

**CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 14, 2023 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall**



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

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

OPENING ITEMS

1. Invocation – Reverend Bob Hennagin, Episcopal Church of the Holy Trinity
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - 3a. Presentation of Proclamation for “Midland RSVP Day”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. BRIEFING SESSION OF JANUARY 24, 2023
 - 4b. REGULAR SESSION OF JANUARY 24, 2023
5. 007-2023 – MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED NOVEMBER 20, 2019, BETWEEN THE CITY OF MIDLAND, TEXAS, AND LUCK DESIGN TEAM, LLC; AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED JULY 28, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND LUCK DESIGN TEAM, LLC; SAID AMENDMENTS PROVIDING FOR THE REMOVAL OF THE PERMIAN BASIN QUALITY OF PLACE CONSERVANCY AS AGENT FOR THE CITY OF MIDLAND, TEXAS, REGARDING CERTAIN MATTERS OF DESIGN RELATING TO PHASE 1 AND PHASE 2 OF THE HOGAN PARK MASTER PLAN PROJECT (DISTRICT 2) (GENERAL SERVICES)

6. 008-2023 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR CERTAIN VETERINARY SERVICES FOR THE ANIMAL SERVICES DIVISION AND TO NEGOTIATE AN AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: ALL) (GENERAL SERVICES)
7. 2023-013 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR ENGINEERING SUPPORT AND ADMINISTRATIVE SERVICES TO THE CITY OF MIDLAND T-BAR RANCH WELL SYSTEM AND OTHER POTENTIAL WATER SOURCES FOR A COST OF \$362,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)
8. 2023-014 – RESOLUTION AWARDED A CONTRACT FOR THE PLANT FARM PONDS REHABILITATION PROJECT TO SYNAGRO OF TEXAS-CDR, INC., FOR THE AMOUNT OF \$4,396,743.50; APPROVING \$879,348.70 FOR CONTINGENCIES; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)
9. 2023-015 – RESOLUTION APPROVING THE PURCHASE OF OPENGOV BUDGETING, PLANNING, REPORTING AND TRANSPARENCY PLATFORM SOFTWARE FOR THE FINANCE DEPARTMENT FROM VERTOSOFT LLC THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$474,260.00; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)
10. 2023-016 – RESOLUTION AUTHORIZING THE EXECUTION OF THE SEVENTH AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT ADJUSTING THE ANNUAL FEE TO \$719,135.58 AND PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (ADMINISTRATIVE SERVICES)
11. 009-2023 – MOTION AUTHORIZING THE EXECUTION OF SPORTS AGREEMENTS WITH THE FOLLOWING ORGANIZATIONS: BOYS AND GIRLS CLUB OF THE PERMIAN BASIN; GREATER MIDLAND FOOTBALL LEAGUE; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INC.; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED SERVICES THROUGH THE USE OF CITY-OWNED PROPERTY AND FACILITIES (DISTRICT: ALL) (COMMUNITY SERVICES)

12. 2023-017 – RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO MCM OPERATING, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE AND 1,550 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 4) (DEVELOPMENT SERVICES)
13. 2023-018 – RESOLUTION APPROVING AMENDMENTS TO THE PERMITS ISSUED TO MCM OPERATING, LLC (“OPERATOR”) TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); SAID AMENDMENTS (1) AUTHORIZING PORTABLE SOUND WALLS TO BE INSTALLED ON THE NORTH AND SOUTH SIDES OF THE FRAC PUMPS, (2) REQUIRING FRAC SAND TO BE DELIVERED AND OFFLOADED USING BELLY DUMP TRUCKS, AND (3) REQUIRING UTILIZATION OF A MONOLINE / ZIPPER MANIFOLD (DISTRICT 4) (DEVELOPMENT SERVICES)
14. 010-2023 – MOTION APPROVING WITH STAFF’S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF SOUTHWEST CROSSING, SECTION 20, BEING A PLAT OF A 60.008-ACRE TRACT OF LAND OUT OF SECTION 14, BLOCK 40, T-2-S, T&P RR CO. SURVEY, COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 500 FEET WEST OF THE INTERSECTION OF SOUTH COUNTY ROAD 1239 AND WEST COUNTY ROAD 122) (DISTRICT: NONE) (DEVELOPMENT SERVICES)
15. 011-2023 – MOTION AUTHORIZING THE INTENT OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ESTABLISH THE SCHEDULE FOR PROGRAM YEAR 2023 CDBG APPLICATION. (DISTRICT: NONE) (DEVELOPMENT SERVICES)

SECOND READINGS

16. 10371 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 5 THROUGH 8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BLOCK 17, KELVIEW HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LR, LOCAL RETAIL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF LOMA DRIVE AND SCHARBAUER DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 24, 2023)
 17. 10372 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 4, BERKSHIRE PLACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SINCLAIR
- PACKET

AVENUE AND NORTH N STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 24, 2023)

PUBLIC HEARINGS

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

18. 10373 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 155, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH LORAIN STREET, APPROXIMATELY 143 FEET SOUTH OF WEST PENNSYLVANIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)
19. 10374 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 4, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 550 FEET SOUTH OF WEST LOOP 250), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)
20. 10375 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE AN 8.823-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 1, ORTLOFF ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO MF-22, MULTIPLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WESTCLIFF DRIVE, APPROXIMATELY 335 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 (DISTRICT 3) (DEVELOPMENT SERVICES)
21. 10376 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF

MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 7,464-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, CLAYDESTA PLAZA, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF DESTA DRIVE AND SMITH ROAD), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER, 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 (DISTRICT 3) (DEVELOPMENT SERVICES)

22. 10377 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES)
23. 10378 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES)
24. 10379 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND BY REPEALING ORDINANCE NO. 8961, WHICH GRANTED A SPECIFIC USE DESIGNATION WITHOUT TERM THAT ALLOWED AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS ON LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED O-1, OFFICE 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 PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 2) (DEVELOPMENT SERVICES)
25. 10380 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.73-ACRE TRACT OF LAND OUT OF LOT 22, BLOCK 22, WESTERN HILLS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT TO TH, TOWNHOUSE

(ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BEAL PARKWAY, APPROXIMATELY 154 FEET SOUTH OF BLUE HAVEN DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

26. 10381 – AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 2, “PLATS AND SUBDIVISIONS”, SECTION THREE, “PLATTING PROCEDURES”, SUBSECTION (D), “PRELIMINARY PLAT”, SUB-SUBSECTION 11, “APPROVAL BY THE COUNCIL” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REQUIRE COUNCIL APPROVAL OF A PRELIMINARY PLAT THAT WAS APPROVED BY THE PLANNING AND ZONING COMMISSION BY OPERATION OF LAW; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES)

MISCELLANEOUS

27. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS (CITY SECRETARY’S OFFICE)

PUBLIC COMMENT

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

EXECUTIVE SESSION

29. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:
- a. Section 551.071, Consultation with Attorney
 - a.1. Discuss pending or contemplated litigation.
 - b. Section 551.072, Deliberation Regarding Real Property
 - b.1. Discuss the purchase, exchange, lease or value of real property.
 - c. Section 551.074, Personnel Matters
 - c.1. Deliberate the appointment, employment, evaluation, or duties of the City Manager.

Respectfully Submitted,

Robert Patrick
City Manager

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

**MIDLAND CITY COUNCIL
BRIEFING SESSION
MINUTES
January 24, 2023**



The City Council convened in briefing session in the Council Chamber, City Hall, Midland, Texas, at 9:45 AM, January 24, 2023.

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

Council Members absent: Jack Ladd

Staff members present: City Attorney John Ohnemiller, City Manager Robert Patrick, Deputy City Manager Morris Williams Jr, Assistant City Manager Tina Jauz

The meeting was called to order at 9:46 a.m.

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

1. Receive and discuss a presentation from the City Manager's Office regarding the City of Midland's 2023 Texas Legislative session priorities and related matters.

Deputy City Manager Morris Williams gave a presentation on the 2023 88th Legislative Program. The priority topics discussed were to preserve and protect water and water rights, transportation, and economic development. Mr. Williams also reviewed the 2023 legislative partners and lobbyist options for the remainder of the session.

All the business at hand having been completed, the meeting adjourned at 9:55 a.m.

PASSED AND APPROVED February 14, 2023.

Lori Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
January 24, 2023**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., January 24, 2023.

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

Council Members absent: Jack Ladd

Staff members present: City Manager Robert Patrick, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr, Assistant City Manager Tina Jauz

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - 3a. Presentation of Proclamation for “School of World Missions Foundation Day”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR SESSION OF JANUARY 9, 2023
 - 4b. BRIEFING SESSION OF JANUARY 10, 2023
 - 4c. REGULAR SESSION OF JANUARY 10, 2023

8. 2023-010 – RESOLUTION AWARDDING A CONTRACT FOR THE GARFIELD STREET UTILITY BOND PROJECT TO ENTRENCH, INC., FOR AN AMOUNT OF \$5,810,010.00; APPROVING \$581,001.00 FOR CONTINGENCIES; APPROVING \$50,000.00 FOR PROJECT RELATED EXPENSES; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT 3) (GENERAL SERVICES)

Dan Corrales moved to approve the Consent Agenda items 4-11, excluding item(s) 5, 6, 7, 9, 10, 11; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

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

5. 2023-008 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MARTINEZ ARCHITECTS, LP, FOR ARCHITECTURAL, DESIGN AND ENGINEERING SERVICES FOR THE CENTRAL FIRE STATION WELLNESS CENTER AND POLICE DEPARTMENT RENOVATIONS FOR A COST OF \$168,000.00 AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

Fire Chief Chuck Blumenaur gave a brief overview of the item noting this has been part of the long term plan to improve the Wellness Center.

General Services Director Regina Stephenson reported the age of the Police Department has a lot to do with the need for a major renovation. The Facilities division keeps track and notifies the team of issues.

Dan Corrales moved to approve Resolution No. 2023-008; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

6. 2023-009 – RESOLUTION AWARDDING A CONTRACT FOR THE IDLEWILDE DRIVE STORM DRAIN IMPROVEMENTS PROJECT TO BOLER EQUIPMENT SERVICE, INC., OF MIDLAND, TEXAS, AT A TOTAL COST OF \$1,932,184.00; APPROVING \$193,218.40 FOR CONTINGENCIES; APPROVING \$50,000.00 FOR PROJECT-RELATED EXPENSES; TRANSFERRING AND APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 4) (GENERAL SERVICES)

Transportation Manager Gabe McClelland gave a brief history of the item noting there has been an existing storm drain pipe at Manor Park for more than 20 years that is not in

service but had the understanding that one day it would be extended and put into service. This will cause a regional drainage improvement and will help take some of the stormwater off Wadley.

Amy Stretcher Burkes moved to approve Resolution No. 2023-009; seconded by Dan Corrales.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

7. 004-2023 – MOTION TO AUTHORIZE THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR EXECUTIVE SEARCH FOR CITY MANAGER SERVICES ASSOCIATED WITH THE RECRUITMENT AND SELECTION OF A QUALIFIED INDIVIDUAL FOR THE POSITION OF CITY MANAGER AND TO NEGOTIATE AN AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: NONE) (GENERAL SERVICES)

John Norman moved to defer Motion No. 004-2023; seconded by Scott Dufford.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

9. 2023-011 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH RANDAL SCOTT ARCHITECTS, INC., FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE MIDLAND PUBLIC SAFETY TRAINING FACILITIES PHASE 1 IMPROVEMENTS PROJECT FOR A COST OF \$2,500,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

Fire Chief Chuck Blumenaur reported this facility would be a premier training facility in the entire area. It would allow the City to save money by not sending employees away for training. This will create revenue from people coming in for training from the surrounding cities.

Dan Corrales moved to approve Resolution No. 2023-011; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

10. 005-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-495-003) WITH TARGA DELAWARE LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 2, BLOCK C-24, AND SECTIONS 22 AND 25, BLOCK C-23, PSL WINKLER COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

Utilities Director Carl Craigo gave a brief overview of the item noting a pipeline is being updated and a new one is being put in. Mr. Craigo confirmed this is not a common carrier and the infrastructure is not near the T-Bar Ranch water operations.

Dan Corrales moved to approve Motion No. 005-2023; seconded by John Norman.

The motion passed by the following vote:

AYE: Poole, Blong, Dufford, Norman

NAY: Corrales, Stretcher Burkes

ABSTAIN: None

ABSENT: Ladd

11. 006-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-495-004) WITH TARGA NORTHERN DELAWARE LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 27, BLOCK 74, ABSTRACT 1380, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY TEXAS (DISTRICT: NONE) (UTILITIES)

Dan Corrales moved to approve Motion No. 006-2023; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Poole, Blong, Dufford, Norman

NAY: Corrales, Stretcher Burkes

ABSTAIN: None

ABSENT: Ladd

SECOND READINGS

12. 10362 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1A AND 5, BLOCK 1, ROLLING GREEN ACRES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF EAST HIGHWAY 80, APPROXIMATELY 250 FEET WEST OF TODD DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10362.

John Norman moved to approve the second and final reading of Ordinance No. 10362; seconded by Dan Corrales.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

13. 10363 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,792-SQUARE FOOT PORTION OF THE WEST 90 FEET OF LOTS 10, 11 AND 12, BLOCK 61, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND SOUTH CARRIZO STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS 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 (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10363.

John Norman moved to approve the second and final reading of Ordinance No. 10363; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

14. 10364 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 8, BLOCK 30, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 90 FEET NORTH OF EAST PENNSYLVANIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10364.

John Norman moved to approve the second and final reading of Ordinance No. 10364; seconded by Dan Corrales.

The motion passed by the following vote:

PACKET

4b.5

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AYE: Corrales, Poole, Blong, Dufford, Norman, Stretcher Burkes
NAY: None
ABSTAIN: None
ABSENT: Ladd

15. 10365 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 21, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND EAST ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10365.

John Norman moved to approve the second and final reading of Ordinance No. 10365; seconded by Dan Corrales.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Dufford, Norman, Stretcher Burkes
NAY: None
ABSTAIN: None
ABSENT: Ladd

16. 10366 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,763-SQUARE FOOT PORTION OF LOT 6A, BLOCK 62, BELMONT ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE 20, APPROXIMATELY 478 FEET WEST OF SOUTH TERRELL STREET), WHICH IS PRESENTLY ZONED BP, I-20 BUSINESS PARK DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10366.

John Norman moved to approve the second and final reading of Ordinance No. 10366; seconded by Amy Stretcher Burkes.

PACKET

4b.6

February 14, 2023

MINUTES

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January 24, 2023

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

17. 10367 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 37.65-ACRE TRACT OF LAND OUT OF SECTION 48, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, RECREATION CENTER, AND SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, OFFICE CENTER, RECREATION CENTER, AND SHOPPING CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND SOUTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10367.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10367; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

18. 10368 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY 6,200 FEET NORTH OF EAST STATE HIGHWAY 80), WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A SPECIAL EVENTS CENTER FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10368.

Robin Poole moved to approve the second and final reading of Ordinance No. 10368;

seconded by Dan Corrales.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

19. 10369 – AN ORDINANCE VACATING AND ABANDONING A 0.034-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 2, 3 AND 4, BLOCK 1, RICHARDSON-ABILENE STREET ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MAIN STREET, APPROXIMATELY 120 FEET SOUTH OF BUTLER AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$2,956.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10369.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10369; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

20. 10370 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.00-ACRE TRACT OF LAND OUT OF THE SOUTHEAST QUARTER OF SECTION 7, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF TANFORAN AVENUE AND ORIOLE DRIVE), BY PERMITTING A REDUCED MINIMUM LOT AREA; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 10, 2023)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10370.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10370; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None
ABSENT: Ladd

PUBLIC HEARINGS

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

21. 10371 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 5 THROUGH 8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BLOCK 17, KELVIEW HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LR, LOCAL RETAIL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF LOMA DRIVE AND SCHARBAUER DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10371.

Mayor Blong opened the public hearing at 12:46 p.m. There being no one present wishing to speak, the public hearing was closed at 12:46 p.m.

Dan Corrales moved to approve the first of two readings of Ordinance No. 10371; seconded by Scott Dufford.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

22. 10372 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 4, BERKSHIRE PLACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SINCLAIR AVENUE AND NORTH N STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10372.

Mayor Blong opened the public hearing at 12:47 p.m.

Mark Wellen, 5110 Daventry Place, stated he is available to answer questions or concerns.

There being no one else wishing to speak, the public hearing was closed at 12:48 p.m.

Scott Dufford moved to approve the first of two readings of Ordinance No. 10372; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

MISCELLANEOUS

23. 2023-012 – RESOLUTION AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT AND LEASE AGREEMENT WITH THE PERMIAN BASIN QUALITY OF PLACE CONSERVANCY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, AND OPERATION OF CERTAIN IMPROVEMENTS TO HOGAN PARK (DISTRICT 2) (COMMUNITY SERVICES)

Mayor Blong moved this item up to discuss first since many community members were in the Council Chamber to speak.

A motion was made by Scott Dufford to defer to the next meeting. The motion died for lack of a second.

Jeff Beard, 4507 Teakwood, would like to defer this item to the next meeting so all districts could be represented in the vote.

Lynn Rodgers, 1409 Chestnut Ave, serves on the Parks and Recreation Committee. Ms. Rodgers' main concern is lack of representation and lack of access.

Kari Dingler, 4505 Bent Tree Trail, spoke in favor of the item and explained why the project would be good for Midland.

Lori Forbus, 4213 Baybrook Place, is concerned that the city is rushing into this project and is against the item.

Roy Geer, 2606 W. Shandon Ave, spoke in favor of the park to invest in the people.

William Dodson, 6011 San Bernard, spoke against the item and asked Council to answer his questions.

Jeff Beard, 4507 Teakwood, answered questions that were raised by Mr. Dodson. Mr. Beard reported that Half & Luck Design is who the City hired. Mr. Beard also stated the Conservancy has not received any funds from the City and answered more questions from Council. Staff also answered questions from Council.

Ramon Najer, 720 N. Tilden, spoke against the item. Mr. Najer is for improvement of parks

but against this approach.

Dean Maltzberger, 2904 Sanhill Circle, spoke against this item and feels a project of this size should come before the voters.

Sandra Evans, 3502 Mockingbird Lane, spoke against the item and stated the City should take bids for a project of this size.

Tommy Hawkins, 4487 Hackberry Ct., President and Tournament Director of the Midland Softball Association, spoke on considering the future of the kids with regard to playing sports and what this project could do for the youth. Mr. Hawkins invited everyone to attend opening day on Feb 18th. Mr. Hawkins also spoke on the amount of funds these tournaments bring to the City.

City Manager Robert Patrick reported that the money from the tournament would go to the conservancy but the Hotel Occupancy Tax would come to the City which would be two different revenue streams.

Community Services Director Cristina Burns, reported that since there is a sports association agreement with Midland Softball Association there is no charge for rental fees.

Eliel Rosa, 3603 Humble Ave, spoke to why he is against this item and asked Council to vote no.

Deputy City Manager Morris Williams clarified Community Services Director Cristina Burns' comment; the City does not charge rental fees but does collect tournament fees.

Cathie Broten, 6100 Dunbarton, spoke against this item and feels like there is no transparency and that the project is being rushed.

Mark Dingler, 4505 Bent Tree Trail, spoke in favor of this item. Mr. Dingler reported a delay of two weeks for the project is fine but due to fundraising needs, a decision should be made soon since the deadline is this summer and a lot of the money will go away if there are no commitments. Mr. Dingler and Jeff Beard answered additional questions, including funding questions from Council.

Kay Shrader, 6402 Driftwood Dr., spoke against the item but is in favor of improving parks without the need of a contract with the conservancy.

Jessica Sparkman, 2804 Boardwalk Ave., spoke in favor of this item and encouraged Citizens to go to the MRT to read a lot of information on Hogan Park.

Edward Mayberry, 1712 Pavilion Parkway, asked that the conservancy do another Townhall meeting at the MLK Center to inform the public.

Deputy City Manager Morris Williams reported that last year there was \$19,000 in revenue from tournament fees and \$31,000 in lights and field rentals. Community Services Director Cristina Burns reported an average of \$1.1 million is spent on the cost to maintain the park.

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Council Member Dufford gave a history of how all of this came about and how this would benefit the kids and grandkids of the City of Midland.

A motion was made by Scott Dufford to defer to the next meeting. The motion died for lack of a second.

Each Council Member was able to speak regarding this item and share their concerns.

City Attorney John Ohnemiller spoke on exclusivity and how it can be managed through a contract.

Lucy Sisniega, 5408 Crowley Blvd., had a question regarding the Open Meetings Act and Executive Session. City Attorney John Ohnemiller explained that Executive Session is closed to the public by law as long as it fits certain qualifications

John Norman moved to approve Resolution No. 2023-012; seconded by Dan Corrales.

The motion failed by the following vote:

AYE: Blong, Dufford

NAY: Corrales, Poole, Norman, Stretcher Burkes

ABSTAIN: None

ABSENT: Ladd

Mayor Blong recessed the Council Meeting for a break at 12:16 p.m. and reconvened the meeting at 12:23 p.m. to take up the Consent Agenda.

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

John Elphick, 4002 Blakemore Court, reported that he applied for the Midland Development Corporation board and is available for questions.

Scott Dufford moved to defer this item until after Executive Session; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Ladd

Following Executive Session, Mayor Blong reconvened the Council Meeting in open session at 3:26 p.m. with all Council Members present except Council Member Ladd.

Robin Poole moved to appoint Zachary Deck to the vacancy on the Midland Development Corporation Board; seconded by Scott Dufford.

The motion passed by the following vote:

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

PACKET

4b.12

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NAY: None
ABSTAIN: None
ABSENT: Ladd

Scott Dufford moved to reappoint Lourcey Sams and Jill Pennington to the Midland Development Corporation Board; seconded by Dan Corrales.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Dufford, Norman, Stretcher Burkes
NAY: None
ABSTAIN: None
ABSENT: Ladd

PUBLIC COMMENT

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

There were no citizens present wishing to speak.

EXECUTIVE SESSION

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

Mayor Blong recessed the meeting to go to Executive Session at 12:52 p.m.

- a. Section 551.074, Personnel Matters
 - a.1. Deliberate the appointment of members to the Midland Development Corporation board of directors.
 - a.2. Deliberate the appointment, employment, evaluation, or duties of the City Manager.
- b. Section 551.072, Deliberation Regarding Real Property
 - b.1. Discuss the purchase, exchange, lease or value of real property.
- c. Section 551.071, Consultation with Attorney
 - c.1. Discuss a matter in which the duty of the attorney 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.

All the business at hand having been completed, the meeting adjourned at 3:27 p.m.

PASSED AND APPROVED February 14, 2023.

Lori Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT



City Council Meeting

Item Number: 5
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED NOVEMBER 20, 2019, BETWEEN THE CITY OF MIDLAND, TEXAS, AND LUCK DESIGN TEAM, LLC; AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED JULY 28, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND LUCK DESIGN TEAM, LLC; SAID AMENDMENTS PROVIDING FOR THE REMOVAL OF THE PERMIAN BASIN QUALITY OF PLACE CONSERVANCY AS AGENT FOR THE CITY OF MIDLAND, TEXAS, REGARDING CERTAIN MATTERS OF DESIGN RELATING TO PHASE 1 AND PHASE 2 OF THE HOGAN PARK MASTER PLAN PROJECT (DISTRICT 2) (GENERAL SERVICES)

Purpose:

Motion authorizing the execution of a second amendment to that certain professional services agreement dated November 20, 2019, between the City of Midland, Texas and Luck Design Team, LLC; and authorizing the execution of a second amendment to that certain professional services agreement dated July 28, 2021, between the City of Midland, Texas, and Luck Design Team, LLC; said amendments providing for the removal of the Permian Basin Quality of Place Conservancy as agent for the City of Midland, Texas, regarding certain matters of design relating to Phase 1 and Phase 2 of the Hogan Park Master Plan Project.

Recommended City Council Action:

Approve

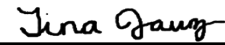
Fiscal Impact:

Funding is not required at this time.

Discussion:

Staff recommends amending a professional services agreement for the Hogan Park and Reyes-Mashburn Nelms Park Master Plan Development, Phase I, and Phase II Construction Documents and Construction oversight with Luck Design Team LLC of Austin, Texas. Please see the attached memo from Cristina Burns, Community Services Director, for additional information.

Therefore, please consider a motion amending the Professional Services Agreement with Luck Design Team for the Hogan Park and Reyes-Mashburn Nelms Park Master Plan Development, Phase 1, and Phase 2 Construction Documents; as directed by City Staff.



City Manager's Office

**SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIDLAND, TEXAS
AND LUCK DESIGN TEAM, LLC**

THIS SECOND AMENDMENT is made and effective February 15, 2023, by and between the City of Midland, Texas (“City”), a home-rule municipal corporation, and Luck Design Team, LLC (“Company”).

WHEREAS, City and Company entered into that certain Professional Services Agreement (the “Agreement”), effective July 28, 2021, for certain design and construction services related to the Hogan Park Park Master Plan Development and Phase 2 Improvements Project, which was approved by Midland City Council Motion No. 081-2021; and

WHEREAS, City and Company executed an amendment to the Agreement on April 13, 2022, providing for the designation of the Permian Basin Quality of Place Conservancy as City’s design agent (the “First Amendment”), which was approved by Midland City Council Motion No. 032-2022; and

WHEREAS, the Agreement, inclusive of the First Amendment, has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, City and Company desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Second Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- I. Article II is hereby amended so as to delete Section II.3 to the Agreement.
- II. Section XIV.C is hereby amended so as to read in its entirety as follows:
 - C. Notice. Any notice or demand that shall be made regarding this Agreement shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the notice or demand, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to CITY:

City Manager’s Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY:

Luck Design Team, LLC
9600 Escarpment Blvd., #745-4
Austin, Texas 78749

- III. The Agreement, inclusive of the First Amendment and this Second Amendment, is hereby ratified and affirmed by City and Company, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, Secretary

LUCK DESIGN TEAM, LLC

Brent Luck, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, _____, a notary public, on this day personally appeared **BRENT LUCK**, President of Luck Design Team, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2023.

Notary Public, in and for
the State of Texas

**SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIDLAND, TEXAS
AND LUCK DESIGN TEAM, LLC**

THIS SECOND AMENDMENT is made and effective February 15, 2023, by and between the City of Midland, Texas (“City”), a home-rule municipal corporation, and Luck Design Team, LLC (“Company”).

