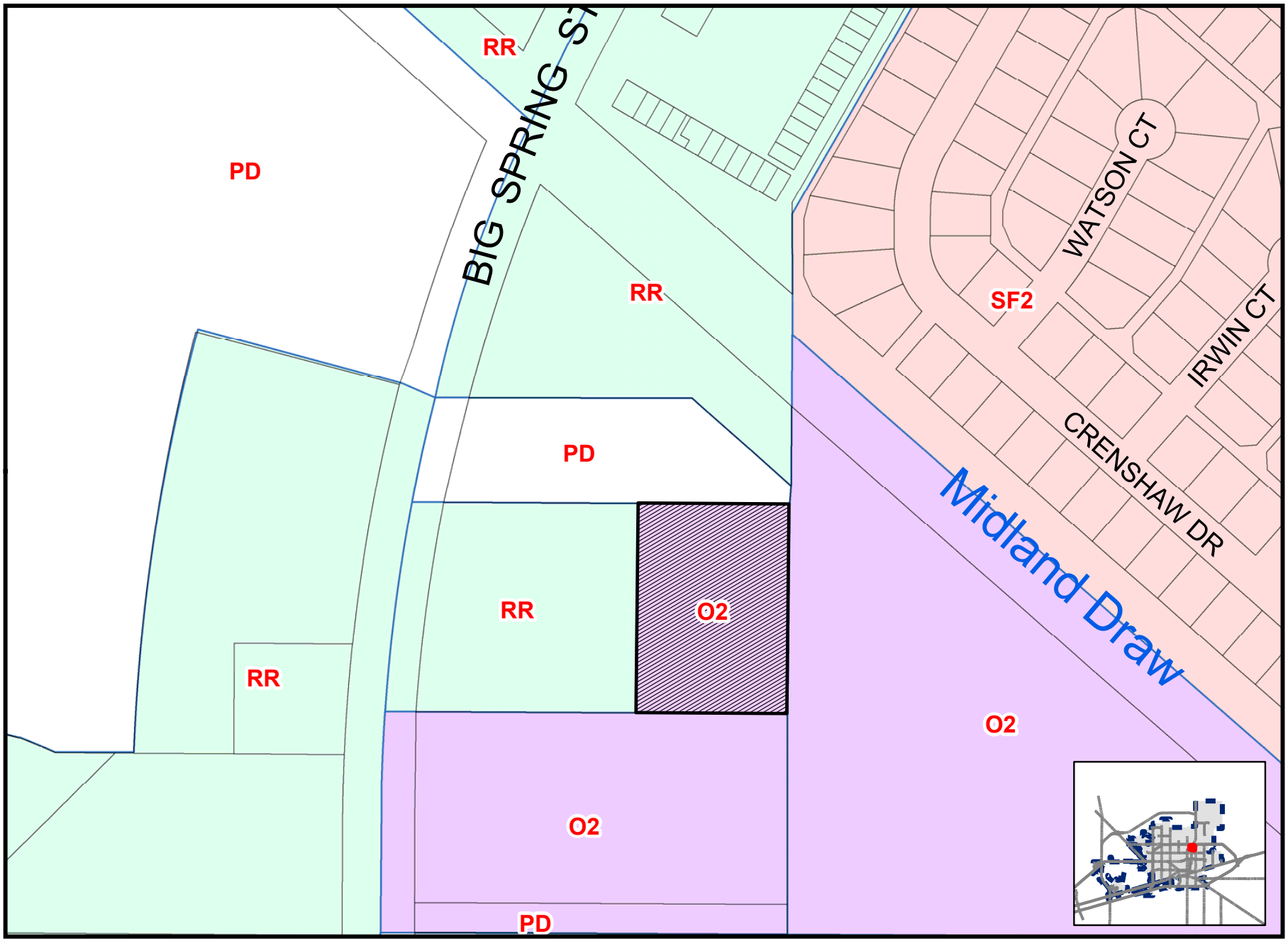
Generally located approximately 366 feet east of North Big Spring Street and approximately 876 - feet north of Corporate Drive. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 9, 2021



Map By ES, 12/15/2020

SUD-20-0092

Scale: 1" = 200'

ZONING MAP

PACKET
14.20
February 9, 2021

PLAZA
INN

HOME

DRIVE THRU

City Council Meeting

Item Number: 15

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.08-ACRE TRACT OF LAND OUT OF TRACT 3, MIDKIFF HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED APPROXIMATELY 160 FEET WEST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 250 FEET SOUTH OF ANDREWS HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, CG Midland, LLC is requesting a zone change for a 0.08-acre tract of land located in Tract 3, Midkiff Heights Addition, to bring it into conformance with the zoning of the property to the east for the development of a gas station and convenience store.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

MF-16, Multiple Family Dwelling District, in part; and RR, Regional Retail District, in part.

Surrounding Zoning and Land Use:

The property to the north, south, and west are zoned MF-16, Multiple Family Dwelling District and the location of vacant land. The property to the east is zoned RR, Regional Retail District and the location of a retail store.

Analysis:

The property in question is currently zoned MF-16, Multiple Family Dwelling District, in part; and RR, Regional Retail District, in part; and the location of vacant land. The property has recently been acquired by CG Midland, LLC to use it as part of the development of a Murphy gas station and convenience store on the adjacent lot to the east. This combination of these properties is currently in the final phase of the platting process, and building permits for the development are pending the approval of this zone change and the final plat.

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objections to zoning/zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil 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.

No objection to zone change.

Planning:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City Tomorrow comprehensive plan as this area calls for Urban Medium. This development pattern calls for a “mix of complementary uses” including commercial uses and multi-family housing. This zone change would bring an entire lot under the same zoning district so that construction of a convenience store could occur.

This request was recommended for approval at the January 4, 2020 Planning and Zoning Commission meeting and approved at the January 26, 2021 City Council meeting.

Therefore, staff recommends approval of this zone change, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

Staff has not received any letters of objection as of January 20, 2021.

Attachments:

Metes and Bounds (Exhibit A)
Application
Warranty Deed
Maps
Proposed Final Plat

Robert Patrick

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.08-ACRE TRACT OF LAND OUT OF TRACT 3, MIDKIFF HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED APPROXIMATELY 160 FEET WEST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 250 FEET SOUTH OF ANDREWS HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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 0.08-acre tract of land out of Tract 3, Midkiff Heights Addition, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property") to RR, Regional Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-16, Multiple-Family Dwelling District, in part, and RR, Regional Retail District, in part, to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

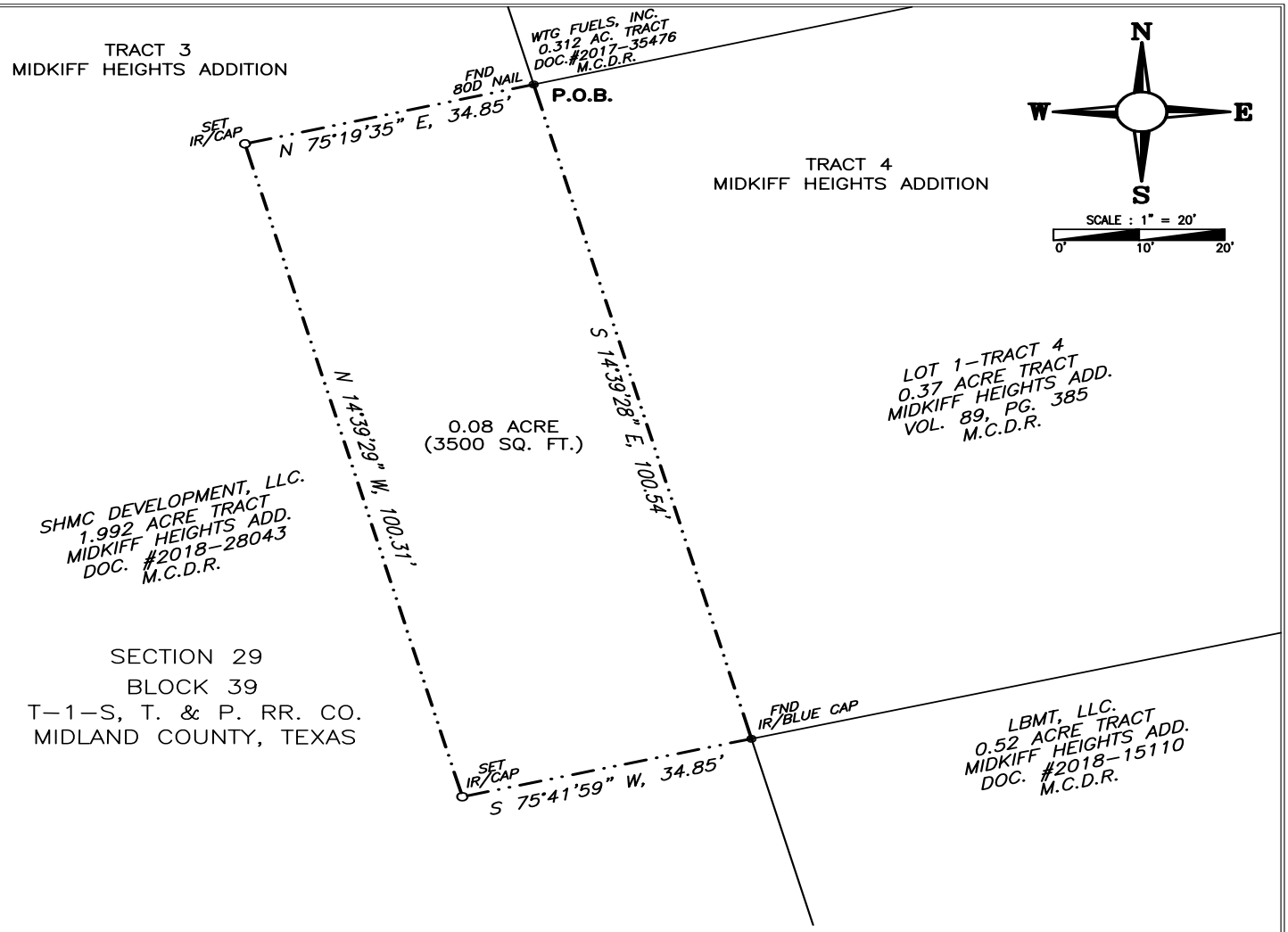
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



0.08 ACRE DESCRIPTION

Description of a 0.08 acre tract of land out of the East part of a 1.992 acre tract of land out of the East part of Tract 3, Midkiff Heights Addition to the City of Midland as described in Document #2018-28043 of the Deed Records of Midland County to SHMC Development, LLC. and being located out of the Northeast quarter of Section 29, Block 39, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas:

Beginning at an 80D nail found for the common Northeast corner of this, the Southwest corner of a 0.312 acre tract, the Northwest corner of a 0.37 acre tract and on the common East line of said 1.992 acre tract and said Tract 3 from whence a 1" iron rod found for the Northeast corner of said 1.992 acre tract bears N 14°42'17" W, 32.61 feet and continuing N 14°37'40" W, 218.73 feet to a 1/2" iron rod found for the Northeast corner of said Tract 3 on the South right of way of Andrews Highway. From said point of beginning, the Northeast corner of said Section 29 bears N 75°19'35" E, 199.82 feet and N 14°36'58" W, 1282.61 feet;

Thence S 14°39'28" E, 100.54 feet to an iron rod with blue cap found for the common Southeast corner of this, the Southwest corner of said 0.37 acre tract, the Northwest corner of a 0.52 acre tract and on the common East line of said 1.992 acre tract and said Tract 3;

Thence S 75°41'59" W, 34.85 feet to a 1/2" iron rod with cap set for the Southwest corner of this;

Thence N 14°39'29" W, 100.31 feet to a 1/2" iron rod with cap set for the Northwest corner of this;

Thence N 75°19'35" E, 34.85 feet to the place of beginning.

NOTE:

BEARINGS BASED ON NAD 1927, TX. CENTRAL ZONE
SET CORNERS ARE 1/2" IRON ROD WITH CAP MARKED "LUCHINI & MERTZ"

PROFESSIONAL LAND SURVEYORS
Well Locations
Pipelines
LUCHINI & MERTZ
Boundary Surveys

JEFFREY D. SUITER
TX. R.P.L.S. #4650

STATE OF TEXAS
REGISTERED
Jeffrey D. Suiter
4650
PROFESSIONAL
LAND SURVEYOR

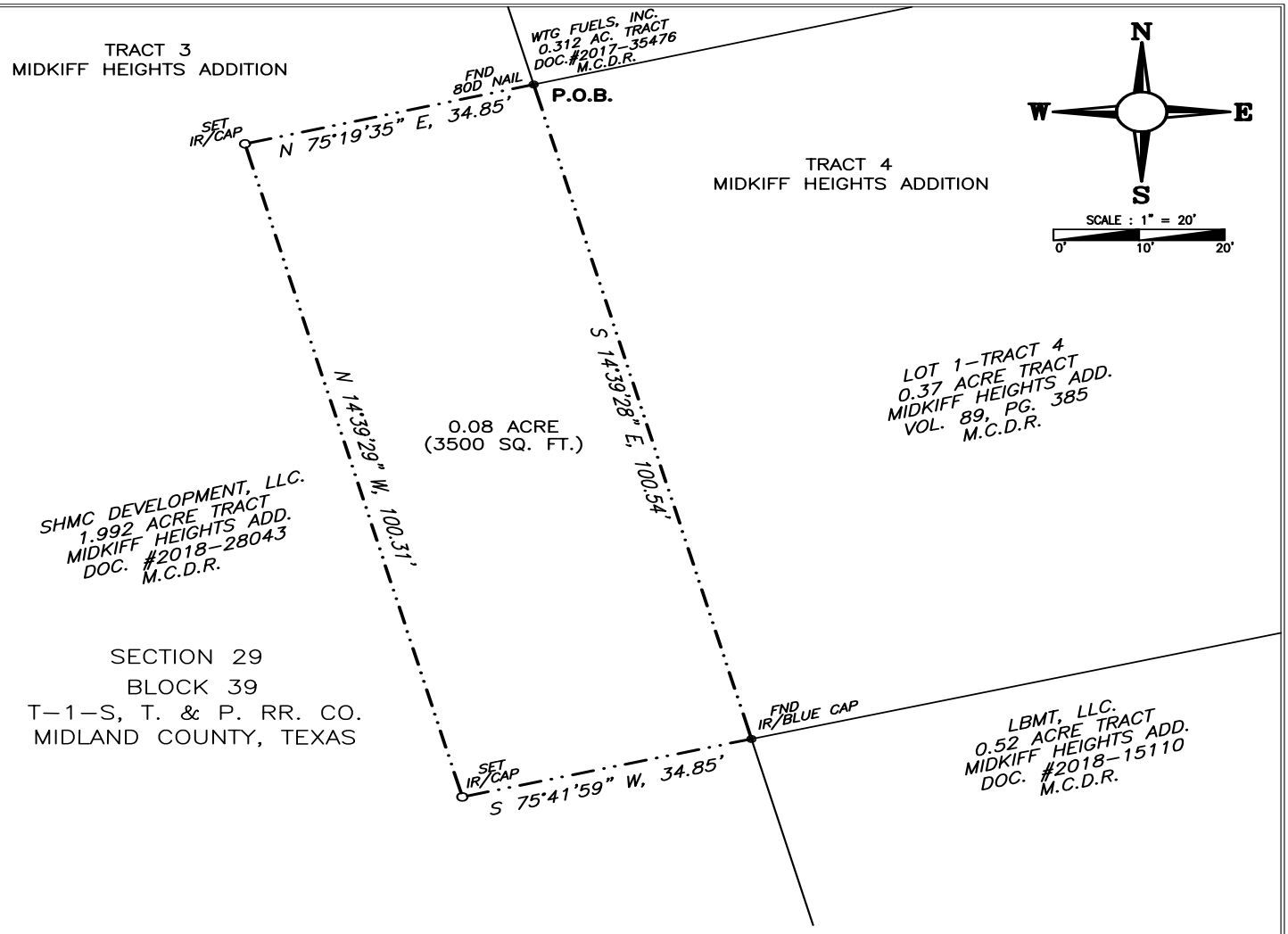
PACKET 35 February 9, 2021

P. O. Box 1963 Midland, Texas 79702 (432) 684-6728 Firm# 10086500

September 9, 2020

Job# 200909PS

EXHIBIT "A"



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Well Locations
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Jeffrey D. Suiter
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PROFESSIONAL
LAND SURVEYOR

PACKET 35 February 9, 2021

P. O. Box 1963 Midland, Texas 79702 (432) 684-6728 Firm# 10086500

September 9, 2020

Job# 200909PS

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-20-0208

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: CG Midland LLC ("Coy Haynes")		Phone ( ) Email 214 335 4702	
Address 4024 Goodfellow dr	City Dallas	State TX	Zip 75229

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email Chaynes@haynesdevco.com	
Address	City	State	Zip

Street Address: A portion of 1110 Austin st

Legal Description
Lot: 3 Block: Tract 4 Subdivision: Midkiff Heights Addition

Current Zoning: TH	**Proposed Zone:** RR *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: We are combining this land area with the other lots we own on Andrews an And midkiff frontage road. This will make the whole parcel the same zoning

Present Use of Property: Vacant

Proposed Use of Property: Gas station

How would this zone change affect the public health, safety and welfare? It will give more gas optio

Describe how conditions affecting the property have changed since present zoning designation: It's become vacant

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: 12/14/20
Applicant (printed): Coy Haynes	
Property Owner (signature):	Date: 12/14/20
Property Owner (printed) : Coy Haynes	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

WHEN RECORDED RETURN TO:

Wick Phillips Gould & Martin LLP
3131 McKinney Avenue, Suite 100
Dallas, Texas 75204
Attn: Rob Wills

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF MIDLAND §

SHMK DEVELOPMENT, LLC, a Texas limited liability company ("**Grantor**"), for and in consideration of the sum of $10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, AND CONVEY unto **CG MIDLAND LLC**, a Texas limited liability company ("**Grantee**") the real property in Midland County, Texas, fully described in Exhibit A hereto, together with all improvements thereon, and all rights, titles, and interests appurtenant thereto (collectively, the "**Property**").

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee subject to the matters described in Exhibit B hereto, to the extent the same are validly existing and applicable to the Property (collectively, the "**Permitted Encumbrances**").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto the said Grantee, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor but not otherwise, subject to the Permitted Encumbrances.

A part of the consideration for the foregoing conveyance was paid by PLAINSCAPITAL BANK (the "**Lender**") at the request of Grantee. Thus, Grantee reserves for the benefit of Lender a vendor's lien and superior title (collectively, "**Vendor's Lien**") against the Property as security for the payment of that certain promissory note of even date herewith (the "**Note**") payable to Lender, said Note being secured by the Vendor's Lien herein retained and being further secured by the Deed of Trust of even date herewith (the "**Deed of Trust**") from Grantee to DARRELL G. ADAMS as Trustee for the benefit of Lender covering the Property.

It is expressly agreed that the Vendor's Lien, as well as the superior title in and to the Property, is retained against the Property until the Note and all interest thereon is fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute. The Note represents a portion of the purchase price for the Property and is payable directly to Lender, who has advanced money to Grantor at the request of Grantee, and in consideration thereof, Grantor does hereby TRANSFER and ASSIGN, unto Lender, its successors and assigns, the Vendor's Lien and superior title herein retained against the Property to secure payment of the Note, hereby fully and completely subrogating Lender, its successors and assigns, to all rights, titles, equities and interests in and to the Note, and all liens against the Property securing payment thereof as if the Note were payable to Grantor and assigned to Lender without recourse or warranty, oral or written, express or implied. The full release of the lien of the Deed of Trust and the recordation of such release shall constitute a full, final and complete release of the Vendor's Lien as well as superior title retained herein.

Grantee's address is: 1901 N. Akard Street, Dallas, Texas 75201.

[*Remainder of page intentionally left blank; Signature page to follow*]

EXECUTED as of October 26, 2020.

SHMK DEVELOPMENT, LLC,
a Texas limited liability company

By: _____
Name: Shafik Tejani
Title: Manager

STATE OF Texas §
§
COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this day personally appeared Shafik Tejani, the Manager of SHMK DEVELOPMENT, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed on behalf of such limited liability company.