WHEREAS, City and Company entered into that certain Professional Services Agreement (the “*Agreement*”), effective November 20, 2019, for certain design and construction services related to the Hogan Park and Reyes-Mashburn-Nelms Park Master Plan Development and Phase 1 Project, which was approved by Midland City Council Resolution No. 2019-346; and

WHEREAS, City and Company executed an amendment to the Agreement on April 13, 2022, providing for the designation of the Permian Basin Quality of Place Conservancy as City’s design agent (the “*First Amendment*”), which was approved by Midland City Council Motion No. 032-2022; and

WHEREAS, the Agreement, inclusive of the First Amendment, has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, City and Company desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Second Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- I. Article II is hereby amended so as to delete Section II.3 to the Agreement.
- II. Section XIV.C is hereby amended so as to read in its entirety as follows:
 - C. Notice. Any notice or demand that shall be made regarding this Agreement shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the notice or demand, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to CITY:

City Manager’s Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY:

Luck Design Team, LLC
9600 Escarpment Blvd., #745-4
Austin, Texas 78749

- III. The Agreement, inclusive of the First Amendment and this Second Amendment, is hereby ratified and affirmed by City and Company, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, Secretary

LUCK DESIGN TEAM, LLC

Brent Luck, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, _____, a notary public, on this day personally appeared **BRENT LUCK**, President of Luck Design Team, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2023.

Notary Public, in and for
the State of Texas

CITY OF MIDLAND
Community Services Department
Parks Division
Interoffice Memorandum

Date: February 14, 2023
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Second Amendments to Professional Service Agreements with Luck Design Team for Hogan Park Phase I and II

The Community Services Department recommends amending the two previously amended Professional Services Agreements with Luck Design Team for the Hogan Park and Reyes-Mashburn-Nelms Park Master Plan Development and Phase I and Phase II Construction Documents to remove the previously added Section II.3, which designated the Permian Basin Quality of Place Conservancy as the agent for all design decisions regarding the construction documents covered in the agreements, as well as amending Section XIV.C to remove the Permian Basin Quality of Place Conservancy from the notices list.



City Council Meeting

Item Number: 6
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR CERTAIN VETERINARY SERVICES FOR THE ANIMAL SERVICES DIVISION AND TO NEGOTIATE AN AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Motion to authorize the City Manager or the City Manager's designee to advertise a request for proposals for the veterinary services at the animal shelter for said services; provided, however, that said agreement shall not become effective until approved by the City Council.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approval of a motion authorizing advertisement of a request for proposals for veterinary services at the animal shelter for the Animal Services Division. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Jina Gang

City Manager's Office

CITY OF MIDLAND
Community Services Department
Animal Services Division

Interoffice Memorandum

Date: January 31, 2023
To: Erika Martinez, Purchasing Manager
From: Cristina Burns, Director of Community Services
Subject: Request for Proposals – Veterinary Services for the City of Midland Animal Shelter

This Request for Proposals is to engage a contractor to provide veterinary services for the City of Midland Animal Shelter, to include, but not limited to:

- Provide basic veterinary services at least once (1) per week, including animal examinations, medical treatment and care, vaccinations, spay and neuter surgeries, and consultation services.
- Provide training for animal shelter staff members related to topics, including animal care, animal handling and behavior, shelter medicine, euthanasia, etc.
- Maintain a Federal Drug Enforcement Administration licensure for the handling and keeping of controlled substances used for spay and neuter surgeries.
- Provide veterinary license permissions allowing the shelter to purchase necessary vaccines, medications, and related supplies.

Proposals should be submitted no later than the end of the business day on March 1, 2023.

Request for Proposals

RFP 23002497

for

Veterinary Services for the
City of Midland Animal Shelter

Proposals for this requirement will be accepted until 2:00 P.M. on March 1, 2023

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS, THEN THE CITY RESERVES THE RIGHT TO AWARD
2. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK
3. **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.
4. **PUBLIC INFORMATION**. TO THE EXTENT THAT PROPOSER IS SUBMITTING A PROPOSAL FOR A CONTRACT DESCRIBED BY SECTION 552.371 OF THE TEXAS GOVERNMENT CODE, PROPOSER AGREES AS FOLLOWS IN ACCORDANCE WITH SECTION 552.372(B) OF THE TEXAS GOVERNMENT CODE: THE REQUIREMENTS OF SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE, MAY APPLY TO THIS PROPOSAL, AND THE 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.

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SCHEDULE OF EVENTS

RFP 23002497

For

Project Veterinary Services for the
City of Midland Animal Shelter

Event	Date*
RFP Released	February 14, 2023
Cutoff Date for inquiries and clarification.....	February 24, 2023
Proposal Due Date	March 1, 2023
Intended Date for Contract Award.....	March 28, 2023

*These dates are our intended schedule; however, they may be changed as necessary without further notice.

NOTE:

From the issuance date of this RFP until a Contractor(s) is selected, all verbal communication is not binding. The City will only be bound by written comments submitted by the Purchasing Office.

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.
2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offerors. All copies of the proposal may be delivered in the same box/package.
3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.
4. Late proposals will not be accepted under any circumstances.
5. Proposal should give full firm name and address of Offeror. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN ____-____-____.
6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.
7. Telephone proposals are not acceptable when in response to an RFP.

the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.
2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.
3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.
4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.
5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.
7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.
8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.
9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.
10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

Conditions

The City of Midland is requesting proposals with
PACKET

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Animal Services (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Veterinary Services, as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

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

1.6. TRADE SECRETS

- 1.6.1. All information received in response to this RFP will be available to the public except for:**
- 1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and**
 - 1.6.1.2. matters involving individual safety as determined by the department.**
- 1.6.2. In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.**

- 1.6.2.1. The proposal may not contain trade secret matter in the cost or price.
- 1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.8. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

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

1.9. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.10. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.11. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections, or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.12. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with

the following:

“(Offeror’s Name)”, understands and will comply.

1.13. ALTERNATE PROPOSALS

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

1.14. SUBMITTING A SEALED PROPOSAL

1.14.1. Number of copies and Location:

1.14.1.1. Offerors must submit one original, 2 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.14.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.14.2. Each Offeror who submits a proposal represents that:

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

1.14.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.14.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

1.14.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 14-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.15. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

- A) waive any formality;
- b) cancel or terminate this RFP;
- c) reject any or all proposals received in response to this document;
- d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if

requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

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

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person; \$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Workers Compensation: Statutory limits

Employers Liability: \$500,000.00 per accident or occurrence

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

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

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

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

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

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

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

- 1.21.1.1. The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is found in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

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

- 1.21.4. The initial contract(s) term is for a period of 6 months.

2. PROPOSAL WAIVERS:

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

ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.

- 2.2. OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 2.3. OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.**
- 2.4. WAIVER:**
- 2.5. BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS, AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**
- 2.5.1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- 2.5.2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**
- 2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR**
- 2.5.4. AWARD OF THE CONTRACT.**
- 2.6. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSAL DOCUMENTS AND CONSENTS TO THE PROPOSAL PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS. THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE PROPOSAL AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).**
- 2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.**

3. SCOPE OF PROJECT

The City of Midland Animal Services Division is seeking letters of proposals from Texas licensed veterinarians or contractors that provide Texas licensed veterinarians with shelter medicine and high volume spay/neuter experience to provide veterinary services at the Midland Animal Shelter.

4. REQUIREMENTS

Contractor responsibilities:

- Provide basic veterinary and professional services at least once (1) per week that will include, but are not limited to, animal examinations, medical treatment and care, vaccinations, spay and neuter surgery, and consultation services in accordance with City of Midland's Animal Services Division's standard operating procedures and established industry standards and best practices.
- Provide training for Animal Shelter staff members as requested by the City of Midland's Animal Services Manager or his designee related to topics including but not limited to animal care, animal handling and behavior, shelter medicine, euthanasia etc.
- Consult with the Animal Services Manager or his designee to develop and monitor standard operating procedures that include, but are not limited to, animal health and husbandry; disease outbreak and management; and the care of individual animals that are injured or ill.
- Perform examinations, make recommendations, and provide medical care to animals involved in animal cruelty or neglect cases and provide expert testimony regarding same as needed.
- Provide emergency veterinary care to ill and injured animals as requested by the City of Midland's Animal Services Manager or his designee. The scope of care provided in these situations shall be limited to life saving measures for the purpose of stabilizing a pet and to relieve suffering and pain.
- Ensure consistency with current industry standards and best practices for high-volume, high-quality, low cost spay/neuter as recommended by the Humane Alliance and the Association of Shelter Veterinarians Guidelines for Spay/Neuter.
- Maintain Federal Drug Enforcement Administration licensure for the handling and keeping of controlled substances used for spay/neuter and field services activities at the City of Midland Animal Shelter. Provide oversight of these drug records to the extent necessary to meet the requirements of the Texas Controlled Substances Act and Department Policy and Procedure regarding the handling, storage, and record keeping for controlled substances.
- Provide veterinary license permissions allowing the Shelter to purchase necessary vaccines, medications, and related supplies.
- Maintain a license to practice veterinary medicine that is current and in good standing in the state of Texas as well as the level of expertise and education necessary to keep abreast of current industry standards and practices.
- Be a member in good standing of the American Veterinary Medical Association.

City responsibilities:

- Provide the facility, staffing, and supplies, which will be purchased by the City of Midland and kept at the Midland Animal Shelter.

5. NARRATIVE

The following information shall be included in the proposal:

- A resume showing the contractor's professional experience with shelter medicine and high volume spay/neuter.
- A narrative demonstrating the contractor's ability to meet the requirements under the scope of responsibilities.
- Proof of the contractor's ethical and professional standing
- A fee schedule showing the contractor's daily rate and hourly rate for consultation and emergency response (as needed) for work performed outside the scheduled twice per week.

6. VENDOR QUALIFICATIONS

6.1. INFORMATION VERIFICATION

The City may make such investigations as deemed necessary to determine the ability of the offeror to supply the products and perform the services specified.

6.2. RIGHT TO REJECT

The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the City that offeror is properly qualified to carry out the obligations of the contract.

6.3. VENDOR CAPABILITIES

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror and will be weighed by the City. (Note: Each item must be thoroughly addressed. Taking exception to any requirements listed in this Section may disqualify the proposal):

6.3.1. References

- 6.3.1.1. Offeror shall provide a minimum of three (3) references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- 6.3.1.2. These references should include City government and universities where the offeror, preferably within the last five (5) years, has successfully completed these type of services

6.3.2. Vendor Stability

- 6.3.2.1. Offerors shall demonstrate their financial stability to supply and support the services specified.
- 6.3.2.2. Provide financial statements, preferably audited, for the 3 consecutive years immediately preceding the issuance of this RFP.
- 6.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 6.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects).

7. EVALUATION PROCESS

7.1. EVALUATION PROCEDURE

7.1.1. Committee Actions

- 7.1.1.1. The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.
- 7.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP.
- 7.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any

award.

7.2. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

7.2.1. Proposal (Fee Schedule) (30%)

7.2.2. Contractor Qualifications (40%)

7.2.2.1. Professional Experience (20%)

7.2.2.2. Abilities to Meet Scope Responsibilities (20%)

7.2.3. Ethical and Professional Standing (20%)

7.2.4. Three references (10%)

8. PROPOSAL CONTENTS

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

8.1. THE RFP

8.2. PROPOSAL (FEE SCHEDULE)

8.3. REQUESTED ATTACHMENTS

8.3.1. Resume

8.3.2. Professional Abilities

8.3.3. Proof of Ethical and Professional Standing

8.3.4. References

8.3.5. Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

By executing this offer, Offeror affirms that he/she has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Offeror shall be removed from all proposal lists.

By the signature hereon affixed, the Offeror hereby certifies that neither the Offeror or the firm, corporation, or institution represented by the Offeror or anyone acting for such firm, corporation, or institution has violate the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer being made to any competitor or any other person in such line of business. By signing this offer, Offeror certifies that if a Texas address is shown as the address of the Offeror, Offeror qualifies as a Texas Resident Offeror as defined in Rule 1 TAC 113.8.

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

•

AGREEMENT
23002497

THIS AGREEMENT is made and effective the __day of __ 20____, by and between the CITY OF MIDLAND, TEXAS (“CITY”), a home-rule municipal corporation, and _____ (“COMPANY”). CITY and COMPANY are at times individually referred to as a “Party” and collectively referred to as the “Parties.”

ARTICLE I. PURPOSE

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

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from _____ until _____, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information and other data ("*Instruments of Service*") given to, prepared or assembled by COMPANY under this Agreement, and any other related document or item shall become the sole and exclusive property of CITY. The Instruments of Service shall be promptly delivered, without restriction, to CITY and such other persons or entities as CITY may designate; provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of CITY. COMPANY shall have exclusive control of and the exclusive

right to control the details of the Services and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The Parties acknowledge and agree that the doctrine of *respondeat superior* shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing the Services shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended nor shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” that would give rise to vicarious liability. COMPANY is an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor. CITY does not have the power to direct the order in which the services are performed. CITY shall not have the right to control the means, methods or details of COMPANY’S work. COMPANY shall assume exclusive responsibility for performing the Services, and is entirely free to perform the Services in its own way.

ARTICLE IX. INSURANCE

During the term of this Agreement, COMPANY shall maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
 \$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Workers’ Compensation: Statutory limits

Employers’ Liability: \$500,000.00 per accident or occurrence

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and that name the City of Midland as an additional insured on a claims-occurred basis (except Workers' Compensation).

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

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law and this Agreement is the sole and exclusive responsibility of COMPANY.

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONSTRUCTION,

INTERPRETATION, OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED) OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE), COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

CITY's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of the Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

If to COMPANY: _____

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon

whom COMPANY relies to establish its claim. COMPANY's failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such notice.

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

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

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

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

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

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

M. Records Retention and Production of Information. To the extent that this Agreement is

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

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

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

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

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

ARTICLE XV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION XV SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of _____, 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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

~~PACKET~~ ~~6-31~~ ~~Signature of vendor doing business with the governmental entity~~

~~File~~ February 14, 2023

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____



City Council Meeting

Item Number: 7
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR ENGINEERING SUPPORT AND ADMINISTRATIVE SERVICES TO THE CITY OF MIDLAND T-BAR RANCH WELL SYSTEM AND OTHER POTENTIAL WATER SOURCES FOR A COST OF \$362,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a Professional Services Agreement with Parkhill, Smith & Cooper, Inc. dba Parkhill, to provide engineering support and administrative services to the City of Midland – T-Bar Systems and other potential water sources, for a cost of \$362,000.00; as directed by City Staff.

Recommended City Council Action:

Approve

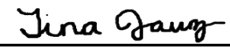
Fiscal Impact:

\$362,000.00 is available in the Utilities operating budget and will be transferred and appropriated to a project.

Discussion:

Resolution 2020-091 approved the selection of Parkhill, Smith & Cooper, Inc. dba Parkhill, for performance of on-call engineering support services for the Utilities Department. Parkhill will support and administer services to the City of Midland T-Bar Systems and other potential water sources including the Fort Stockton Water source. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution authorizing the execution of a professional services agreement with Parkhill, Smith & Cooper, Inc. dba Parkhill to provide engineering support and administrative services for the City of Midland – T-Bar Systems and other potential water sources as directed by City Staff for a cost of \$362,000.00; as directed by City Staff.



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Carl Craig, PE, Utilities Director

SUBJECT: Consider a Resolution approving a contract with Parkhill, Smith & Cooper., DBA Parkhill for a Professional Service Agreement for the engineering support and administrative services to the City of Midland – T-Bar Systems and other potential water sources.

DATE: February 14, 2023

Parkhill will provide engineering support and administrative services to the City of Midland T-Bar Systems and other potential water sources via a Designated Professional Engineer. These services will include oversight of the day-to-day operations of the System. The Designated Professional Engineer will report directly to the Water Utilities Director for the City of Midland. This Contract will have Parkhill an approved on-call engineer (Resolution 2020-091) perform the task.

Administrative support is to process all invoices, time sheets, daily operations, work orders, and other assigned duties related to the operations of the T-Bar Water Ranch. Engineering support is to provide design, and construction oversight for projects as needed throughout the year.

Parkhill will provide owners rep services of other potential water sources including the Fort Stockton Water source. These services will review possible routes, consultants with the tri-cities engineers, and assist with ROW acquisitions.

The scope of services is on a task fee basis of \$362,000. Funds will be allocated from the Utilities Operations budget.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR ENGINEERING SUPPORT AND ADMINISTRATIVE SERVICES TO THE CITY OF MIDLAND T-BAR RANCH WELL SYSTEM AND OTHER POTENTIAL WATER SOURCES FOR A COST OF \$362,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS

WHEREAS, the Utilities Department has selected Parkhill, Smith & Cooper, Inc., d/b/a Parkhill (“Parkhill”), to provide engineering support and administrative services to the City of Midland T-Bar Ranch well system and other potential water sources; and

WHEREAS, Parkhill has agreed to perform said professional services at a cost of \$362,000.00; and

WHEREAS, the City Council finds that Parkhill is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Parkhill are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Parkhill provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Parkhill as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Parkhill for said professional services. A copy of said

agreement is attached hereto as Exhibit “1” and incorporated herein for all purposes.

SECTION TWO. That funds are available in the Utilities Fund operating budget and shall be transferred and appropriated to a project.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Parkhill pursuant to the terms of said professional services agreement upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
23002371

THIS AGREEMENT is made and effective the 15 day of February, 2023 by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and PARKHILL, SMITH & COOPER, INC., DBA, PARKHILL, (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform engineering support and administrative services to the City of Midland – T-Bar Systems and other potential water sources (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$362,000.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

fifteen (15) days of the date of receipt of the invoice, and the Parties shall immediately make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, CITY shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from February 15, 2023 until February 14, 2024, unless the Services are completed sooner or the Agreement is terminated as provided below. Thereafter, this agreement may be renewed for up to two (2) additional terms of one (1) year each, upon the CITY providing notice of intent to renew to the COMPANY not less than 30 days prior to the expiration of this contract.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information and other data ("*Instruments of Service*") given to, prepared or assembled by COMPANY under this Agreement, and any other related document or item shall become the sole and exclusive property of CITY. The Instruments of Service shall be promptly delivered, without restriction, to CITY and such other persons or entities as CITY may designate;

provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of CITY. COMPANY shall have exclusive control of and the exclusive right to control the details of the Services and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The Parties acknowledge and agree that the doctrine of *respondeat superior* shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing the Services shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended nor shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" that would give rise to vicarious liability. COMPANY is an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor. CITY does not have the power to direct the order in which the services are performed. CITY shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for performing the Services, and is entirely free to perform the Services in its own way.

ARTICLE IX. INSURANCE

During the term of this Agreement, COMPANY shall maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence

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

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

The Business Automobile Liability policy shall cover any vehicle for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the Services. This policy shall name CITY as an additional insured and waive subrogation in favor of CITY.

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and that name the City of Midland as an additional insured on a claims-occurred basis (except Workers' Compensation).

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

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert

inappropriate language on a certificate. Compliance with state law and this Agreement is the sole and exclusive responsibility of COMPANY.

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

ARTICLE X. ATTORNEY FEES

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT AND HAD THE

OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

CITY's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any contractual claims or disputes arising from or relating in any way to the subject matter of this

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

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

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

If to COMPANY: Parkhill, Smith & Cooper, Inc., DBA Parkhill
 4222 85th Street
 Lubbock, Texas 79423

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

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

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

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

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

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement,

and all terms and requirements under said statutes and regulations are made terms and conditions of this Agreement, to which the Parties have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim. COMPANY's failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such notice.

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

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

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

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

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

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

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

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

O. Conflict of Terms. If a conflict of terms or language exists between: (i) any of the provisions of this Agreement; and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the Parties acknowledge and

agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023 personally appeared, _____, an officer of PARKHILL, SMITH & COOPER, INC., DBA, PARKHILL, 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

January 13, 2023

Mr. Carl Craig, PE
Director of Utilities
City of Midland
300 N. Lorraine
Midland, Texas 79701

RE: Proposal for Professional Services
City of Midland T-Bar Systems Administrative and Engineering Support
2215 County Road 101, Kermit, Texas 79745

Dear Mr. Craig:

Parkhill is pleased to have the opportunity to provide this proposal for Engineering services to City of Midland for the referenced Project.

SCOPE OF SERVICES

Parkhill will provide engineering support and administrative services to City of Midland T-Bar Systems and other potential water sources via a Designated Professional Engineer. These services will include oversight of the day-to-day operations of the System. The Designated Professional Engineer will report directly to the Water Utilities Director for City of Midland.

The following outlines a general description of the various services and key job tasks to be provided.

PLANNING AND MANAGEMENT

- Provides leadership assisting City with the development of long-range strategic plans.
- Collaborates with City to define the vision and to develop strategies for achieving that vision.
- Creates annual operating plans that support the strategic direction set by City and correlate with annual operating budgets.
- Oversees the operations and manages its compliance with legal and regulatory requirements.
- Ft. Stockton Holdings – route study, right-of-way procurement and general planning and support.

GENERAL FINANCIAL MANAGEMENT

- Develops tools and systems to provide key financial and operational information to City.
- Oversees the development of annual budgets that support operating plans and submits budgets for City approval.
- Oversees cash flow planning and ensures availability of funds as needed for ongoing operations and projects.
- Develops budgets for ongoing and future projects and oversee the financial implementation of such projects.

TECHNICAL OPERATIONS

- Parkhill will provide ongoing technical assistance for the overall operation and management of the District's Well Field, Pipeline, storage, and other assets. Technical assistance will be provided by Parkhill staff as directed by City on an as needed basis. Technical Assistance will include the following:
 - Supports the Operators services contract.
 - Prepares, reviews, and presents to City for approval annual operating and maintenance budgets to maintain the systems in good working order.
 - Monitors ongoing operation and assists in developing processes and procedures that provide cost benefit to City.

ADMINISTRATIVE ASSISTANCE

- Parkhill will provide Administrative Assistance for the overall operation and management of the T-Bar System through PSC Water. Administrative Assistance will include the following job tasks:
 - Answering and transferring incoming telephone calls to the related to the T-bar System, taking and delivering phone messages to Engineering and PSC Water.
 - Receiving and filing incoming letters and documents to conform to City standards.
 - Typing and word processing.
 - Managing office equipment and supplies.
 - Scheduling meetings and taking minutes.
 - Managing meeting agendas including travel, meeting place, hotel, meals, etc.
 - Preparing and mailing monthly statements.
 - Receiving and depositing payments.
 - Providing general high level bookkeeping services as set up by City accounting to ensure the project stays within budget.
 - Filing and maintaining the systems legal documentation.
 - Processing of all invoices related to system operations and maintenance.
 - Coordination with City staff on accounts and payments.
 - Procurement assistance for project operations following City purchasing procedures.

Services specifically excluded from our Scope of Services include, but are not limited to, the following:

- Surveys and Geotechnical Reports
- Asbestos and Hazardous Materials Studies
- Third-Party Independent Construction Inspection Services
- Construction Material Testing
- Texas Department of Health Demolition Notification
- Construction Observation Services
- Preparation of Construction Documents for more than one bid package
- Multiple Bid Packages
- Phased Construction
- Fast-track Construction
- Entitlement Services

DELIVERABLES

Provide invoice submittals to City, coordinate and facilitate monthly progress meetings, and develop a preliminary route study and planning material for future water source

COMPENSATION

Our fee for the Scope of Services described above will be based on an hourly rate. We estimate this to be approximately **\$362,000**. The estimated fee will be billed by Tasks, based on the following approximate allocations:

	Administrative Services.....	\$137,000
	Engineering Support	\$100,000
	Ft. Stockton Analysis and Support.....	\$125,000

We appreciate the opportunity to provide professional services to you and look forward to the successful completion of your project. If you have any questions, please do not hesitate to call us.

Sincerely,

PARKHILL

By 

Kyle W. Krueger, PE
Project Manager | Associate

KWK/kg
Enclosures

X:\PENDING PROJECT NUMBER\COM_TBar\Parkhill-COM_ProfSvcsProposal_TBarSysSupport_012023.docx



City Council Meeting

Item Number: 8
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AWARDING A CONTRACT FOR THE PLANT FARM PONDS REHABILITATION PROJECT TO SYNAGRO OF TEXAS-CDR, INC., FOR THE AMOUNT OF \$4,396,743.50; APPROVING \$879,348.70 FOR CONTINGENCIES; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract for the Plant Farm Ponds Rehabilitation Project to Synagro of Texas-CDR, Inc. of Baltimore, Maryland for the Utilities Department for the amount of \$4,396,743.50; approving \$879,348.70 for contingencies; for a total cost amount of \$5,276,092.20; and transferring and appropriating funds; and authorizing payment.

Recommended City Council Action:

Approve

Fiscal Impact:

\$5,276,092.20 is available in the Utilities operating budget and will be transferred and appropriated to a project.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the Plant Farm Ponds Rehabilitation Project for the Utilities Department. The bid request was sent to fifty-six (56) companies. We received two (2) bids. Staff recommends awarding a contract to Synagro of Texas-CDR, Inc. The project timeline is projected at 120 calendar days. Please see the attached memo from Carl Craig, Utilities Director, for more information.

Therefore, please consider a resolution awarding a contract for the Plant Farm Ponds

Rehabilitation Project for the Utilities Department to Synagro of Texas-CDR, Inc. of Baltimore, Maryland for the amount of \$4,396,743.50; approving \$879,348.70 for contingencies; for a total cost amount of \$5,276,092.20; and transferring and appropriating funds; and authorizing payment.

Jina Gang

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AWARDED A CONTRACT FOR THE
PLANT FARM PONDS REHABILITATION PROJECT
TO SYNAGRO OF TEXAS-CDR, INC., FOR THE
AMOUNT OF \$4,396,743.50; APPROVING \$879,348.70
FOR CONTINGENCIES; AND TRANSFERRING AND
APPROPRIATING FUNDS**

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the Plant Farm Ponds Rehabilitation Project; and

WHEREAS, bids were opened on January 26, 2023, with the lowest bid being submitted by Synagro of Texas-CDR, Inc., as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Synagro of Texas-CDR, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Synagro of Texas-CDR, Inc., for the Plant Farm Ponds Rehabilitation Project; and

WHEREAS, the City Council finds it to be in the public interest to approve \$879,348.70 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Synagro of Texas-CDR, Inc., for the Plant Farm Ponds Rehabilitation Project for an amount of \$4,396,743.50. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$879,348.70 for contingencies is hereby approved for said contract.

SECTION THREE. That funds are available in the Utilities operating budget and shall be transferred and appropriated to a project.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Synagro of Texas-CDR, Inc., pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Plant Farm Ponds Rehabilitation (Re-Bid)
Bids Opened 01/26/2023
2:00 PM



Bidder				Synagro		Onyx General Contractors	
Attachments: Bid Security Vendor Compliance to State Law Qualifications Statement Affidavit of Eligibility Conflict of Interest Questionnaire Completed Site Visit Acknowledgement of Addendum 1 Acknowledgement of Addendum 2 Acknowledgement of Addendum 3							
				Yes		Yes	
				Yes		Yes	
				Yes		Yes	
				Yes		Yes	
				Yes		Yes	
				Yes		Yes	
				Yes		Yes	
Bid item #	Description	Quantity	Units	Price	Total Price	Price	Total Price
	BASE BID:						
1	Mobilization/Demobilization	1	LS	\$53,817.00	\$53,817.00	\$286,323.00	\$286,323.00
2	Dry Sludge Removal & Disposal	17,000	TONS	\$105.24	\$1,789,080.00	\$97.00	\$1,649,000.00
3	Wet Sludge Dewatering & Disposal	4,000	TONS	\$105.24	\$420,960.00	\$86.00	\$344,000.00
4	Liner Removal & Disposal	1	LS	\$323,652.50	\$323,652.50	\$187,439.00	\$187,439.00
5	Grading & Subgrade Preparation	1	LS	\$20,000.00	\$20,000.00	\$208,370.00	\$208,370.00
6	Leak Detection Well Head Modification	8	EA	\$2,500.00	\$20,000.00	\$19,625.00	\$157,000.00
7	Leak Detection Pipe & Trench Replacement	1,000	LF	\$24.79	\$24,790.00	\$295.00	\$295,000.00
8	Liner Installation	1	LS	\$1,744,444.00	\$1,744,444.00	\$2,115,000.00	\$2,115,000.00
SUBTOTAL BASE BID				\$4,396,743.50		\$5,242,132.00	
OWNER'S CONTINGENCY (20%) OF BASE BID				\$ 879,348.70		\$ 1,048,426.40	
TOTAL BID PRICE (SUBTOTAL + OWNER'S CONTINGENCY				\$5,276,092.20		\$6,290,558.40	
I, Sherif E. Mabrouk, PE, do hereby certify this bid tabulation is accurate and true  01/27/2023							



INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Carl Craigo, PE, Utilities Director

SUBJECT: Consider a Resolution approving a contract for the Plant Farm Ponds Rehabilitation Project to Synagro of Baltimore, Maryland for Construction.

DATE: February 14, 2023

The City has two (2) existing primary effluent holding ponds located east of the Water Pollution Control Plant (WPCP) off CR 1150 and south of CR 110. The City of Midland received a new permit to discharge waste from the TCEQ with the update to its secondary treatment process with Pioneer. The permit states that within three years of permit issuance, the City must either complete the installation of new liners or construct replacement ponds. The City received an extension of the three years for an additional year on Jan 15, 2023, with the anticipation of accepting current bids.

Resolution awarding a contract for the Plant Farm Ponds Rehabilitation Project to Synagro of Baltimore, Maryland for the Utilities Department for the amount of \$4,396,743.50; approving \$879,348.70 for contingencies. Funds were approved in the Operation FY22 budget and were moved to unallocated funds when the project was delayed. Utilities request to allocate funds from the Water and Sewer Unallocated funds to perform the project.



City of Midland

Plant Farm Ponds Rehabilitation

Construction Documents Project Manual

Issued for Bid

November 2022

HDR Project No. 10301516

Prepared by:

*HDR Engineering, Inc.
TBPE Firm Registration No. F-754
4401 West Gate Blvd., Suite 400
Austin, TX 78745
512-912-5100*



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DIVISION 00

PROCUREMENT AND CONTRACTING
REQUIREMENTS

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ADVERTISEMENT FOR BIDS

CITY OF MIDLAND
MIDLAND, TEXAS
PLANT FARM PONDS REHABILITATION

General Notice

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

Water Reclamation Facility
Plant Farm Ponds Rehabilitation
Project Number 10301516

Sealed bids for the construction of the Project will be received at the **City of Midland City Hall, 300 N. Loraine, 3rd Floor, Midland, TX 79701, Attn: City Secretary's Office**, until Thursday, January 12th, 2023 at **2:00 PM** local time. At that time the Bids received will be publicly opened and read. There will also be a WebEx meeting option. At the specified time, follow the link below to join the video conference. Prospective bidders are encouraged to test the link in advance of the meeting to verify functionality.

<https://meethdr.webex.com/meethdr/j.php?MTID=mece9ab76eb1561a1037c630787fea459>

The Project includes the following Work:

The Project includes constructing the Work broadly described below, in accordance with the Contract Documents, with all related appurtenances. Work shown on the Drawings, or indicated in the Specifications, or indicated elsewhere in the Contract Documents is part of the Work, regardless of whether indicated below. The Work includes, but is not limited to, the following:

1. All labor, materials, equipment, and necessary incidentals required for the removal and replacement the pond liners at Farm Pond A and Farm Pond B.

Bids are requested for the following Contract: Plant Farm Ponds Rehabilitation Project

Obtaining the Bidding Documents

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

www.civcastusa.com

Bidding Documents may be downloaded from the designated website. Prospective Bidders are urged to register with the designated website as a Bidding Documents holder, even if Bidding Documents are obtained from a third-party plan room or source other than the designated website in either electronic or paper format. The designated website will be updated periodically with Addenda, lists of registered Bidding Documents holders, reports on the Site, and other information relevant to submitting a Bid for the Project. All official notifications, Addenda, and other Bidding Documents will be offered only through the designated website. Neither Owner nor Engineer will be responsible for Bidding Documents, including Addenda, if any, obtained from sources other than the designated website.

The Issuing Office for the Bidding Documents is:

HDR
4401 West Gate Blvd., Suite 400
Austin, TX 78745

EJCDC® C-111, Advertisement for Bids for Construction Contract.

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PACKET

For questions or information concerning this project, contact Ms. Lisa Singer, HDR, 4401 West Gate Blvd., Suite 400, Austin, TX 78745, lisa.singer@hdrinc.com; CC Mr. Sherif Mabrouk, sherif.mabrouk@hdrinc.com.

Pre-bid Conference

A mandatory pre-bid conference for the Project will be held on Wednesday, December 14th, 2022 at 2:30 PM via WebEx meeting. At the specified time, follow the link below to join the video conference. Prospective bidders are encouraged to test the link in advance of the meeting to verify functionality.

<https://meethdr.webex.com/meethdr/j.php?MTID=m800955a19cb0297693ef55e50df1eed>

To request a site visit prior to bid, contact Mr. Ben Jordan (432-559-3045) at least 48 hours in advance of a requested site visit.

Instructions to Bidders

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, their address, and the name of the project for which the bid is submitted.

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

This Advertisement is issued by:

Owner: City of Midland

By: Amy Turner

Title: City Secretary

Date: Advertising: November 30, 2022

INSTRUCTIONS TO BIDDERS

FOR CONSTRUCTION CONTRACT

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ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use, nor does it grant or confer ownership or any property interest in the Bidding Documents and other documents distributed for the Project. Authorization to download documents, or other distribution, includes the right for Bidding Documents holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the Bidding Documents holder pays all costs associated with printing or reproduction. Paper or other types of printed documents may not be re-sold under any circumstances.
- 2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that Bidder register as a Bidding Documents holder with the Issuing Office at such website, and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered Bidding Documents holders will receive Addenda issued by Owner or Issuing Office.
- 2.04 Bidder may register as a Bidding Documents holder and obtain complete sets of Bidding Documents, in the format stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered Bidding Documents holders will receive Addenda issued by Owner or Issuing Office.
- 2.05 Plan rooms (including construction information subscription services, and electronic and virtual plan rooms) may distribute the Bidding Documents, or make them available for examination. Those prospective bidders that obtain an electronic (digital) copy of the Bidding Documents from a plan room are encouraged to register as Bidding Documents holders from the Bidding Documents Website or Issuing Office. Owner is not responsible for omissions in Bidding

Documents or other documents obtained from plan rooms or other such sources (such as other prospective bidders), or for a Bidder's failure to obtain Addenda from a plan room.

2.06 Electronic Documents

- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to prospective Bidders as Electronic Documents in the manner specified.
 - 1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader Version 2020 or later. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor any bidder's or the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.06.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in paper versions of the documents, and for Bidder's reliance upon such derived information.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 Bidder is to submit the following information with its Bid to demonstrate Bidder's qualifications to perform the Work:
 - A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
 - B. A written statement that Bidder is authorized to do business in the state of Texas, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
 - C. Bidder's state (or other) contractor license number, if applicable.
 - D. Subcontractor and Supplier qualification information.
 - E. Other required information regarding qualifications.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.04 Bidders shall be experienced in the kind of Work to be performed, shall have the or be able to obtain construction equipment necessary for the Work, and shall possess sufficient capital to properly perform the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed

similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show and document to Owner's satisfaction that Bidder has the necessary ability, facilities, equipment, and resources to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the times specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the Work.

ARTICLE 4—PRE-BID CONFERENCE

- 4.01 A mandatory pre-bid conference will be held at the time and location indicated in the Advertisement or invitation to bid. Representatives of Owner and Engineer will be present to discuss the Project. Bids will not be accepted from Bidders who do not attend the conference. It is each Bidder's responsibility to sign in at the pre-bid conference to verify its participation. Bidders must sign in using the name of the organization that will be submitting a Bid. A list of Bidders that attended the pre-bid conference and are, on that basis alone, eligible to submit a Bid for this Project, will be issued in an Addendum. A mandatory site visit is also required. Refer to the details listed in Article 5.03.
- 4.02 Information presented at the pre-bid conference does not alter the Bidding Documents. Owner or Issuing Office will issue Addenda to make any changes to the Bidding Documents that result from discussions at the pre-bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

5.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents, including in Specifications Section 01 11 00 – Summary of Work. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

5.02 *Existing Site Conditions*

A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*

1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
 - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
 - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

- d. Technical Data contained in such reports and drawings.
 - 2. Owner will make copies of reports and drawings referenced above available to any prospective Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
 - 3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
 - 4. *Geotechnical Baseline Report and Geotechnical Data Report:* The Bidding Documents contain a Geotechnical Baseline Report (GBR) and Geotechnical Data Report (GDR).
 - a. As set forth in Specifications Section 02 06 13 – Geotechnical Baseline Report, the GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (“Baseline Conditions”). Because it is an attachment to a Specifications section, the GBR is a Contract Document.
 - b. The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.
 - c. Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
 - d. As set forth in Specifications section 02 06 13 – Geotechnical Baseline Report, the GDR is a Contract Document containing data prepared by or for the Owner in support of the GBR.
 - B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- 5.03 *Site Visit and Testing by Bidders*
- A. A Site visit is scheduled following the pre-bid conference with the City of Midland. Maps, directions, or GPS coordinates to the Site, when the Site is remote from the pre-bid conference location, will be available at the pre-bid conference. If bidders are not able to attend the site visit following the pre-bid conference, they will be required to schedule a

separate site visit with the owner and certify in their Bids that a site visit was conducted to the Plant Farm ponds.

- B. Bidders visiting the Site are required to: (1) arrange their own transportation to the Site; and (2) each Bidder visiting the Site is responsible for providing and using its own personal protective equipment appropriate for the Site and conditions, and in accordance with posted requirements, if any. It is recommended that Bidders have protective equipment appropriate to provide protection from sludge that is saturated and/or in standing water. Comply with Paragraph 5.05 of these Instructions to Bidders.
- C. All access to the Site, other than during a regularly scheduled Site visit, must be coordinated through the following Owner or Engineer contact for visiting the Site: Ben Jordan, Water Reclamation Facility Superintendent, City of Midland (432-559-3045). Bidder must conduct the required Site visit during normal working hours, Mondays through Fridays.
- D. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- E. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.
- F. Bidder must comply with Laws and Regulations regarding excavation and location of utilities, obtain necessary permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- G. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be indicated in the Supplementary Conditions. Where the Bidding Documents indicate an Owner's safety program, visitors to the Site during the bidding phase and at other times shall comply with Owner's safety programs.

5.05 *Other Work at the Site*

- A. Reference is made to Specifications Section 01 11 00 – Summary of Work, for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other potentially confidential matters), if any.

ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will complete and submit contains express representations regarding the Bidder’s examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Successful Bidder (as Contractor) will make similar express representations and certifications when it signs the Agreement.

ARTICLE 7—INTERPRETATIONS AND ADDENDA

- 7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing. Contact information and submittal procedures for such questions are as follows:
 - A. All questions shall be submitted via CivCast by the date specified. The CivCast site is the sole point of contact until contract award. Do not rely on information from any other source.
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all Bidding Documents holders registered with the Issuing Office. Questions received less than seven days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Bidding Documents.
- 7.05 Addenda that engineer judges to have a material or significant effect on Bidders’ preparation of pricing and other requirement element of the Bid will be transmitted via Addendum for Bidders’ receipt not less than three days prior to the scheduled date for receipt of the Bids. Clarifications or modifications that Engineer deems will not have a material or substantial effect on the preparation of Bids may be transmitted for Bidders’ receipt later, for receipt prior to the deadline for receipt of Bids.

ARTICLE 8—BID SECURITY

8.01 *Required Form and Amount of Bid Security*

- A. A Bid must be accompanied by bid security made payable to Owner in an amount of five percent of Bidder’s maximum Bid price (determined by adding the base bid and all alternates) and in the form of a bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
- B. Such bid bond will be issued in the form included in the Bidding Documents.

8.02 *Bid Security of Successful Bidder*

- A. The Bid security of the apparent Successful Bidder will be retained until Owner awards the Contract to such Bidder, and such Bidder has signed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Successful Bidder's bid security will be released.
- B. If the Successful Bidder fails to sign and deliver the Contract and furnish the required Contract security within the number of days, indicated in Paragraph 20.01 of these Instructions to Bidders, after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the bid security of that Bidder will be forfeited.
- C. Upon Successful Bidder's default:
 - 1. When the bid security is a penal sum bid bond, the entire penal sum amount of the bid bond will be forfeit and due Owner.
 - 2. When the bid security is a damages form of bid bond, to the extent of Owner's damages will be forfeit and due Owner.
 - 3. If a type of bid security other than a bid bond is allowed and is furnished, the amount that will be forfeit and due Owner will be the same as for the form of bid bond included in the Bidding Documents. Owner will so notify the defaulting Bidder in writing of the annulment and the amount of the forfeiture, with documentation of the amount forfeited.
- D. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.

8.03 *Bid Security of Bidders other than the Successful Bidder*

- A. The bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon bid security furnished by such Bidders will be released.
- B. Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the bid opening.
- C. Release of Bid Security: Owner may release any Bidder's bid security by returning such bid security to the associated Bidder. When bid security is in the form of a bid bond, Owner may dispose of or destroy the bid bond and so advise the associated Bidder in writing that the bid bond has been released.

ARTICLE 9—CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any), are to be achieved are set forth in the Agreement.
- 9.02 Bidder must set forth in the Bid the time by which Bidder must achieve Substantial Completion, subject to the restrictions established in Paragraph 13.07 of these Instructions to Bidders. Owner will take Bidder's time commitment regarding Substantial Completion into consideration during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that Successful Bidder will be able to achieve Substantial Completion within the time such Bidder

has designated in the Bid. Bidder must also set forth in the Bid its commitments regarding achievement of Milestones and readiness for final payment. Successful Bidder's time commitments will be entered into the Agreement or incorporated in the Agreement by reference to the specific terms of the Bid.

- 9.03 Provisions for liquidated and special damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials, equipment, and procedures specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items or procedures. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment or procedure, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, and will perform the Work in accordance with procedures indicated in the Bidding Documents, as supplemented by Addenda, if any. Assumptions regarding the possibility of post-bid approvals of “or-equal” or substitution requests are made at Bidder's sole risk.

ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so in the Specifications or elsewhere in the Bidding Documents. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should not submit a Bid.
- 11.02 The apparent Successful Bidder, and any other Bidder so requested by Owner or Engineer, must submit to Owner (with a copy to Engineer) a list of the Subcontractors and Suppliers proposed for the following portions of the Work within five days after the bid opening:
- 11.03 If requested by Owner or Engineer, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and awarding the Contract.
- 11.04 If apparent Successful Bidder declines to make a requested substitution, Owner may award the Contract to another Bidder, consistent with the basis for evaluating the Bids for award as set forth in these Instructions to Bidders, that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to issuance of the Notice of Award will be deemed acceptable

to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

ARTICLE 12—PREPARATION OF BID

- 12.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8.5inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a corporation must be signed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.
- 12.05 A Bid by a limited liability company must be signed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder’s name and official address.
- 12.07 A Bid by a joint venture must be signed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be indicated on the Bid Form.
- 12.11 The Bid must contain evidence of Bidder’s authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.

- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.

ARTICLE 13—BASIS OF BID

13.01 *Lump Sum*

- A. Bidders must submit a Bid on a lump sum basis as set forth in the Bid Form.

13.02 *Unit Price*

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each item of Unit Price Work will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and final Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

13.03 *Cash Allowances*

- A. For cash allowances the bid price (for items other than cash allowances) must include such amounts as Bidder deems proper for Contractor's overhead, handling and installation costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 14—SUBMITTAL OF BID

- 14.01 The Bidding Documents include one separate, unbound copy of the Bid Form, and, where required, the Bid Bond Form and other supplements to the Bid Form. The unbound copy of the Bid Form and supplements (if any) is to be completed and submitted with the Bid security and the other documents required with the Bid by Article 2 of the Bid Form.
- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, and the name and address of Bidder, and must be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery method, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement or invitation to bid.
- 14.03 Bids received after the date and time prescribed for the opening of Bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the

Bidder unopened. Owner accepts no responsibility for delays in returning Bids submitted or delivered to the incorrect location.

ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly signed in the same manner that a Bid must be signed and delivered to the place where Bids are to be submitted, prior to the date and time established in the Bidding Documents for the receipt of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 of this Article and submit a new Bid prior to the date and time for established in the Bidding Documents the receipt of Bids.
- 15.03 If, within 24 hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the bid security will be returned.

ARTICLE 16—OPENING OF BIDS

- 16.01 Bids will be opened at the time and place indicated in the Advertisement or invitation to bid and, unless obviously non-responsive, will be read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 17.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT

- 18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. Owner may reject the Bid of any Bidder that fails to demonstrate appropriate qualifications, experience, and resources for the Work, in accordance with Article 3 of these Instructions to Bidders.
- 18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 18.04 *Basis for Award of Contract*
 - A. If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest-priced, responsive Bid that has not otherwise been disqualified.

18.05 *Evaluation of Bids*

- A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or elsewhere in the Bidding Documents, or prior to the Notice of Award.
- 18.06 In evaluating whether a Bidder is responsible, Owner will consider the qualifications, experience, and resources of the Bidder and may consider the qualifications, experience, and resources of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 18.07 Owner, with or without Engineer's assistance, may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 19—BONDS AND INSURANCE

- 19.01 Paragraph 2.01 and Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, set forth Owner's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the signed Agreement to Owner (or Owner's representative), it must be accompanied by required bonds and insurance documentation.
- 19.02 Article 8 ("Bid Security") of these Instructions to Bidders addresses any requirements for providing bid bonds as part of the bidding process.

ARTICLE 20—SIGNING OF AGREEMENT

- 20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Agreement, along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and required bonds and insurance documentation (as required by the Contract Documents) to Owner. Within 10 days thereafter, Owner will deliver one fully signed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 21—SALES AND USE TAXES

- 21.01 Owner is exempt from Texas state sales and use taxes on materials and equipment to be incorporated in the Work. . Said taxes must not be included in the Bid. Refer to Paragraph SC-7.10 of the Supplementary Conditions for additional information.

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BID FORM

FOR CONSTRUCTION CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: City of Midland, 300 N. Loraine, City Secretary, Midland, TX 79701
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. Bid Form;
 - C. Vendor Compliance to State Law;
 - D. Affidavit of Eligibility;
 - E. List of Proposed Subcontractors;
 - F. List of Proposed Suppliers;
 - G. Evidence of authority to do business in the state of the Texas
 - H. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - I. Required Bidder Qualification Statement with supporting data; and
 - J. Conflict of Interest Questionnaire
 - K. Certification that a site visit to the Plant Farm Ponds was conducted.

ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

- 3.01 *Lump Sum and Unit Price Bids*
- A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum price(s), and unit prices.
 - B. For unit price items, bidder acknowledges that:
 - 1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and

2. the estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.
- C. All specified contingency allowances are included in the price(s) set forth below, and have been computed in accordance with Paragraph 13.02 of the General Conditions.

Description	Quantity	Unit	Unit Price	TOTAL
BASE BID				
Dry Sludge Removal and Disposal:	17,000	TONS	\$	\$
Wet Sludge Dewatering and Disposal:	4,000	TONS	\$	\$
Liner Removal and Disposal:	1	LS	\$	\$
Grading and Subgrade Preparation:	1	LS	\$	\$
Leak Detection Well Head Modification:	8	EA	\$	\$
Leak Detection Pipe and Trench Replacement:	1,000	LF	\$	\$
Liner Installation:	1	LS	\$	\$
SUBTOTAL BASE BID				\$
OWNER'S CONTINGENCY (20% OF BASE BID)				\$
TOTAL BID PRICE (SUBTOTAL + OWNER'S CONTINGENCY)				\$

ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work at the Farm Ponds (including sludge disposal, liner removal, grading, leak detection work, and liner replacement) will be substantially complete within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and will be completed and ready for final payment in accordance with

Paragraph 15.06 of the General Conditions within 150 calendar days after the date when the Contract Times commence to run.

4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 5—BIDDER’S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA

5.01 *Bid Acceptance Period*

A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date

ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder’s Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 *Bidder's Certifications*

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
 - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.

- c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
- d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BIDDER hereby submits this Bid as set forth above:

Bidder:

(typed or printed name of organization)

By:

(individual's signature)

Name:

(typed or printed)

Title:

(typed or printed)

Date:

(typed or printed)

If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.

Attest:

(individual's signature)

Name:

(typed or printed)

Title:

(typed or printed)

Date:

(typed or printed)

Bidder's Address for giving notices:

Bidder's Contact Person:

Name:

(typed or printed)

Title:

(typed or printed)

Phone:

Email:

Address:

Bidder's Contractor License No.: (if applicable)

QUALIFICATIONS STATEMENT

ARTICLE 1—GENERAL INFORMATION

1.01 Provide contact information for the Business:

Legal Name of Business:			
Corporate Office			
Name:		Phone number:	
Title:		Email address:	
Business address of corporate office:			
Local Office			
Name:		Phone number:	
Title:		Email address:	
Business address of local office:			

1.02 Provide information on the Business's organizational structure:

Form of Business:	☐ Sole Proprietorship ☐ Partnership ☐ Corporation		
☐ Limited Liability Company ☐ Joint Venture comprised of the following companies:			
1.			
2.			
3.			
Provide a separate Qualification Statement for each Joint Venturer.			
Date Business was formed:		State in which Business was formed:	
Is this Business authorized to operate in the Project location?		☐ Yes ☐ No ☐ Pending	

1.03 Identify all businesses that own Business in whole or in part (25% or greater), or that are wholly or partly (25% or greater) owned by Business:

Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			

Name of business:		Affiliation:	
Address:			

1.04 Provide information regarding the Business's officers, partners, and limits of authority.

Name:		Title:	
Authorized to sign contracts:	☐ Yes ☐ No	Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts:	☐ Yes ☐ No	Limit of Authority:	\$
Name:		Title:	
Authorized to sign contracts:	☐ Yes ☐ No	Limit of Authority:	\$
Name:		Title:	

ARTICLE 2—LICENSING

2.01 Provide information regarding licensure for Business:

Name of License:			
Licensing Agency:			
License No:		Expiration Date:	
Name of License:			
Licensing Agency:			
License No:		Expiration Date:	

ARTICLE 3—DIVERSE BUSINESS CERTIFICATIONS

3.01 Provide information regarding Business's Diverse Business Certification, if any. Provide evidence of current certification.

Certification	Certifying Agency	Certification Date
☐ Disadvantaged Business Enterprise		
☐ Minority Business Enterprise		
☐ Woman-Owned Business Enterprise		
☐ Small Business Enterprise		
☐ Disabled Business Enterprise		
☐ Veteran-Owned Business Enterprise		
☐ Service-Disabled Veteran-Owned Business		
☐ HUBZone Business (Historically Underutilized) Business		

☐ Other			
☐ None			

ARTICLE 4—SAFETY

4.01 Provide information regarding Business's safety organization and safety performance.

Name of Business's Safety Officer:		
Safety Certifications		
Certification Name	Issuing Agency	Expiration

4.02 Provide Worker's Compensation Insurance Experience Modification Rate (EMR), Total Recordable Frequency Rate (TRFR) for incidents, and Total Number of Recorded Manhours (MH) for the last 3 years and the EMR, TRFR, and MH history for the last 3 years of any proposed Subcontractor(s) that will provide Work valued at 10% or more of the Contract Price. Provide documentation of the EMR history for Business and Subcontractor(s).

Year									
Company	EMR	TRFR	MH	EMR	TRFR	MH	EMR	TRFR	MH

ARTICLE 5—FINANCIAL

5.01 Provide information regarding the Business's financial stability. Provide the most recent audited financial statement, and if such audited financial statement is not current, also provide the most current financial statement.

Financial Institution:			
Business address:			
Date of Business's most recent financial statement:		☐ Attached	
Date of Business's most recent audited financial statement:		☐ Attached	
Financial indicators from the most recent financial statement			
Contractor's Current Ratio (Current Assets ÷ Current Liabilities)			
Contractor's Quick Ratio ((Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities)			

ARTICLE 6—SURETY INFORMATION

- 6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:			
Surety is a corporation organized and existing under the laws of the state of:			
Is surety authorized to provide surety bonds in the Project location?	☐ Yes ☐ No		
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury?			
☐ Yes ☐ No			
Mailing Address (principal place of business):			
Physical Address (principal place of business):			
Phone (main):		Phone (claims):	

ARTICLE 7—INSURANCE

- 7.01 Provide information regarding Business's insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):		
Insurance Provider	Type of Policy (Coverage Provided)	
Are providers licensed or authorized to issue policies in the Project location?		☐ Yes ☐ No
Does provider have an A.M. Best Rating of A-VII or better?		☐ Yes ☐ No
Mailing Address (principal place of business):		
Physical Address (principal place of business):		

Phone (main):		Phone (claims):	
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ARTICLE 8—CONSTRUCTION EXPERIENCE

8.01 Provide information that will identify the overall size and capacity of the Business.

Average number of current full-time employees:	
Estimate of revenue for the current year:	
Estimate of revenue for the previous year:	

8.02 Provide information regarding the Business's previous contracting experience.

Years of experience with projects like the proposed project:				
As a general contractor:		As a joint venturer:		
Has Business, or a predecessor in interest, or an affiliate identified in Paragraph 1.03:				
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years? ☐ Yes ☐ No				
Been barred from contracting by any local, state, or federal agency within the last 5 years? ☐ Yes ☐ No				
Been released from a bid in the past 5 years? ☐ Yes ☐ No				
Defaulted on a project or failed to complete any contract awarded to it? ☐ Yes ☐ No				
Refused to construct or refused to provide materials defined in the contract documents or in a change order? ☐ Yes ☐ No				
Been a party to any currently pending litigation or arbitration? ☐ Yes ☐ No				
Provide full details in a separate attachment if the response to any of these questions is Yes.				