RUBY KAMALI
My Notary ID # 125761745
Expires July 14, 2022

_____
Notary Public, State of _____

Exhibit A
Legal Description

Description of a 0.08 acre tract of land out of the East part of a 1.992 acre tract of land out of the East part of Tract 3, Midkiff Heights Addition to the City of Midland as described in Document #2018-28043 of the Deed Records of Midland County to SHMC Development, LLC. and being located out of the Northeast quarter of Section 29, Block 39, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas:

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Thence N 75°19'35" E, 34.85 feet to the place of beginning.

Exhibit B

Permitted Encumbrances

1. Real property taxes and assessments for the year 2020 and thereafter, not yet due and payable.

Midland County
Alison Haley
Midland County
Clerk

Instrument Number: 32547

eRecording - Real Property

Recorded On: October 29, 2020 03:47 PM

Number of Pages: 6

" Examined and Charged as Follows: "

Total Recording: $42.00

********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	32547
Receipt Number:	20201029000149
Recorded Date/Time:	October 29, 2020 03:47 PM
User:	Clarisa S
Station:	cc10289

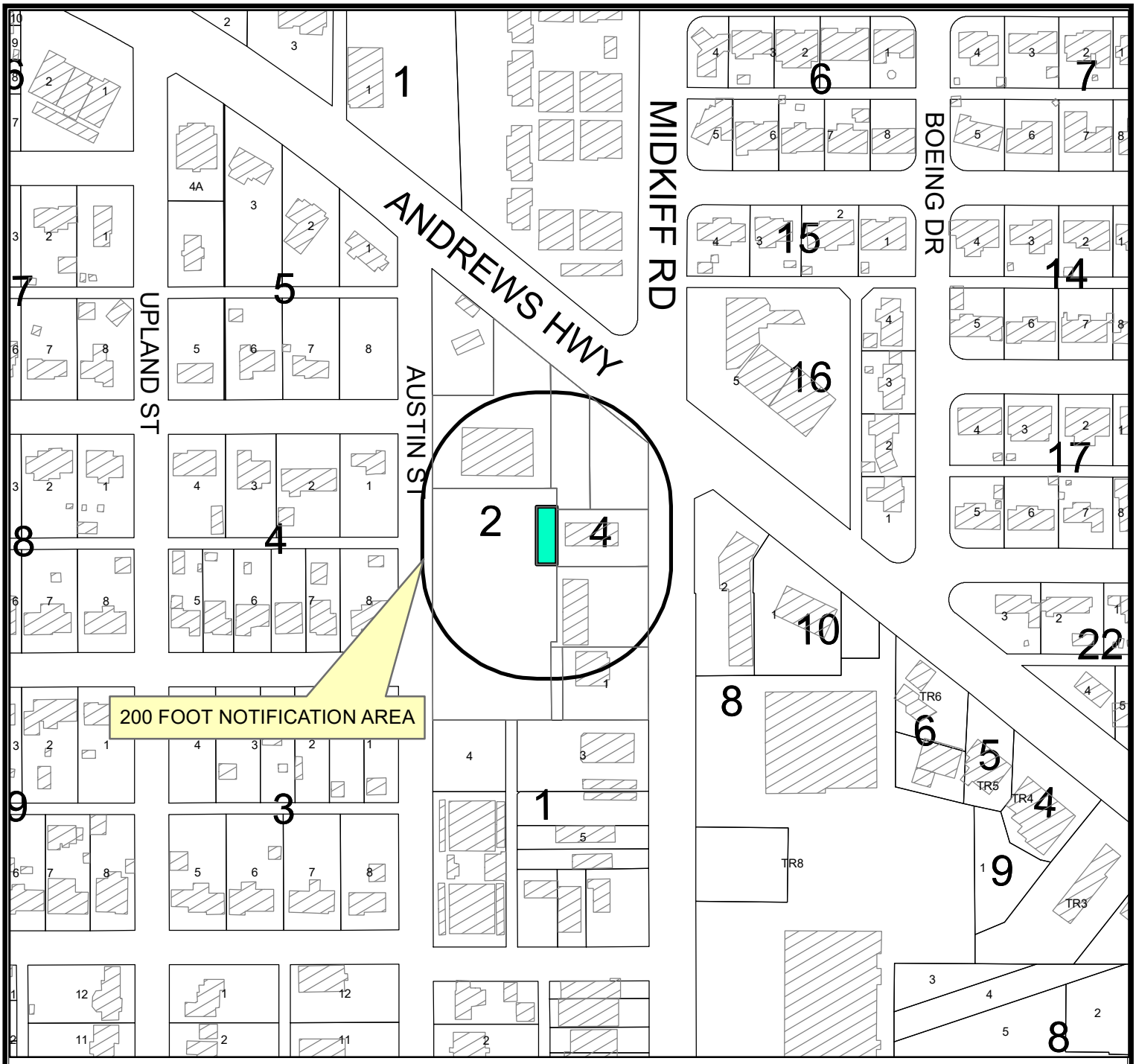
Record and Return To:

Corporation Service Company

STATE OF TEXAS
COUNTY OF MIDLAND

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Midland County, Texas.**

Alison Haley
Midland County Clerk
Midland County, TX



LOCATION MAP

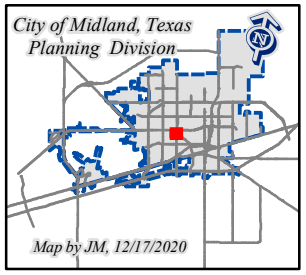
Z-20-0207 **Scale: 1" = 250'**

Consider a request by CG Midland, LLC for a zone change from MF-16, Multiple Family Dwelling District, in part; and RR, Regional Retail District, in Part; to RR, Regional Retail District on a 0.08-acre tract of land located in Tract 3, Midkiff Heights Addition, City and County of Midland Texas.

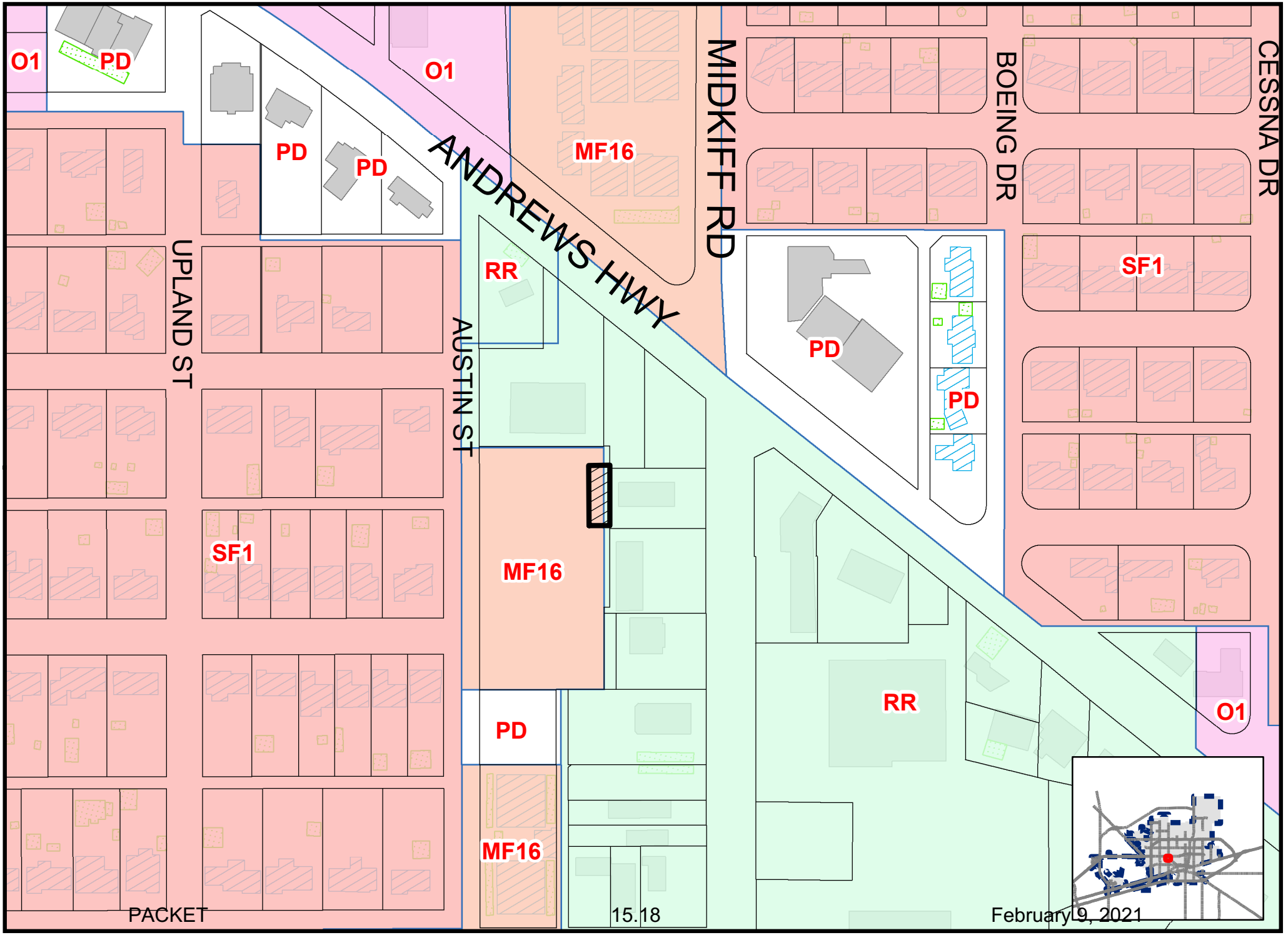
Generally located approximately 160 feet west of North Midkiff Road and approximately 250 south of Andrews Highway. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 12/18/2020

Z-20-0207

Scale: 1" = 200'

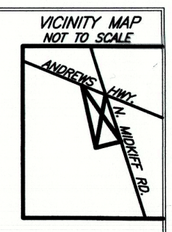
ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

DESCRIPTION

PROPOSED PLAT OF MIDKIFF HEIGHTS, SECTION 5, BEING A RE-PLAT OF A 0.821 ACRE PORTION OF TRACTS 3 AND 4, MIDKIFF HEIGHTS, CITY AND COUNTY OF MIDLAND, TEXAS.

VICINITY MAP
NOT TO SCALE



FND 1/2" IR

ANDREWS HIGHWAY (STATE HIGHWAY #158)

N 65°48'24" W, 76.66'

FND 1/2" IR

S 65°51'56" E, 94.77'

SET "X" IN CONC.

DELTA=51°13'31"
RADIUS= 70.0'
ARC LENGHTH= 62.58'
CHORD DISTANCE= 60.52'
CHORD BEARING= S 40°23'32" E

FND COTTON SPINDLE

S 14°38'53" E, 89.29'

NORTH MIDKIFF ROAD (80' R.O.W.)

GRID N= 10696671.88
GRID E= 1742728.06
LAT: N32°00'10.36"
LONG: W102°07'11.79"

TRACT 3

TRACT 4

ODUKWU FAMILY INVESTMENTS, LLC
1.04 ACRE TRACT
DOC. #12690, VOL. 2871, PG. 410
M.C.D.R.

N 14°37'40" W, 218.73'

WTG FUELS, INC.
0.312 ACRE TRACT
DOC. #2017-35476
M.C.D.R.

N 14°41'48" W, 203.26'

CG MIDLAND, LLC.
DOC. #2020-32544
M.C.D.R.

LOT 6, BLOCK 1

CONTAINING 0.821 ACRE TOTAL

FND 1" IR

N 14°42'17" W, 32.61'

SET IR/CAP

FND 80D NAIL

N 75°19'35" E, 59.93'

FND 3/8" IR

FND COTTON SPINDLE

N 75°19'35" E, 34.85'

CG MIDLAND, LLC.
DOC. #2020-32547
M.C.D.R.

SHMC DEVELOPMENT, LLC.
REMAINING 1.912 ACRE TRACT
DOC. #2018-28043
M.C.D.R.

N 14°39'29" W, 100.31'

CG MIDLAND, LLC.
DOC. #2020-32546
M.C.D.R.

S 14°37'19" E, 101.58'

PP/TRANS

WM

BC

ACCESS ENTRANCE

E

BC

ACCESS ENTRANCE

E

S 75°41'59" W, 34.85'

SET IR/CAP

P.O.B.

FND IR/BLUE CAP

S 75°41'59" W, 159.74' (DEED= S 75°00' W, 160')

FND 60 D NAIL

GRID N= 10696402.31
GRID E= 1742901.88
LAT: N32°00'07.72"
LONG: W102°07'09.72"

LBMT, LLC.
0.52 ACRE TRACT
DOC. #2018-15110
M.C.D.R.
TRACT 4

TRACT 3

STATE OF TEXAS

COUNTY OF MIDLAND

WHEREAS, WE ARE THE RECORD OWNERS OF A TRACT OF LAND SITUATED IN THE NORTH PART OF TRACT 4 AND A PORTION OF THE EAST PART OF TRACT 3, MIDKIFF HEIGHTS ADDITION, AND MORE PARTICULARY DESCRIBED HEREON.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT WE DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS_____ AN ADDITION TO THE CITY OF MIDLAND, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLY, AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.

WITNESS MY HAND AT MIDLAND, TEXAS, THIS _____ DAY OF _____, 20___.

_____
CG MIDLAND, LLC

STATE OF TEXAS:
COUNTY OF MIDLAND:

THIS INSTRUMENT WAS ACKOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 20___, CG MIDLAND, LLC

_____
NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

CERTIFICATION OF APPROVAL

FOR APPROVAL BY THE COMMISSION:

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF _____, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE CITY OF MIDLAND, ON THIS _____ DAY OF _____, 2020. AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.

SIGNED: _____
CHAIRMAN REGGIE LAWRENCE

SIGNED: _____
SECRETARY CRISTINA ODENBORG BURNS

NOTES:

1. SELLING A PORTION OF THIS ADDITION MY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. BEARINGS, DISTANCES AND ACREAGE SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
4. THE INSTALLATION OF PUBLIC IMPROVEMENTS MAY BE REQUIRED BY THE CITY OF MIDLAND AS SUCH TIME AS: (1) THE 0.821 TRACT IS RE-PLATTED FOR SUBDIVISION INTO MORE THAN THREE TRACTS OR (2) THE PROPERTY IS REZONED FOR A MORE INTENSIVE USE.
5. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

OWNER: CG MIDLAND, LLC, 4024 GOODFELLOW DR., DALLAS, TEXAS 75229

THAT I, JEFFREY D. SUITER, A REGISTERED PROFESSION LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED OR FOUND UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

_____
JEFFREY D. SUITER
TX. R.P.L.S. #4650

PROFESSIONAL LAND SURVEYORS
Well Locations
Pipelines
LUCHINI & MERTZ
Boundary Surveys

P. O. Box 1963 Midland, Texas 79702 (432) 684-6728 Firm# 10086500 | DATE: June 24, 2020 | Job# 200624JS

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

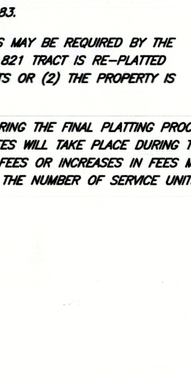
SIGNED: _____
ONCOR ELECTRIC DELIVERY COMPANY

SIGNED: _____
AT&T TEXAS

SIGNED: _____
ATMOS ENERGY

SIGNED: _____
SUDDEDLINK COMMUNICATIONS

SIGNED: _____
GRANDE COMMUNICATIONS



CASH ST
TITLE LOANS & CASH
CHIROPR
CASH STOR
TITLE LOANS &
CASH ADVANCES
NAILS

CASH STORE

cricket
BUD LIGHT

City Council Meeting

Item Number: 16

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.58-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Midland (Fairgrounds) DTP, LLC, is requesting a zone change from PD, Planned Development District for a Housing Development to LR, Local Retail District, to develop a retail store.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

PD, Planned Development District for a Housing Development (Ordinance No. 9851)

Surrounding Zoning and Land Use:

The property to the north is zoned SF-2, Single Family Dwelling District and the location of a church. The property to the east and south are zoned PD, Planned Development District for a Housing Development (Ordinance No. 9851) and the location of vacant land. The properties to the west are zoned 2F, Two-Family Dwelling District and the location of single-family housing.

Analysis:

The property in question is currently zoned PD, Planned Development District for a Housing Development (Ordinance No. 9851). While this area is currently zoned for a housing development, this was not always the case. Prior to the adoption of Ordinance No. 9851 in 2018, this property was zoned LR, Local Retail District. In the context of Ordinance No. 9851, this 1.58 acres was part of an 8.15-acre area set aside for future development of market rate housing. As such, this request does not disrupt the amount of housing supplied under the previous ordinance.

If approved, the development will need to conform to section 5.05, Nonresidential Zoning District Dimensional Regulations and sections 6.01 through 6.05, Zoning Development Regulations of the Zoning Ordinance. This property is currently not platted. As such, a final plat will need to be adopted prior to any development.

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objections to zoning/zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil 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.

No objection to zone change.

Planning:

This proposed development does not fit with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City Tomorrow comprehensive plan as this area calls for Urban Residential Low. This district calls exclusively for single-family developments and specifically cites that uses with higher traffic volumes should not be allowed. However, this location has frontage on a major arterial street, which is more suitable for low-density retail development than single-family housing.

Rezoning this property to LR, Local Retail District would provide a retail opportunity for the nearby single-family developments to the west as well as future multiple family developments being proposed to the east and south. This area is devoid of retail options despite having frontage on a major arterial. Providing retail space in this development would give current and future residents an opportunity to walk to a shopping area or decrease the distance they would need to drive to get to one.

This request was recommended for approval at the January 4, 2021 Planning and Zoning Commission meeting and approved at the January 26, 2021 City Council meeting.

Therefore, staff recommends approval of this zone change, 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:

Staff has not received any letters of objection as of January 20, 2021.

Attachments:

Metes and Bounds (Exhibit A)
Application
Maps

Proposed Site Plan
Ordinance No. 9851

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.58-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE 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 1.58-acre tract of land located in Section 31, Block 38, 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 LR, Local Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Housing Development to LR, Local Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all

other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

FIRM REGISTRATION NO:
10025500

10147 CR 135
FLINT, TEXAS 75762

903.581.2238
TXSURVEYS.COM

FIELD NOTES FOR GBT REALTY
Southwest Quarter of Section 31, Block 38
Township 1 South, T&P R.R. Co. Survey, Abstract No. 25
Midland County, Texas

All that certain lot, tract, or parcel of land, being part of the Southwest Quarter of Section 31, Block 38, Township 1 South, T&P R.R. Co. Survey, Abstract No. 25, Midland County, Texas, and being part of that certain called 119.47 acre tract described in a deed from Professional Lazer Graphix, LTD to the Chase W. Gardaphe 2012 Trust on July 18, 2014, recorded in Document No. 2014-18367 of the Official Public Records of Midland County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Northwest corner of the above mentioned 119.47 acre tract, the Southwest corner of Block 1 of Colonial Hills, Section 1, as shown by plat of same recorded in Volume 294, Page 399 of the Plat Records of Midland County, Texas, in the East right of way of North Fairgrounds Road;

THENCE North 75 deg. 29 min. 55 sec. East with the South line of Block 1, the North line of the 119.47 acre tract, distance of 345.00 ft. to a ½" iron rod (set) for corner;

THENCE South 14 deg. 36 min. 09 sec. East a distance of 200.00 ft. to a ½" iron rod (set) for corner;

THENCE South 75 deg. 29 min. 55 sec. West a distance of 345.00 ft. to a ½" iron rod (set) for corner in the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road;

THENCE North 14 deg. 36 min. 09 sec. West with the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road a distance of 200.00 ft. to the place of beginning, containing 1.584 acres of land.

Bearing oriented to Grid North of the Texas State Plane Coordinate System, NAD83, Central Zone 4203.

I, PHILIP W. CORNETT, Registered Professional Land Surveyor No. 5515, do hereby certify that the above field notes were prepared from an actual survey made on the ground under my direction and supervision.

GIVEN UNDER MY HAND AND SEAL, this the 10th day of December, 2020.

PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres

STATE OF TEXAS
REGISTERED
PHILIP W. CORNETT
5515
PROFESSIONAL
LAND SURVEYOR

JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

FIRM REGISTRATION NO:
10025500

10147 CR 135
FLINT, TEXAS 75762

903.581.2238
TXSURVEYS.COM

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Township 1 South, T&P R.R. Co. Survey, Abstract No. 25
Midland County, Texas

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PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-20-0207

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Midland (Fairgrounds) DTP, LLC		Phone (615) 370-0670 Email gglaser@gbtrealty.com	
Address 9010 Overlook Blvd.	City Brentwood	State TN	Zip 37027

Property Owner Printed Name: Gardaphe Chase W 2012 Trust		Phone (832) 766-3656 Email gardaphe@gmail.com	
Address 1320 N. Fairgrounds Road	City Midland	State TX	Zip 79706

Representative *(if different from Applicant or Property Owner)* Firm: Midland (Fairgrounds) DTP, LLC Printed Name: Bob Gage		Phone (615) 519-8208 Email bgage@gbtrealty.com	
Address 9010 Overlook Blvd.	City Brentwood	State TN	Zip 37027

Street Address: TBD

Legal Description
Lot: Block: 38 Subdivision: SE Qtr. Section 31, Twp.1 S, T&P R.R Co. Survey, Abstrat # 25

Current Zoning: PD - Planned Development

Proposed Zone: LR - Local Retail
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Proposed Retail Development

Present Use of Property: Vacant

Proposed Use of Property: Construct a 10,460 SF Retail Store with parking and utilities on a 1.58 acre lot

How would this zone change affect the public health, safety and welfare? The development would benefit the nearby single family residential community and apartment complex that is under construction

Describe how conditions affecting the property have changed since present zoning designation: The Planned Development was originally designated for apartments, which are being built behind this property. Property owner decided the area needs commercial development fronting Fiargrounds Road

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: 12/09/2020
Applicant (printed): Greg Glaser, Development Manager	
Property Owner (signature):	Date: 12/09/2020
Property Owner (printed) : Chase Gardaphe, Manager	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF ~~TEXAS~~ TENNESSE
COUNTY OF ~~MIDLAND~~ DAVIDSON

Before me, the undersigned authority, on this day personally appeared GREG GLASER who, being by me duly sworn, upon oath says: That (s)he is authorized by GARDAPHE CHASE W 2012 TRUST, 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*)

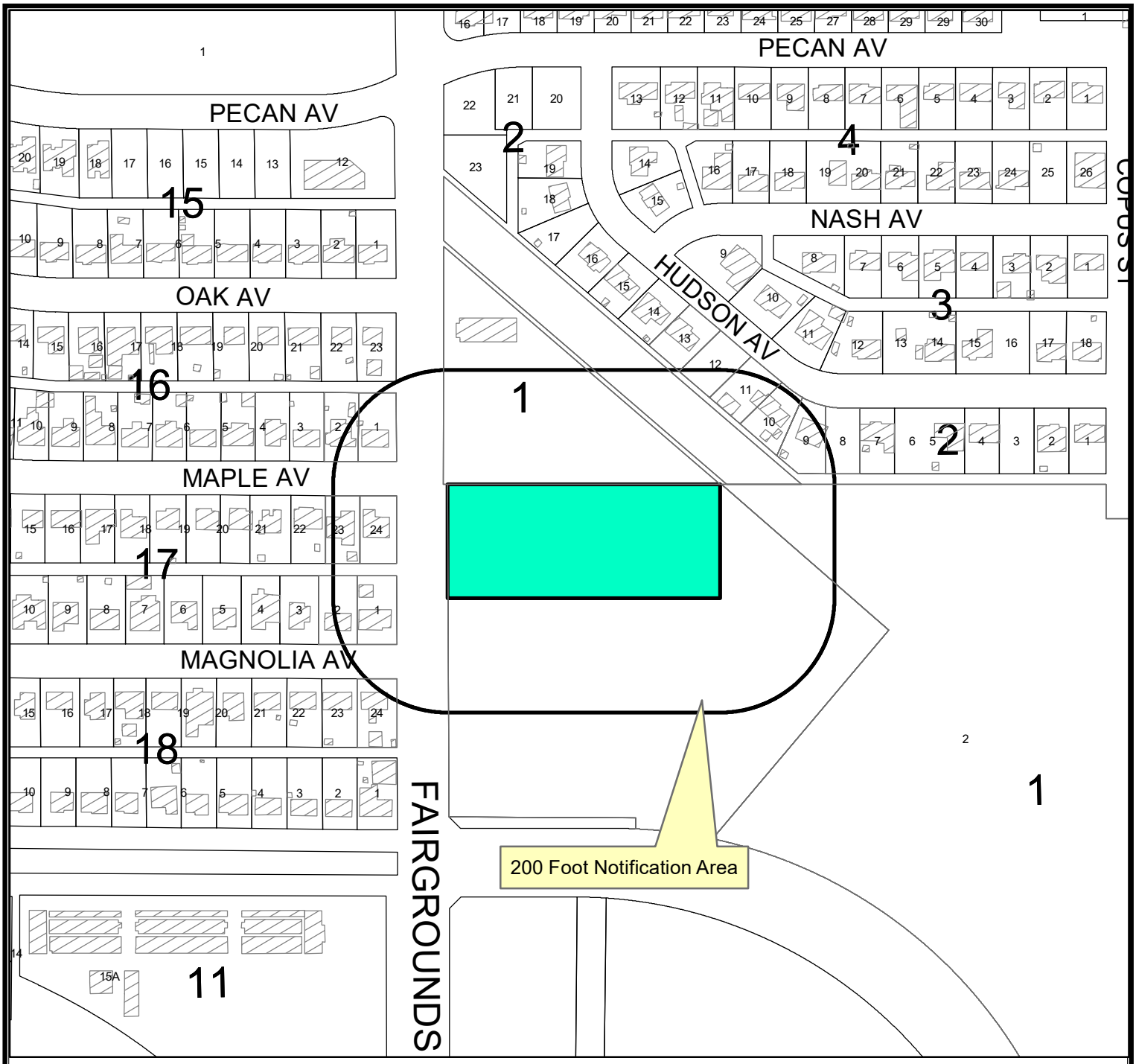
Subscribed and sworn to before me, this 9TH day of DECEMBER, 20 20, to certify which witness my hand and seal of office.

JULIE FRANCIS LOYD
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, ~~TEXAS~~
DAVIDSON TENNESSEE

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.****



LOCATION MAP

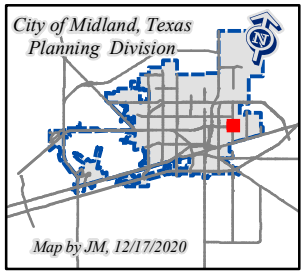
Z-20-0207 **Scale: 1" = 250'**

Consider a request by Midland (Fairgrounds) DTP, LLC for a zone change from PD, Planned Development District for a Housing Development to LR, Local Retail District on a 1.58 acre tract of land located in Section 31, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located southeast of the intersection of North Fairgrounds Road and Maple Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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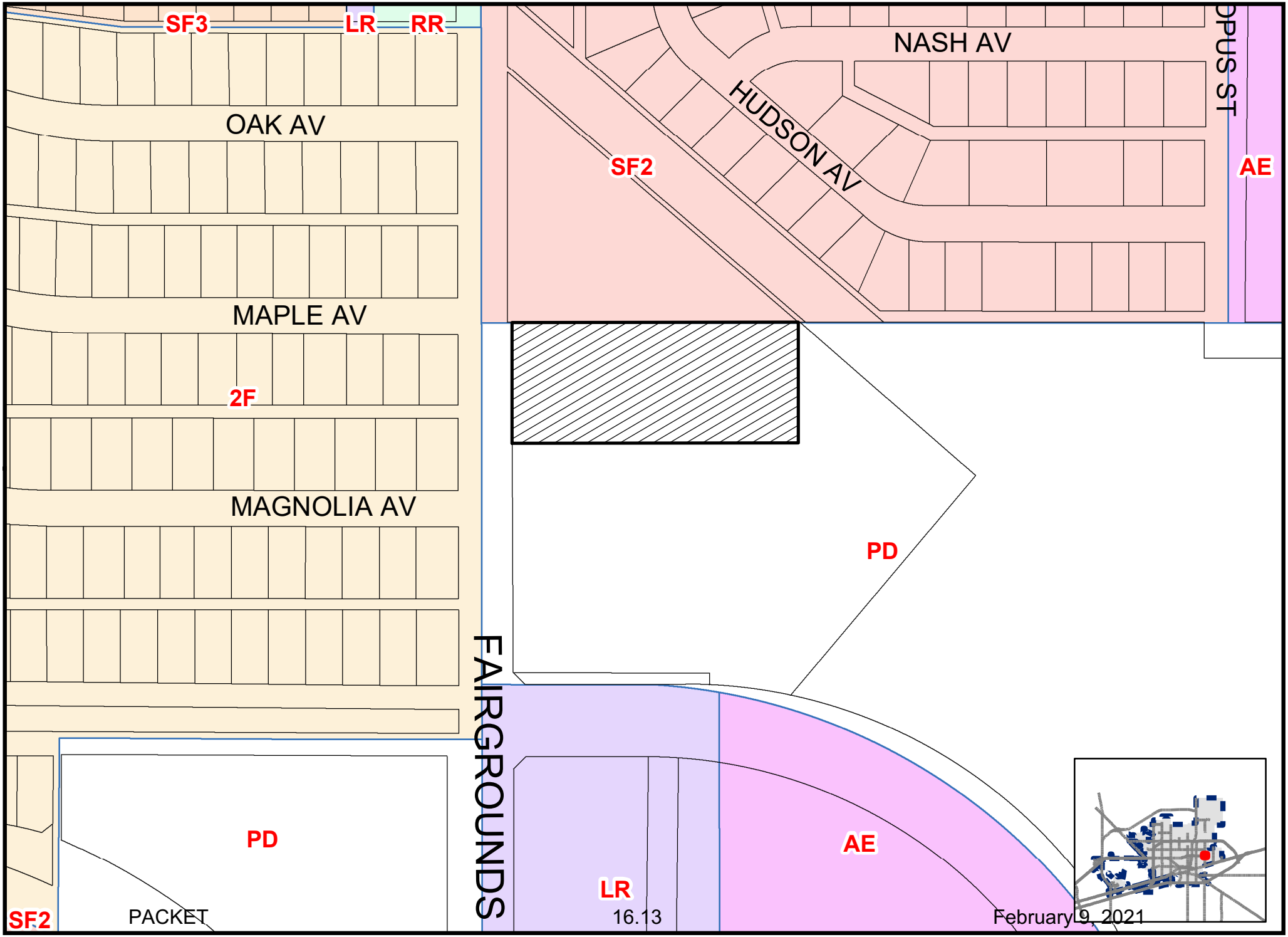
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



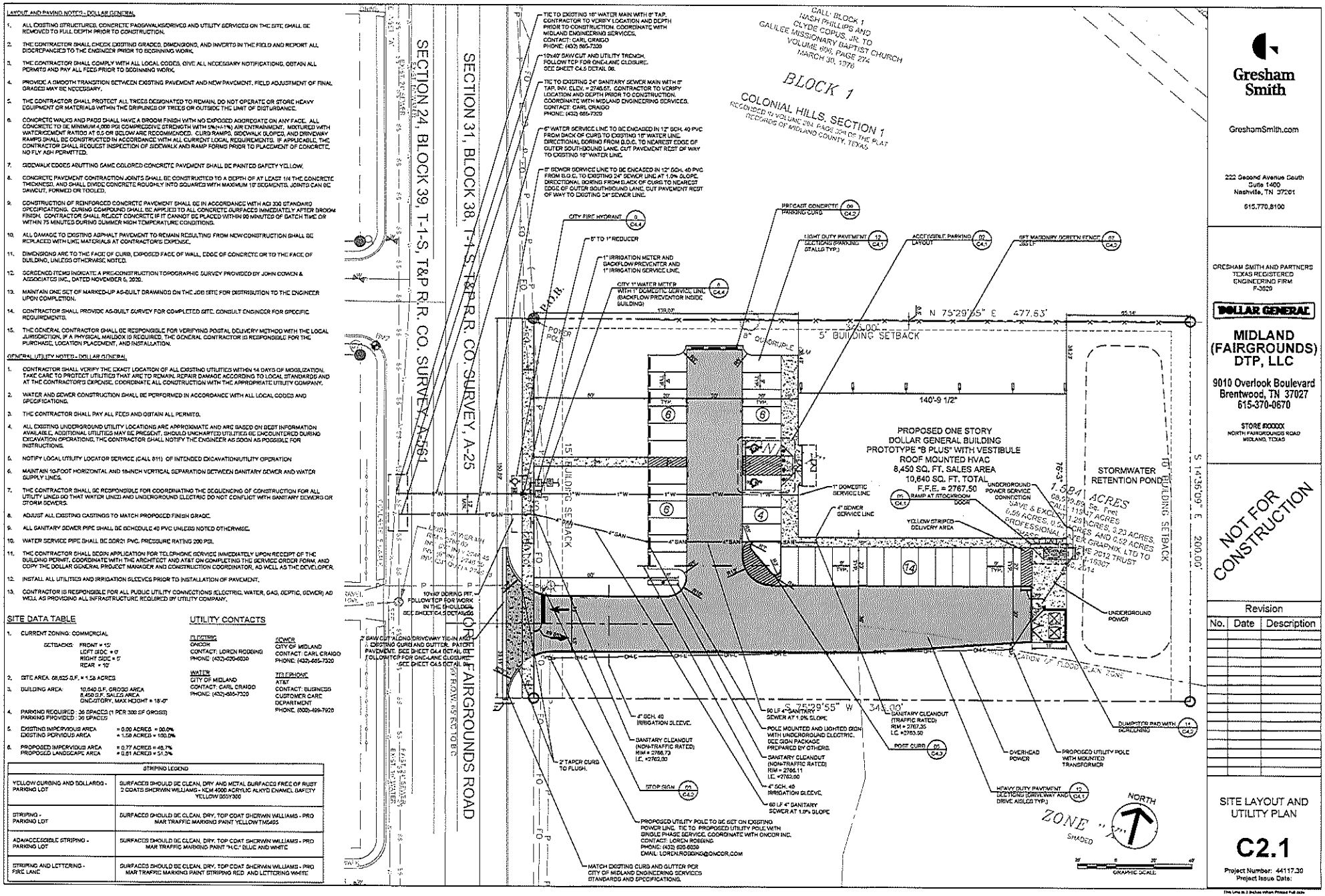
Map By JM, 12/18/2020

Z-20-0207

Scale: 1" = 200'

ZONING MAP

© **THE CITY OF MIDLAND - 2020:** THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Gresham Smith

GreshamSmith.com

222 Second Avenue South
Suite 1400
Nashville, TN 37201

615.770.8100

GRESHAM SMITH AND PARTNERS
TEXAS REGISTERED ENGINEERING FIRM
F-3629

DOLLAR GENERAL

MIDLAND (FAIRGROUNDS) DTP, LLC

9010 Overlook Boulevard
Brentwood, TN 37027
615-370-0670

STORE #00000
NORTH FAIRGROUNDS ROAD
MIDLAND, TEXAS

NOT FOR CONSTRUCTION

Revision

No.	Date	Description

SITE LAYOUT AND UTILITY PLAN

C2.1

Project Number: 44117.30
Project Issue Date:

ORDINANCE NO. 9851

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 26.15-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-1, LOCAL RETAIL DISTRICT, IN PART, AND AE, AGRICULTURE ESTATE DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 715 FEET SOUTH OF EAST PECAN 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 and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, as set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-1, Local Retail District, in part, and AE, Agriculture Estate District, in part, and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

A 26.15-acre tract of land out of the southwest quarter of Section 31, Block 38, 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.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

A. That the use and development of this property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That this property shall significantly conform to the site plan and elevations, which are attached hereto as Exhibits "B" through "F" and incorporated herein.

C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

D. That the parking shall conform to the regulations set forth in Title XI, Chapter 1 of the City Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 20th day of November, A.D., 2018; and passed to second reading on motion of Council member Love, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Lacy, seconded by Council member Sparks, on the 11th day of December, A.D., 2018, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 11th day of December, A.D., 2018.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

City Council Meeting

Item Number: 17

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: The proposed granting of oil and gas well permits to Diamondback E&P LLC for the drilling of the following oil and gas wells: Billings Unit 807WB and Missoula Unit 806WA; said wells being generally located between 409 feet and 410 feet north of Green Tree Blvd. Extension and between 2,022 feet and 2,042 feet west of North Midkiff Road Extension. (DEVELOPMENT SERVICES)

Purpose:

Diamondback E&P LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval. Diamondback E&P will be using at a minimum 24 ft. tall sound walls on the southerly side of the well pad during completion operations (frac and drillout). Sound walls may also be erected on the westerly side if needed. Diamondback E&P does have a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Diamondback E&P is requesting the following variances:

1. Requesting a variance for trees of 2”-3” in diameter due to having a greater survival rate

over a five-year period and have a growth rate greater than the 4” diameter requirements.
2. Requesting a variance to have perimeter fence around the four well pad site and the ability to remove either fence around pad site if and when the construction of greater perimeter is deemed and replace fence meeting the requirement of the applicable ordinance.
3. Requesting a variance to a larger reserve pit being 445 ft. X 227 ft. for the drilling of four separate wells on drilling pad which will result in a smaller footprint to the surface versus four separate reserve pits.
4. Requesting a variance to the pit closure requirement with the option to use a green bio technology treatment which will result in a low percentage of hydrocarbons in soil in an environmentally friendly state.
5. Requesting a variance to the hours of operation for fracture stimulations and to allow for frac operations to occur during a 24-hour period which will include the use of lights during such operations.

Attachments: Applications, Location maps, Exhibit - Drill site maps, Exhibit – Flow Line Location.

City Manager’s Office

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
11/24/2020	DIAMONDBACK E&P LLC	500 W. TEXAS AVE., STE 1200 MIDLAND, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
PAULA BRUNSON Regulatory Advisor	500 W. Texas Ave., Ste 1200 Midland, TX 79701	432-221-7442 Rep. Fax
Fee: $4,000.00 Rec'd Yes X No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A: Joel Martin, Production Manager

24/7 Answering Services - No. 1 (Tele.): 432-699-9332 No. 2 (Tele.): 432-238-9969

Option B: Joel Martin 500 W. Texas Ave., Ste 1200
432-238-9969 Midland, TX 79701

Company Compliance Representative (Name, Address, Local Telephone) *(ATTACH STATEMENT AS EXHIBIT A):*

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

(Same as above)

Other Permitted Wells in City *(ATTACH EXHIBIT B* [see § J(26)]).

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. See attached.
2.
3.

ATTACHED AS EXHIBIT C is a *Take-off from Amanda Gray , a Certified Petroleum Landman,* indicating that Diamondback E&P LLC has a legal right to develop the mineral estate that is the subject of this Application. [See J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Farming and pasture.

ATTACHED AS EXHIBIT D is *a Current Tax Roll from Midland Central Appraisal District* which lists the names and addresses of all surface owners within 860 feet of the surface well location. [See J(7)].

ATTACHED AS EXHIBIT E is a *(map / plat / satellite / aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map / plat / satellite / aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: BILLINGS UNIT 807WB

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit W.

Legal Description of Proposed Well Site:
SHL: 2022' FEL & 310' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719
BHL: 1047' FEL & 2590' FNL, T&P RR Co Svy, Blk 39, T-1-S, Sec. 17, A-37

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations)*. [See § J(16) and (20)].

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ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

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ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:
Existing water wells location in Section 8, Blk 39, T&P RR Co Svy will be used. Other nearby wells will be used if needed. Trucking will also be used if needed.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicaton are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certification. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

ATTACHED AS EXHIBIT V is Applicant's request for a variance to the hours of fracing operations.