8.03 List all projects currently under contract in Schedule A and provide indicated information.

8.04 List a minimum of three and a maximum of six projects completed in the last 5 years in Schedule B and provide indicated information to demonstrate the Business's experience with projects similar in type and cost of construction.

8.05 In Schedule C, provide information on key individuals whom Business intends to assign to the Project. Provide resumes for those individuals included in Schedule C. Key individuals include the Project Manager, Project Superintendent, Quality Manager, and Safety Manager. Resumes may be provided for Business's key leaders as well.

ARTICLE 9—REQUIRED ATTACHMENTS

9.01 Provide the following information with the Statement of Qualifications:

- A. If Business is a Joint Venture, separate Qualifications Statements for each Joint Venturer, as required in Paragraph 1.02.
- B. Diverse Business Certifications if required by Paragraph 3.01.
- C. Certification of Business's safety performance if required by Paragraph 4.02.

- D. Financial statements as required by Paragraph 5.01.
- E. Attachments providing additional information as required by Paragraph 8.02.
- F. Schedule A (Current Projects) as required by Paragraph 8.03.
- G. Schedule B (Previous Experience with Similar Projects) as required by Paragraph 8.04.
- H. Schedule C (Key Individuals) and resumes for the key individuals listed, as required by Paragraph 8.05.
- I. Additional items as pertinent.

This Statement of Qualifications is offered by:

Business:

(typed or printed name of organization)

By:

(individual's signature)

Name:

(typed or printed)

Title:

(typed or printed)

Date:

(date signed)

(If Business is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Name:

(typed or printed)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Schedule A—Current Projects

Name of Organization					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Schedule B—Previous Experience with Similar Projects

Name of Organization					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Schedule B—Previous Experience with Similar Projects

Name of Organization					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Schedule C—Key Individuals

Project Manager			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	
Project Superintendent			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	

Safety Manager			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	
Quality Control Manager			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate's role on project		Candidate's role on project	

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SECTION 00 45 46
VENDOR COMPLIANCE TO STATE LAW

The 1985 Session of the Texas Legislature passed House Bill 620 relative to the award of contracts to non-resident bidders. This law provides that, in order to be awarded a contract as low bidder, non-resident bidders (out of state contractors whose corporate officers or principal place of business are outside of the state of Texas) bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. The appropriate blanks in Section A must be filled out by all out-of-state or non-resident bidders in order for your bid to meet specifications. The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder. Resident bidders must check the line in Section B.

- A. Non-resident bidder in _____ (give state), our principal place of business, are required to be _____ percent lower than resident bidders by state law.
Non-resident vendors in _____ (give state), our principal place of business, are not required to underbid resident bidders.
- B. Our principal place of business or corporate offices are in the State of Texas:
_____.

BIDDER:

_____		By	_____
(Company Name)			(please print)
Address:	_____	Signature:	_____
	_____	Title:	_____
	_____		(please print)

	City	State	Zip

THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL

END OF SECTION

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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

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

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

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

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

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

PACKET

8.50

February 14, 2023

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STANDARD GENERAL CONDITIONS

OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS

OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

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BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

_____ DOLLARS

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

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

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

_____ day of _____, 20____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: **PACKET**
ATTACH POWER OF ATTORNEY

8.130

February 14, 2023

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IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

~~PACKET~~ ~~8-134~~ ~~Signature of vendor doing business with the governmental entity~~

~~February 14, 2023~~

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



THE CITY OF MIDLAND CONTRACT

Contract No. 23001570

THIS CONTRACT, effective the 15 day of February, 2023, by and between the City of Midland, hereinafter referred to as "CITY", and Synagro of Texas-CDR, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 4,396,743.50 DOLLARS
2. **Scope of Work:** COMPANY shall perform all work described for Plant Farm Ponds Rehabilitation Project. Said work being more particularly described in the following documents, which are attached hereto and incorporated herein for all purposes.

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

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

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

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

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

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

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

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

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

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

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

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 120 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

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

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

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

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

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

- 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.

beneficiary. There is no third-party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third-party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. Insurance:

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

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$500,000.00 per accident or occurrence

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

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

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

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

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

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's February 14, 2023

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

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

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

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023 personally appeared, _____, an officer of Synagro of Texas-CDR, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Exhibit A

Bid to Provide
Water Reclamation Facility Plant Farm Ponds
Rehabilitation

Project Number 10301516

to the

CITY OF MIDLAND

Submitted on
January 26, 2023



JANUARY 26, 2023

City of Midland

Attn: City Secretary's Office
300 N. Loraine, 3rd Floor
Midland, TX 79701

**Re: Project Number 10301516
Water Reclamation Facility Plant Farm Ponds Rehabilitation**

Dear Ladies and Gentlemen:

Synagro of Texas-CDR, Inc. (Synagro) is pleased to respond to the City's Advertisement to bid for the Plant Farm Ponds Rehabilitation project. We have enclosed for your review our completed bid package.

Having been in business for over 40 years, Synagro is one of the largest residuals management companies in the country with over 650 municipal and industrial customers and operations in 33 states. We provide ongoing residuals management services to numerous water and wastewater treatment plants throughout Texas and have extensive equipment and personnel resources to perform the services required for this project.

Synagro is a non-public company, and its financial statements are confidential, competitively sensitive information exempt from disclosure under Subsection 552.104 of the Texas Public Information Act. Synagro requests that distribution of the financial statements be limited to only those reviewers who have a need for such information. Accordingly, we have provided the financial statements in a separate sealed envelope for easy removal when forwarding the bid package.

Please be advised that pricing on line item "Grading and Subgrade Preparation" on the bid form, is based on the assumption provided by the City that "Minor grading and subgrade prep needs to be performed as directed by engineer to meet minimum grades and subgrade condition". Our pricing for this line item includes 5 working days of grading/subgrade prep work per pond and no requirement for additional materials. If the engineer determines that more time is required for this portion of the project, it will be addressed via change order for time, equipment, and materials.

Additionally, we have included in our proposal \$87,000 for landfill administrative fees, because it's unclear whether the landfill will issue the contractor a hauler's permit to waive this fee or not. If such fee is waived by the landfill, a deduction of \$87,000 can be taken off this proposal.

Lastly, this proposal is with the assumption that lagoon conditions were as-is during the mandatory site visit that Synagro attended. The condition of the ponds were, no amount of free standing water present in the lagoons, eliminating the need for sludge dewatering. The conditions during the site visit were digitally documented. All modifications to the scope of work will be addressed with a change order.

Synagro appreciates this opportunity. Should you have any questions regarding our submittal, please contact me at (281) 965-4614 or opacas@synagro.com. We look forward to hearing from you soon. Thank you.

Warm regards,

Oscar Pacas

Oscar Pacas
Sales Representative

Table of Contents



Section 1 Required Bid Forms

Section 2 Supporting Data

BID BOND

THE STATE OF TEXAS §

SURETY NO. N/A

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT SYNAGRO OF TEXAS-CDR, INC.

(hereinafter called the Principal), as Principal, and ARGONAUT INSURANCE COMPANY

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

Five Percent of Amount Bid DOLLARS

(\$ 5% of Amount Bid), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to Water Reclamation Facility Plant Farm Ponds Rehabilitation - Project Number 10301516

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

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

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

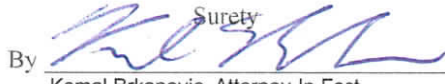
IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

29th day of December, 2022

SYNAGRO OF TEXAS-CDR, INC.

ARGONAUT INSURANCE COMPANY

By  Principal

By  Surety
Kemal Brkanovic, Attorney-In-Fact

Address 435 Williams Court, Suite 100
Baltimore, Maryland 21220

Address P.O. Box 469011
San Antonio TX 78246

APPROVED AS TO FORM:

City Attorney

Argonaut Insurance Company
Deliveries Only: 225 W. Washington, 24th Floor
Chicago, IL 60606

United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

Sandra Diaz, Debra A Deming, Anne Potter, Beverly A Woolford, Valorie Spates, Jennifer L Jakaitis, Susan A Welsh, Peter Healy, Nancy Schnee, Aklina Noorhassan, Frances Rodriguez, Francesca Kazmierczak, Kemal Brkanovic

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$97,550,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 19th day of November, 2021.

Argonaut Insurance Company



by:

G E Grose

Gary E. Grose, President

STATE OF TEXAS
COUNTY OF HARRIS SS:

On this 19th day of November, 2021 A.D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



Kathleen M. Meeks

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 29th day of December, 2022.



Austin W. King

Austin W. King, Secretary

FINANCIAL STATEMENT
ARGONAUT INSURANCE COMPANY
STATUTORY BASIS as of 12/31/2021

ASSETS		LIABILITIES AND SURPLUS	
CASH & INVESTED ASSETS	\$248,880,956	UNEARNED PREMIUMS	\$304,943,789
BONDS	\$1,181,530,880	LOSSES	\$595,583,927
STOCKS	\$674,977,267	LOSS ADJUSTMENT EXPENSES	\$198,245,975
INVESTMENT INCOME DUE AND ACCRUED	\$5,760,648	COMMISSIONS	\$4,787,791
PREMIUM BALANCES	\$114,828,886	TAXES, LICENSES, AND FEES	\$10,269,846
NET DEFERRED TAX ASSET	\$33,825,187	OTHER LIABILITIES	\$9,873,605
REINSURANCE RECEIVABLE	\$2,762,000	FINED AND PENALTY FOR VIOLATIONS (SECURED)	\$27,671,510
OTHER ASSETS	\$40,514,092	CURRENT FEDERAL AND FOREIGN INCOME TAXES	\$0
TOTAL ASSETS	\$2,392,360,630	REMITTANCES AND ITEMS NOT ALLOCATED	\$2,510,048
		AMOUNTS WITHHELD/RETAINED BY COMPANY FOR OTHERS	\$11,771,696
		PAYABLES TO PARENT, SUBSIDIARIES, & AFFILIATES	\$52,193,204
		PAYABLE FOR SECURITIES	\$3,599,489
		PROVISION FOR REINSURANCE	\$16,445,734
		CEDED REINSURANCE PREMIUMS PAYABLE	\$47,083,249
		OTHER ACCRUED EXPENSES AND LIABILITIES	\$1,597,617
		TOTAL LIABILITIES	\$1,321,201,703
		COMMON CAPITAL STOCK	\$4,500,000
		GROSS PAID IN AND CONTRIBUTED SURPLUS	\$525,520,936
		UNASSIGNED SURPLUS	\$541,137,991
		TOTAL SURPLUS TO POLICYHOLDERS	\$1,071,158,927
		TOTAL LIABILITIES & SURPLUS	\$2,392,360,630

Jace Westbrook, being duly sworn, says that he is Head of US Segment Accounting of Argonaut Insurance Company and that to the best of his knowledge, and belief, the foregoing statement is a true and correct statement of the financial condition of said Company as of the 31st of December, 2021.

Subscribed and sworn to before me this 5th day of April, 2022

Debbie Gouge
Notary Public

Julian Gandler Westbrook III
Julian Gandler Westbrook III, Head of US Segment Accounting



IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Argonaut Insurance Company and its affiliates by telephone for information or to make a complaint:

ARGONAUT INSURANCE COMPANY

Please send all notices of claim on this bond to:
Argo Surety Claims
(413) 773-6359

Deliveries Only: 225 W. Washington, 24th Floor, Chicago, IL 60606
United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

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

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR BOND:

This notice is for information only and does not become a part or condition of the attached document and is given to comply with Texas legal and regulatory requirements.

BID FORM (REVISED AD-01)

FOR CONSTRUCTION CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: City of Midland, 300 N. Loraine, City Secretary, Midland, TX 79701
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. Bid Form;
 - C. Vendor Compliance to State Law;
 - D. Affidavit of Eligibility;
 - E. List of Proposed Subcontractors;
 - F. List of Proposed Suppliers;
 - G. Evidence of authority to do business in the state of the Texas
 - H. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - I. Required Bidder Qualification Statement with supporting data; and
 - J. Conflict of Interest Questionnaire
 - K. Certification that a site visit to the Plant Farm Ponds was conducted.

ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

- 3.01 *Lump Sum and Unit Price Bids*
- A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum price(s), and unit prices.
 - B. For unit price items, bidder acknowledges that:
 - 1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and

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February 14, 2023

2. the estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

C. All specified contingency allowances are included in the price(s) set forth below, and have been computed in accordance with Paragraph 13.02 of the General Conditions.

Description	Quantity	Unit	Unit Price	TOTAL
BASE BID				
Mobilization/Demobilization	1	LS	\$ 53,817.00	\$ 53,817.00
Dry Sludge Removal and Disposal:	17,000	TONS	\$ 105.24	\$ 1,789,080.00
Wet Sludge Dewatering and Disposal:	4,000	TONS	\$ 105.24	\$ 420,960.00
Liner Removal and Disposal:	1	LS	\$ 323,652.50	\$ 323,652.50
Grading and Subgrade Preparation:	1	LS	\$ 20,000.00	\$ 20,000.00
Leak Detection Well Head Modification:	8	EA	\$ 2,500.00	\$ 20,000.00
Leak Detection Pipe and Trench Replacement:	1,000	LF	\$ 24.79	\$ 24,790.00
Liner Installation:	1	LS	\$ 1,744,444.00	\$ 1,744,444.00
SUBTOTAL BASE BID				\$ 4,396,743.50
OWNER'S CONTINGENCY (20% OF BASE BID)				\$ 879,348.70
TOTAL BID PRICE (SUBTOTAL + OWNER'S CONTINGENCY)				\$ 5,276,092.20

ARTICLE 4—TIME OF COMPLETION

4.01 Bidder agrees that the Work at the Farm Ponds (including sludge disposal, liner removal, grading, leak detection work, and liner replacement) will be substantially complete within

1 120 calendar days after the date when the Contract Times commence to run as provided
2 in Paragraph 4.01 of the General Conditions, and will be completed and ready for final
3 payment in accordance with Paragraph 15.06 of the General Conditions within 150
4 calendar days after the date when the Contract Times commence to run.

5 4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

6 **ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND**
7 **RECEIPT OF ADDENDA**

8 5.01 *Bid Acceptance Period*

9 A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for
10 such longer period of time that Bidder may agree to in writing upon request of Owner.

11 5.02 *Instructions to Bidders*

12 A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including
13 without limitation those dealing with the disposition of Bid security.

14 5.03 *Receipt of Addenda*

15 A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
1	January 5, 2023
2	January 9, 2023
3	January 13, 2023

17 **ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

18 6.01 *Bidder's Representations*

19 A. In submitting this Bid, Bidder represents the following:

- 20 1. Bidder has examined and carefully studied the Bidding Documents, including
21 Addenda.
- 22 2. Bidder has visited the Site, conducted a thorough visual examination of the Site
23 and adjacent areas, and become familiar with the general, local, and Site
24 conditions that may affect cost, progress, and performance of the Work.
- 25 3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and
26 performance of the Work.
- 27 4. Bidder has carefully studied the reports of explorations and tests of subsurface
28 conditions at or adjacent to the Site and the drawings of physical conditions
29 relating to existing surface or subsurface structures at the Site that have been
30 identified in the Supplementary Conditions, with respect to the Technical Data in
31 such reports and drawings.
- 32 5. Bidder has carefully studied the reports and drawings relating to Hazardous
33 Environmental Conditions, if any, at or adjacent to the Site that have been

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1 identified in the Supplementary Conditions, with respect to Technical Data in such
2 reports and drawings.

3 6. Bidder has considered the information known to Bidder itself; information
4 commonly known to contractors doing business in the locality of the Site;
5 information and observations obtained from visits to the Site; the Bidding
6 Documents; and the Technical Data identified in the Supplementary Conditions
7 or by definition, with respect to the effect of such information, observations, and
8 Technical Data on (a) the cost, progress, and performance of the Work; (b) the
9 means, methods, techniques, sequences, and procedures of construction to be
10 employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's)
11 safety precautions and programs.

12 7. Based on the information and observations referred to in the preceding
13 paragraph, Bidder agrees that no further examinations, investigations,
14 explorations, tests, studies, or data are necessary for the performance of the
15 Work at the Contract Price, within the Contract Times, and in accordance with the
16 other terms and conditions of the Contract.

17 8. Bidder is aware of the general nature of work to be performed by Owner and
18 others at the Site that relates to the Work as indicated in the Bidding Documents.

19 9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or
20 discrepancies that Bidder has discovered in the Bidding Documents, and of
21 discrepancies between Site conditions and the Contract Documents, and the
22 written resolution thereof by Engineer is acceptable to Contractor.

23 10. The Bidding Documents are generally sufficient to indicate and convey
24 understanding of all terms and conditions for performance and furnishing of the
25 Work.

26 11. The submission of this Bid constitutes an incontrovertible representation by
27 Bidder that without exception the Bid and all prices in the Bid are premised upon
28 performing and furnishing the Work required by the Bidding Documents.

29 6.02 *Bidder's Certifications*

30 A. The Bidder certifies the following:

31 1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed
32 individual or entity and is not submitted in conformity with any collusive
33 agreement or rules of any group, association, organization, or corporation.

34 2. Bidder has not directly or indirectly induced or solicited any other Bidder to
35 submit a false or sham Bid.

36 3. Bidder has not solicited or induced any individual or entity to refrain from bidding.

37 4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in
38 competing for the Contract. For the purposes of this Paragraph 8.02.A:

39 a. Corrupt practice means the offering, giving, receiving, or soliciting of anything
40 of value likely to influence the action of a public official in the bidding process.

- 1 b. Fraudulent practice means an intentional misrepresentation of facts made
2 (a) to influence the bidding process to the detriment of Owner, (b) to
3 establish bid prices at artificial non-competitive levels, or (c) to deprive
4 Owner of the benefits of free and open competition.
- 5 c. Collusive practice means a scheme or arrangement between two or more
6 Bidders, with or without the knowledge of Owner, a purpose of which is to
7 establish bid prices at artificial, non-competitive levels.
- 8 d. Coercive practice means harming or threatening to harm, directly or
9 indirectly, persons or their property to influence their participation in the
10 bidding process or affect the execution of the Contract.
11

BIDDER hereby submits this Bid as set forth above:

Bidder:

Synagro of Texas-CDR, Inc.

(typed or printed name of organization)

By:


(individual's signature)

Name:

Emil Kneis

(typed or printed)

Title:

Sales Support Manager

(typed or printed)

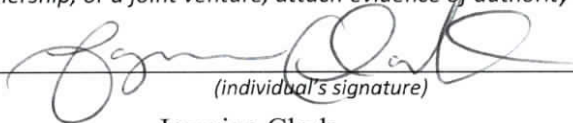
Date:

January 24, 2023

(typed or printed)

If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.

Attest:


(individual's signature)

Name:

Jazmine Clark

(typed or printed)

Title:

Senior Proposal Coordinator

(typed or printed)

Date:

January 24, 2023

(typed or printed)

Bidder's Address for giving notices:

435 Williams Court, Suite 100

Baltimore, MD 21220

Bidder's Contact Person:

Name:

Oscar Pacas

(typed or printed)

Title:

Sales Representative

(typed or printed)

Phone:

281-965-4614

Email:

opacas@synagro.com

Address:

435 Williams Court, Suite 100

Baltimore, MD 21220

Bidder's Contractor License No.: (if applicable) N/A

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February 14, 2023

October 20, 2021

Delegation of Authority

FROM: Matt Robertson, Chief Commercial Officer

TO: Emil Kneis, Sales Support Manager

In consideration of the continued closing of our corporate office in response to the COVID-19 pandemic and in anticipation of continued disruption in normal company procedures, I, Matt Robertson as Chief Commercial Officer of Synagro Technologies, Inc. and all its affiliates and subsidiaries, hereby delegate to you, Emil Kneis, authority to sign binding bids and awarded contracts as an officer or as an authorized person. Also, I delegate to you the authority to sign as an officer or authorized person on any business-related application and other agreements as necessary to provide uninterrupted service to current and new customers. Such authority does not alter our internal approval processes. This delegation of authority is valid from the date of this letter until revoked by me.



Matt Robertson

Chief Commercial Officer

Date 11/1/2021



SECTION 00 45 46
VENDOR COMPLIANCE TO STATE LAW

The 1985 Session of the Texas Legislature passed House Bill 620 relative to the award of contracts to non-resident bidders. This law provides that, in order to be awarded a contract as low bidder, non-resident bidders (out of state contractors whose corporate officers or principal place of business are outside of the state of Texas) bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. The appropriate blanks in Section A must be filled out by all out-of-state or non-resident bidders in order for your bid to meet specifications. The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder. Resident bidders must check the line in Section B.

A. Non-resident bidder in _____ (give state), our principal place of business, are required to be _____ percent lower than resident bidders by state law.
Non-resident vendors in _____ (give state), our principal place of business, are not required to underbid resident bidders.

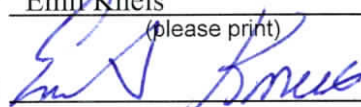
☒ B. Our principal place of business or corporate offices are in the State of Texas:
2501 Greenbelt Road, Fort Worth, TX 76118

BIDDER:

Synagro of Texas-CDR, Inc.
(Company Name)

By Emil Kneis
(please print)

Address: 435 Williams Court

Signature: 

Suite 100

Title: Sales Support Manager
(please print)

Baltimore MD 21220
City State Zip

THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL

END OF SECTION

Non Applicable

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

6. Was the local business required to pay business and/or real property tax for the most recent tax year?
☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

List of Subcontractors and Suppliers

Subcontractors

Texas Environmental Plastics, Ltd.
29089 Robinson Road, Conroe, TX 77385
Kevin P. Phouangsavanh
Kevin.tk@tepinc.net
(281) 821-7320 EXT-305

Potential Subcontractor

Vic Trucking and Construction LLC
PO Box 0001, Midland, TX 79706
Victor Madrid
(432) 631-1086

Supplier

Warren CAT Equipment Rentals
2331 E Interstate 20
Odessa, TX 79766
432-334-0700



Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Articles Of Incorporation for SYNAGRO OF TEXAS-CDR, INC. (file number 124816500), a Domestic For-Profit Corporation, was filed in this office on October 28, 1992.

It is further certified that the entity status in Texas is in existence.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on June 08, 2022.



A handwritten signature in black ink, appearing to read "John B. Scott".

John B. Scott
Secretary of State

QUALIFICATIONS STATEMENT

ARTICLE 1—GENERAL INFORMATION

1.01 Provide contact information for the Business:

Legal Name of Business:		Synagro of Texas-CDR, Inc.	
Corporate Office			
Name:	Emil Kneis	Phone number:	410-688-4438
Title:	Sales Support Manager	Email address:	ekneis@synagro.com
Business address of corporate office:		435 Williams Court, Suite 100	
		Baltimore, MD 21220	
Local Office			
Name:	Oscar Pacas	Phone number:	281-965-4614
Title:	Sales Representative	Email address:	opacas@synagro.com
Business address of local office:		2501 Greenbelt Road	
		Fort Worth, TX 76118	

1.02 Provide information on the Business's organizational structure:

Form of Business:	☐ Sole Proprietorship ☐ Partnership ☒ Corporation		
☐ Limited Liability Company ☐ Joint Venture comprised of the following companies:			
1.			
2.			
3.			
Provide a separate Qualification Statement for each Joint Venturer.			
Date Business was formed:	June 28, 2000	State in which Business was formed:	Texas
Is this Business authorized to operate in the Project location?		☒ Yes ☐ No ☐ Pending	

1.03 Identify all businesses that own Business in whole or in part (25% or greater), or that are wholly or partly (25% or greater) owned by Business:

Synagro South, LLC owns 100% of Texas-CDR, Inc.

Name of business:		Affiliation:	
Address:	435 Williams Court, Suite 100, Baltimore, MD 21220		
Name of business:		Affiliation:	
Address:			

Name of business:		Affiliation:	
Address:			

1.04 Provide information regarding the Business's officers, partners, and limits of authority.

Name:	Robert Preston	Title:	CEO/President
Authorized to sign contracts:	☒ Yes ☐ No	Limit of Authority:	\$5 Million
Name:	Matthew Robertson	Title:	Chief Commercial Officer
Authorized to sign contracts:	☒ Yes ☐ No	Limit of Authority:	\$5 Million
Name:	Kaivan Desai	Title:	Chief Financial Officer
Authorized to sign contracts:	☒ Yes ☐ No	Limit of Authority:	\$5 Million
Name:	Elizabeth Grant	Title:	Assistant Secretary \$5 Million

ARTICLE 2—LICENSING

2.01 Provide information regarding licensure for Business:

Name of License:	Sludge Transporter Registration		
Licensing Agency:	Texas Commission on Environmental Quality		
License No:	20009	Expiration Date:	8/31/2023
Name of License:			
Licensing Agency:			
License No:		Expiration Date:	

ARTICLE 3—DIVERSE BUSINESS CERTIFICATIONS

3.01 Provide information regarding Business's Diverse Business Certification, if any. Provide evidence of current certification.

Certification	Certifying Agency	Certification Date
☐ Disadvantaged Business Enterprise		
☐ Minority Business Enterprise		
☐ Woman-Owned Business Enterprise		
☐ Small Business Enterprise		
☐ Disabled Business Enterprise		
☐ Veteran-Owned Business Enterprise		
☐ Service-Disabled Veteran-Owned Business		
☐ HUBZone Business (Historically Underutilized) Business		

☐ Other			
☒ None			

ARTICLE 4—SAFETY

4.01 Provide information regarding Business's safety organization and safety performance.

Name of Business's Safety Officer:	Frank Foster		
Safety Certifications			
Certification Name	Issuing Agency	Expiration	
Osha 510 Construction	University of South Florida	n/a	
Construction Safety and Health	OSHA	n/a	

4.02 Provide Worker's Compensation Insurance Experience Modification Rate (EMR), Total Recordable Frequency Rate (TRFR) for incidents, and Total Number of Recorded Manhours (MH) for the last 3 years and the EMR, TRFR, and MH history for the last 3 years of any proposed Subcontractor(s) that will provide Work valued at 10% or more of the Contract Price. Provide documentation of the EMR history for Business and Subcontractor(s).

Year	2019			2020			2021		
Company	EMR	TRFR	MH	EMR	TRFR	MH	EMR	TRFR	MH
Synagro Technologies	.78	1.89	1.7mm	.77	2.41	1.73mm	.76	2.29	1.75mm
Texas Environmental Plastics, Ltd.	1.0	1.51	132,395	.99	1.85	108,129	.95	0	71,526

ARTICLE 5—FINANCIAL

5.01 Provide information regarding the Business's financial stability. Provide the most recent audited financial statement, and if such audited financial statement is not current, also provide the most current financial statement.