Diamondback E&P LLC
[NAME OF COMPANY]

By Paula Brunson

Its Regulatory Advisor

State of Texas)

County of Midland)

Paula Brunson, Regulatory Advisor, personally appeared before me, and being first duly sworn, declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

CATHERINE NIBLO BRABHAM
Notary Public, State of Texas
Comm. Expires 11-14-2023
Notary ID 132253194

Catherine Niblo Brabham

Notary Public, State of Texas

[Seal]

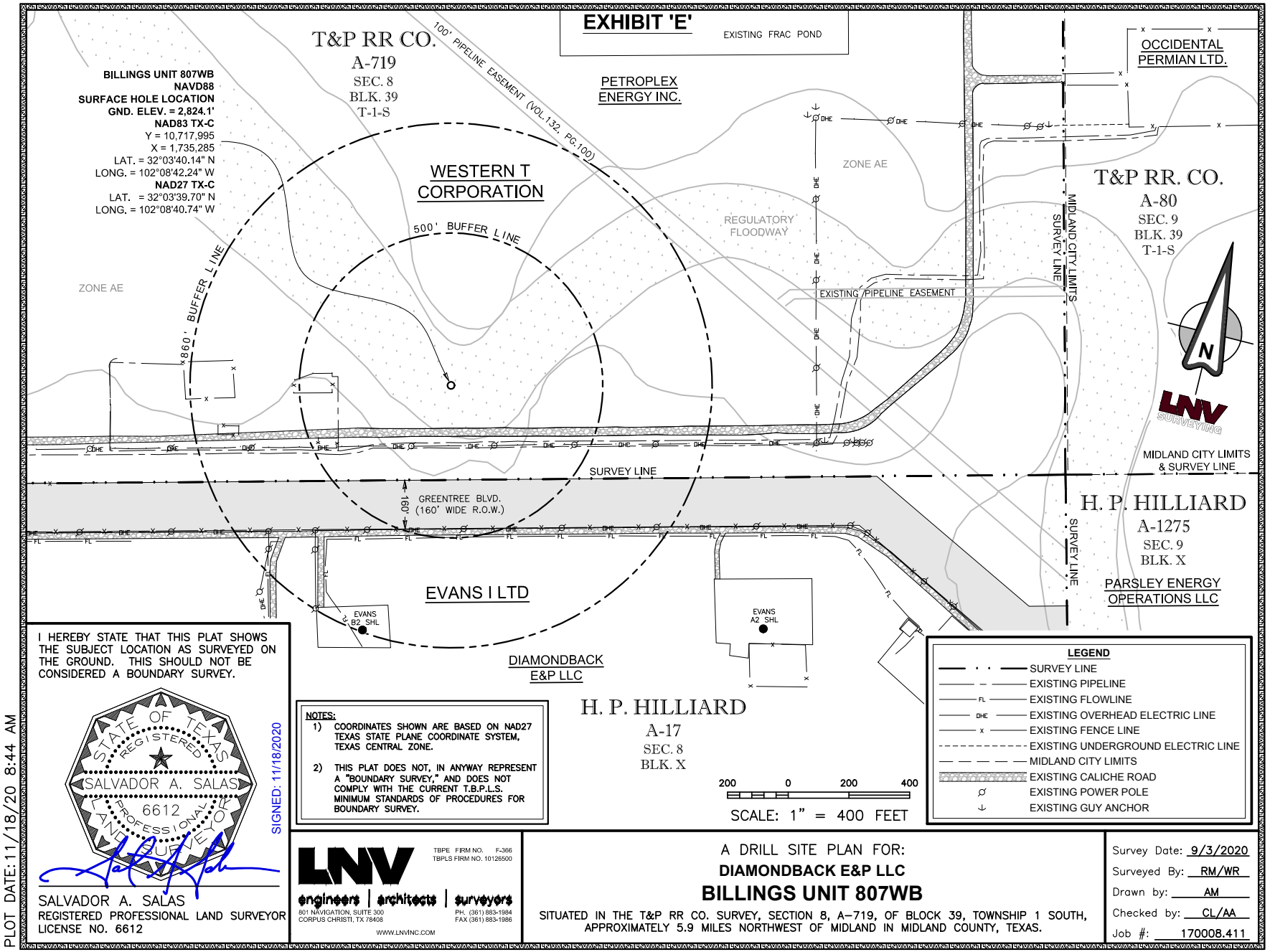
Attachment to
Application for Oil and Gas Permit

II. Mineral Ownership Billings Unit

Names and Addresses of Mineral Estate Lessors (under applicable lease):

Anguish Partnership P.O. Box 8015 Horseshoe Bay, TX 78657	Elaine Barnes P.O. Box 505 Midland, TX 79702
Barbara Hilseweck Wong, Trustee of The Barbara Hilseweck Wong Trust 1139 Waieli Street Honolulu, HI 96821-1244	GrayRock Minerals, LLC 5950 Cedar Springs Rd., Ste. 200 Dallas, TX 75235
Byrd McNeil Ball and Alice Hilseweck Ball, Trustees of The Ball Family Trust P.O. Box 12749 Dallas, TX 75225	Hilseweck Partnership 1139 Waieli Street Honolulu, HI 96821-1244
Carolyn J. Davis 3946 Freshwind Circle Westlake Village, CA 91361	Julie Ellen Barnes P.O. Box 505 Midland, TX 79702
Christine Barnes Mallams, a.k.a. Christine Motycka P.O. Box 505 Midland, TX 79702	McAfee Enterprises, L.P. P.O. Box 1087 Norman, OK 73070
Gloria R.A. Evans Ltd. P.O. Box 7962 Midland TX 79708	Mary Jane Lackey, as Trustee of the Trust Agreement of Mary Jane Lackey, dated November 20, 1998 1601 Ramona Drive Enid, OK 73703
Mary Turner P.O. Box 85 Mize, MS 39116	Mid Continental Exploration, Inc. P.O. Box 699 Sanger, TX 76266
Orman J. Hubbard, Jr. P.O. Box 512 Midland, TX 79702	Sidwell Oil & Gas, Inc. P.O. Box 9298 Amarillo, TX 79105
Steven C. Barnes P.O. Box 505 Midland, TX 79703	W. Carr Vincent 28 Springhill Road Des Moines, NM 88418
Terri Ann Williams, Trustee of Trust C 5230 Blodgett Ave. Downers Grove, IL 60515	Warwick Associates, L.C. P.O. Box 18405 Oklahoma City, OK 73154
Viper Energy Partners, L.L.C. 515 Central Park Drive, Suite 500 Oklahoma City, OK 73105	Evans Resources, L.P. P.O. Box 7962 Midland, TX 79708

Anguish Interests, LLC c/o Trust Division P.O. Box 2749 Longview, TX 75606	David Eric Ash 310 Berkeley Oak Shavano Park, TX 78230
Aspen Grove Royalty Company LLC P.O. Box 10588 Midland, TX 79702	Daniel J. Bates P.O. Box 162213 Austin, TX 78716
Brigham Minerals LLC 5914 W. Courtyard Dr., Ste. 200 Austin, TX 78730	Buckhorn Minerals III, LP 1800 Bering Drive, Ste. 1075 Houston, TX 77057
D&J Anguish Properties, Ltd c/o Trust Division P.O. Box 2749 Longview, TX 75606	D. Wynn Ent., LLC c/o Trust Division P.O. Box 2749 Longview, TX 75606
Jauer Energy LLC 25716 Creekside Cove Boerne, TX 78006	Primitive Petroleum Inc 4514 Robin Ln Midland, TX 79707
Santa Elena Minerals LP P.O. Box 2063 Midland, TX 79702	SBN 2015 Map, Ltd 5410 Bee Caves Rd. Austin, TX 78746
Richard W. Schmidt P.O. Box 50187 Austin, TX 79763	TX RIGG Resources, LLC P.O. Box 471192 Fort Worth, TX 76147
Turner Williams Family Rev Trust Donald W. Turner & Barbara T. Turner, Co-Trustees 4514 Tutbury Court Amarillo, TX 79119	Buckhorn Minerals III-QP, LP 1800 Bering Drive, Ste. 1075 Houston, TX 77057
Source Energy Leasehold, LP 3333 Welborn St., Ste. 400 Dallas, TX 75219	John Fontenot 10016 Sauve Oak Lane River Ridge, LA 70123
Lynn G. Harrison 808 Chrissys Cove Austin, TX 78733	Carol Wren 3300 Bee Caves Road #650-1151 Austin, TX 78746
Leander A. Reichle, Jr. P.O. Box 151 New Ulm, TX 78950	James P. Reichle, SSP P.O. Box 162893 Austin, TX 78716
SBN 2012 Energy Fund, Ltd 5410 Bee Caves Rd. Austin, TX 78746	CYS Investments, LLC c/o Clay Young Smith 56 Champions Run San Antonio, TX 78258
TTCZ Properties LLC c/o Wells Fargo Bank, N.A. Agent P.O. Box 40909 Austin, TX 78704	Amy Reichle, SSP 2952 Barton Skyway #482 Austin, TX 78746
John Christopher Dublin 5417 Fruitland Farm Rd. San Angelo, TX 76903	



I HEREBY STATE THAT THIS PLAT SHOWS THE SUBJECT LOCATION AS SURVEYED ON THE GROUND. THIS SHOULD NOT BE CONSIDERED A BOUNDARY SURVEY.

STATE OF TEXAS REGISTERED SALVADOR A. SALAS 6612 PROFESSIONAL LAND SURVEYOR

SIGNED: 11/18/2020

SALVADOR A. SALAS
REGISTERED PROFESSIONAL LAND SURVEYOR
LICENSE NO. 6612

NOTES:

1) COORDINATES SHOWN ARE BASED ON NAD27 TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE.

2) THIS PLAT DOES NOT, IN ANYWAY REPRESENT A "BOUNDARY SURVEY," AND DOES NOT COMPLY WITH THE CURRENT T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEY.

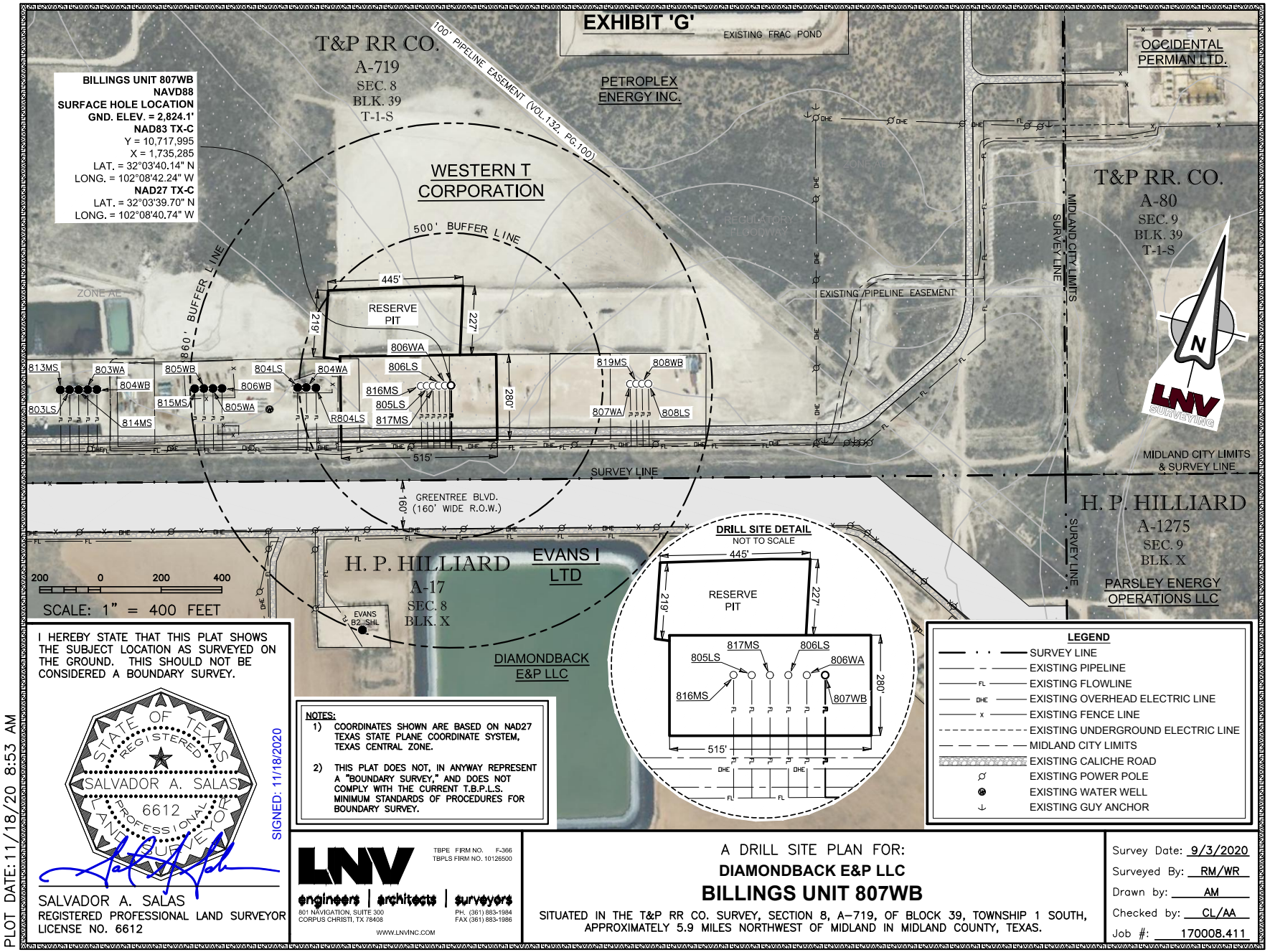
LNV
engineers | architects | surveyors
801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408
TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500
PH. (361) 883-1984
FAX (361) 883-1986
WWW.LNVINC.COM

A DRILL SITE PLAN FOR:
DIAMONDBACK E&P LLC
BILLINGS UNIT 807WB
SITUATED IN THE T&P RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 1 SOUTH, APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

Survey Date: 9/3/2020
Surveyed By: RM/WR
Drawn by: AM
Checked by: CL/AA
Job #: 170008.411

PLOT DATE: 11/18/20 8:44 AM

U:\Diamondback EP\170008 MSA\411 Billings Unit 807WB Midland County\90-Survey\Drawings\411 Billings Unit 807WB City Exhibit E Final.dwg



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REGISTERED
SALVADOR A. SALAS
6612
PROFESSIONAL
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SIGNED: 11/18/2020

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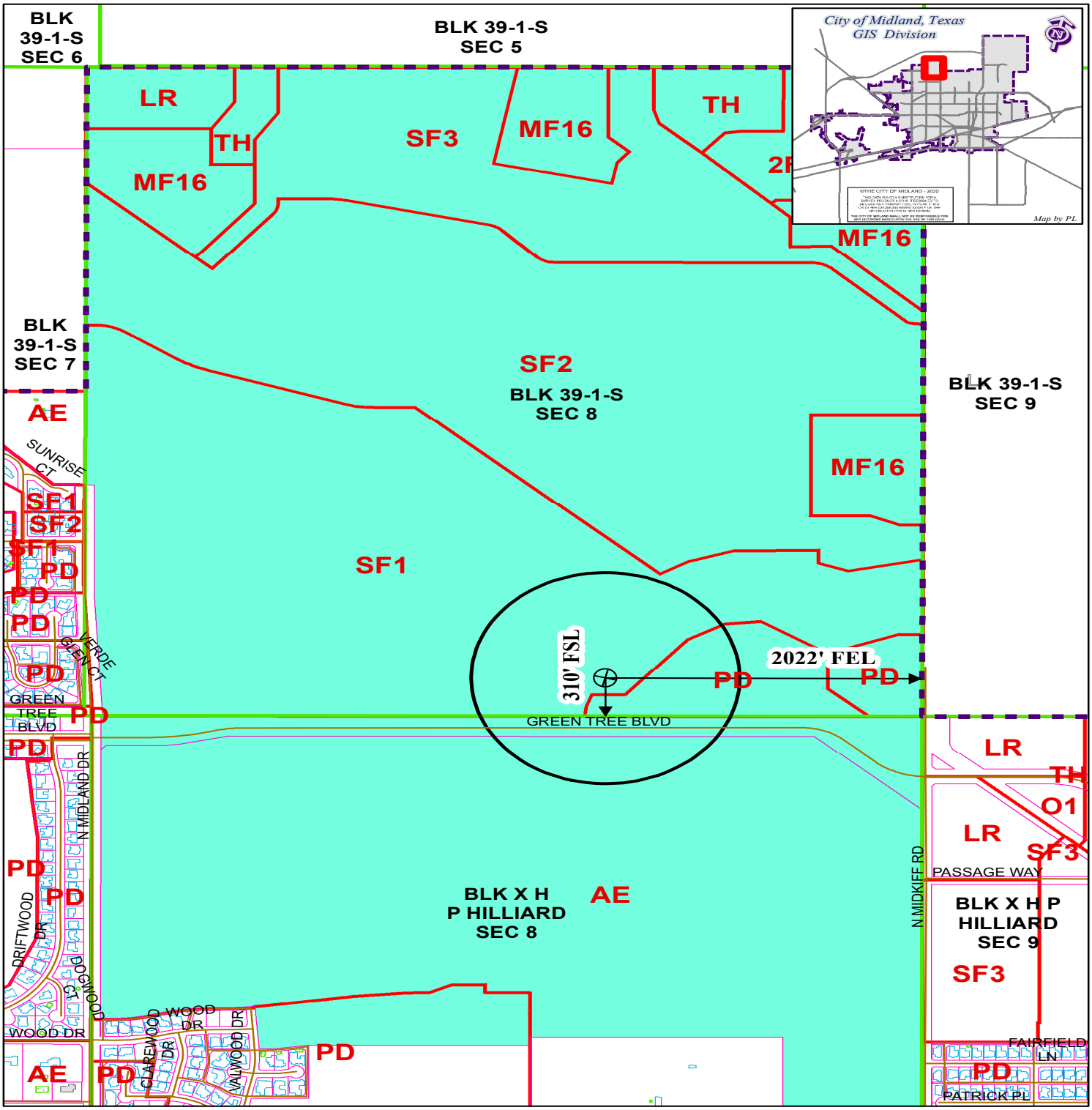

LOCATION AND ZONING MAP

Oil - 030512 - 2020 **Scale: 1" = 900'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 310' FSL and 2,022' FEL, Section 8, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 410 feet north of Green Tree Blvd. extension and 1,000 feet west of North Midkiff Road extension.

Billings Unit 807WB

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

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1. See attached.
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ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners. Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: MISSOULA UNIT 806WA

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit W.

Legal Description of Proposed Well Site:
SHL: 2042' FEL & 309' FSL, T&P RR Co Svy, Blk 39, T-1-S, Sec 8, A-719
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Diamondback E&P LLC
[NAME OF COMPANY]

By Paula Brunson

Its Regulatory Advisor

State of Texas)

County of Midland)

Paula Brunson, Regulatory Advisor, personally appeared before me, and being first duly sworn, declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

CATHERINE NIBLO BRABHAM
Notary Public, State of Texas
Comm. Expires 11-14-2023
Notary ID 132253194

Catherine Niblo Brabham

Notary Public, State of Texas

[Seal]

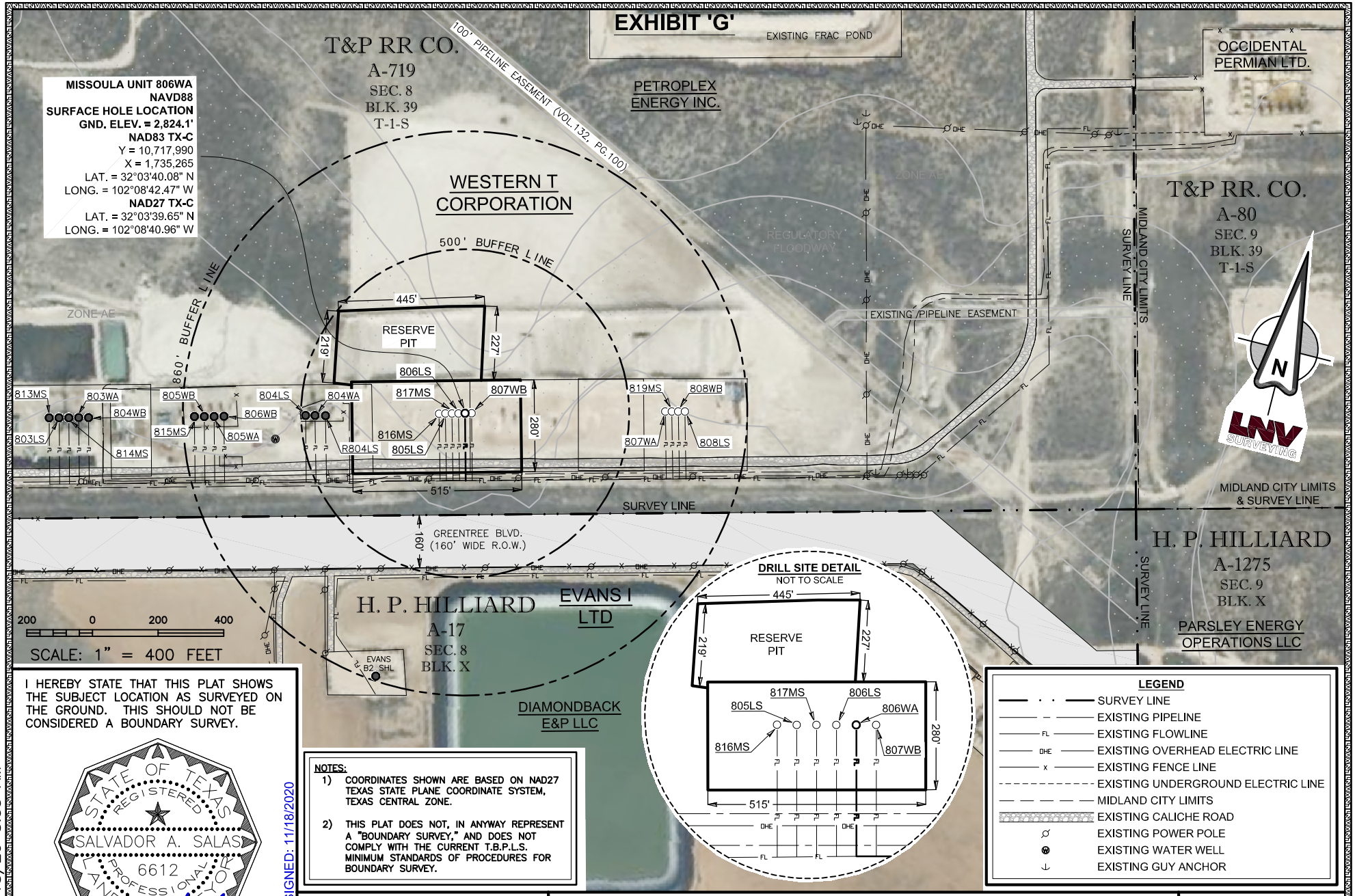
Attachment to
Application for Oil and Gas Permit

II. Mineral Ownership Missoula Unit

Names and Addresses of Mineral Estate Lessors (under applicable lease):

Anguish Partnership P.O. Box 63 Midland, TX 79702	Christine Barnes Mallams, a.k.a. Christine Motycka P.O. Box 505 Midland, TX 79702
Evans Resources, L.P. 3502 Mockingbird Ln Midland, TX 79707	D&J Anguish Properties, Ltd. 33819 Conroe Huffsmith Road Magnolia, TX 77354-5011
D. Wynn Ent., LLC 825 Good Springs Loop Willison, TN 38076	Anguish Interests, LLC 350 C.R. 2664 Eureka Springs, AR 72631
Brigham Minerals 5914 W. Courtyard Dr. Bridgepoint Plaza II, Ste. 200 Austin, TX 78730	SBN 2015 Map 5410 Bees Caves Rd. Austin, TX 78746
Clay Young Smith 56 Champions Run San Antonio, TX 78258	Jauer Energy, LLC 25716 Creekside Cove Boerne, TX 78006
David Eric Ash 310 Berkeley Oak Shavano Park, TX 78230	Buckhorn Minerals II, LLP 1800 Bering Dr, STE 1075 Houston, TX 77057
Alva Energy, LLC P.O. Box 10151 Midland, TX 79702	Sidwell Oil & Gas, Inc. P.O. Box 9298 Amarillo, TX 79105
Santa Elena Minerals, LP P.O. Box 2063 Midland, TX 79702	Texas Redhand, LLC P.O. Box 2840 Midland, TX 79702
Powers Acquisitions, LLC P.O. Box 470972 Fort Worth, TX 76147	RRIG Energy, LLC P.O. Box 471192 Fort Worth, TX 76147
Primitive Petroleum 4514 Robin Lane Midland, TX 79707	RRIG Permian I, LLC P.O. Box 471195 Fort Worth, TX 76147
Barbara Hilseweck Wong, Trustee of The Barbara Hilseweck Wong Trust P.O. Box 12749 Dallas, TX 75225	Carolyn J. Davis 3946 Freshwind Circle Westlake Village, CA 91361
Gloria R.A. Evans Ltd. P.O. Box 7962 Midland TX 79708	Aspen Grove Royalty Company, LLC P.O. Box 10588 Midland, TX 79701

Byrd McNeil Ball and Alice Hilseweck Ball, Trustees of The Ball Family Trust P.O. Box 12749 Dallas, TX 75225	Elaine Barnes P.O. Box 505 Midland, TX 79702
Donald W. Turner and Barara Theresa Turner Co-Trustees of the Ball Family Trust 4514 Tutbury Court Amarillo, TX 79119	GrayRock Minerals, LLC 5950 Cedar Springs Rd Dallas, TX 75235
John R. Michener and/or John M. Michener, JTWROS 1908 Midcress Plano TX 75075	Hilseweck Partnership P.O. Box 12749 Dallas, TX 75225
Julie Barnes and Christine Motycka, Co-Trustees of the Laurie B. Barr Family Trust Wells Fargo Bank, N.A, Agent for the Laurie Barr Family Trust P.O. Box 1959 Midland, TX 79702	Julie Ellen Barnes P.O. Box 505 Midland, TX 79702
Mary Jane Lackey, as Trustee of the Trust Agreement of Mary Jane Lackey, dated November 20, 1998 1601 Ramona Drive Enid, OK 73703	McAfee Enterprises, L.P. Attn: Mark Williams P.O. Box 1087 Norman, OK 73070
Mary Turner P.O. Box 85 Mize, MS 39116	Warwick Associates, L.C. P.O. Box 18405 Oklahoma City, OK 73154
Mid Continental Exploration, Inc. P.O. Box 699 Sanger, TX 76266	W. Carr Vincent 28 Springhill Road Des Moines, NM 88418
Orman J. Hubbard, Jr. P.O. Box 512 Midland, TX 79702	John Dublin, Jr. 5417 Fruitland Farm Road San Angelo, TX 76903
Steven C. Barnes P.O. Box 505 Midland, TX 79703	Viper Energy Partners 500 W. Texas Ave, Ste. 1200 Midland, TX 79701
Terri Ann Williams, Trustee of Trust C 1100 S. Pickard Norman, OK 73069	



I HEREBY STATE THAT THIS PLAT SHOWS THE SUBJECT LOCATION AS SURVEYED ON THE GROUND. THIS SHOULD NOT BE CONSIDERED A BOUNDARY SURVEY.

STATE OF TEXAS
REGISTERED
SALVADOR A. SALAS
6612
PROFESSIONAL
LAND SURVEYOR

SIGNED: 11/18/2020

SALVADOR A. SALAS
REGISTERED PROFESSIONAL LAND SURVEYOR
LICENSE NO. 6612

NOTES:

1) COORDINATES SHOWN ARE BASED ON NAD27 TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE.

2) THIS PLAT DOES NOT, IN ANYWAY REPRESENT A "BOUNDARY SURVEY," AND DOES NOT COMPLY WITH THE CURRENT T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEY.

LNV
engineers | architects | surveyors
801 NAVIGATION, SUITE 300
CORPUS CHRISTI, TX 78408
TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126500
PH. (361) 883-1984
FAX (361) 883-1986
WWW.LNVINC.COM

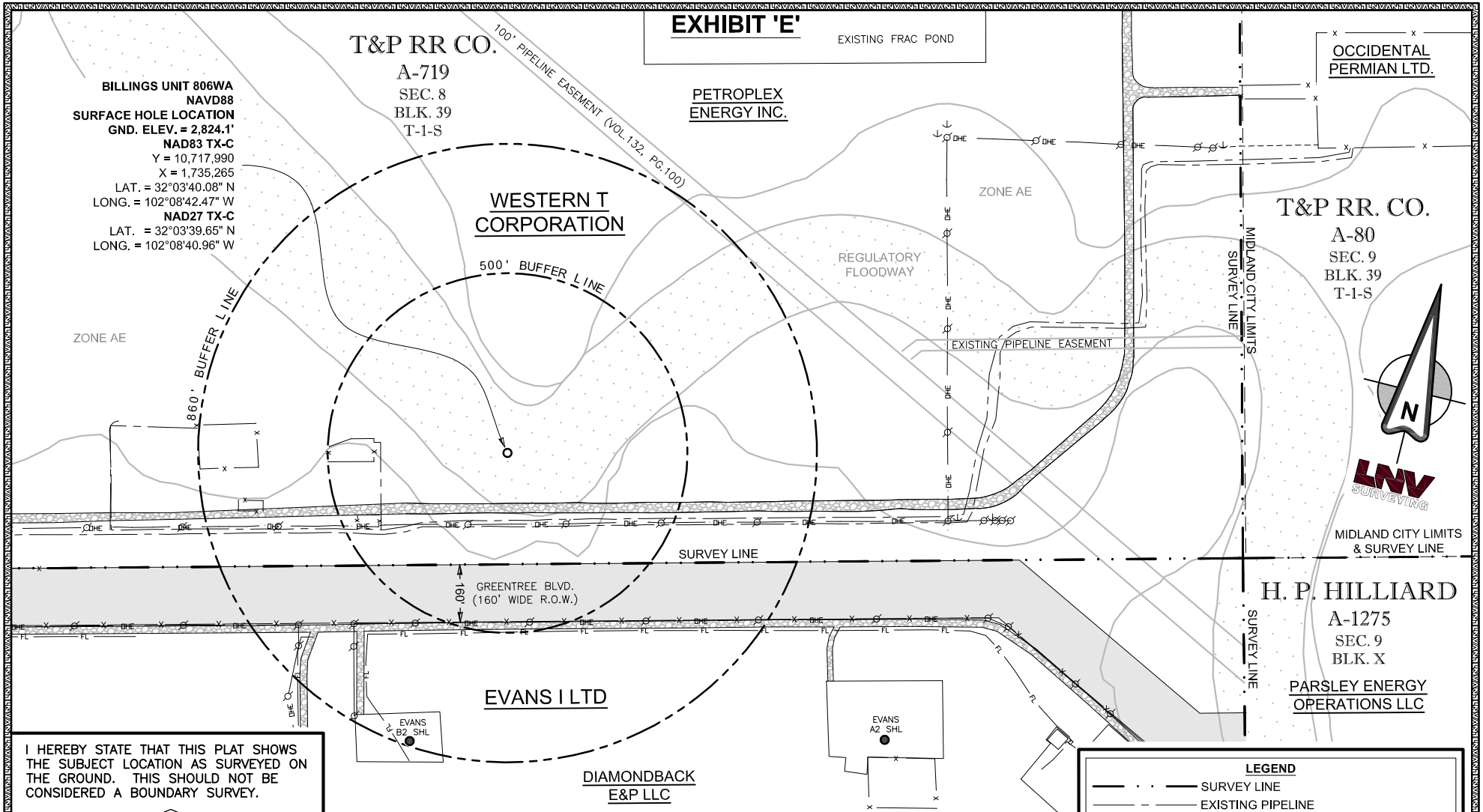
A DRILL SITE PLAN FOR:
DIAMONDBACK E&P LLC
MISSOULA UNIT 806WA
SITUATED IN THE T&P RR CO. SURVEY, SECTION 8, A-719, OF BLOCK 39, TOWNSHIP 1 SOUTH, APPROXIMATELY 5.9 MILES NORTHWEST OF MIDLAND IN MIDLAND COUNTY, TEXAS.

Survey Date: 9/3/2020
Surveyed By: RM/WR
Drawn by: AM
Checked by: CL/AA
Job #: 170008.412

PLOT DATE: 11/18/20 8:53 AM

U:\Diamondback EP\170008 MSA\412 Missoula Unit 806WA Midland County\90-Survey\Drawings\412 Missoula Unit 806WA City Exhibit G Aerial- F.dwg

EXHIBIT 'E'



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LEGEND

- SURVEY LINE
- EXISTING PIPELINE
- FL — EXISTING FLOWLINE
- OHE — EXISTING OVERHEAD ELECTRIC LINE
- x — EXISTING FENCE LINE
- EXISTING UNDERGROUND ELECTRIC LINE
- MIDLAND CITY LIMITS
- EXISTING CALICHE ROAD
- EXISTING POWER POLE
- EXISTING GUY ANCHOR

LNV
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DIAMONDBACK E&P LLC

MISSOULA UNIT 806WA

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Survey Date: 9/3/2020
Surveyed By: RM/WR
Drawn by: AM
Checked by: CL/AA
Job #: 170008.412

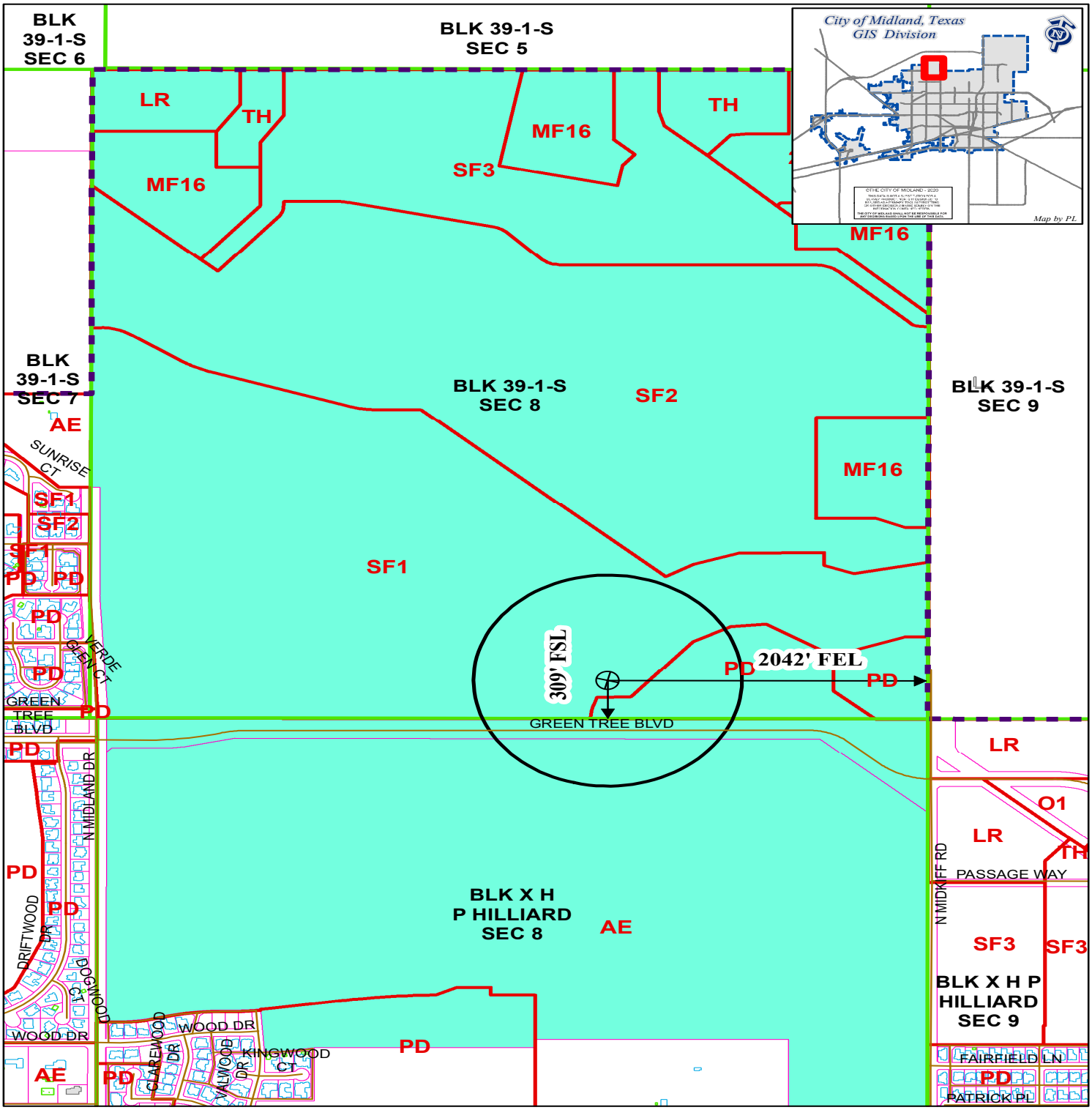
PLOT DATE: 11/18/20 8:54 AM

PACKET

1 of 17

February 9, 2021

U:\Diamondback EP\170008 MSA\412 Missoula Unit 806WA Midland County\90-Survey\Drawings\412 Missoula Unit 806WA City Exhibit E- F.dwg



LOCATION AND ZONING MAP

Oil - 030515 - 2020 **Scale: 1" = 900'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 309' FSL and 2,042' FEL, Section 8, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 409 feet north of Green Tree Blvd. extension and 2,042 feet west of North Midkiff Road extension.

Missoula Unit 806WA

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL
MH	MOBILE HOME DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		

City Council Meeting

Item Number: 18

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 4, REPLAT OF WINDWOOD PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND ELM AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA AND A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LR, LOCAL RETAIL DISTRICT TO MF-16, MULTIPLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Liliana Vergara, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot area and width dimensions to be able to rezone the described property from LR, Local Retail District to MF-16, Multiple-Family Dwelling District.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 2100 N. Main Street. This property is currently zoned LR, Local Retail District and is vacant. The applicant has submitted a zone change application to MF-16, Multiple Family Dwelling District to develop a quadruplex.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

MF-16, Multiple-Family Dwelling District
Lot dimensions
Minimum Lot Area:
Corner Lot: 2-Acres (87,120 Square Feet)
Minimum Lot Width:
Corner Lot: 150 Feet

The applicant's property is a corner lot and would have to meet the minimum lot area of 2-acres (87,120 square feet) and the minimum lot width of 150-feet as listed in the zoning ordinance, in order to be rezoned to MF-16, Multiple Family Dwelling District.

The applicant is requesting to reduce the required minimum lot area for the proposed lot to be approximately 0.316-acres, and the width dimension for the lot to be approximately 77.80-feet to be able to proceed with the rezone process.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved with Conditions)

Driveway spacing does not meet City Code. On Main St, start of curb cut must be at least 40 ft from intersection corner and 10 ft from alley with max driveway width is 40 ft. On Elm St, minimum 5 ft landing is required between ped ramps.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas issues.

Building: (Approved)

No Issues.

Planning Analysis:

The Future Land Use Plan calls for urban-medium neighborhood center uses, which calls for a mix of housing types. However, as this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart.*

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

A. **That the property shall significantly conform to the site plan as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the minimum lot area for this property shall be 0.316-acres, and the minimum lot width for this property shall be 77.80-feet.**

Letters of Objection:

As of February 3, 2021, staff has not received any letters of objections.

Attachments:

Site Plan (Exhibit A)
Application
Maps

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 4, REPLAT OF WINDWOOD PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND ELM AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA AND A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM LR, LOCAL RETAIL DISTRICT TO MF-16, MULTIPLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 8, Block 4, Replat of Windwood Park, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot area and a reduced minimum lot width in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from LR, Local Retail District to MF-16, Multiple-Family Dwelling District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the dimensions of the Property shall conform to the dimensions shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the minimum lot area shall be 0.316 acres.