Financial Institution:	Shamrock Guarantor, Inc. (Predecessor Company/Synagro)		
Business address:	Corporation Trust Center 1209 Orange Street Wilmington, DE 19801		
Date of Business's most recent financial statement:		☒ Attached	
Date of Business's most recent audited financial statement:		☒ Attached	
Financial indicators from the most recent financial statement			
Contractor's Current Ratio (Current Assets ÷ Current Liabilities)			1.375
Contractor's Quick Ratio ((Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities)			1.11

ARTICLE 6—SURETY INFORMATION

- 6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:	Argonaut Insurance Company		
Surety is a corporation organized and existing under the laws of the state of:	Texas		
Is surety authorized to provide surety bonds in the Project location?	☒ Yes ☐ No		
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury?			
☒ Yes ☐ No			
Mailing Address (principal place of business):	PO Box 469011 San Antonio, TX 78246		
Physical Address (principal place of business):	225 W. Washington, 24th Floor Chicago, IL 60606		
Phone (main):	n/a	Phone (claims):	413-773-6359

ARTICLE 7—INSURANCE

- 7.01 Provide information regarding Business's insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):	
Insurance Provider	Type of Policy (Coverage Provided)
Zurich American Ins Co	Auto Liability
American Zurich Ins Co	Worker's Comp and Liability
Steadfast Insurance Company	Commercial General Liability
Evanston Insurance Company	Umbrella Liability
Are providers licensed or authorized to issue policies in the Project location?	
☒ Yes ☐ No	
Does provider have an A.M. Best Rating of A-VII or better?	
☒ Yes ☐ No	
Mailing Address (principal place of business):	One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA
Physical Address (principal place of business):	One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA

EJCDC C-451, Qualifications Statement.

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Phone (main):	866-283-7122	Phone (claims):	
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ARTICLE 8—CONSTRUCTION EXPERIENCE

8.01 Provide information that will identify the overall size and capacity of the Business.

Average number of current full-time employees:	850
Estimate of revenue for the current year:	\$398MM
Estimate of revenue for the previous year:	\$370MM

8.02 Provide information regarding the Business's previous contracting experience.

Years of experience with projects like the proposed project:			
As a general contractor:	22	As a joint venturer:	n/a
Has Business, or a predecessor in interest, or an affiliate identified in Paragraph 1.03:			
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years? ☐ Yes ☒ No			
Been barred from contracting by any local, state, or federal agency within the last 5 years? ☐ Yes ☒ No			
Been released from a bid in the past 5 years? ☐ Yes ☒ No			
Defaulted on a project or failed to complete any contract awarded to it? ☐ Yes ☒ No			
Refused to construct or refused to provide materials defined in the contract documents or in a change order? ☐ Yes ☒ No			
Been a party to any currently pending litigation or arbitration? ☐ Yes ☒ No			
Provide full details in a separate attachment if the response to any of these questions is Yes.			

8.03 List all projects currently under contract in Schedule A and provide indicated information.

8.04 List a minimum of three and a maximum of six projects completed in the last 5 years in Schedule B and provide indicated information to demonstrate the Business's experience with projects similar in type and cost of construction.

8.05 In Schedule C, provide information on key individuals whom Business intends to assign to the Project. Provide resumes for those individuals included in Schedule C. Key individuals include the Project Manager, Project Superintendent, Quality Manager, and Safety Manager. Resumes may be provided for Business's key leaders as well.

ARTICLE 9—REQUIRED ATTACHMENTS

9.01 Provide the following information with the Statement of Qualifications:

- A. If Business is a Joint Venture, separate Qualifications Statements for each Joint Venturer, as required in Paragraph 1.02.
- B. Diverse Business Certifications if required by Paragraph 3.01.
- C. Certification of Business's safety performance if required by Paragraph 4.02.

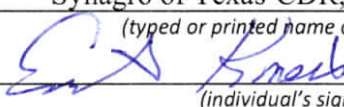
EJCDC C-451, Qualifications Statement.

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- D. Financial statements as required by Paragraph 5.01.
- E. Attachments providing additional information as required by Paragraph 8.02.
- F. Schedule A (Current Projects) as required by Paragraph 8.03.
- G. Schedule B (Previous Experience with Similar Projects) as required by Paragraph 8.04.
- H. Schedule C (Key Individuals) and resumes for the key individuals listed, as required by Paragraph 8.05.
- I. Additional items as pertinent.

This Statement of Qualifications is offered by:

Business: Synagro of Texas-CDR, Inc.
(typed or printed name of organization)

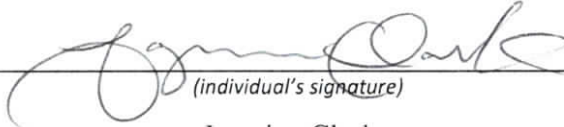
By: 
(individual's signature)

Name: Emil Kneis
(typed or printed)

Title: Sales Support Manager
(typed or printed)

Date: January 24, 2023
(date signed)

(If Business is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 
(individual's signature)

Name: Jazmine Clark
(typed or printed)

Title: Senior Proposal Coordinator
(typed or printed)

Address for giving notices:
435 Williams Court, Suite 100
Baltimore, MD 21220

Designated Representative:

Name: Oscar Pacas
(typed or printed)

Title: Sales Manager
(typed or printed)

Address: 435 Williams Court, Suite 100
Baltimore, MD 21220

Phone: 281-965-4614

Email: opacas@synagro.com

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8.175

February 14, 2023

Schedule A—Current Projects

Name of Organization		Synagro of Texas-CDR, Inc.		Project Name		Dredging Ponds 1, 3, 4, 5	
Project Owner		Oxy Vinyl's, LP					
General Description of Project		Removal and dewatering of approximately 6800 dry tons of sludge from the Pasadena PVC Ponds 3, 4, and 5.					
Project Cost		\$1,000,000		Date Project Completed		September 2021 - August 2024	
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Name		Jamie Annett		Eduardo Torres		Frank Foster	
Quality Control Manager		Greg Roque					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Michael Halligan		Maintenance Engineer		Oxy Vinyls	
Telephone				281-884-4526		Michael_halligan2@oxy.com	
Designer		N/A					
Construction Manager		N/A					
Project Owner		City of Fort Worth – Village Creek Water Department		Project Name		Anaerobic Digester Cleaning and Solids Disposal	
General Description of Project		Removal, dewatering, transportation, and landfill disposal of all removed contents from digesters# 1-6.					
Project Cost		\$1,600,000.00		Date Project Completed		March 2020 – February 2025	
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Quality Control Manager		Greg Roque					
Name		Jamie Annett		Emiliano Torres		Frank Foster	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Eduardo Aguirre		Project Engineer		City of Fort Worth	
Telephone				817-266-6409		Eduardo.aguirre@fortworthtexas.gov	
Designer		N/A					
Construction Manager		N/A					
Project Owner		City of Coahoma, TX WWTP		Project Name		Wastewater System Improvements – Removal of Sludge	
General Description of Project		Removal and disposal of sludge and vegetation from 5 lagoons and ponds at Coahoma Wastewater Treatment Plant.					
Project Cost		\$340,000		Date Project Completed		October 2022- March 2023	
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Quality Control Manager		Greg Roque					
Name		Jamie Annett		Eduardo Torres		Frank Foster	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Ray Seales		Public Works Director		City of Coahoma	
Telephone				432-394-4287		Rayseales52@yahoo.com	
Designer		Sage Diller, PE		Senior Project Manager		EHT Enprotec Hibbs&Todd	
Telephone				325-721-2740		Sage.diller@e-ht.com	
Construction Manager		N/A					

Schedule B—Previous Experience with Similar Projects

Name of Organization		Synagro of Texas-CDR, Inc.		Project Name		Wastewater Lagoon Sludge Removal	
Project Owner		City of Ballinger, TX		Date Project Completed		10/7/2022	
General Description of Project		Dredge solids from wastewater lagoon and discharge to nearby empty lagoon further processing by owner.					
Project Cost		\$138,928.00					
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Name		Jamie Annett		Carlos Gonzalez		Frank Foster	
Quality Control Manager		Greg Roque					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Name		Title/Position		Telephone	
Randy Everett		Water Plant Superint.		City of Ballinger		325-365-6190	
Designer		Josh Gadbois, P.E.		Project Manager		Enprotec/Hibbs & Todd	
Construction Manager		N/A		Safety Manager		979-218-9628	
Project Owner		City of Baytown, TX		Project Name		South Lagoon Sludge Removal	
General Description of Project		Removal and disposal of 16,000 cubic yards of solids from the City's South Lagoon.					
Project Cost		\$162,080.00					
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Name		Jamie Annett		Eduardo Torres		Frank Foster	
Quality Control Manager		Greg Roque					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Name		Title/Position		Telephone	
Michael Gay III		Water Treatment Superint.		City of Baytown		281-868-9431	
Designer		N/A		Safety Manager		Michael.Gay@bayown.org	
Construction Manager		N/A		Quality Control Manager		Greg Roque	
Project Owner		City of Nacogdoches, TX		Project Name		2022 WTP Sludge Removal and Lagoon Repair	
General Description of Project		Removal and disposal of residual sediment from 2 lagoons, repair and regrading of side slopes and bottoms of each lagoon.					
Project Cost		\$218,000.00					
Key Project Personnel		Project Manager		Project Superintendent		Safety Manager	
Name		Jamie Annett		Eduardo Torres		Frank Foster	
Quality Control Manager		Greg Roque					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
Owner		Name		Title/Position		Telephone	
Case Opperman, PE		City Engineer		City of Nacogdoches		936-559-2515	
Designer		N/A		Safety Manager		oppermanc@nactx.us	
Construction Manager		N/A		Quality Control Manager		Greg Roque	

Schedule B—Previous Experience with Similar Projects

Name of Organization		Synagro of Texas-CDR, Inc.	
Project Owner		City of Houston, TX	
General Description of Project		69th Street WWTP Maintenance and Evaluation	
Project Cost		\$4,813,190.24	
Key Project Personnel		Date Project Completed 8/26/2022	
Name		Jorge Farfan	
Project Manager		Eduardo Torres	
Project Superintendent		Safety Manager	
Quality Control Manager		Greg Roque	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name		Title/Position	
Organization		Telephone	
Email			
Owner		Tika Guatam, P.E.	
Supervising Engineer		City of Houston	
Telephone		832-395-5006	
Email		Tika.gautam@houstontx.gov	
Designer		Tika Guatam, P.E.	
Supervising Engineer		City of Houston	
Telephone		832-395-5006	
Email		Tika.gautam@houstontx.gov	
Construction Manager		Charles Ebo, CPM	
Const. Manager		City of Houston	
Telephone		832-395-6116	
Email		Charles.Ebo@houstontx.gov	
Project Owner			
City of Sherman, TX		Project Name	
WTP Sludge Removal Project			
General Description of Project			
Load, transport, and dispose of 7,150 Wet Tons of lagoon sludge accumulated at the City's Water Treatment Plant.			
Project Cost		\$150,000	
Date Project Completed		3/30/2022	
Project Superintendent		Safety Manager	
Quality Control Manager		Greg Roque	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name		Title/Position	
Organization		Telephone	
Email			
Owner		Tom Pruitt, PE	
Utility Engineer		City of Sherman	
Telephone		903-892-7212	
Email		Tomp@cityofsherman.com	
Designer		N/A	
Construction Manager		N/A	
Project Owner			
City of Big Spring		Project Name	
Sludge Dewatering Project			
General Description of Project			
Removal and dewatering of sludge from four sedimentation basins at the City's Water Treatment Plant			
Project Cost		\$167,300.00	
Date Project Completed		8/26/2022	
Project Superintendent		Safety Manager	
Quality Control Manager		Greg Roque	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)			
Name		Title/Position	
Organization		Telephone	
Email			
Owner		Chad Tidwell	
Wastewater Manager		City of Big Spring	
Telephone		432-264-2389	
Email		ctidwell@mybigspring.com	
Designer		N/A	
Construction Manager		N/A	

Schedule C—Key Individuals

Project Manager			
Name of individual		Jamie Annett	
Years of experience as project manager		5 years	
Years of experience with this organization		3.5 years	
Number of similar projects as project manager		15	
Number of similar projects in other positions		n/a	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Oxy Vinyl's LP – Dredging Ponds 1, 3, 4, 5		20%	August 2024
City of Coahoma, TX – Wastewater System Improvements		20%	March 2023
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Kevin Duffy	Name	Chris Saliba
Title/Position	Superintendent	Title/Position	VP of Operations
Organization	Pasco County, FL	Organization	U.S Water
Telephone	727-992-7711	Telephone	813-416-3992
Email	kduffy@pascocountyfl.net	Email	csaliba@uswatercorp.net
Project	Pasco County Dewatering	Project	U.S Water Dewatering
Candidate's role on project	Senior Operations Manager	Candidate's role on project	Senior Operations Manager
Project Superintendent			
Name of individual		Eduardo Torres	
Years of experience as project superintendent		3 years	
Years of experience with this organization		5 years	
Number of similar projects as project superintendent		10	
Number of similar projects in other positions		20	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Oxy Vinyl's LP – Dredging Ponds 1, 3, 4, 5		20%	August 2024
City of Coahoma, TX – Wastewater System Improvements		30%	March 2023
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Michael Gay III	Name	Tika Gautam, P.E.
Title/Position	Water Treatment Superintendent	Title/Position	Supervising Engineer
Organization	City of Baytown	Organization	City of Houston
Telephone	281-868-9431	Telephone	832-395-5006
Email	Michael.Gay@baytown.org	Email	Tika.Guatam@houston.tx.gov
Project	Lagoon Cleanout	Project	WWTP Maintenance/Eval.
Candidate's role on project	Superintendent	Candidate's role on project	Superintendent

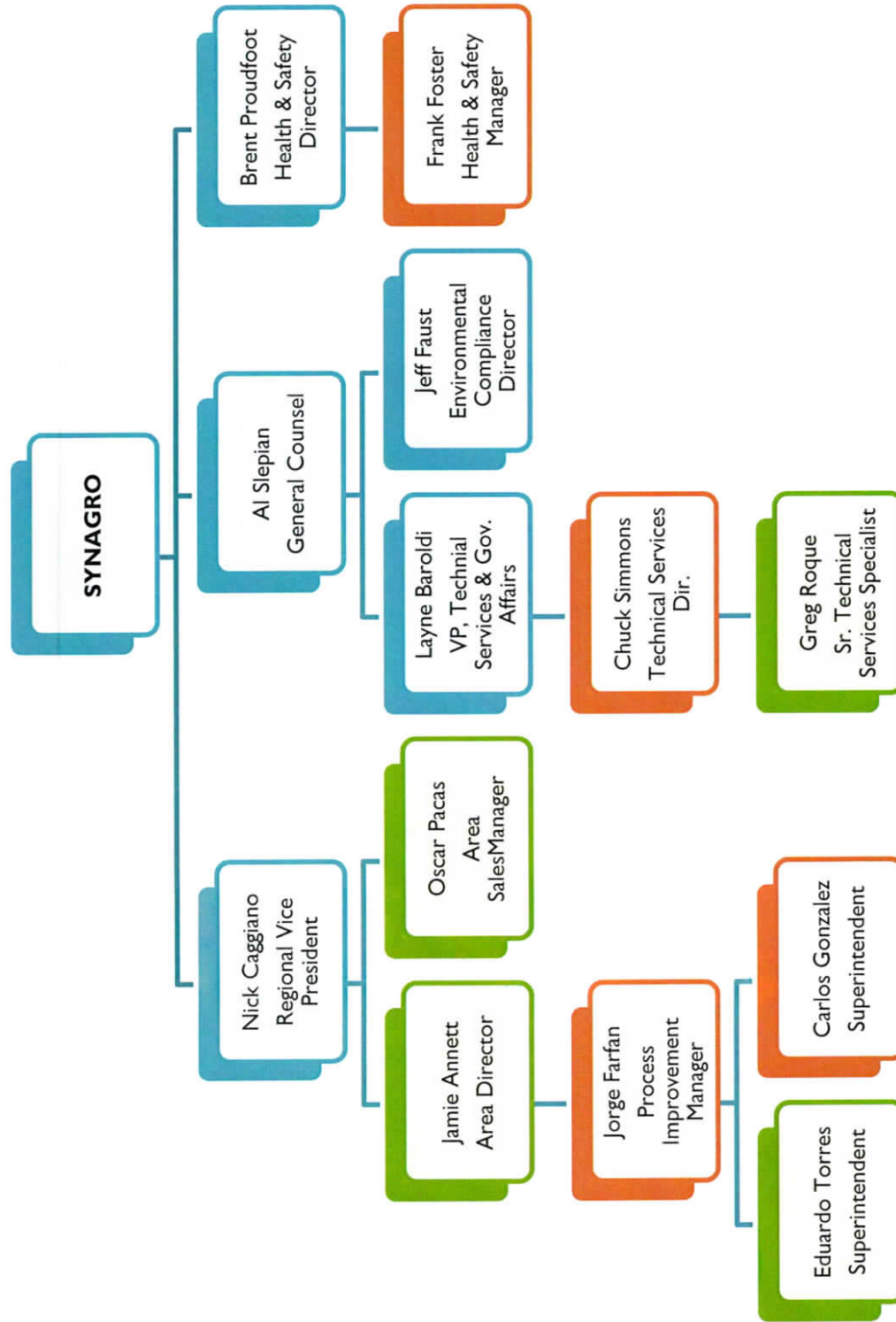
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Safety Manager			
Name of individual		Frank Foster	
Years of experience as project manager		32 years	
Years of experience with this organization		17 years	
Number of similar projects as project manager		Assisted with > 100	
Number of similar projects in other positions		n/a	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Synagro Central Region		50%	Continuous
Synagro Southeast Region		50%	Continuous
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Todd Larson	Name	Chris Teeters
Title/Position	Area Director	Title/Position	Area Director
Organization	Synagro	Organization	Synagro
Telephone	704-309-7426	Telephone	715-581-9075
Email	tlarson@synagro.com	Email	cteeters@synagro.com
Project	Internal reference	Project	Internal reference
Candidate's role on project	Safety Manager	Candidate's role on project	Safety Manager
Quality Control Manager			
Name of individual		Greg Roque	
Years of experience as project superintendent		11 years	
Years of experience with this organization		11 years	
Number of similar projects as project superintendent		>100	
Number of similar projects in other positions		n/a	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Oxy Vinyl's LP – Dredging Ponds 1, 3, 4, 5		30%	August 2024
City of Coahoma, TX – Wastewater System Improvements		30%	March 2023
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Steven Nutter, REM, CEA	Name	Layne Baroldi
Title/Position	Environmental Program Manager	Title/Position	VP, Technical Services
Organization	City of Fort Worth	Organization	Synagro
Telephone	817-392-4965	Telephone	714-299-2943
Email	Steven.nutter@fortworthtexas.gov	Email	lbaroldi@synagro.com
Project	Biosolids Management	Project	Internal Technical Support
Candidate's role on project	Quality Control Manager	Candidate's role on project	Quality Control Manager

Synagro of Texas-CDR, Inc. Organization Chart

The project organizational chart below highlights our Primary project team members in green and Alternate project team members in orange.





Key Personnel Experience Summaries

Jamie Annett, Area Director

As Area Director, Jamie Annett is responsible for all service operations in Louisiana, Texas, New Mexico, and Arizona, including transport and disposal, land application, municipal WWTP and WTP cleaning, dewatering, and dredging, and industrial dewatering and dredging projects.

Jamie joined Synagro in 2019 as a Process Improvement Manager responsible for the tracking and management of the company's nationwide consumption of polymer to identify usage trends, machine issues and improve project profitability. He coordinated with numerous departments to improve data reporting and monitoring methods, with a focus on live data and provided project support to reduce machine downtime due to incorrect machine configuration and machine breakdown. Jamie also served as Project Coordinator for the City of Houston wastewater treatment maintenance contract where he managed the project team responsible for cleaning, removal and disposal of sand and grit from various treatment plant process trains.

Prior to joining Synagro Jamie held various engineering positions with GSE Environmental, Climbttech LLC, and Solmax.

Jamie holds a Bachelor of Science degree in Mechanical Engineering from the Queen's University of Belfast, Northern Ireland. He is Lean Six Sigma certified.

Jorge Farfan, PMP, CCM, Process Improvement Manager

In his role at Synagro, Jorge Farfan supports the company's Texas operations as Process Improvement Manager. His responsibilities include facilitating regional teams in cultural transformation, continuous improvement initiatives, work execution and delivery, leadership and performance management, change management and coaching. While reporting directly to members of the Senior Leadership Team and in collaboration with Synagro's Business Optimization and Sales & Operations Performance team, Jorge's involvement and level of influence can reach decision-makers at all levels of the organization (Regional Vice Presidents, Area Directors & Operations Managers). Within this capacity, he has developed and improved procedures and tools which track project metrics that empower data-driven decision making for Synagro and its customers.

Jorge has provided Engineering, Operations, and Project/Contract Management for the City of Houston's 69th Street WWTP Cleaning and Evaluation Project, a multiyear project (\$4.3MM contract) with the City of Houston's Water Department - Wastewater Operations. In this role his responsibilities include actively engaging in the conceptual development, review, and approval of proposed work plans and working closely with Synagro's field team and in-house experts to foster a



healthy partnership with project members and all project stakeholders from pre-construction to commissioning.

Jorge received his Project Management Professional (PMP) credential in 2011 and has been a Certified Construction Manager (CCM) since 2018. He holds a Bachelor of Science degree in Technical Management from DeVry University, a Master of Science degree in Project Management from Keller Graduate School and a Graduate Certificate in Construction Management from the University of Houston.

Eduardo Torres, Superintendent

Eduardo Torres joined Synagro's Texas operations team in 2018. He has over six years of experience directly working in dredging operations and with dewatering equipment. Over his time with Synagro he has been directly involved with cleaning multiple lagoons, has completed reactor and clarifier cleaning work, and has cleaned multiple digester and tanks for numerous water and wastewater treatment plants throughout Texas.

Eduardo has vast knowledge running and maintaining operation of equipment including dredges, belt presses, and pumps.

Carlos Gonzalez, Superintendent

As Superintendent, Carlos Gonzalez is responsible for operation of various projects for Synagro's Texas event dewatering business. In this position, he performs safety inspections, planning, mobilization, demobilization, operation of dewatering equipment (belt filter press and centrifuge, polymer systems, equalization of flow pumps and discharge pumps, conveyance and loading systems), coordination with subcontractors, trucking logistics for loading within plant, scaling of loaded vehicles for proper weights, maintenance and repair.

Carlos has been with Synagro since 2020 and has served as project Superintendent/Lead Operator for various treatment plant cleaning projects including: City of Big Spring sludge dewatering, City of Ballinger lagoon sludge removal, City of Houston 69th Street WWTP emergency solids dewatering, Oxy Vinyls pond dredging, and Saputo Cheese lagoon cleaning.

Frank Foster, Environmental Health & Safety Manager

Frank Foster is the EH&S Manager for Synagro's Services Division. His responsibilities include the promotion of safety initiatives and training, regulatory compliance with OSHA, DOT, EPA, and the oversight of the Division's injury and accident prevention program. Frank travels to various operating areas of the company to perform internal safety-review audits and ensures compliant follow-up.



Prior to joining Synagro in 2005, Mr. Foster held several safety manager positions for Allied Waste and BFI. He brings with him 20+ years of environmental, health and safety experience in a variety of capacities.

Frank has received extensive training in all areas relating to the Environment, Health, Safety & Transportation field throughout his work experiences and has attended multiple outsources courses, seminars, and professional meetings. He is a member of the American Society of Safety Engineers and the National Safety Council.

Greg Roque, Sr. Technical Services Specialist

Greg Roque joined Synagro's Technical Services Department in 2007. He is responsible for regulatory permitting, preparation, operational scheduling, compliance, and reporting associated with managing a variety of land application programs. He is also responsible for acquiring and maintaining land base for the Texas/Oklahoma areas. As Senior Technical Service Specialist, Greg is the liaison between the permitted farm community, operational staff, regulatory agencies, neighbors, and/or local politicians.

Prior to joining Synagro, Greg's provided transportation services within the oil and gas industry as an Owner/Operator. His agriculture experience started at a very young age as his passion for farming has been the continuous support of maintaining his family's 100-year-old farm which produces hay, pecans, and a 300+ head of yearling operation. Greg has received a Bachelor of Science in Agriculture Economics from Southern University in Baton Rouge, Louisiana.

Chuck Simmons, Technical Services Director

As the Technical Services Director, Chuck Simmons manages and coordinates all land application permitting efforts for numerous projects in Synagro Southeast and Southwest Regions. He also manages the retention and destruction of Synagro project documents; as well as manages the transportation permits and subcontractor agreements for the company's South Regions. His responsibilities entail overseeing all regulatory compliance, correspondence, monitoring and reporting. Chuck also provides guidance, support management and training of the Technical Services Managers in the Southwest and Southeast Regions. He provides support to sales, legal and the Area Directors of Operations.

Prior to joining Synagro in 1998, Chuck was the staff soil scientist for Mid-South Testing for 13 years, overseeing drilling operations, geotechnical and field environmental services along with managing land application of pulp/paper residuals and municipal residuals.

Chuck holds a Bachelor of Science in Agronomy and Soils from Auburn University, is a Certified Professional Soil Scientist and is a Registered Professional Soil Classifier. He is a member of the Soil



Science Society of America, and the Alabama Soil and Water Conservation. Chuck also serves on the Board of Directors for the Lawrence County Cattlemen's Association.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

None

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

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

Name of Officer

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

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

☐ Yes

☐ No

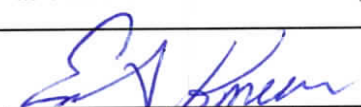
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

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

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

7 

Signature of vendor doing business with the governmental entity

January 24, 2023

Date

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February 14, 2023

From: [Oscar Pacas](#)
To: [Jazmine Clark](#)
Subject: FW: [External Email] FW: Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)
Date: Wednesday, December 28, 2022 4:09:42 PM

Jazmine,

Please see email below and include with the Midland, TX bid package.

Thank you,

From: Singer, Lisa <Lisa.Singer@hdrinc.com>
Sent: Wednesday, December 28, 2022 2:15 PM
To: Oscar Pacas <opacas@synagro.com>
Cc: Mabrouk, Sherif <sherif.mabrouk@hdrinc.com>
Subject: [External Email] FW: Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)

[EXTERNAL EMAIL]

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Hi Oscar. Please include this email in your bid package. This serves as certification of Synagro's site visit.