C. That the minimum lot width shall be 77.80 feet.

E. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

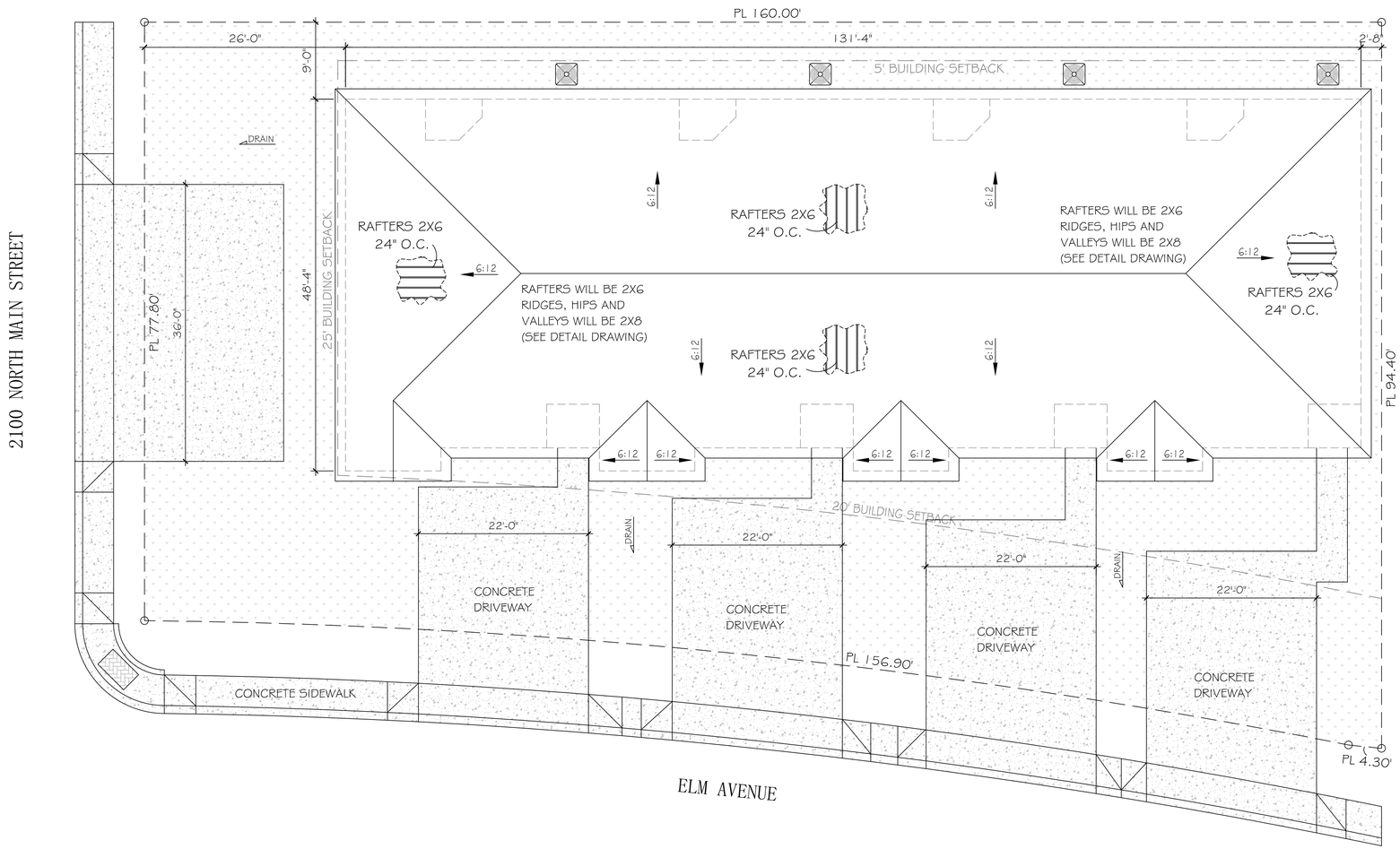
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

PAGE	DRAWINGS
1	SITE PLAN
1	ROOF PLAN
2	FLOOR PLAN
2	ELECTRICAL
3	ELEVATIONS
4	FOUNDATIONS
5	DETAILS
5	GENERAL NOTES
5	PLANS ACCEPTANCE

GENERAL NOTES:
*DO NOT SCALE MEASUREMENTS FROM DRAWING. DRAWINGS MAY BE DISTORTED DUE TO REPRODUCTION PROCESS, SO USE WRITTEN DIMENSIONS OR CALCULATE MATHEMATICALLY.
*CONTRACTOR SHALL VERIFY ALL DIMENSIONS, SETBACKS, AND CONDITIONS ON DRAWINGS AND SHALL BE RESPONSIBLE FOR ALL ADJUSTMENTS AND VARIATIONS MADE TO THE DRAWINGS IN THE FIELD.



SITE PLAN
SCALE: 1/8" = 1'-0"

EXHIBIT "A"

LEGAL DESCRIPTION

SUBDIVISION	
WINWOOD PARK ADD.	
BLOCK	LOT(S)
4	8

CONTRAST HOME DESIGNS

CUSTOM HOME PLANS
CONSTRUCTION DRAWINGS
(432) 230-7072
SINCE 2009 ODESSA TX
Contrast_Homes@Outlook.com

Project Name and Address
4-PLEX
2100 N MAIN ST
MIDLAND TEXAS

Builder/General Contractor
L2 DIVERSIFIED INVESTMENTS

Notes

Drawn by
Daniel O.

Date
01/25/21

Plan#
P201512

Sheet
1 of 5

©2020 CONTRAST HOME DESIGNS COL 322

NOTE: **This is not a legal survey.** This site plan is only a sketch based upon information found in maps, surveys, public records and field measurements. It is offered for information purposes to identify structures, utilities, roads, and similar elements related to the property. It is the responsibility of the owner/contractor to verify exact locations and distances for all legal purposes, through a professional land survey prepared by a licensed surveyor or civil engineer.

PAGE	DRAWINGS
1	SITE PLAN
1	ROOF PLAN
2	FLOOR PLAN
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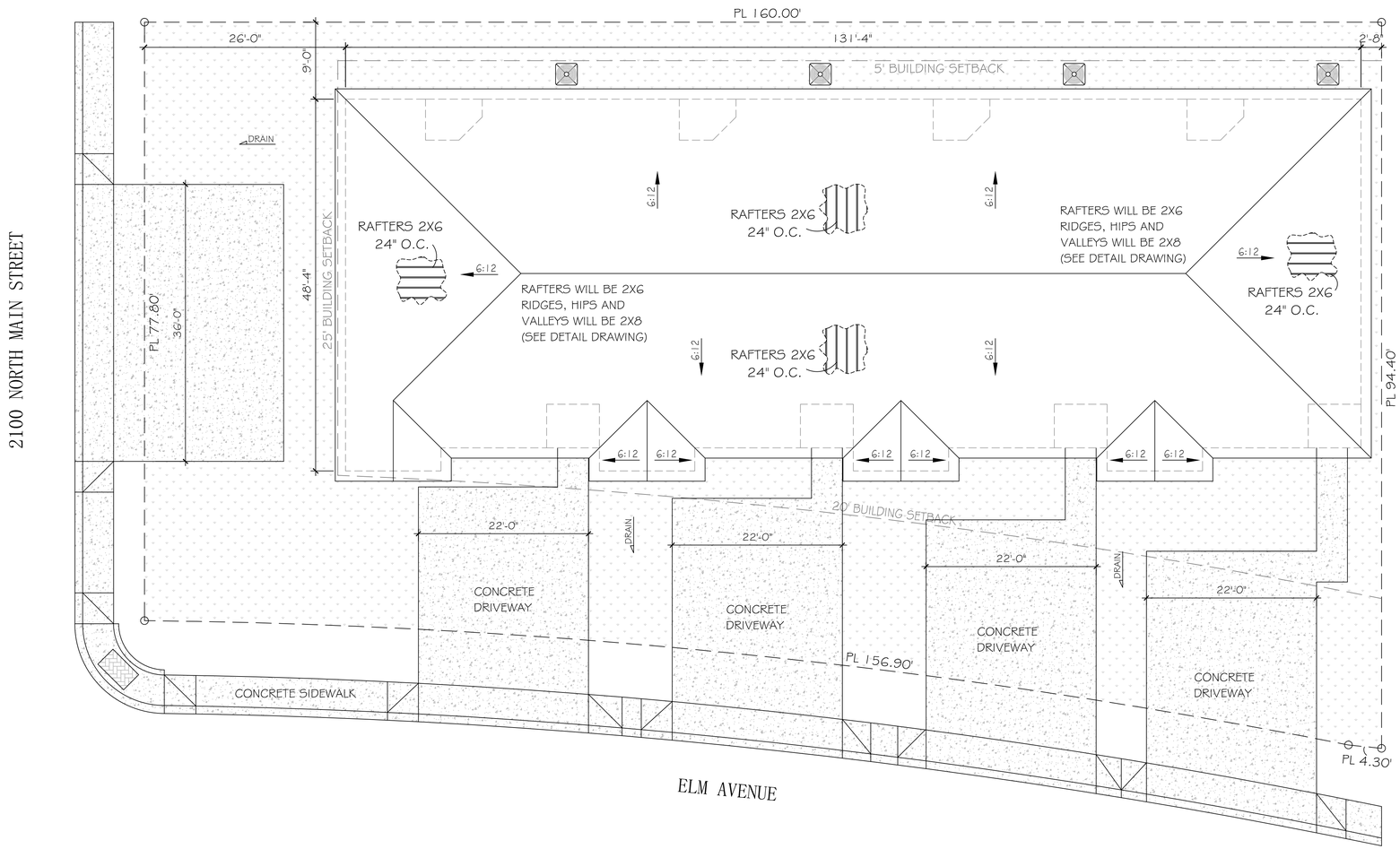

SITE PLAN
SCALE: 1/8" = 1'-0"

LEGAL DESCRIPTION

SUBDIVISION	
WINWOOD PARK ADD.	
BLOCK	LOT(S)
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MIDLAND Planning Division

Special Exception Application

Project Number: E-21-0044

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Liliana Vergara			Phone (570)3803550 Email members@12diversifiedinvestments.com
Address 5507 San Clemente Dr	City Midland	State TX	Zip 79707

Property Owner Printed Name: Liliana Vergara			Phone (570) 3803550 Email members@12diversifiedinvestments.com
Address 5507 San Clemente Dr	City Midland	State TX	Zip 79707

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:			Phone ( ) Email
Address	City	State	Zip

Street Address: 2100 N Main St

Legal Description
Lot: 8 Block: 4 Subdivision: Winwood Park

Current Zoning: LR Local Retail district

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☑ The addition of architectural or other projections of a minor extent.

Reason for Request: The lot does not meet the requiered minimum lot depth and width.

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):	Date: 01/14/21
Applicant (printed): Liliana Vergara	
Property Owner (signature):	Date: 01/14/21
Property Owner (printed): Liliana Vergara	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

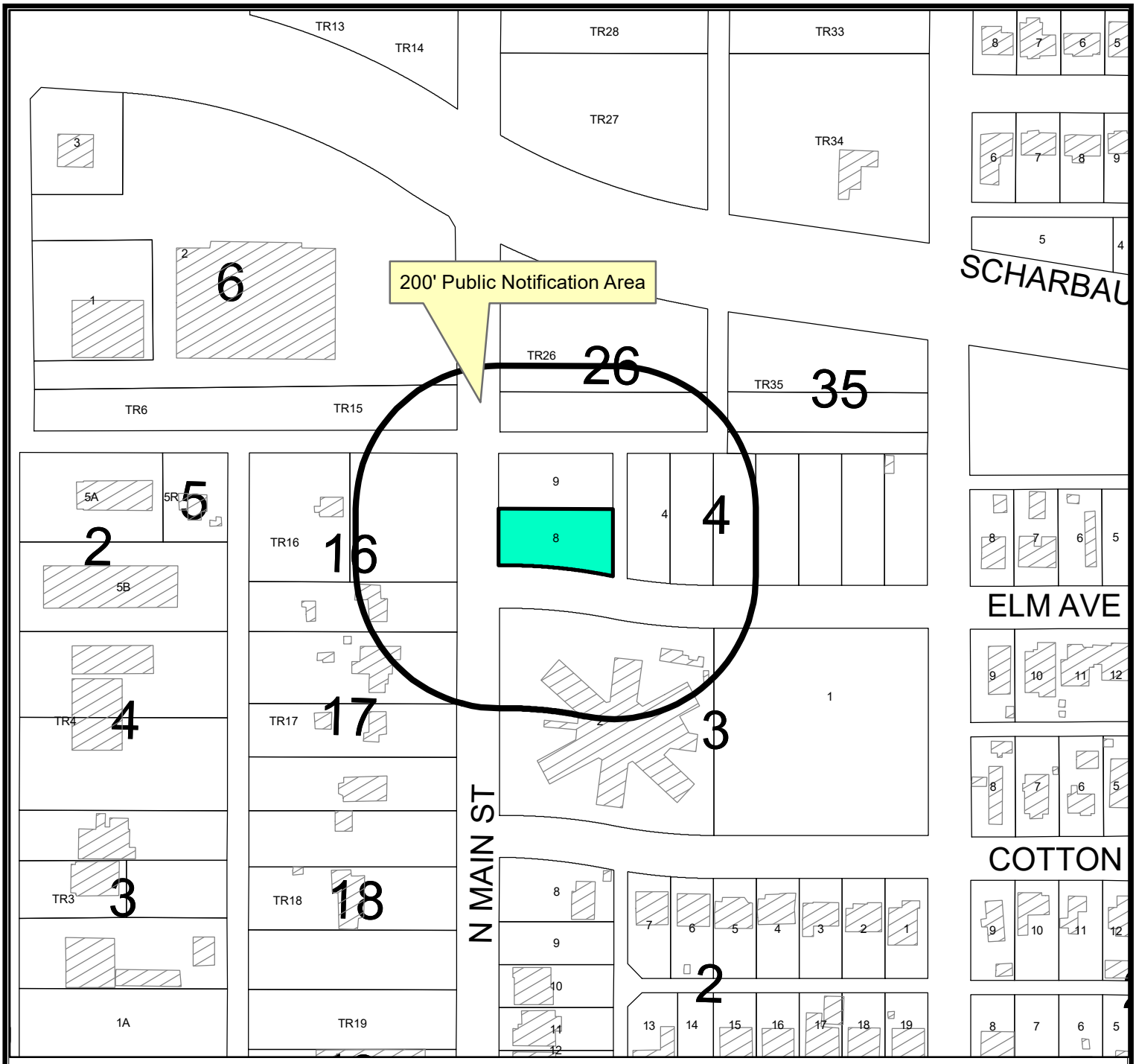
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # Credit Card	
Received By: Emailed	Date: 1/14/21

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

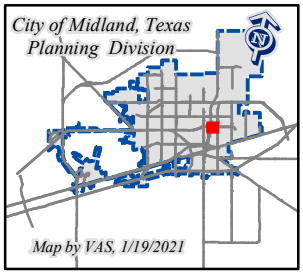
E-21-0044 **Scale: 1" = 200'**

Consider a request by Liliana Vergara for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot area and width on Lot 8, Block 4, Replat of Windwood Park, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of N. Main Street and Elm Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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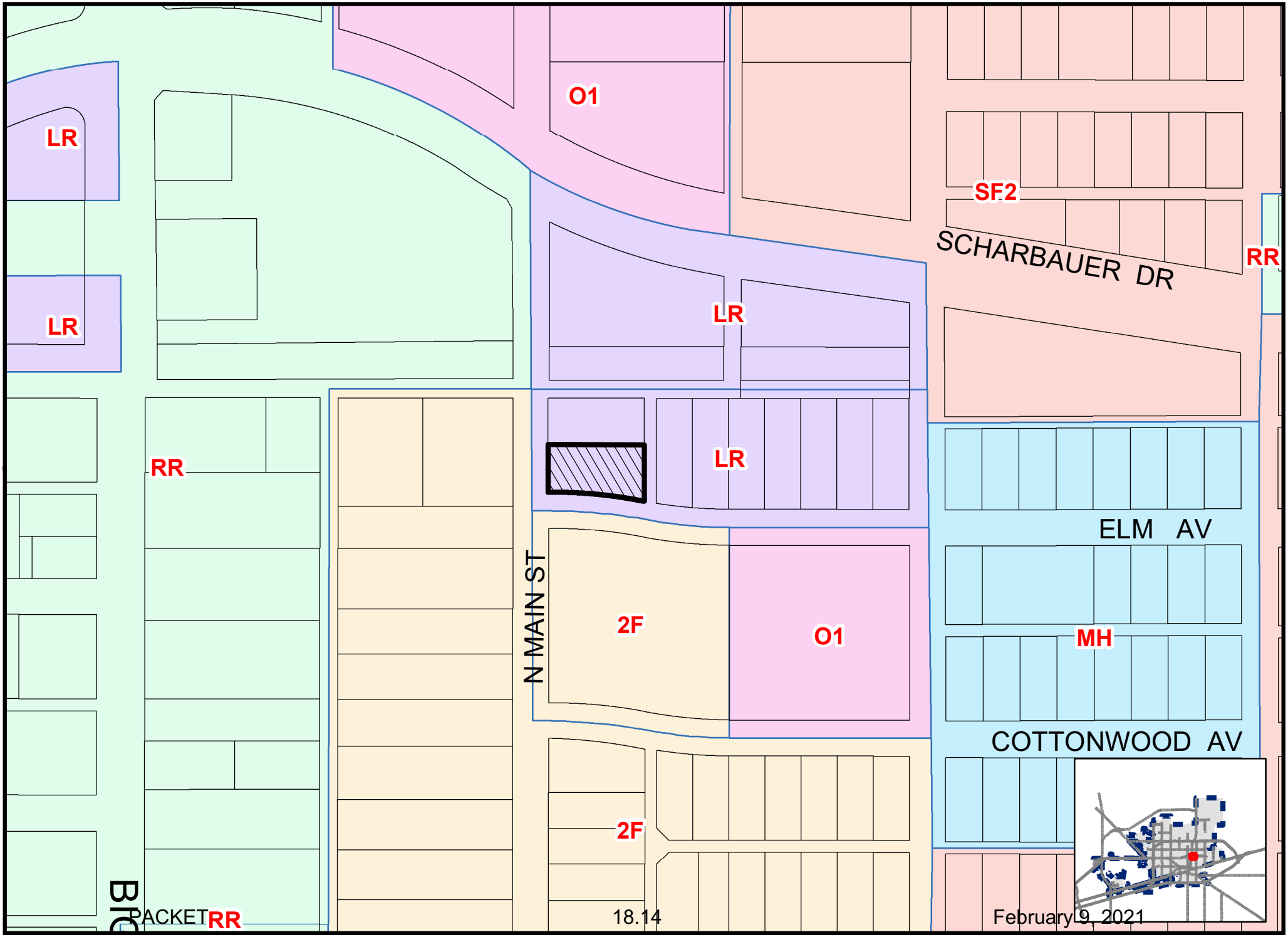
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By VAS, 1/19/2021

E-21-0044

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

STOP

City Council Meeting

Item Number: 19

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Midland (Fairgrounds) DTP, LLC, is requesting a special exception to City of Midland Zoning Ordinance, 6.01.A - Screening Required Between Nonresidential and Residential to allow a wood screening wall with a reduced height.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located southeast of the intersection of North Fairgrounds Road and Maple Avenue and the location of vacant land. The applicant is requesting a special exception to the required screening wall material and height for the property's northern boundary. The property is currently in the process of being rezoned to LR, Local Retail District to allow for the development of a retail establishment, which would require an eight-foot masonry screen wall along the property line shared with existing development in a residential zone. The property to the north is zoned SF-2, Single Family Dwelling District and the location of a church.

As shown on the proposed site plan, the length of the wall would be approximately 480 feet. The applicant is proposing to replace this wall with a six-foot tall, wooden fence.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection to zone change.

Fire: (Approved)

No objection.

Code Compliance: (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.

Building: (Approved)

No objections

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, *6.01.A - Screening Required Between Nonresidential and Residential* to allow a wood screening wall with a reduced height.

Should the City Council approve this request, the property shall be subject to condition A:

Conditions:

A. **That the screening wall required along the northern property line shall be allowed to be a six-foot tall, wood fence as shown in Exhibit B.**

Letters of Objection:

As of February 3, 2021, staff has not received any letters of objection

Attachments:

Metes and Bounds (Exhibit A)
Site Plan (Exhibit B)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the

purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as a 1.58-acre tract of land out of Section 31, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (the "Property"), said Property being more fully described in Exhibit "A", which is attached hereto and incorporated herein for all purposes. Said special exception shall allow a non-masonry screening wall of a reduced height along the northern boundary of the Property (the "Wall") in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from PD, Planned Development District for a Housing Development to LR, Local Retail District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the Wall shall be at least six feet in height, but not more than 10 feet in height.

B. That the Wall shall be constructed of wood or masonry materials.

C. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

FIRM REGISTRATION NO:
10025500

10147 CR 135
FLINT, TEXAS 75762

903.581.2238
TXSURVEYS.COM

FIELD NOTES FOR GBT REALTY
Southwest Quarter of Section 31, Block 38
Township 1 South, T&P R.R. Co. Survey, Abstract No. 25
Midland County, Texas

All that certain lot, tract, or parcel of land, being part of the Southwest Quarter of Section 31, Block 38, Township 1 South, T&P R.R. Co. Survey, Abstract No. 25, Midland County, Texas, and being part of that certain called 119.47 acre tract described in a deed from Professional Lazer Graphix, LTD to the Chase W. Gardaphe 2012 Trust on July 18, 2014, recorded in Document No. 2014-18367 of the Official Public Records of Midland County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Northwest corner of the above mentioned 119.47 acre tract, the Southwest corner of Block 1 of Colonial Hills, Section 1, as shown by plat of same recorded in Volume 294, Page 399 of the Plat Records of Midland County, Texas, in the East right of way of North Fairgrounds Road;

THENCE North 75 deg. 29 min. 55 sec. East with the South line of Block 1, the North line of the 119.47 acre tract, distance of 345.00 ft. to a ½" iron rod (set) for corner;

THENCE South 14 deg. 36 min. 09 sec. East a distance of 200.00 ft. to a ½" iron rod (set) for corner;

THENCE South 75 deg. 29 min. 55 sec. West a distance of 345.00 ft. to a ½" iron rod (set) for corner in the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road;

THENCE North 14 deg. 36 min. 09 sec. West with the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road a distance of 200.00 ft. to the place of beginning, containing 1.584 acres of land.