Thank you,
Lisa Singer, CDT
Senior Water/Wastewater Design Project Coordinator

HDR
4401 West Gate Blvd., Suite 400
Austin, TX 78745
D 512-912-5192
lisa.singer@hdrinc.com

hdrinc.com/follow-us

From: Bennie Jordan <bjordan@midlandtexas.gov>
Sent: Wednesday, December 28, 2022 1:12 PM
To: Singer, Lisa <Lisa.Singer@hdrinc.com>
Subject: RE: Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)

CAUTION: [EXTERNAL] This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lisa

Syngro visited the plant farms ponds on the 20th of December

From: Singer, Lisa <Lisa.Singer@hdrinc.com>
Sent: Wednesday, December 28, 2022 12:07 PM
To: Bennie Jordan <bjordan@midlandtexas.gov>
Subject: FW: Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)

Ben: See below. Please confirm that Synagro had a site visit on the 20th of December, 2022.

Thank you,
Lisa Singer, CDT
Senior Water/Wastewater Design Project Coordinator

HDR
4401 West Gate Blvd., Suite 400
Austin, TX 78745
D 512-912-5192
lisa.singer@hdrinc.com

hdrinc.com/follow-us

From: Oscar Pacas <opacas@synagro.com>
Sent: Wednesday, December 28, 2022 11:33 AM
To: Singer, Lisa <Lisa.Singer@hdrinc.com>
Subject: RE: Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)

CAUTION: [EXTERNAL] This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Lisa,

Thank you so much for the reminder. We completed our site visit last Tuesday, December 20th. We were told there wouldn't be a sign-in sheet or anything like that, so please let me know if you need anything other than this email to confirm our attendance.

Best regards,

Oscar Pacas
Area Sales Manager
Synagro of Texas CDR, Inc.
281-965-4614

From: Singer, Lisa <Lisa.Singer@hdrinc.com>
Sent: Wednesday, December 28, 2022 11:11 AM
To: <mailto:clowman@nobleenviro.com> <clowman@nobleenviro.com>; todd@texaswaterandsoil.com; Oscar Pacas <opacas@synagro.com>; dave@txrowservices.com; Roger Krabel <rkrabel@caawssystem.com>; <mailto:malbert@caawssystem.com> <malbert@caawssystem.com>; <mailto:charlieg@cccgroupinc.com> <charlieg@cccgroupinc.com>; <mailto:falconels@aol.com> <falconels@aol.com>; <mailto:daniel@peliners.com>

<daniel@peliners.com>; <mailto:hansentrucks@gmail.com> <hansentrucks@gmail.com>;
<mailto:derrick@onyxcontractors.com> <derrick@onyxcontractors.com>;
<mailto:aali@allstatelining.com> <aali@allstatelining.com>; <mailto:daniel.rico@integrity-serv.com>
<daniel.rico@integrity-serv.com>; <mailto:jwardlaw@mustangextreme.com>
<jwardlaw@mustangextreme.com>; <mailto:brown@agservicesnm.com>
<brown@agservicesnm.com>

Cc: Mabrouk, Sherif <sherif.mabrouk@hdrinc.com>; Carl Craig <ccraig@midlandtexas.gov>;
bjordan@midlandtexas.gov; Erika Munoz <emunoz@midlandtexas.gov>; Elizabeth Ybarra
<eybarra@midlandtexas.gov>; Boehm, Rolland <rolland.boehm@hdrinc.com>

Subject: [External Email] Reminder: Mandatory Site Visit (Plant Farm Ponds Rehabilitation)

Importance: High

Hello. Just a friendly reminder that if you plan on bidding the above-referenced project, a site visit is mandatory. To request a site visit, contact Mr. Ben Jordan (432-559-3045) at least 48 hours in advance of requested site visit.

Thank you,

Lisa Singer, CDT

Senior Water/Wastewater Design Project Coordinator

HDR

4401 West Gate Blvd., Suite 400

Austin, TX 78745

D 512-912-5192

lisa.singer@hdrinc.com

hdrinc.com/follow-us



Oscar Pacas

Sales Rep.

, Fort Worth, TX,

O: +1 281-965-4614

opacas@SYNAGRO.com | synagro.com

[Facebook](#) | [Twitter](#) | [Linkedin](#)





Supporting Data



Synagro Company Profile

Founded in 1986, Synagro's core business is the environmentally sound and economically viable management of municipal biosolids, including project development, operations and biosolids product distribution. Through this focus, Synagro has grown to be North America's leading provider of high-quality, cost-effective biosolids management and beneficial use solutions. We have been successfully meeting the biosolids management needs of hundreds of generators for more than 40 years. Synagro's experience in all areas of biosolids management is unparalleled.



Synagro annually manages more than 14 million tons of wastewater biosolids and other organic by-products. Synagro employs a team of 750+ professional engineers, soil scientists, agronomists, construction managers, financial managers and the largest, most diverse operational staff in the industry. Our team is dedicated to working with our clients to find the right solution to their organic residuals management challenges. Synagro, and its subsidiaries, are at the forefront of the environmental movement to safely process and market organic residual materials for beneficial uses.

Synagro owns no proprietary technology which enables us to offer nearly all commercially viable processing options and product marketing channels for biosolids and organic residuals and allows us to develop projects that fit a municipality's unique needs. Our breadth of experience developing, building, financing as necessary, and operating and maintaining the complete range of biosolids options listed below is unique to Synagro.

- Heat-drying and pelletization
- Composting
- Incineration
- Digestion
- Product marketing
- Dewatering (installation and operation)
- Mobile dewatering
- Land application and reclamation
- Lagoon and digester cleaning
- Alkaline stabilization
- Rail transportation

Synagro currently operates 13 heat-drying facilities (with one more facility under construction), three thermal processing facilities serving multiple regional generators, six composting facilities; five of which provide an outlet for numerous generators, more than a dozen alkaline stabilization facilities, and in excess of 75 permanent and mobile dewatering facilities.



In addition, we provide final product distribution as a key component of many of these projects. Our Product Sales and Marketing team is responsible for successfully managing approximately 300,000 tons per year of AllGro® compost and 170,000 tons of Granulite® fertilizer pellets (heat-dried biosolids). We have unrivalled understanding of the markets for these products and continuously work to broaden the suite of outlets for these materials. As an example, Synagro pioneered the use of heat-dried biosolids as an alternative fuel resource in cement manufacturing. When Synagro operates a facility, we include product distribution services in our operation; however, we also work with municipally operated facilities to assist in managing their products.

In December 2020, Synagro was acquired from EQT, a Swedish private equity firm, by West Street Infrastructure Partners III, an infrastructure investment fund managed by Goldman Sachs Merchant Banking Division. Founded in 1869, The Goldman Sachs Group, Inc. is a leading global investment banking, securities and investment management firm. Goldman Sachs Merchant Banking Division (MBD) is the primary center for the firm's long-term principal investing activity. MBD is one of the leading private capital investors in the world with investments across private equity, infrastructure, private debt, growth equity and real estate.

Jon Niermann, Chairman
Emily Lindley, Commissioner
Bobby Janecka, Commissioner
Toby Baker, Executive Director



Tx Office
copy

Texas Commission on Environmental Quality

Protecting Texas by Reducing and Preventing Pollution

August 12, 2021

CHUCK SIMMONS
SYNAGRO OF TEXAS-CDR INC
435 WILLIAMS CT STE 100
BALTIMORE, MD 21220-2888

Re: Renewal of Sludge Transportation Registration
SYNAGRO OF TEXAS-CDR
Registration Number: 20009

CN601307630

RN105303606

Dear Mr. Simmons:

The Section Manager of the Registration and Reporting Section has issued the enclosed registration in accordance with Title 30 of the Texas Administrative Code (30 TAC) Chapter 312 Subsection (§) 312.147 (b). This action is taken under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

Issuance of this authorization is not an acknowledgment that your operation is in full compliance with state and federal rules and regulations. Failure to comply with all rules and regulations may result in enforcement action and/or the revocation of your registration.

Your registration number is required to appear on all tanks and containers used for the collection and transportation of sewage sludge and similar waste. It should also be used on all correspondence regarding your sludge registration.

A copy of your sludge transporter registration, a copy of your application for registration and copies of all amendments to this registration must be available at all times and at all locations where business is being transacted under this registration, including all motorized vehicles operated under this registration.

If you have any questions or comments, please contact the Sludge Transporter Registration Program at (512) 239-3695.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaya Zyman".

Jaya Zyman, P.E., Deputy Director
Occupational Licensing and Registration Division

Enclosures
CC: TCEQ Region ,



Texas Commission on Environmental Quality

SLUDGE TRANSPORTER REGISTRATION

Registration Number: 20009

CN601307630

RN105303606

Print Date: August 17, 2021

For the Commission

Company: SYNAGRO OF TEXAS-CDR INC

Registered Since: April 25, 1991

Regulated Entity: SYNAGRO OF TEXAS-CDR

Expiration Date: August 31, 2023

Status: ACTIVE

Organization Type: CORPORATION

County:

TCEQ Region:

Transport Waste into Texas: NO

Transport Waste out of Texas: NO

Physical Address:

501 WOODALL RD
DECATUR, AL 35601-7401

Contact Information

Contact: CHUCK SIMMONS

Phone: 256-351-0959

Fax: 256-351-0961

E-Mail: CSIMMONS@SYNAGRO.COM

Mailing Address:

435 WILLIAMS CT STE 100
BALTIMORE, MD 21220-2888

Sticker Numbers Issued and Listed below will expire on August 31, 2023:

3427 3428 3429 3430 3431 3432

520694
520818
520801
520674
520855
520936

This is your registration which reflects the information submitted on your application to the Register or Renew as a Transporter of Municipal Sludge(s) and Similar Wastes. Requirements for transportation are provided in accordance with 30 TAC Chapter 312. Issuance of this registration is not acknowledgement by the TCEQ that your operation is in full compliance with the rules and regulations of the TCEQ. Changes or additions referred to this notice require written notification to the TCEQ. Please keep a copy of this registration in every vehicle transporting sludge and all locations where business is being transacted under this registration.



Texas Commission on Environmental Quality

SLUDGE TRANSPORTER REGISTRATION

Registration Number: 20009

CN601307630

RN105303606

Print Date: August 17, 2021

For the Commission

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PACKET

8.195

February 14, 2023



Texas Commission on Environmental Quality

SLUDGE TRANSPORTER

Registration Number: 20009

Print Date: August 17, 2021

For the Commission

Disposal Facility Information

<u>Facility ID</u>	<u>Waste Type</u>	<u>Facility Name</u>	<u>Program</u>
1149A	WW	GALVESTON COUNTY LANDFILL	MSWDISP
1193	WW	WHISPERING PINES LANDFILL	MSWDISP
1273A	WW	CITY OF BROWNSVILLE MUNICIPAL LANDFILL	MSWDISP
1307C	WW	ATASCOCITA RECYCLING AND DISPOSAL FACILITY	MSWDISP
1327B	WW	PIÑEHILL LANDFILL	MSWDISP
1410C	WW	BFI WASTE TESSMAN ROAD LANDFILL	MSWDISP
1417B	WW	TURKEY CREEK LANDFILL	MSWDISP
1447A	WW	BFI SUNSET FARMS LANDFILL	MSWDISP
1505A	WW	BLUE RIDGE LANDFILL	MSWDISP
1535B	WW	BAYTOWN LANDFILL	MSWDISP
1614A	WW	ROYAL OAKS LANDFILL	MSWDISP
1663B	WW	SOUTHWEST LANDFILL TX	MSWDISP
1721A	WW	COASTAL PLAINS RECYCLING AND DISPOSAL FACILITY	MSWDISP
1752B	WW	SECURITY RECYCLING AND DISPOSAL FACILITY	MSWDISP
1972A	WW	GREENWOOD FARMS LANDFILL	MSWDISP
2027	WW	BFI GOLDEN TRIANGLE LANDFILL	MSWDISP
2093B	WW	COVEL GARDENS LANDFILL	MSWDISP
218C	WW	FORT WORTH SOUTHEAST LANDFILL	MSWDISP
2234A	WW	LIQUID ENVIRONMENTAL SOLUTIONS	MSWPROC
2242A	WW	WESTERN WASTE OF TEXAS NEWTON COMPLEX	MSWDISP
2269	WW	CEFE VALENZUELA LANDFILL	MSWDISP
2270	GT; WW	FORT BEND REGIONAL LANDFILL	MSWDISP
261B	GT; WW	MCCARTY ROAD LANDFILL TX	MSWDISP
356	WW	VITAL EARTH RESOURCES	MSWPROC
39001	WW	CONROE INDUSTRIAL NON HAZARDOUS LANDFILL	MSWDISP
66B	WW	MESQUITE CREEK LANDFILL	MSWDISP
710774	WW	SHERMAN SITE	SLUDGE
730015	WT	BAYTOWN AREA WATER AUTHORITY	SLUDGE
79	WW	SAN ANGELO LANDFILL	MSWDISP
WQ0004441000	WW	KAECHLE RANCH	SLUDGE
WQ0004451000	WW	CAMPBELL RANCH	SLUDGE
WQ0004503000	WW	VOYLES RANCH BLU SITE	SLUDGE
WQ0004723000	WW	OWERS RANCH BLU SITE	SLUDGE
WQ0005190000	WW	J1 RANCH	SLUDGE TR
WQ0010008002	WW	CONROE SOUTHWEST REGIONAL WWTP	WWPERMIT
WQ0010137033	WW	STEVEN M CLOUSE WATER RECYCLING CENTER	WWPERMIT
WQ0010187002	WW	NORTHSIDE WWTP	WWPERMIT
WQ0010258001	WW	RICHMOND NORTH SECOND STREET WWTP	WWPERMIT
WQ0010315001	WW	CITY OF WILLIS WWTP	WWPERMIT
WQ0010395008	WW	WEST DISTRICT WWTP	WWPERMIT
WQ0010395010	WW	NORTHEAST DISTRICT WWTP	WWPERMIT
WQ0010397003	WW	BROWNSVILLE PUB SOUTHSIDE WWTP	WWPERMIT
WQ0010397005	WW	ROBINDALE WWTP	WWPERMIT



Texas Commission on Environmental Quality
SLUDGE TRANSPORTER
Registration Number: 20009

Print Date: August 17, 2021

For the Commission

WQ0010401003	WW	GREENWOOD PLANT	WWPERMIT
WQ0010401005	WW	NEW BROADWAY WWTP	WWPERMIT
WQ0010495002	WW	SIMS BAYOU PLANT	WWPERMIT
WQ0010495003	WW	ALMEDA SIMS WWTP	WWPERMIT
WQ0010495009	WW	CHOCOLATE BAYOU WWTP	WWPERMIT
WQ0010495023	WW	HOMESTEAD WWTF	WWPERMIT
WQ0010495076	WW	NORTHWEST WWTP	WWPERMIT
WQ0010495078	WW	INTERCONTINENTAL AIRPORT WWTP	WWPERMIT
WQ0010495090	WW	69TH ST WWTP	WWPERMIT
WQ0010495101	WW	IMPERIAL VALLEY WWTP	WWPERMIT
WQ0010495109	WW	TURKEY CREEK WWTP	WWPERMIT
WQ0010495115	WW	NORTHBOROUGH WWTF	WWPERMIT
WQ0010495116	WW	CITY OF HOUSTON UPPER BRAYS WWTP	WWPERMIT
WQ0010495119	WW	KEEGANS BAYOU WWTP	WWPERMIT
WQ0010495122	WW	NORTHBELT WWTP	WWPERMIT
WQ0010495146	WW	KINGWOOD CENTRAL WWTP	WWPERMIT
WQ0010568005	WW	DALLAS SALMON WWTP	WWPERMIT
WQ0010607002	WW	CITY OF ROSENBERG WWTP 2	WWPERMIT
WQ0010607003	WW	CITY OF ROSENBERG WWTP 1A	WWPERMIT
WQ0010607004	WW	CITY OF ROSENBERG WWTP 3	WWPERMIT
WQ0010653001	WW	WESTSIDE WWTP	WWPERMIT
WQ0010653002	WW	SOUTHSIDE WWTP	WWPERMIT
WQ0010706001	WW	CITY OF KATY WWTP	WWPERMIT
WQ0010712001	WW	CITY OF SOUTHSIDE PLACE	WWPERMIT
WQ0010781002	WW	N B DAVIDSON SOUTH WWTP	WWPERMIT
WQ0011044001	WW	MEMORIAL HILLS UD WWTP	WWPERMIT
WQ0011193001	WW	BRITTMORE WWTP	WWPERMIT
WQ0011275002	WW	PRAIRIE VIEW A&M WWTP	WWPERMIT
WQ0011314001	WW	CANDLELIGHT HILLS WWTP	WWPERMIT
WQ0011371001	WW	MONTGOMERY COUNTY MUD 8 WWTP	WWPERMIT
WQ0011409001	WW	KLEINWOOD CENTRAL	WWPERMIT
WQ0011770001	WW	HARRIS COUNTY MUD 50 WWTP	WWPERMIT
WQ0011807001	WW	FOREST HILLS MUD WWTP	WWPERMIT
WQ0011824001	WW	NORTHWEST HARRIS COUNTY MUD 5 WWTP	WWPERMIT
WQ0011917001	WW	HARRIS COUNTY MUD 71 WWTP	WWPERMIT
WQ0011969001	WW	MAYDE CREEK MUD-REGIONAL WWTF	WWPERMIT
WQ0011989001	WW	FRY ROAD MUD	WWPERMIT
WQ0012003001	WW	FORT BEND COUNTY MUD 25 WWTP	WWPERMIT
WQ0012025002	WW	BILMA PUD WWTP	WWPERMIT
WQ0012110001	WW	KATY ISD MAYDE CREEK WWTP	WWPERMIT
WQ0012222001	WW	BRITTMORE WEST BY NORTHWEST WWTP	WWPERMIT
WQ0012223001	WW	WEST HARRIS COUNTY MUD 15 WWTP	WWPERMIT
WQ0012224001	WW	KLEIN ISD TRANSPORTATION WWTP	WWPERMIT
WQ0012541001	WW	CHASEWOOD WSC WWTP	WWPERMIT
WQ0012622001	WW	WILLOW RIDGE ESTATES	WWPERMIT
WQ0012726001	WW	HARRIS COUNTY MUD 155 WWTP	WWPERMIT

WQ0013209001	WW	LAKE LIVINGSTON VILLAGE WWTP	WWPERMIT
WQ0013355001	WW	SUGAR LAND GREATWOOD WWTP	WWPERMIT
WQ0013625001	WW	NORTHWEST HARRIS COUNTY MUD 20 WWTP	WWPERMIT
WQ0013627001	WW	CYPRESS LAKES WWTP	WWPERMIT
WQ0014210001	WW	LAKE CONROE KOA WWTP	WWPERMIT

Waste Types

DS - Septic Tank Waste
GS - Grease Trap Waste

GT - Grit Trap Waste
PP - Chemical Toilet Waste

WT - Water Treatment Residuals
WW - Sewage Sludge/Biosolids



Texas Commission on Environmental Quality

SLUDGE TRANSPORTER

Registration Number: 20009

Print Date: August 17, 2021

For the Commission

Vehicle Information

<u>License Plate</u>	<u>Year</u>	<u>Vehicle Make</u>	<u>Sticker Issued</u>	<u>Vehicle Capacity</u>
1L84908	2006	MACK	07/29/2015	20 CY
BL06103	2012	MACK	07/29/2015	20 CY
1M17357	2006	FREIGHTLINER	07/29/2015	20 CY
1L00981	2006	MACK	07/29/2015	20 CY
1141048	2016	KENWORTH	01/11/2018	20 CY
1M25821	2020	PETERBILT	12/20/2019	20 CY

*UOM - Units of Measure

PACKET

8.199

February 14, 2023

**APPLICATION TO RENEW REGISTRATION AS A TRANSPORTER OF
MUNICIPAL SLUDGES AND SIMILAR WASTES******* Please return completed form to the TCEQ *******Transporter Company Name** SYNAGRO OF TEXAS-CDR**Legal Company Name:** Synagro of Texas-CDR, Inc.**Registration Number:** 20009**Customer Number:** CN601307630**Regulated Entity Number:** RN105303606**Physical Address:**501 WOODALL RD
DECATUR, AL 35601-7401**Contact:** CHUCK SIMMONS**Phone:** 256-351-0959**Fax:** 256-351-0961**E-Mail:** CSIMMONS@SYNAGRO.COM**County:****Mailing Address:**435 WILLIAMS CT STE 100
BALTIMORE, MD 21220-2888

All registered transporters must submit an Annual Summary Report (ASR) before the registration will be renewed. Any administrative changes to the registration information must be made using the TCEQ Core Data Form (TCEQ 10400).

AUTHORIZED FACILITIES OR SITES USED FOR DISPOSAL OF WASTE:

Only dispose of waste at authorized disposal facilities. See Title 30 of the Texas Administrative Code (TAC) §312.143. List all authorized disposal facilities to be utilized, along with the waste type to be transported and the state-issued authorization number: wastewater treatment plant; sanitary landfill; Type V facility; or beneficial land application site.

Are there any outstanding fees or penalties due to the TCEQ from this owner? If yes, provide the amount \$ _____; nature of the fee or penalty _____; and the identifying account number _____. The registration form will not be processed until all delinquent fees and/or penalties owed to the TCEQ are paid in full.

SIGNATURE:

An application submitted under the business type of INDIVIDUAL must be signed by that individual. A person signing an application on behalf of the applicant must provide a letter of authorization signed by the applicant. For a PARTNERSHIP, the application must be signed by a general partner. For MUNICIPAL, STATE, FEDERAL or other public facility, the application must be signed by a principal executive official or another duly authorized employee. An application submitted by a CORPORATION must be signed by a principal executive officer of at least the level of vice-president or by a duly authorized representative, if said representative is responsible for the overall transportation activity. An application signed by a person other than vice-president or above must include a letter of authorization, signed by an executive officer of at least the level of vice-president. In all cases, the person signing the form must be authorized to do so by the applicant.

I, MATTHEW ROBERTSON Title: CHIEF COMMERCIAL OFFICER
(Printed name of applicant)

certify under penalty of law that all information submitted is, to the best of my knowledge and belief, true, accurate and complete.

I am aware that there are significant penalties for falsification of information, including the possibility of fines, imprisonment for violations and revocation of this registration.

Signature: Matt R Date: MAY 26, 2021

****This renewal will not be accepted without the sticker fee payment
in the form of a check or money order****

For questions on filling out this form or about the Sludge Transporter Program, contact us at (512) 239-6413. Please mail this completed form and your check or money order for the vehicle sticker fee payment to the address below:

Texas Commission on Environmental Quality
Cashier's Office (MC-214)
P.O. Box 13088, Austin, Texas 78711-3088
www.tceq.texas.gov

TRANSPORTING ACROSS STATE LINES:

Do you transport waste from Texas to another state for disposal?

☒ No☐ Yes

Do you transport waste from another state to Texas for disposal?

☒ No☐ Yes

See Title 30 of the Texas Administrative Code (TAC) §312.149 for more information on transporting sludge waste out of state.

VEHICLE INFORMATION:

A TCEQ authorization sticker is required for each motorized vehicle that transports waste. The cost is \$10 per vehicle. Please include payment in the form of a personal check, money order or cashier's check payable to: Texas Commission on Environmental Quality or TCEQ.