Bearing oriented to Grid North of the Texas State Plane Coordinate System, NAD83, Central Zone 4203.

I, PHILIP W. CORNETT, Registered Professional Land Surveyor No. 5515, do hereby certify that the above field notes were prepared from an actual survey made on the ground under my direction and supervision.

GIVEN UNDER MY HAND AND SEAL, this the 10th day of December, 2020.

PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres

STATE OF TEXAS
REGISTERED
PHILIP W. CORNETT
5515
PROFESSIONAL
LAND SURVEYOR

JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

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GIVEN UNDER MY HAND AND SEAL, this the 10th day of December, 2020.

PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres

LAYOUT AND PAVING NOTES - DOLLAR GENERAL

1. ALL EXISTING STRUCTURES, CONCRETE PADS/WALKS/DRIVES AND UTILITY SERVICES ON THE SITE SHALL BE REMOVED TO FULL DEPTH PRIOR TO CONSTRUCTION.
2. THE CONTRACTOR SHALL CHECK EXISTING GRADES, DIMENSIONS, AND INVERTS IN THE FIELD AND REPORT ALL DISCREPANCIES TO THE ENGINEER PRIOR TO BEGINNING WORK.
3. THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL CODES, GIVE ALL NECESSARY NOTIFICATIONS, OBTAIN ALL PERMITS AND PAY ALL FEES PRIOR TO BEGINNING WORK.
4. PROVIDE A SMOOTH TRANSITION BETWEEN EXISTING PAVEMENT AND NEW PAVEMENT. FIELD ADJUSTMENT OF FINAL GRADES MAY BE NECESSARY.
5. THE CONTRACTOR SHALL PROTECT ALL TREES DESIGNATED TO REMAIN. DO NOT OPERATE OR STORE HEAVY EQUIPMENT OR MATERIALS WITHIN THE DRIPLINES OF TREES OR OUTSIDE THE LIMIT OF DISTURBANCE.
6. CONCRETE WALKS AND PADS SHALL HAVE A BROOM FINISH WITH NO EXPOSED AGGREGATE ON ANY FACE. ALL CONCRETE TO BE MINIMUM 4,000 PSI COMPRESSIVE STRENGTH WITH 5%(+/-1%) AIR ENTRAINMENT. MIXTURES WITH WATER/CEMENT RATIOS AT 0.5 OR BELOW ARE RECOMMENDED. CURB RAMPS, SIDEWALK SLOPES, AND DRIVEWAY RAMPS SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL CURRENT LOCAL REQUIREMENTS. IF APPLICABLE, THE CONTRACTOR SHALL REQUEST INSPECTION OF SIDEWALK AND RAMP FORMS PRIOR TO PLACEMENT OF CONCRETE. NO FLY ASH PERMITTED.
7. SIDEWALK EDGES ABUTTING SAME COLORED CONCRETE PAVEMENT SHALL BE PAINTED SAFETY YELLOW.
8. CONCRETE PAVEMENT CONTRACTION JOINTS SHALL BE CONSTRUCTED TO A DEPTH OF AT LEAST 1/4 THE CONCRETE THICKNESS, AND SHALL DIVIDE CONCRETE ROUGHLY INTO SQUARES WITH MAXIMUM 10' SEGMENTS. JOINTS CAN BE SAWCUT, FORMED OR TOOLED.
9. CONSTRUCTION OF REINFORCED CONCRETE PAVEMENT SHALL BE IN ACCORDANCE WITH ACI 330 STANDARD SPECIFICATIONS. CURING COMPOUND SHALL BE APPLIED TO ALL CONCRETE SURFACES IMMEDIATELY AFTER BROOM FINISH. CONTRACTOR SHALL REJECT CONCRETE IF IT CANNOT BE PLACED WITHIN 90 MINUTES OF BATCH TIME OR WITHIN 75 MINUTES DURING SUMMER HIGH TEMPERATURE CONDITIONS.
10. ALL DAMAGE TO EXISTING ASPHALT PAVEMENT TO REMAIN RESULTING FROM NEW CONSTRUCTION SHALL BE REPLACED WITH LIKE MATERIALS AT CONTRACTOR'S EXPENSE.
11. DIMENSIONS ARE TO THE FACE OF CURB, EXPOSED FACE OF WALL, EDGE OF CONCRETE OR TO THE FACE OF BUILDING, UNLESS OTHERWISE NOTED.
12. SCREENED ITEMS INDICATE A PRE-CONSTRUCTION TOPOGRAPHIC SURVEY PROVIDED BY JOHN COWEN & ASSOCIATES INC., DATED NOVEMBER 5, 2020.
13. MAINTAIN ONE SET OF MARKED-UP AS-BUILT DRAWINGS ON THE JOB SITE FOR DISTRIBUTION TO THE ENGINEER UPON COMPLETION.
14. CONTRACTOR SHALL PROVIDE AS-BUILT SURVEY FOR COMPLETED SITE. CONSULT ENGINEER FOR SPECIFIC REQUIREMENTS.
15. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING POSTAL DELIVERY METHOD WITH THE LOCAL JURISDICTION. IF A PHYSICAL MAILBOX IS REQUIRED, THE GENERAL CONTRACTOR IS RESPONSIBLE FOR THE PURCHASE, LOCATION PLACEMENT, AND INSTALLATION.

GENERAL UTILITY NOTES - DOLLAR GENERAL

1. CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL EXISTING UTILITIES WITHIN 14 DAYS OF MOBILIZATION. TAKE CARE TO PROTECT UTILITIES THAT ARE TO REMAIN. REPAIR DAMAGE ACCORDING TO LOCAL STANDARDS AND AT THE CONTRACTOR'S EXPENSE. COORDINATE ALL CONSTRUCTION WITH THE APPROPRIATE UTILITY COMPANY.
2. WATER AND SEWER CONSTRUCTION SHALL BE PERFORMED IN ACCORDANCE WITH ALL LOCAL CODES AND SPECIFICATIONS.
3. THE CONTRACTOR SHALL PAY ALL FEES AND OBTAIN ALL PERMITS.
4. ALL EXISTING UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE AND ARE BASED ON BEST INFORMATION AVAILABLE. ADDITIONAL UTILITIES MAY BE PRESENT. SHOULD UNCHARTED UTILITIES BE ENCOUNTERED DURING EXCAVATION OPERATIONS, THE CONTRACTOR SHALL NOTIFY THE ENGINEER AS SOON AS POSSIBLE FOR INSTRUCTIONS.
5. NOTIFY LOCAL UTILITY LOCATOR SERVICE (CALL 811) OF INTENDED EXCAVATION/UTILITY OPERATION
6. MAINTAIN 10-FOOT HORIZONTAL AND 18-INCH VERTICAL SEPARATION BETWEEN SANITARY SEWER AND WATER SUPPLY LINES.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING THE SEQUENCING OF CONSTRUCTION FOR ALL UTILITY LINES SO THAT WATER LINES AND UNDERGROUND ELECTRIC DO NOT CONFLICT WITH SANITARY SEWERS OR STORM SEWERS.
8. ADJUST ALL EXISTING CASTINGS TO MATCH PROPOSED FINISH GRADE.
9. ALL SANITARY SEWER PIPE SHALL BE SCHEDULE 40 PVC UNLESS NOTED OTHERWISE.
10. WATER SERVICE PIPE SHALL BE SDR21 PVC. PRESSURE RATING 200 PSI.
11. THE CONTRACTOR SHALL BEGIN APPLICATION FOR TELEPHONE SERVICE IMMEDIATELY UPON RECEIPT OF THE BUILDING PERMIT. COORDINATE WITH THE ARCHITECT AND AT&T ON COMPLETING THE SERVICE ORDER FORM, AND COPY THE DOLLAR GENERAL PROJECT MANAGER AND CONSTRUCTION COORDINATOR, AS WELL AS THE DEVELOPER.
12. INSTALL ALL UTILITIES AND IRRIGATION SLEEVES PRIOR TO INSTALLATION OF PAVEMENT.
13. CONTRACTOR IS RESPONSIBLE FOR ALL PUBLIC UTILITY CONNECTIONS (ELECTRIC, WATER, GAS, SEPTIC, SEWER) AS WELL AS PROVIDING ALL INFRASTRUCTURE REQUIRED BY UTILITY COMPANY.

SITE DATA TABLE

1. CURRENT ZONING: COMMERCIAL
   SETBACKS: FRONT = 15'
   LEFT SIDE = 0'
   RIGHT SIDE = 5'
   REAR = 10'
2. SITE AREA: 68,825 S.F. = 1.58 ACRES
3. BUILDING AREA: 10,640 S.F. GROSS AREA
   8,450 S.F. SALES AREA
   ONE-STORY, MAX HEIGHT = 18'-0"
4. PARKING REQUIRED : 36 SPACES (1 PER 300 SF GROSS)
   PARKING PROVIDED : 36 SPACES
5. EXISTING IMPERVIOUS AREA = 0.00 ACRES = 00.0%
   EXISTING PERVIOUS AREA = 1.58 ACRES = 100.0%
6. PROPOSED IMPERVIOUS AREA = 0.77 ACRES = 48.7%
   PROPOSED LANDSCAPE AREA = 0.81 ACRES = 51.3%

STRIPING LEGEND	
YELLOW CURBING AND BOLLARDS - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY AND METAL SURFACES FREE OF RUST 2 COATS SHERWIN WILLIAMS - KEM 4000 ACRYLIC ALKYD ENAMEL SAFETY YELLOW B55Y300
STRIPING - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT YELLOW TM5495
ADA/ACCESSIBLE STRIPING - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT "H.C." BLUE AND WHITE
STRIPING AND LETTERING - FIRE LANE	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT STRIPING RED AND LETTERING WHITE

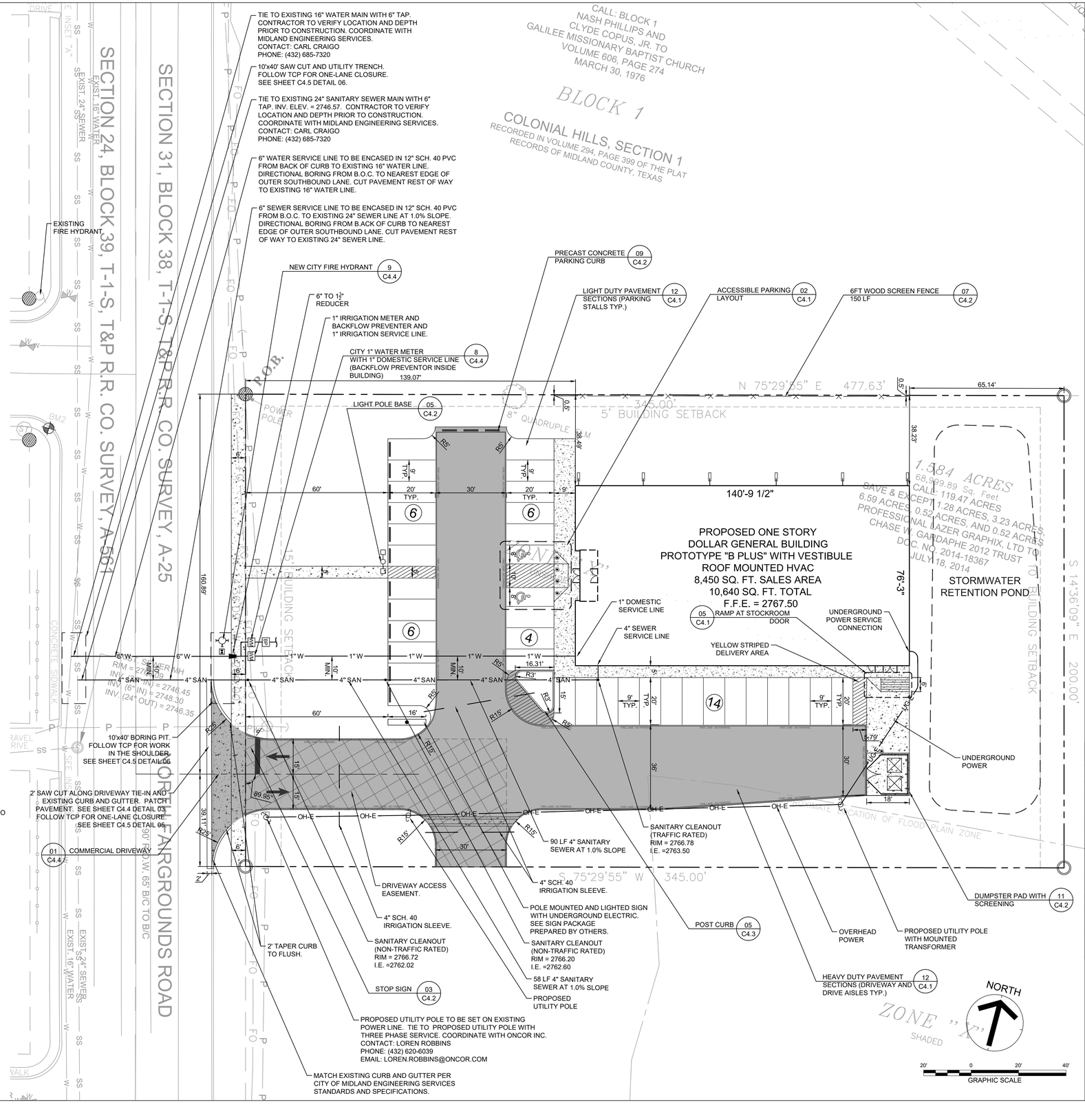
UTILITY CONTACTS

ELECTRIC
ONCOR
CONTACT: LOREN ROBBINS
PHONE: (432)-620-6039

WATER
CITY OF MIDLAND
CONTACT: CARL CRAIGO
PHONE: (432)-685-7320

SEWER
CITY OF MIDLAND
CONTACT: CARL CRAIGO
PHONE: (432)-685-7320

TELEPHONE
AT&T
CONTACT: BUSINESS CUSTOMER CARE DEPARTMENT
PHONE: (800)-499-7928



Gresham Smith

GreshamSmith.com

222 Second Avenue South
Suite 1400
Nashville, TN 37201

615.770.8100

GRESHAM SMITH AND PARTNERS
TEXAS REGISTERED ENGINEERING FIRM
F-3629

DOLLAR GENERAL

MIDLAND (FAIRGROUNDS) DTP, LLC

9010 Overlook Boulevard
Brentwood, TN 37027
615-370-0670

STORE #22969
NORTH FAIRGROUNDS ROAD
MIDLAND, TEXAS

NOT FOR CONSTRUCTION

Revision

No.	Date	Description

SITE LAYOUT AND UTILITY PLAN

C2.1

Project Number: 44117.39
Project Issue Date: 01/12/2021

This Line Is 3 Inches When Printed Full Size

PACKET
19.10
February 9, 2021

\\global.gspdata.net\fna_nfs\44117\39\Work\01\CAD\SLP44117.39_C2.1_24x36.dwg - Ethan Rutledge - 1/27/2021 11:33:07 AM

MIDLAND
Planning Division

Special Exception Application

Project Number: E-21-0046

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: MIDLAND (FAIRGROUNDS) DTP, LLC		Phone (615) 370-0670 Email GGLASER@GBTREALTY.COM	
Address 9010 Overlook Blvd.	City Brentwood	State TN	Zip 37027

Property Owner Printed Name: Gardaphe Chase W 2012 Trust		Phone (832) 766-3656 Email GARDAPHE@GMAIL.COM	
Address 1320 N. Fairgrounds Road	City Midland	State TX	Zip 79706

Representative *(if different from Applicant or Property Owner)* Firm: Midland (Fairgrounds) DTP, LLC Printed Name: BOB GAGE		Phone (615) 370-8670 Email BGAGE@GBTREALTY.COM	
Address 9010 Overlook Blvd.	City Brentwood	State TN	Zip 37027

Street Address: TBD

Legal Description
Lot: Block: 38 Subdivision: SE Qtr. Section 31, Twp. 1 S, T&P RR Co. Survey, Abstract # 25

Current Zoning: PD - Planned Development, Developer has requested LR - Local Retail

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: The adjoining lot to the north is Zoned SF-2. Midland's zoning ordinance requires a 8' masonry wall when commercial development is adjacent to residential. In our case the existing use of the adjecent lot is not residential. This lot has an abandoned church that is 250' north of our lot line. We would like to request a variance to install a 6' wood screen fence vs. 8' masonry wall.

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):	Date: 01/14/21
Applicant (printed): Greg Glaser, Development Manager	
Property Owner (signature): DocuSigned by: Chase Gardapalu CE2820ED85A641C...	Date: 1/13/2021
Property Owner (printed) : Gardaphe Chase W 2012 Trust, Chase Gardaphe, Manager	

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~~ TENNESSEE
COUNTY OF ~~MIDLAND~~ DAVIDSON

Before me, the undersigned authority, on this day personally appeared GREG GLASER who, being by me duly sworn, upon oath says: That (s)he is authorized by GARDAPHE CHASE W 2012 TRUST the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 14TH day of JANUARY, 20 21, to certify which witness my hand and seal of office.