****RENEWALS WILL NOT BE ACCEPTED WITHOUT THE STICKER FEE PAYMENT
IN THE FORM OF A CHECK OR MONEY ORDER****

License Plate	Year	Vehicle Make	Vehicle Capacity	Is Vehicle Power Unit Only? Y/N
1 IL84908	2006	MACK (520694)	20 CY	Y
2 BL06103	2012	MACK (520818)	20 CY	Y
3 IL84018	2006	MACK (520668)	20 CY	N
4 1M17357	2006	FREIGHTLINER (520801)	20 CY	N
5 1L00981	2006	MACK (520674)	20 CY	N
6 1141048	2016	KENWORTH (520825)	20 CY	N
7 1M25821	2020	PETERBILT (520936)	20 CY	N

Total Number of Motorized Vehicles (Do not include trailers)

Vehicles = 6 Multiply by \$10.00 = \$ 60.00 Total Sticker Fee enclosed with renewal

	Disposal Facility Permit Number	Waste Type	Facility Name	Program
1	1149A	WW	GALVESTON COUNTY LANDFILL	MSWDISP
2	1193	WW	WHISPERING PINES LANDFILL	MSWDISP
3	1273A	WW	CITY OF BROWNSVILLE MUNICIPAL LANDFILL	MSWDISP
4	1307C	WW	ATASCOCITA RECYCLING AND DISPOSAL FACILITY	MSWDISP
5	1327B	WW	PINEHILL LANDFILL	MSWDISP
6	1410C	WW	BFI WASTE TESSMAN ROAD LANDFILL	MSWDISP
7	1417B	WW	TURKEY CREEK LANDFILL	MSWDISP
8	1447A	WW	BFI SUNSET FARMS LANDFILL	MSWDISP
9	1505A	WW	BLUE RIDGE LANDFILL	MSWDISP
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16	2027	WW	BFI GOLDEN TRIANGLE LANDFILL	MSWDISP
17	2093B	WW	COVEL GARDENS LANDFILL	MSWDISP
18	218C	WW	FORT WORTH SOUTHEAST LANDFILL	MSWDISP
19	2234A	WW	LIQUID ENVIRONMENTAL SOLUTIONS	MSWPROC
20	2242A	WW	WESTERN WASTE OF TEXAS NEWTON COMPLEX	MSWDISP
21	2269	WW	CEFE VALENZUELA LANDFILL	MSWDISP
22	2270	GT; WW	FORT BEND REGIONAL LANDFILL	MSWDISP
23	261B	GT; WW	MCCARTY ROAD LANDFILL TX	MSWDISP
24	356	WW	VITAL EARTH RESOURCES	MSWPROC
25	39001	WW	CONROE INDUSTRIAL NON HAZARDOUS LANDFILL	MSWDISP
26	66B	WW	MESQUITE CREEK LANDFILL	MSWDISP
27	710774	WW	SHERMAN SITE	SLUDGE
28	730015	WT	BAYTOWN AREA WATER AUTHORITY	SLUDGE
29	79	WW	SAN ANGELO LANDFILL	MSWDISP
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31	WQ0004451000	WW	CAMPBELL RANCH	SLUDGE
32	WQ0004503000	WW	VOYLES RANCH BLU SITE	SLUDGE
33	WQ0004504000	WW	MADELAINE FARMS BUCK MILLER-HE3 RANCH	SLUDGE
34	WQ0004671000	WW	DUNCAN RANCH 1	SLUDGE
35	WQ0004723000	WW	OWERS RANCH BLU SITE	SLUDGE
36	WQ0005190000	WW	J1 RANCH	SLUDGE TR
37	WQ0010008002	WW	CONROE SOUTHWEST REGIONAL WWTP	WWPERMIT
38	WQ0010137033	WW	STEVEN M CLOUSE WATER RECYCLING CENTER	WWPERMIT
39	WQ0010187002	WW	NORTHSIDE WWTP	WWPERMIT
40	WQ0010258001	WW	RICHMOND NORTH SECOND STREET WWTP	WWPERMIT
41	WQ0010315001	WW	CITY OF WILLIS WWTP	WWPERMIT
42	WQ0010395008	WW	WEST DISTRICT WWTP	WWPERMIT
43	WQ0010395010	WW	NORTHEAST DISTRICT WWTP	WWPERMIT
44	WQ0010397003	WW	BROWNSVILLE PUB SOUTHSIDE WWTP	WWPERMIT
45	WQ0010397005	WW	ROBINDALE WWTP	WWPERMIT
46	WQ0010401003	WW	GREENWOOD PLANT	WWPERMIT
47	WQ0010401005	WW	NEW BROADWAY WWTP	WWPERMIT
48	WQ0010495002	WW	SIMS BAYOU PLANT	WWPERMIT

49	WQ0010495003	WW	ALMEDA SIMS WWTP	WWPERMIT
50	WQ0010495009	WW	CHOCOLATE BAYOU WWTP	WWPERMIT
51	WQ0010495023	WW	HOMESTEAD WWTF	WWPERMIT
52	WQ0010495076	WW	NORTHWEST WWTP	WWPERMIT
53	WQ0010495078	WW	INTERCONTINENTAL AIRPORT WWTP	WWPERMIT
54	WQ0010495090	WW	69TH ST WWTP	WWPERMIT
55	WQ0010495101	WW	IMPERIAL VALLEY WWTP	WWPERMIT
56	WQ0010495109	WW	TURKEY CREEK WWTP	WWPERMIT
57	WQ0010495115	WW	NORTHBOROUGH WWTF	WWPERMIT
58	WQ0010495116	WW	CITY OF HOUSTON UPPER BRAYS WWTP	WWPERMIT
59	WQ0010495119	WW	KEEGANS BAYOU WWTP	WWPERMIT
60	WQ0010495122	WW	NORTHBELT WWTP	WWPERMIT
61	WQ0010495146	WW	KINGWOOD CENTRAL WWTP	WWPERMIT
62	WQ0010568005	WW	DALLAS SALMON WWTP	WWPERMIT
63	WQ0010607002	WW	CITY OF ROSENBERG WWTP 2	WWPERMIT
64	WQ0010607003	WW	CITY OF ROSENBERG WWTP 1A	WWPERMIT
65	WQ0010653001	WW	WESTSIDE WWTP	WWPERMIT
66	WQ0010653002	WW	SOUTHSIDE WWTP	WWPERMIT
67	WQ0010706001	WW	CITY OF KATY WWTP	WWPERMIT
68	WQ0010712001	WW	CITY OF SOUTHSIDE PLACE	WWPERMIT
69	WQ0010781002	WW	N B DAVIDSON SOUTH WWTP	WWPERMIT
70	WQ0011044001	WW	MEMORIAL HILLS UD WWTP	WWPERMIT
71	WQ0011193001	WW	BRITTMORE WWTP	WWPERMIT
72	WQ0011275002	WW	PRAIRIE VIEW A&M WWTP	WWPERMIT
73	WQ0011314001	WW	CANDLELIGHT HILLS WWTP	WWPERMIT
74	WQ0011371001	WW	MONTGOMERY COUNTY MUD 8 WWTP	WWPERMIT
75	WQ0011409001	WW	KLEINWOOD CENTRAL	WWPERMIT
76	WQ0011770001	WW	HARRIS COUNTY MUD 50 WWTP	WWPERMIT
77	WQ0011807001	WW	FOREST HILLS MUD WWTP	WWPERMIT
78	WQ0011824001	WW	NORTHWEST HARRIS COUNTY MUD 5 WWTP	WWPERMIT
79	WQ0011917001	WW	HARRIS COUNTY MUD 71 WWTP	WWPERMIT
80	WQ0011969001	WW	MAYDE CREEK MUD REGIONAL WWTF	WWPERMIT
81	WQ0011989001	WW	FRY ROAD MUD	WWPERMIT
82	WQ0012003001	WW	FORT BEND COUNTY MUD 25 WWTP	WWPERMIT
83	WQ0012025002	WW	BILMA PUD WWTP	WWPERMIT
84	WQ0012110001	WW	KATY ISD MAYDE CREEK WWTP	WWPERMIT
85	WQ0012222001	WW	BRITTMORE WEST BY NORTHWEST WWTP	WWPERMIT
86	WQ0012223001	WW	WEST HARRIS COUNTY MUD 15 WWTP	WWPERMIT
87	WQ0012224001	WW	KLEIN ISD TRANSPORTATION WWTP	WWPERMIT
88	WQ0012541001	WW	CHASEWOOD WSC WWTP	WWPERMIT
89	WQ0012622001	WW	WILLOW RIDGE ESTATES	WWPERMIT
90	WQ0012726001	WW	HARRIS COUNTY MUD 155 WWTP	WWPERMIT
91	WQ0013209001	WW	LAKE LIVINGSTON VILLAGE WWTP	WWPERMIT
92	WQ0013355001	WW	SUGAR LAND GREATWOOD WWTP	WWPERMIT
93	WQ0013625001	WW	NORTHWEST HARRIS COUNTY MUD 20 WWTP	WWPERMIT
94	WQ0013627001	WW	CYPRESS LAKES WWTP	WWPERMIT
95	WQ0014124001	WW	CEDRIC SMITH ELEMENTARY SCHOOL WWTP	WWPERMIT
96	WQ0014210001	WW	LAKE CONROE KOA WWTP	WWPERMIT

Waste Types

DS - Septic Tank Waste
GS - Grease Trap Waste

GT - Grit Trap Waste
PP - Chemical Toilet Waste

WT - Water Treatment Residuals
WW - Sewage Sludge/Biosolids

PACKET

NAICS 221300
IRR 3.3
DART 1.2

Synagro - Occupational Safety & Health / Injury & Illness Statistics

SYNAGRO TOTAL	Labor Hours (includes temp)	Average # Employees	Experience Modification Rate	G							Total Recordables	TRR (includes all injuries)	DART (does not include "other" injuries)	LTIR (includes lost-time only)	K		L		Severity Rate (K * hours /200,000)	Severity Rate (K+L * hours /200,000)
				Fatality	Lost Time Injuries	Mod-Duty Injuries	Other Injuries	J	# Lost Workdays	# Restricted Workdays										
8.2019	1,693,561	746	.78 (eff: 8.1.19)	0	7	3	6	16	1.89	1.18	0.83	233	473	27.52	83.37	27.52				
2020	1,739,360	701	.77 (eff: 8.1.20)	0	7	6	8	21	2.41	1.49	0.80	459	443	52.78	103.72	52.78				
2021	1,745,351	796	.76 (eff: 8.1.21)	0	5	8	7	20	2.29	1.49	0.57	336	597	38.50	106.91	38.50				
3-year run (2019-2021)	5,178,272	748	.77 (3-yr average)	0	19	17	21	57	2.20	1.39	0.73	1028	1513	39.70	98.14	39.70				

February 14, 2023

Equipment



BFP 2m	39	Loader	83
Gravity Belt Thickeners	5	Lowboy Trailer	11
Compost Turner Self Propelled	5	Pickup Truck	235
Centrifuges	14	Liquid Pull Tank Spreaders	24
Load out Conveyor	24	Pump Hydraulic NO power unit	12
Conveyor	28	Pump Hydraulic with power unit	8
Disk-Tillage (25'-30')	31	Pump-Houle	12
Disk-No Tillage or Min (24'-30')	2	Road Tractors	60
Dozer 90 to 99 hp	2	Roll Off Truck	4
Dredge Large	2	Scales Portable Axle	3
Dredge Small	9	Skid Steer	12
Dump Truck	11	Spreader - Cake Pull Behind	55
End Dump Trailer	442	Spreader - Truck Liquid	5
Excavator 26-30 ton	3	Spud Barge-Small	1
Excavator Long Reach	1	Tanker	195
Farm Tractors	138	Tanker Trains (MI only)	13
Forest Applicator	4	Telehandler (19 foot Lift)	10
Forklift Off-Road	21	Terragator/Ag-gator 4000 Gallons	24
Generator	12	Water truck 2000-2999 Gallons	5
Grinders	26	Jockey Truck	30

JANUARY 26, 2023

City of Midland

Attn: City Secretary's Office
300 N. Loraine, 3rd Floor
Midland, TX 79701

Re: Project Number 10301516
Water Reclamation Facility Plant Farm Ponds Rehabilitation

Dear Ladies and Gentlemen:

Synagro of Texas-CDR, Inc. (Synagro) is pleased to respond to the City's Advertisement to bid for the Plant Farm Ponds Rehabilitation project. We have enclosed for your review our completed bid package.

Having been in business for over 40 years, Synagro is one of the largest residuals management companies in the country with over 650 municipal and industrial customers and operations in 33 states. We provide ongoing residuals management services to numerous water and wastewater treatment plants throughout Texas and have extensive equipment and personnel resources to perform the services required for this project.

Synagro is a non-public company, and its financial statements are confidential, competitively sensitive information exempt from disclosure under Subsection 552.104 of the Texas Public Information Act. Synagro requests that distribution of the financial statements be limited to only those reviewers who have a need for such information. Accordingly, we have provided the financial statements in a separate sealed envelope for easy removal when forwarding the bid package.

Please be advised that pricing on line item "Grading and Subgrade Preparation" on the bid form, is based on the assumption provided by the City that "Minor grading and subgrade prep needs to be performed as directed by engineer to meet minimum grades and subgrade condition". Our pricing for this line item includes 5 working days of grading/subgrade prep work per pond and no requirement for additional materials. If the engineer determines that more time is required for this portion of the project, it will be addressed via change order for time, equipment, and materials.

Additionally, we have included in our proposal \$87,000 for landfill administrative fees, because it's unclear whether the landfill will issue the contractor a hauler's permit to waive this fee or not. If such fee is waived by the landfill, a deduction of \$87,000 can be taken off this proposal.

Lastly, this proposal is with the assumption that lagoon conditions were as-is during the mandatory site visit that Synagro attended. The condition of the ponds were, no amount of free standing water present in the lagoons, eliminating the need for sludge dewatering. The conditions during the site visit were digitally documented. All modifications to the scope of work will be addressed with a change order.

Synagro appreciates this opportunity. Should you have any questions regarding our submittal, please contact me at (281) 965-4614 or opacas@synagro.com. We look forward to hearing from you soon. Thank you.

Warm regards,

Oscar Pacas

Oscar Pacas
Sales Representative



BID BOND

THE STATE OF TEXAS §

SURETY NO. N/A

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT SYNAGRO OF TEXAS-CDR, INC.

(hereinafter called the Principal), as Principal, and ARGONAUT INSURANCE COMPANY

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

Five Percent of Amount Bid DOLLARS

(\$ 5% of Amount Bid), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to Water Reclamation Facility Plant Farm Ponds Rehabilitation - Project Number 10301516

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

29th day of December, 2022

SYNAGRO OF TEXAS-CDR, INC.

ARGONAUT INSURANCE COMPANY

By [Signature] Principal

By [Signature] Surety
Kemal Brkanovic, Attorney-In-Fact

Address 435 Williams Court, Suite 100
Baltimore, Maryland 21220

Address P.O. Box 469011
San Antonio TX 78246

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PACKET

FORM BID BOND FIRM

8.210

February 14, 2023

REVISED: March 30, 2011

Argonaut Insurance Company
Deliveries Only: 225 W. Washington, 24th Floor
Chicago, IL 60606

United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

Sandra Diaz, Debra A Deming, Anne Potter, Beverly A Woolford, Valorie Spates, Jennifer L Jakaitis, Susan A Welsh, Peter Healy, Nancy Schnee, Aklima Noorhassan, Frances Rodriguez, Francesca Kazmierczak, Kemal Brkanovic

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$97,550,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 19th day of November, 2021.

Argonaut Insurance Company



by:

Gary E. Grose

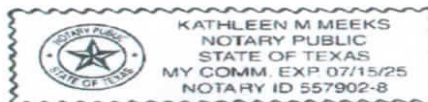
Gary E. Grose, President

STATE OF TEXAS

COUNTY OF HARRIS SS:

On this 19th day of November, 2021 A.D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



Kathleen M. Meeke

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 29th day of December, 2022.



Austin W. King

Austin W. King, Secretary

IF YOU HAVE QUESTIONS ON AUTHENTICITY OF THIS DOCUMENT CALL (833) 820 - 9137.

PACKET

8.211

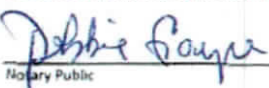
February 14, 2023

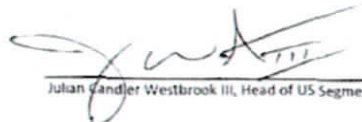
FINANCIAL STATEMENT
ARGONAUT INSURANCE COMPANY
STATUTORY BASIS as of 12/31/2021

<u>ASSETS</u>		<u>LIABILITIES AND SURPLUS</u>	
CASH & INVESTED ASSETS	\$248,880,956	UNEARNED PREMIUMS	\$304,943,789
BONDS	\$1,181,510,880	LOSSES	\$585,583,927
STOCKS	\$674,977,267	LOSS ADJUSTMENT EXPENSES	\$188,245,975
INVESTMENT INCOME DUE AND ACCRUED	\$5,760,648	COMMISSIONS	\$4,787,791
PREMIUM BALANCES	\$114,828,986	TAXES, LICENSES, AND FEES	\$10,269,846
NET DEFERRED TAX ASSET	\$58,325,157	OTHER EXPENSES	\$9,373,605
REINSURANCE RECOVERABLE	\$92,562,864	FUNDS HELD UNDER REINSURANCE TREATIES	\$77,371,315
OTHER ASSETS	\$40,514,092	CURRENT FEDERAL AND FOREIGN INCOME TAXES	\$0
TOTAL ASSETS	\$2,392,360,630	REMITTANCES AND ITEMS NOT ALLOCATED	\$2,510,048
		AMOUNTS WITHHELD/RETAINED BY COMPANY FOR OTHERS	\$11,771,696
		PAYABLES TO PARENT, SUBSIDIARIES, & AFFILIATES	\$52,193,204
		PAYABLE FOR SECURITIES	\$3,599,489
		PROVISION FOR REINSURANCE	\$16,445,734
		CEDED REINSURANCE PREMIUMS PAYABLE	\$47,083,249
		OTHER ACCRUED EXPENSES AND LIABILITIES	\$1,597,617
		TOTAL LIABILITIES	\$1,321,201,703
		COMMON CAPITAL STOCK	\$4,500,000
		GROSS PAID IN AND CONTRIBUTED SURPLUS	\$525,520,936
		UNASSIGNED SURPLUS	\$541,137,991
		TOTAL SURPLUS TO POLICYHOLDERS	\$1,071,158,927
		TOTAL LIABILITIES & SURPLUS	\$2,392,360,630

Jack Westbrook, being duly sworn, says that he is Head of US Segment Accounting of Argonaut Insurance Company and that to the best of his knowledge, and belief, the foregoing statement is a true and correct statement of the financial condition of said Company as of the 31st of December, 2021.

Subscribed and sworn to before me this 5th day of April 2022


Debbie Gouge
Notary Public


Julian Gandler Westbrook III, Head of US Segment Accounting



IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Argonaut Insurance Company and its affiliates by telephone for information or to make a complaint:

ARGONAUT INSURANCE COMPANY

Please send all notices of claim on this bond to:
Argo Surety Claims
(413) 773-6359

Deliveries Only: 225 W. Washington, 24th Floor, Chicago, IL 60606
United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

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

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR BOND:

This notice is for information only and does not become a part or condition of the attached document and is given to comply with Texas legal and regulatory requirements.

1 **BID FORM (REVISED AD-01)**

2 FOR CONSTRUCTION CONTRACT

3 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions
4 to Bidders, the General Conditions, and the Supplementary Conditions.

5 **ARTICLE 1—OWNER AND BIDDER**

6 1.01 This Bid is submitted to: City of Midland, 300 N. Loraine, City Secretary, Midland, TX 79701

7 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an
8 Agreement with Owner in the form included in the Bidding Documents to perform all
9 Work as specified or indicated in the Bidding Documents for the prices and within the
10 times indicated in this Bid and in accordance with the other terms and conditions of the
11 Bidding Documents.

12 **ARTICLE 2—ATTACHMENTS TO THIS BID**

13 2.01 The following documents are submitted with and made a condition of this Bid:

- 14 A. Required Bid security;
- 15 B. Bid Form;
- 16 C. Vendor Compliance to State Law;
- 17 D. Affidavit of Eligibility;
- 18 E. List of Proposed Subcontractors;
- 19 F. List of Proposed Suppliers;
- 20 G. Evidence of authority to do business in the state of the Texas
- 21 H. Contractor's license number as evidence of Bidder's State Contractor's License or a
22 covenant by Bidder to obtain said license within the time for acceptance of Bids;
- 23 I. Required Bidder Qualification Statement with supporting data; and
- 24 J. Conflict of Interest Questionnaire
- 25 K. Certification that a site visit to the Plant Farm Ponds was conducted.

26 **ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES**

28 3.01 *Lump Sum and Unit Price Bids*

29 A. Bidder will complete the Work in accordance with the Contract Documents for the
30 following lump sum price(s), and unit prices.

31 B. For unit price items, bidder acknowledges that:

- 32 1. each Bid Unit Price includes an amount considered by Bidder to be adequate to
33 cover Contractor's overhead and profit for each separately identified item, and

EJCDC® C-410, Bid Form for Construction Contract.

2. the estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.
- C. All specified contingency allowances are included in the price(s) set forth below, and have been computed in accordance with Paragraph 13.02 of the General Conditions.

Description	Quantity	Unit	Unit Price	TOTAL
BASE BID				
Mobilization/Demobilization	1	LS	\$ 53,817.00	\$ 53,817.00
Dry Sludge Removal and Disposal:	17,000	TONS	\$ 105.24	\$ 1,789,080.00
Wet Sludge Dewatering and Disposal:	4,000	TONS	\$ 105.24	\$ 420,960.00
Liner Removal and Disposal:	1	LS	\$ 323,652.50	\$ 323,652.50
Grading and Subgrade Preparation:	1	LS	\$ 20,000.00	\$ 20,000.00
Leak Detection Well Head Modification:	8	EA	\$ 2,500.00	\$ 20,000.00
Leak Detection Pipe and Trench Replacement:	1,000	LF	\$ 24.79	\$ 24,790.00
Liner Installation:	1	LS	\$ 1,744,444.00	\$ 1,744,444.00
SUBTOTAL BASE BID				\$ 4,396,743.50
OWNER'S CONTINGENCY (20% OF BASE BID)				\$ 879,348.70
TOTAL BID PRICE (SUBTOTAL + OWNER'S CONTINGENCY)				\$ 5,276,092.20

ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work at the Farm Ponds (including sludge disposal, liner removal, grading, leak detection work, and liner replacement) will be substantially complete within

1 120 calendar days after the date when the Contract Times commence to run as provided
2 in Paragraph 4.01 of the General Conditions, and will be completed and ready for final
3 payment in accordance with Paragraph 15.06 of the General Conditions within 150
4 calendar days after the date when the Contract Times commence to run.

5 4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

6 **ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND**
7 **RECEIPT OF ADDENDA**

8 5.01 *Bid Acceptance Period*

9 A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for
10 such longer period of time that Bidder may agree to in writing upon request of Owner.

11 5.02 *Instructions to Bidders*

12 A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including
13 without limitation those dealing with the disposition of Bid security.

14 5.03 *Receipt of Addenda*

15 A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
1	January 5, 2023
2	January 9, 2023
3	January 13, 2023

17 **ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS**

18 6.01 *Bidder's Representations*

19 A. In submitting this Bid, Bidder represents the following:

20 1. Bidder has examined and carefully studied the Bidding Documents, including
21 Addenda.

22 2. Bidder has visited the Site, conducted a thorough visual examination of the Site
23 and adjacent areas, and become familiar with the general, local, and Site
24 conditions that may affect cost, progress, and performance of the Work.

25 3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and
26 performance of the Work.

27 4. Bidder has carefully studied the reports of explorations and tests of subsurface
28 conditions at or adjacent to the Site and the drawings of physical conditions
29 relating to existing surface or subsurface structures at the Site that have been
30 identified in the Supplementary Conditions, with respect to the Technical Data in
31 such reports and drawings.

32 5. Bidder has carefully studied the reports and drawings relating to Hazardous
33 Environmental Conditions, if any, at or adjacent to the Site that have been

EJCDC® C-410, Bid Form for Construction Contract.

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PACKET

February 14, 2023

- 1 identified in the Supplementary Conditions, with respect to Technical Data in such
2 reports and drawings.
- 3 6. Bidder has considered the information known to Bidder itself; information
4 commonly known to contractors doing business in the locality of the Site;
5 information and observations obtained from visits to the Site; the Bidding
6 Documents; and the Technical Data identified in the Supplementary Conditions
7 or by definition, with respect to the effect of such information, observations, and
8 Technical Data on (a) the cost, progress, and performance of the Work; (b) the
9 means, methods, techniques, sequences, and procedures of construction to be
10 employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's)
11 safety precautions and programs.
- 12 7. Based on the information and observations referred to in the preceding
13 paragraph, Bidder agrees that no further examinations, investigations,
14 explorations, tests, studies, or data are necessary for the performance of the
15 Work at the Contract Price, within the Contract Times, and in accordance with the
16 other terms and conditions of the Contract.
- 17 8. Bidder is aware of the general nature of work to be performed by Owner and
18 others at the Site that relates to the Work as indicated in the Bidding Documents.
- 19 9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or
20 discrepancies that Bidder has discovered in the Bidding Documents, and of
21 discrepancies between Site conditions and the Contract Documents, and the
22 written resolution thereof by Engineer is acceptable to Contractor.
- 23 10. The Bidding Documents are generally sufficient to indicate and convey
24 understanding of all terms and conditions for performance and furnishing of the
25 Work.
- 26 11. The submission of this Bid constitutes an incontrovertible representation by
27 Bidder that without exception the Bid and all prices in the Bid are premised upon
28 performing and furnishing the Work required by the Bidding Documents.

29 6.02 *Bidder's Certifications*

30 A. The Bidder certifies the following:

- 31 1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed
32 individual or entity and is not submitted in conformity with any collusive
33 agreement or rules of any group, association, organization, or corporation.
- 34 2. Bidder has not directly or indirectly induced or solicited any other Bidder to
35 submit a false or sham Bid.
- 36 3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
- 37 4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in
38 competing for the Contract. For the purposes of this Paragraph 8.02.A:
- 39 a. Corrupt practice means the offering, giving, receiving, or soliciting of anything
40 of value likely to influence the action of a public official in the bidding process.

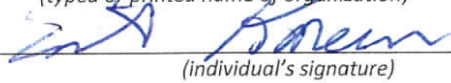
- 1 b. Fraudulent practice means an intentional misrepresentation of facts made
2 (a) to influence the bidding process to the detriment of Owner, (b) to
3 establish bid prices at artificial non-competitive levels, or (c) to deprive
4 Owner of the benefits of free and open competition.
- 5 c. Collusive practice means a scheme or arrangement between two or more
6 Bidders, with or without the knowledge of Owner, a purpose of which is to
7 establish bid prices at artificial, non-competitive levels.
- 8 d. Coercive practice means harming or threatening to harm, directly or
9 indirectly, persons or their property to influence their participation in the
10 bidding process or affect the execution of the Contract.
- 11

BIDDER hereby submits this Bid as set forth above:

Bidder:

Synagro of Texas-CDR, Inc.,
(typed or printed name of organization)

By:


(individual's signature)

Name:

Emil Kneis

(typed or printed)

Title:

Sales Support Manager

(typed or printed)

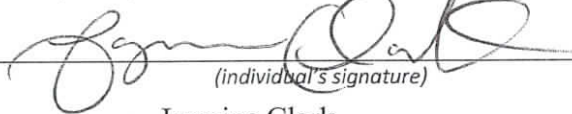
Date:

January 24, 2023

(typed or printed)

If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.

Attest:


(individual's signature)

Name:

Jazmine Clark

(typed or printed)

Title:

Senior Proposal Coordinator

(typed or printed)

Date:

January 24, 2023

(typed or printed)

Bidder's Address for giving notices:

435 Williams Court, Suite 100

Baltimore, MD 21220

Bidder's Contact Person:

Name:

Oscar Pacas

(typed or printed)

Title:

Sales Representative

(typed or printed)

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Bidder's Contractor License No.: (if applicable) N/A

October 20, 2021

Delegation of Authority

FROM: Matt Robertson, Chief Commercial Officer

TO: Emil Kneis, Sales Support Manager

In consideration of the continued closing of our corporate office in response to the COVID-19 pandemic and in anticipation of continued disruption in normal company procedures, I, Matt Robertson as Chief Commercial Officer of Synagro Technologies, Inc. and all its affiliates and subsidiaries, hereby delegate to you, Emil Kneis, authority to sign binding bids and awarded contracts as an officer or as an authorized person. Also, I delegate to you the authority to sign as an officer or authorized person on any business-related application and other agreements as necessary to provide uninterrupted service to current and new customers. Such authority does not alter our internal approval processes. This delegation of authority is valid from the date of this letter until revoked by me.