JULIA FRANKS LOYD STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON

NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, ~~TEXAS~~ DAVIDSON TENNESSEE

FOR OFFICE USE ONLY

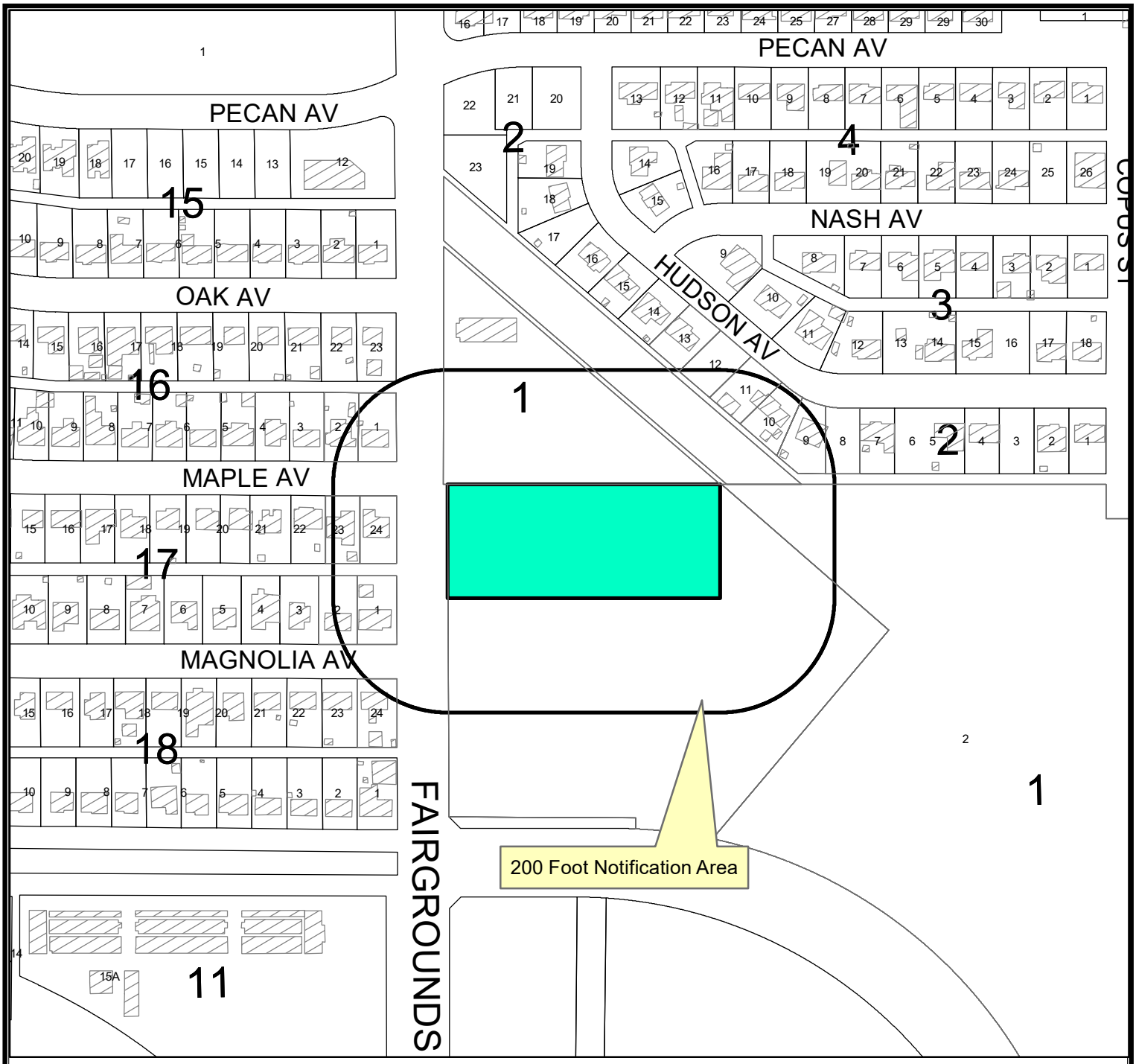
- ☑ Property Owner Authorization
- ☑ Application Fee
  Check # 024234
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)

Received By: Crystal Burns

Date: JAN 15 2021 RECEIVED

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

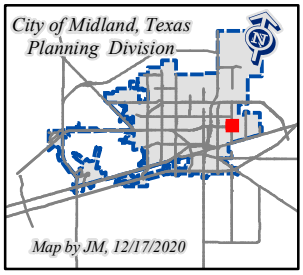
E-21-0046 **Scale: 1" = 250'**

Consider a request by Midland (Fairgrounds) DTP, LLC for a Special Exception from the City of Midland Zoning Ordinance, 6.01.A - Screening Required Between Nonresidential and Residential to allow a wood screening wall with a reduced height on a 1.58 acre tract of land located in Section 31, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

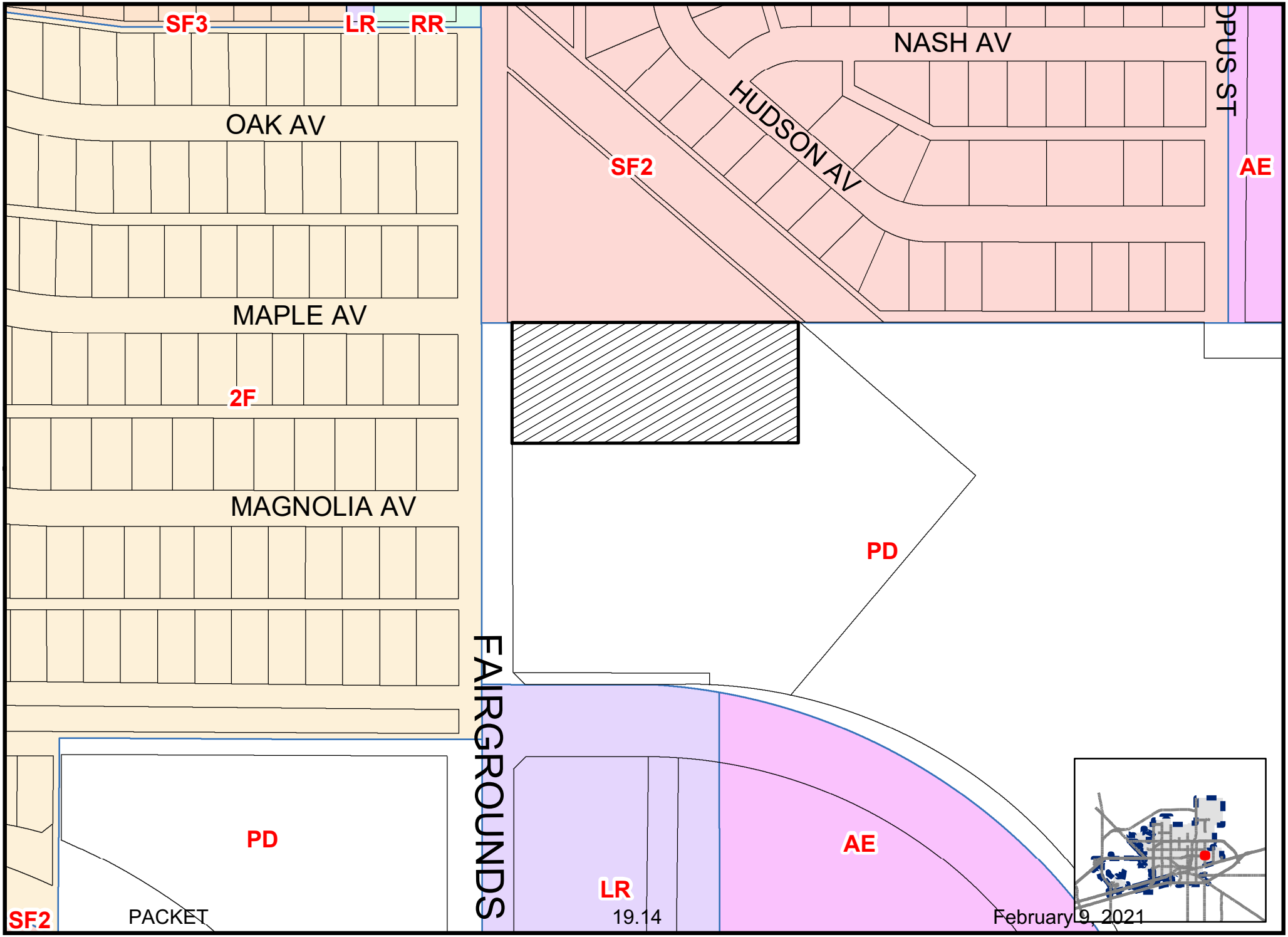
Generally located southeast of the intersection of North Fairgrounds Road and Maple Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 12/18/2020

E-21-0046

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 20

Meeting Date: February 9, 2021

To: City Council / City Manager

From: Michael Pacelli, City Traffic Engineer

Subject: MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH MT223, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS AN APPROXIMATE 2,140-SQUARE FOOT PORTION OF SOUTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 65, AND CERTAIN OTHER NEARBY PORTIONS OF SOUTH COLORADO STREET, SOUTH LORAINE STREET, WEST WALL STREET, AND WEST MISSOURI AVENUE RIGHTS-OF-WAY, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (ENGINEERING SERVICES)

Purpose:

To consider a request for a right-of-way license with an initial term of one year to operate a private valet parking service utilizing four on-street public parking spaces on the east side of S. Colorado St., south of W. Wall St.

Recommended City Council Action:

Deny

Fiscal Impact:

The cost for changing the existing parking regulation signs is minimal. There is no other direct fiscal impact.

Discussion:

The owner of the building at 223 W Wall St. (MT223, LLC), has requested to utilize four on-street public parking spaces along the east side of Colorado St., just south of Wall St., to operate a private valet parking service. These are all of the on-street spaces on that side of Colorado St. between Wall St. and the first alley to the south, except for one handicap accessible space that is not included in this request and would remain available for public use.

The operation, called Midland Valet, proposes to operate 24 hours a day, 7 days a week. Vehicle pick-up and drop-off would occur in the on-street spaces on Colorado St., which would be reserved by the City exclusively for valet parking use only. Vehicles would be transferred and stored in one of two privately-owned, off-street parking lots located on the east side of Big Spring St., south of Missouri Ave. Additional details provided by the Applicant are attached following this memo.

The Development Services Department recommends denial of this request as the applicant will profit from the use of public, on-street parking. Additionally, this request would remove the use of public, on-street parking in a high-demand area of downtown that has several retail and dining options.

Engineering Services also concurs with Development Services' recommendation and reasoning.

It should be noted that this is the first request that the City has received to reserve the use of public parking for private use on a long-term basis. Therefore, handling of this license request likely establishes a precedent for other such requests that may be received in the future.

Staff recommends denial.

Robert Patrick

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: _____ _____, 2021

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Interim City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: MT223, LLC

Licensee's Representative: Wes Perry

Licensee's Mailing Address: 223 W. Wall Street, Suite 900
Midland, TX 79701

Property: The surface of an approximate 2,140-square foot portion of South Colorado Street right-of-way adjacent to Lot 12, Block 65, Original Town Addition, City and County of Midland, Texas, being more fully described as the "Dedicated Drop-Off Area" shown in **Exhibit A** attached hereto and incorporated herein for all purposes, and any streets shown in **Exhibit A** that must be used to travel between said "Dedicated Drop-Off Area" and the "Dedicated Valet Parking" area shown in **Exhibit A** (collectively, the "Property"). The "Dedicated Valet Parking" area shown in **Exhibit A** is not included in the Property that is covered by this License.

Licensee desires use of the Property that is owned by Licensor in Midland County, Texas, within the City of Midland, Texas, for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of one (1) year (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for two (2) additional terms of one (1) year upon the written request of Licensee received by Licensor on

or before sixty (60) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of Licensor's representative.

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

Licensee shall remove all equipment and facilities associated with the undertakings contemplated by this License within seven (7) days after termination of this license.

II. Financial Consideration

A. License Fee. Licensee shall pay to Licensor a license fee in the amount of One Thousand Dollars ($1,000.00) (the "License Fee") for each term of this License. The initial term's License Fee shall be due and payable on or prior to the Commencement Date. The License Fee for each renewal term shall be due and payable on the first day of such renewal term. If Licensee fails to pay the entire License Fee within thirty (30) days after the License Fee is due, Licensee shall pay Licensor a late charge of five percent (5%) of the entire License Fee.

B. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of the Licensor's Representative, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of any nature.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property of Licensor for the purpose of operating valet parking as described in **Exhibit B** attached hereto and incorporated herein for all purposes.

B. **Prohibited Use.** Licensee covenants and agrees that it will not construct any structures on the Property or unreasonably interfere with others' uses of the Property, including those who are entitled to use the Property by easement, franchise, or express authorization. Licensee covenants and agrees that it will not damage the Property, including roads, sidewalks, water lines, sewer lines, service lines and water meters owned by Licensor. Licensee further covenants that it will not obstruct any pedestrian or vehicular traffic and will not violate any applicable traffic laws.

C. Property Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair any of Licensor's Property that is damaged by Licensee, its employees, its agents or assigns. In the event that roads or sidewalks are damaged by Licensee, its employees, its agents or assigns, Licensee shall repair such roads or sidewalks so that such roads and sidewalks comply with Licensor's Standard Specifications. In the event that water lines, sewer lines, service lines or water meters are damaged by Licensee, its employees, its agents or assigns, Licensee shall repair such water lines, sewer lines, service lines or water meters so that such

water lines, sewer lines, service lines or water meters comply with the requirements of the Licensor's Standard Specifications.

D. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor's Representative.

E. Reservation of Rights. Licensor expressly reserves the right to close, install, repair, or reconstruct streets or roads and all ancillary public facilities usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any of the Property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's operations, facilities or property, **NOR SHALL LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO LICENSEE'S PROPERTY ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of the closing of a street or sidewalk or changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than seven (7) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

F. Non-exclusive. Licensor expressly reserves the full right to grant other easements on the Property used by Licensee.

G. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of six (6) consecutive months, or longer, and upon giving Licensee thirty (30) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

H. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said Property used by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt,

conform or relocate any operations, facilities or property of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within seven (7) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$2,000,000.00 per accident or occurrence

The Commercial General Liability shall be on a per location aggregate and shall be on an occurrence basis. This insurance shall name Licensor as an additional insured, and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against the Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any non-owned auto for bodily injury and property damage, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. Licensee expressly represents that only non-owned autos shall be used to execute the work that is the subject of this License. This insurance shall name Licensor as an additional insured, and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than

thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

Licensor's City Manager is hereby authorized to modify the foregoing insurance requirements.

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

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, FURNISHERS OF GOODS, AND FURNISHERS OF SERVICES RELATED TO THE SUBJECT MATTER OF THIS LICENSE.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE

CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SUBJECT MATTER OF THIS LICENSE. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE LAWS.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of the governing body of Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

H. Governmental Immunity. By executing this License the Licensor is not waiving its right of governmental immunity. The Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent

allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property for the purpose of operating valet parking as described in **Exhibit B**, but it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of Property to a specific purpose but does not require the use of Property for a specific purpose. This License does not require Licensee to use the Property for the purpose of operating valet parking as described in **Exhibit B**. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property, not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive the Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, Interim City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

_____
Charles Harrington, Development Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
MT223, LLC

By:_____

Printed Name:_____

Title:_____

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2021, personally appeared _____, an officer of **MT223, LLC**, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

_____
Notary Public, State of _____

Exhibit A

W WALL ST
Dedicated Drop-Off Area
(Accessible Parking Space Not Included)
223
211
S COLORADO ST
6
6
4

Exhibit A cont.

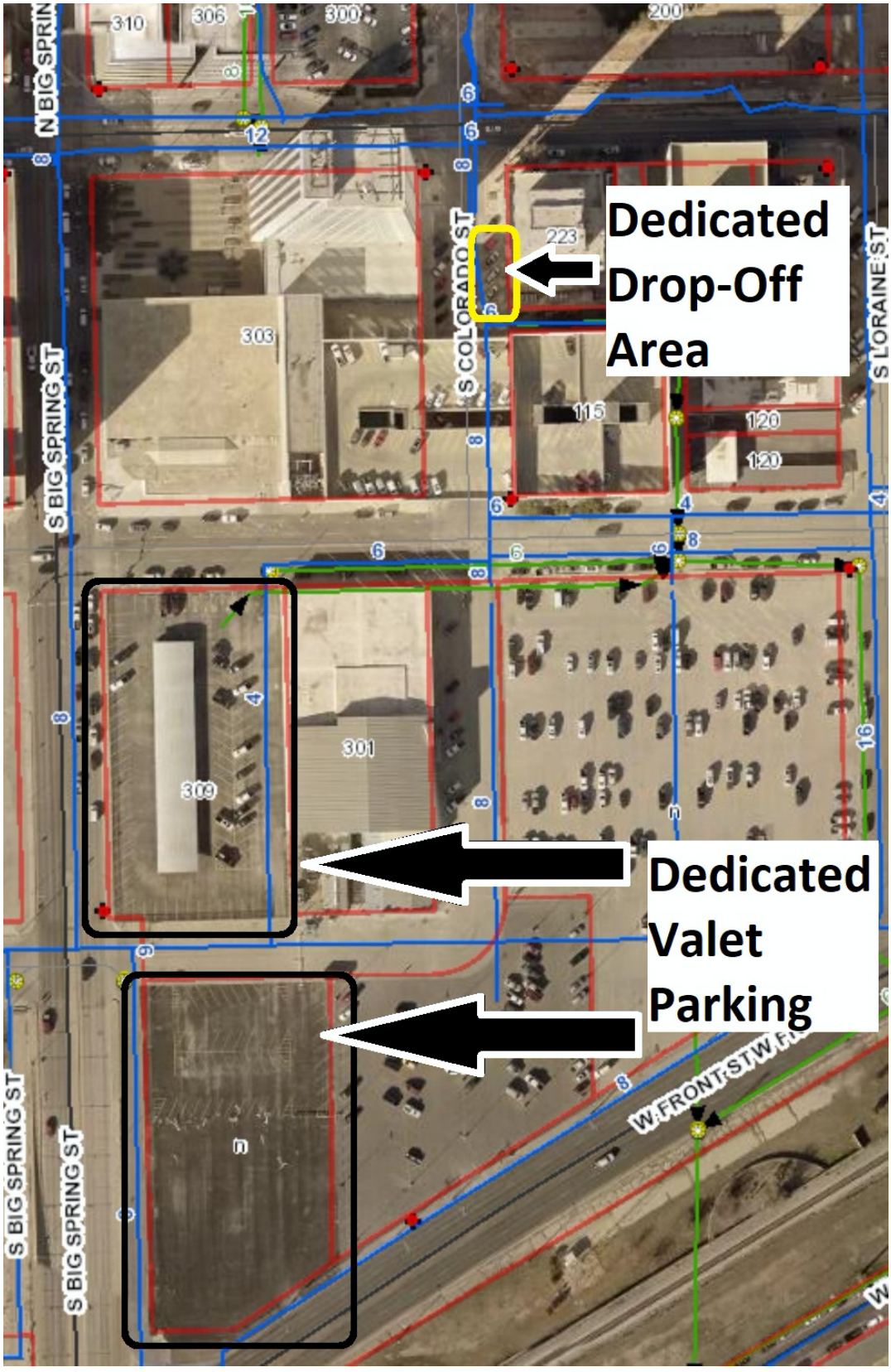


EXHIBIT B

MIDLAND VALET

OVERVIEW AND OPERATION

The Midland Valet project is designed to improve vehicle and pedestrian circulation in downtown Midland through the implementation of efficient and secure valet parking.

Midland Valet aims for the highest degree of safety and security for customers and employees and will operate with the following considerations:

a) The designated drop off areas and the storage valet lots will be managed and overseen by the valet company. Through state-of-the-art operational technology, guests will be able to retrieve their vehicles via their phones to reduce clutter and traffic in the designated pickup areas.

b) The valet staff will provide pickup instructions to patrons using the valet service.

c) Valet attendants will follow a strict code of conduct and transport in the operation and. Movement of vehicles including but not limited to:
    a. Following a specific route to designated parking lot and back to the pickup area
    b. A background check to ensure a flawless driving record prior to employment
    c. A maximum moving speed of 25 miles an hour for the safety of the vehicle and parking attendant.
    d. Training on the latest makes and models to ensure proper ability to safely operate any type of vehicle.

d) The valet parking service will be available 24 hours a day, 7 days a week and will consist of:
    a. an operating manager trained in customer service and logistical operations.
    b. Parking lot attendant to monitor the valet lot(s)
    c. Two valets in non-peak times and a maximum of 8 valet attendants during peak times, weekends, and large events.

e) Access to the specified valet lots will be limited to operators of the valet parking service exclusively. No unauthorized entrants or vehicle owners are allowed in the lot to ensure the safety of the vehicles.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/12/2021

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

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

PRODUCER Marsh & McLennan Agency LLC 15 Smith Road Suite 6000 Midland TX 79705	**CONTACT NAME:** Lesa Sanchez **PHONE (A/C, No, Ext):** 432-618-4570 **FAX (A/C, No):** **E-MAIL ADDRESS:** Lesa.sanchez@marshmma.com
	INSURER(S) AFFORDING COVERAGE / **NAIC #**
	INSURER A : Allied Property & Casualty Insurance Co — 42579
INSURED MT223LLC1 MT223, LLC PO Box 52154 Midland TX 79710	**INSURER B :** **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1798200453 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			ACP3028222024	6/1/2020	6/1/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 1,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	**AUTOMOBILE LIABILITY** ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			ACP3028222024	6/1/2020	6/1/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 0			ACP3028222024	6/1/2020	6/1/2021	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

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

Additional Insured form #CG7470 edition 12/16 applies to the General Liability policy
Waiver of Subrogation form #CG7470 edition 12/16 applies to the General Liability policy

Additional Insured form #CG7470 edition 12/16 applies to the Hired Non-Owned Auto policy
Waiver of Subrogation form #CG7470 edition 12/16 applies to the Hired Non-Owned Auto policy

The General Liability and Hired Non-Owned Auto policy includes an additional insured and Waiver of Subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.
See Attached...

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 79701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: MT223LLC1

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh & McLennan Agency LLC	NAMED INSURED MT223, LLC PO Box 52154 Midland TX 79710
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The City of Midland is included as an Additional Insured, on a claims occurred basis, on all policies. The Contractor and Insurer herby Waive all Rights of Subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance.

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City of Midland

Office Memorandum

DATE: February 4, 2021

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney

SUBJECT: Motion authorizing and directing the Interim City Manager or his designee to establish a landlord rental assistance program (the "Program") for the granting of CARES Act funds or other such grant funds to residents of Midland who own and operate single-family or two-family (duplex) rental properties; providing that the owner of an apartment complex or other similar multi-family development shall not be eligible to participate in the Program; and providing for the establishment of certain Program eviction moratorium requirements.

Council member Lori Blong requested that this item be placed on your agenda for consideration.