Matt Robertson

Chief Commercial Officer

Date 11/1/2021

CONTRACT DRAWINGS FOR:



CITY OF MIDLAND, TEXAS WATER AND WASTEWATER UTILITIES DEPARTMENT

WATER RECLAMATION FACILITY PLANT FARM PONDS REHABILITATION

NOVEMBER 2022

CITY OFFICIALS

PATRICK PAYTON	MAYOR
SCOTT DUFFORD	COUNCIL MEMBER - DISTRICT 1
JOHN NORMAN	COUNCIL MEMBER - DISTRICT 2
JACK LADD	COUNCIL MEMBER - DISTRICT 3
LORI BLONG	COUNCIL MEMBER - DISTRICT 4
DAN CORRALES	COUNCIL MEMBER - AT LARGE
ROBIN POOLE	COUNCIL MEMBER - AT LARGE
ROBERT PATRICK	CITY MANAGER

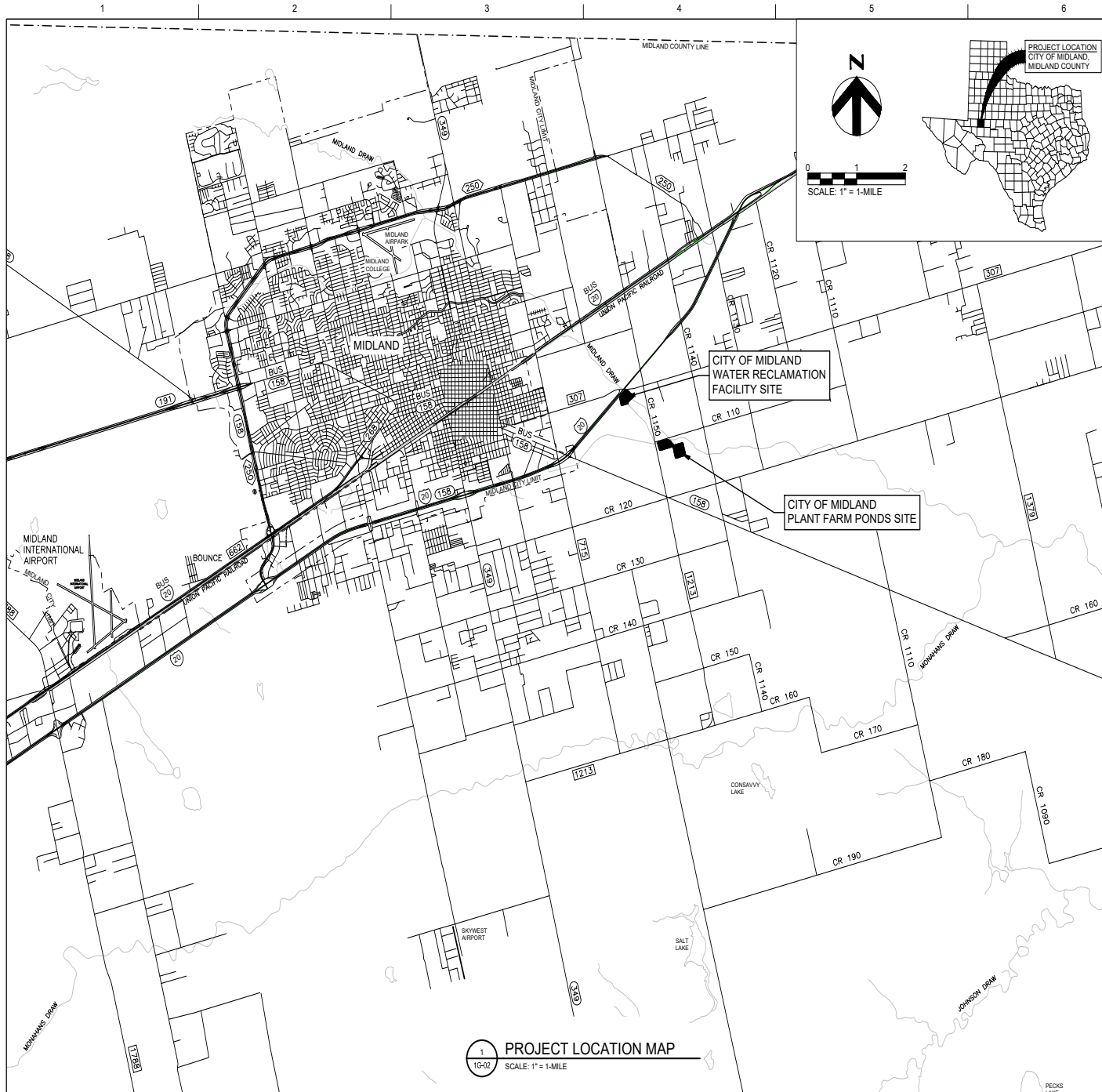


CITY OF MIDLAND
300 NORTH LORRAINE
MIDLAND, TEXAS 79702
PHONE: 432-685-7100
8.221

ISSUED FOR
BID
February 14, 2023

SCALE LENGTH ON ORIGINAL
DRAWING EQUALS ONE INCH.
ADJUST SCALE ACCORDINGLY.

PACKET		PROJECT MANAGER: S. E. MABROUK
		DESIGNED BY: R. BOEHM
		DESIGNED BY: --
		DRAWN BY: J. A. CANTU
		CHECKED BY: --
		PROJECT DATE: NOVEMBER 2022
		PROJECT NUMBER: 10301516
ISSUE	DATE	DESCRIPTION



INDEX OF DRAWINGS:

No.	SHEET	DESCRIPTION
SERIES 1 - GENERAL		
1.	1G-01	COVER / TITLE SHEET
2.	1G-02	PROJECT LOCATION MAP AND INDEX OF DRAWINGS
3.	1G-03	LIST OF ABBREVIATIONS, AND SYMBOLS
4.	1G-04	CONSTRUCTION AND PROTECTION NOTES
SERIES 2 - STANDARD DETAILS		
5.	2C-01	CIVIL - TREE PROTECTION AND EROSION / SEDIMENTATION CONTROL DETAILS - 1
6.	2C-02	CIVIL - TREE PROTECTION AND EROSION / SEDIMENTATION CONTROL DETAILS - 2
SERIES 3 - PLANT FARM PONDS		
7.	3C-01	CIVIL - OVERALL SITE PLAN
8.	3C-02	CIVIL - POND A - EXISTING PLAN VIEW
9.	3C-03	CIVIL - POND B - EXISTING PLAN VIEW
10.	3C-04	CIVIL - POND LINER SECTIONS
11.	3D-01	PROCESS - POND LINER INSTALLATION DETAILS
12.	3D-02	PROCESS - LEACHATE COLLECTION PIPING DETAILS
13.	3D-03	PROCESS - INTAKE SCREEN DETAILS

1
1G-02
PROJECT LOCATION MAP
SCALE: 1" = 1-MILE



ISSUE	DATE	DESCRIPTION
1	11/30/2022	ISSUED FOR BID

PROJECT MANAGER	S. E. MABROUK
DESIGNED BY	S. E. MABROUK
DRAWN BY	M. E. WALKER
CHECKED BY	ALLABENBEROSET
PROJECT DATE	NOVEMBER 2022
PROJECT NUMBER	10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

GENERAL
PROJECT LOCATION MAP
AND INDEX OF DRAWINGS
February 14, 2023



FILENAME 1G-02.dwg
SCALE 1" = 1-MILE

SHEET
1G-02

LIST OF ABBREVIATIONS

@	A/C	AT	AIR CONDITIONING	G	GUTTER / GRILLE	R	RADIUS / RISER / REGISTER
AB	ANCHOR BOLT	GA	GAGE (METAL THICKNESS)	RA	RETURN AIR	RA	REINFORCED CONCRETE CYLINDER PIPE
AC	AIR COMPRESSOR	GAL	GALLON	RC	ROOF DRAIN	RC	ROOF DRAIN
ACC	AIR COOLED CONDENSER	GALV	GALVANIZED	RECIRC	RECIRCULATION	RECIRC	RECIRCULATION
ADDL	ADDITION / ADDITIONAL	GRT	GRATING	RECT	RECTANGULAR	RECT	RECTANGULAR
ADH	ADHESIVE	GS	GROUND STORAGE	RED	REDUCER	RED	REDUCER
ADJ	ADJUSTABLE / ADJACENT	GSP	GALVANIZED STEEL PIPE	REF	REFERENCE / REFRIGERANT	REF	REFERENCE / REFRIGERANT
AFF	ABOVE FINISH FLOOR	GT	GRAVITY GRIFFNER	REQD	REQUIRED	REQD	REQUIRED
AHU	AIR HANDLING UNIT	GV	GATE VALVE	RET	RETAINING / RETURN	RET	RETAINING / RETURN
ALM	ALUMINUM	H	HATCH	RGS	RIGID GALVANIZED STEEL	RGS	RIGID GALVANIZED STEEL
ALT	ALTERNATE	HB	HOSE BIBB	RH	RIGHT HAND	RH	RIGHT HAND
APPROX	APPROXIMATE	HC	HOLLOW CORE / HORIZONTAL CURVE	RO	ROUGH OPENING	RO	ROUGH OPENING
AUTO	AUTOMATIC	HORIZ	HORIZONTAL	ROW	RIGHT-OF-WAY	ROW	RIGHT-OF-WAY
AVE	AVENUE	HP	HIGH POINT / HORSE POWER	RPM	REVOLUTIONS PER MINUTE	RPM	REVOLUTIONS PER MINUTE
AVG	AVERAGE	HT	HEIGHT	RPZ	REDUCED PRESSURE ZONE	RPZ	REDUCED PRESSURE ZONE
		HW	HOSE VALVE	RS	RESILIENT SEAT	RS	RESILIENT SEAT
		HVAC	HEATING VENTILATION AIR CONDITIONING	RT	RIGHT	RT	RIGHT
		HWL	HIGH WATER LEVEL	RWP	RAW WATER PUMP	RWP	RAW WATER PUMP
B	BLOWER	ID	INSIDE DIAMETER	S	SOUTH / SINK / SEWAGE	S	SOUTH / SINK / SEWAGE
BDD	BACK DRAFT DAMPER	IE	INVERT ELEVATION	SA	SUPPLY AIR / SAMPLE	SA	SUPPLY AIR / SAMPLE
BF	BLIND FLANGE	IN	INCH	SCH	SCHEDULE	SCH	SCHEDULE
BFV	BUTTERFLY VALVE	INSUL	INSULATION	SECT	SECTION	SECT	SECTION
BL	BASE LINE	INV	INVERT	SF	SQUARE FOOT	SF	SQUARE FOOT
BLDG	BUILDING	JB	JUNCTION BOX	SFC	STRUCTURAL FRAMING CHANNEL	SFC	STRUCTURAL FRAMING CHANNEL
BLKG	BLOCKING	JT	JOINT	SHT	SHEET / SODIUM HYDROXIDE TANK	SHT	SHEET / SODIUM HYDROXIDE TANK
BM	BENCHMARK / BEAM			SIM	SIMILAR	SIM	SIMILAR
BAC	BACK OF CURB			SLG	SLIDE GATE	SLG	SLIDE GATE
BOD	BOTTOM OF DUCT			SPEC	SPECIFICATION	SPEC	SPECIFICATION
BOP	BOTTOM OF PIPE			SO	SQUARE	SO	SQUARE
BOT	BOTTOM			SR	SHORT RADIUS	SR	SHORT RADIUS
BOW	BOTTOM OF WALL			SST	STAINLESS STEEL	SST	STAINLESS STEEL
BRG	BEARING	KCJ	KEYED CONTROL JOINT	ST	STREET	ST	STREET
BV	BALL VALVE	KW	KILOWATT	STA	STATION	STA	STATION
				STD	STANDARD	STD	STANDARD
C/C	CENTER TO CENTER	L	LOUVER / LAVATORY / ANGLE (STEEL)	STL	STEEL	STL	STEEL
CFM	CUBIC FEET PER MINUTE	LAB	LABORATORY	STRUCT	STRUCTURAL	STRUCT	STRUCTURAL
CHKD	CHECKED	LAM	LAMINATED	SY	SYMBOL / SYMMETRICAL	SY	SYMBOL / SYMMETRICAL
CI	CAST IRON	LB	POUND	SYM	SYMMETRICAL	SYM	SYMMETRICAL
CIP	CAST IRON PIPE	LCV	LEVEL CONTROL VALVE	SVS	SYSTEM	SVS	SYSTEM
CL	CONTRACTION JOINT	LF	LINEAR FEET	T	TREADS / TILE / TUBING	T	TREADS / TILE / TUBING
CLJ	CENTERLINE	LR	LONG RADIUS	T&B	TOP AND BOTTOM	T&B	TOP AND BOTTOM
CLJ	CONTROL JOINT	LT	LEFT	TAN	TANGENT	TAN	TANGENT
CLR	CLEAR	LTG	LIGHTING	TBM	TEMPORARY BENCHMARK	TBM	TEMPORARY BENCHMARK
CMF	CORRUGATED METAL PIPE	LV	LOW VOLTAGE	TDH	TOTAL DYNAMIC HEAD	TDH	TOTAL DYNAMIC HEAD
CMU	CONCRETE MASONRY UNIT	LWL	LOW WATER LEVEL	TEL	TELEPHONE	TEL	TELEPHONE
CO	CLEAN OUT			TEMP	TEMPORARY	TEMP	TEMPORARY
COL	COLUMN	MATL	MATERIAL	TH	THICK	TH	THICK
CONC	CONCRETE	MAX	MAXIMUM	TOB	TOP OF BOLT / TOP OF BAND / TOP OF BEAM	TOB	TOP OF BOLT / TOP OF BAND / TOP OF BEAM
CONN	CONNECTION	MECH	MECHANICAL	TCC	TOP OF CURB / TOP OF CONCRETE	TCC	TOP OF CURB / TOP OF CONCRETE
CONST	CONSTRUCTION	MED	MEDIUM	TOF	TOP OF DUCT	TOF	TOP OF DUCT
CONT	CONTINUOUS / CONTINUATION	MET	METAL	TOG	TOP OF FOOTING	TOG	TOP OF FOOTING
CONTR	CONTRACTOR	MFR	MANUFACTURER	TOH	TOP OF GRATING	TOH	TOP OF GRATING
CP	CONTROL PANEL / CONTROL POINT	MH	MANHOLE	TOW	TOP OF WALL	TOW	TOP OF WALL
CPLG	COUPLING	MIN	MINIMUM	TP	TELEPHONE POLE / TIE PLATE	TP	TELEPHONE POLE / TIE PLATE
CTR	CENTER	MISC	MISCELLANEOUS	TUB	TUBULAR STEEL	TUB	TUBULAR STEEL
CU	COPPER / CUBIC	MU	MECHANICAL JOINT	TYP	TYPICAL	TYP	TYPICAL
CV	CHECK VALVE	N	NORTH	UD	UNIT DRAIN	UD	UNIT DRAIN
CW	COLD WATER / CITY WATER	NC	NORMALLY CLOSED	UE	UNDERGROUND ELECTRIC	UE	UNDERGROUND ELECTRIC
		NTC	NOT IN THIS CONTRACT	UG	UNDERGROUND	UG	UNDERGROUND
D	DOOR / DIFFUSER	NO	NATIONAL PIPE THREADS	UH	UNIT HEATER	UH	UNIT HEATER
DET	DETAIL	NPT	NATIONAL PIPE THREADS	UNO	UNLESS NOTED OTHERWISE	UNO	UNLESS NOTED OTHERWISE
DI	DUCTILE IRON	NPW	NONPOTABLE WATER				
DI	DIAMETER	NRS	NON-RISING STEM				
DIAG	DIAGONAL	NTS	NOT TO SCALE				
DIM	DIMENSION	NW	NORTHWEST				
DIP	DUCTILE IRON PIPE						
DISCH	DISCHARGE	OA	OUTSIDE AIR				
DWG	DRAWING	OC	ON CENTER(S)	V	VENT / VELOCITY / VOLT	V	VENT / VELOCITY / VOLT
		OD	OUTSIDE DIAMETER	VAC	VACUUM	VAC	VACUUM
E	EAST	OE	OUTSIDE ELECTRIC	VB	VALVE BOX	VB	VALVE BOX
EA	EACH / EXHAUST AIR	OH	OVERHEAD	VC	VERTICAL CURVE	VC	VERTICAL CURVE
ED	EQUIPMENT DRAIN	OPNG	OPENING	VERT	VERTICAL	VERT	VERTICAL
EF	EACH FACE / EXHAUST FAN	OPP	OPPOSITE	VS	VERSUS / VAPOR SEAL	VS	VERSUS / VAPOR SEAL
EJ	EXPANSION JOINT			VTR	VENT THROUGH ROOF	VTR	VENT THROUGH ROOF
EL	ELEVATION	PE	PLAIN END				
ELB	ELBOW	PC	POINT OF CURVATURE	W	WEST / WATT / WATER (POTABLE)	W	WEST / WATT / WATER (POTABLE)
ELEC	ELECTRICAL	PCC	POINT OF COMPOUND CURVATURE	WI	WITH	WI	WITH
EQ	EQUAL	PG	PRESSURE GAUGE	W/O	WITHOUT	W/O	WITHOUT
EQUIP	EQUIPMENT	PI	POINT OF INTERSECTION	WD	WOOD / WIDTH	WD	WOOD / WIDTH
ES	EACH SIDE / EQUAL SPACING	PL	PLATE	WP	WALL PENETRATION	WP	WALL PENETRATION
EW	EACH WAY	PNL	PANEL	WST	WATERSTOP / WATER SURFACE	WST	WATERSTOP / WATER SURFACE
EXIST	EXISTING	POT	POINT OF TANGENCY	WT	WEIGHT / WATER TIGHT	WT	WEIGHT / WATER TIGHT
EXP	EXPANSION / EXPOSED	PP	POWER POLE / POLYPROPYLENE PIPE	WW	WASTEWATER	WW	WASTEWATER
EXT	EXTERIOR / EXTERNAL	PRC	POINT OF REVERSE CURVATURE	WWF	WELDED WIRE FABRIC	WWF	WELDED WIRE FABRIC
		PRV	PRESSURE REDUCING VALVE				
F/F	FACE TO FACE	PS	PIPE SUPPORT	Y	YARD	Y	YARD
FCA	FLANGED COUPLING ADAPTOR	PSI	POUNDS PER SQUARE INCH (PRESSURE)	YH	YARD HYDRANT	YH	YARD HYDRANT
FD	FLOOR DRAIN / FIELD DETERMINE	PT	POINT / POINT OF TANGENCY				
FE	FIRE EXTINGUISHER / FLOW ELEMENT	PTD	PAINTED				
FH	FIRE HYDRANT	PV	PLUG VALVE				
FIG	FIGURE	PVC	POLYVINYL CHLORIDE (PIPE)				
FIN	FINISHED	PW	POTABLE WATER				
FIN FLR	FINISHED FLOOR						
FIN GR	FINISHED GRADE						
FL	FLOWLINE	Q	RATE OF FLOW				
FLG	FLANGE	QTY	QUANTITY				
FLR	FLOOR						
FRP	FIBERGLASS REINFORCED PIPE						
FS	FORGED STEEL						
FT	FEET						
FTG	FOOTING						
FTV	FIELD VERIFY						

SITE PLAN SYMBOLOGY

	EMBANKMENT SLOPE
	CONTOUR
	VEGETATION (SIZE)
	CLEANOUT
	MANHOLE
	MONITORING WELL
	PIEZOMETER
	STORM DRAIN CATCH BASIN
	UTILITY VAULT
	POWER POLE
	TELEPHONE POLE
	DOWNGUY
	FIRE HYDRANT
	YARD HYDRANT
	EXISTING SPOT ELEVATION
	FINISHED SPOT ELEVATION
	STRUCTURAL CONTROL POINT
	BENCHMARK
	IDENTIFICATION AND APPROXIMATE LOCATION OF SOIL TEST HOLE

NOTE: UTILITIES THAT ARE SUSPENDED ABOVE GRADE ARE DESIGNATED BY THE PREFIX "OH" (OVERHEAD).

	TELEPHONE LINE
	ELECTRIC LINE
	THICK
	FIBER OPTIC
	COMMUNICATION
	HANDRAIL AND GUARDRAIL
	PIPELINE
	LARGE PIPELINE
	DRAINAGE FLOW
	NATURAL WATERWAY
	CHAIN LINK FENCE
	TREE PROTECTION FENCE
	FIELD FENCE
	PROPERTY LINE
	CENTERLINE
	ROCK BERM
	TRIANGULAR SEDIMENT FILTER DIKE
	SILT FENCE
	EASEMENT
	LIMITS OF CONSTRUCTION
	RIGHT-OF-WAY

GENERAL SYMBOLS

	EXISTING
	EXISTING TO BE DEMOLISHED
	NEW
	AREA TO BE MODIFIED

PIPING SYMBOLOGY

VALVES		
SINGLE LINE	DOUBLE LINE	ISOLATION
		BALL VALVE
		BUTTERFLY VALVE
		DIAPHRAGM VALVE
		GATE VALVE
		GLOBE VALVE
		KNIFE GATE VALVE
		NEEDLE VALVE
		PINCH VALVE
		PLUG VALVE
		THREE-WAY BALL VALVE
		THREE-WAY PLUG VALVE
		BALL CHECK VALVE
		CHECK VALVE
		DOUBLE-DISK CHECK VALVE
		CONE VALVE
		PRESSURE RELIEF VALVE
		PRESSURE-REDUCING VALVE
		AIR RELEASE VACUUM VALVE A = AIR RELEASE VAC = VACUUM
		PRESSURE-REGULATING VALVE
		3-WAY CONTROL VALVE
MISCELLANEOUS		
		PIPE JOINT (SEE SPECS FOR REQUIREMENTS)
		FLANGED COUPLING ADAPTER (FCA)
		FLEXIBLE CONNECTION
		HARNESSED MECHANICAL COUPLING
		PRESSURE GAGE (WICOCK)
		TRAP
		QUICK DISCONNECT CAM & GROOVE COUPLING
		CAP OR PLUG
		INTERIOR CLEANOUT
		HOSE VALVE, HOSE BIBB, OR FLUSHING CONNECTION
		HOSE RACK
		FLOOR DRAIN
		PIPE IN SECTION

GENERAL SYMBOLOGY

	TRUE NORTH
	PLAN NORTH
	NORTH ARROW
	PLAN 1/4" = 1'-0" PLAN TITLE
	FULL BUILDING SECTION CUT MARKER ARROW INDICATES DIRECTION OF SECTION CUT SECTION LETTER SHEET WHERE SECTION IS LOCATED
	SECTION CUT MARKER SECTION LETTER FLAG INDICATES DIRECTION OF SECTION CUT SHEET WHERE SECTION IS LOCATED
	SECTION SECTION LETTER 3/8" = 1'-0" SHEET WHERE SECTION VIEW IS FIRST CUT *
	SECTION TITLE
	DETAIL MARKER DETAIL NUMBER SHEET WHERE DETAIL IS LOCATED *
	DETAIL DETAIL NUMBER 1/4" = 1'-0" SHEET WHERE DETAIL IS LOCATED *
	DETAIL TITLE
	KEY NOTE DESIGNATION KEY NOTE NUMBER

* EXCEPTIONS WHERE THE SHEET NUMBER IS REPLACED BY A DASH (-):
1) FOR COMMON DETAILS, SECTIONS, ELEVATIONS OR DETAILS THAT ARE CUT OR CALLED OUT ON MULTIPLE SHEETS.
2) SECTIONS, ELEVATIONS OR DETAILS THAT ARE LOCATED ON THE SAME SHEET THEY ARE CUT OR CALLED OUT ON.

GENERAL CONSTRUCTION NOTES:

1. ALL WORK SHALL COMPLY WITH THE REQUIREMENTS OF THE CURRENT CITY OF MIDLAND ORDINANCES AND THE CONTRACT DOCUMENTS, WHICHEVER IS MORE STRINGENT.
2. ALL CONSTRUCTION SHALL COMPLY WITH CURRENT FEDERAL AND STATE REGULATIONS.
3. ANY EXISTING UTILITIES, PAVEMENT, FENCING, CURBS, SIDEWALKS, STRUCTURES, TREES, ETC., THAT ARE DAMAGED OR REMOVED SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT NO COST TO THE OWNER.
4. RESTORE ALL DRIVEWAYS, CULVERTS, HEADWALLS, LANDSCAPING, AND OTHER IMPROVEMENTS (REGARDLESS OF WHETHER THEY WERE CONSTRUCTED OR INSTALLED BY PUBLIC AGENCIES, UTILITIES, OR INDIVIDUALS) THAT ARE DISTURBED BY CONSTRUCTION TO A CONDITION EQUAL TO OR BETTER THAN ORIGINAL CONDITIONS.
5. ALL AREAS DISTURBED OR EXPOSED DURING CONSTRUCTION SHALL BE REVEGETATED AND RESTORED TO ORIGINAL CONDITIONS IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS.
6. PRIOR TO BEGINNING ANY CONSTRUCTION, THE CONTRACTOR SHALL FIELD VERIFY THE LOCATIONS AND ELEVATIONS OF, AND SHALL BE RESPONSIBLE FOR THE PROTECTION OF, ALL EXISTING FACILITIES (UTILITIES, PIPING, EQUIPMENT, STRUCTURES, FENCING, BARRIERS, PAVEMENT, SIDEWALKS, SIGNAGE, ETC.) WHICH PERTAIN TO AND/OR AFFECT CONSTRUCTION OF THIS PROJECT. ALL UTILITIES MAY NOT BE SHOWN. ANY DISCREPANCIES WITH THE CONSTRUCTION PLANS FOUND IN THE FIELD SHALL BE BROUGHT IMMEDIATELY TO THE ATTENTION OF THE ENGINEER. FRANCHISE UTILITIES ARE NOT MARKED WITHIN THE CITY OF MIDLAND PROPERTY.
7. VERIFY ALL DEPTHS AND LOCATIONS OF EXISTING UTILITIES PRIOR TO ANY CONSTRUCTION: ALL UTILITIES MAY NOT BE SHOWN! THE CONTRACTOR IS RESPONSIBLE FOR FIELD LOCATION OF UTILITIES.
8. THE CONTRACTOR SHALL CONFINE ALL WORK TO WITHIN THE CITY OF MIDLAND PROPERTY.
9. PRIOR TO FINAL ACCEPTANCE, THE CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING ALL TRASH AND DEBRIS WITHIN THE PROJECT PROPERTY. CLEANUP SHALL BE TO THE SATISFACTION OF THE ENGINEER.
10. PRIOR TO ANY CONSTRUCTION, THE CONTRACTOR SHALL APPLY FOR AND SECURE ALL PROPER PERMITS FROM THE APPROPRIATE AUTHORITIES.
11. THE CONTRACTOR SHALL KEEP ACCURATE RECORDS OF ALL CONSTRUCTION THAT DEVIATES FROM THE PLANS.
12. CONTRACTOR AND MANUFACTURERS ARE RESPONSIBLE FOR MEASURING EXISTING STRUCTURES PRIOR TO SUBMITTING ON, OR FABRICATING PROPOSED EQUIPMENT FOR INSTALLATION TO ASSURE THEMSELVES THAT AS-BUILT CONDITIONS HAVE BEEN ACCOMMODATED FOR. NO SEPARATE PAY.
13. THE CONTRACTOR SHALL SURVEY AND PROVIDE GPS COORDINATES FOR ALL ITEMS INSTALLED IN THE YARD, SUCH AS MANHOLES, VALVES, HYDRANTS, ETC.

SPECIAL NOTES:

1. THE CONTRACTOR SHALL BE AWARE THAT EXISTING UTILITY LINES ARE CURRENTLY LIVE AND IN SERVICE, THERE MAY BE TIMES WHEN SHUTTING DOWN SAID LINES, CONNECTING TO SAID LINES OR TERMINATING SAID LINES WILL HAVE TO OCCUR AT OFF-PEAK HOURS. SUCH HOURS ARE USUALLY OUTSIDE NORMAL WORKING HOURS AND POSSIBLY BETWEEN 12 A.M. AND 6 A.M. COORDINATE ALL SHUT DOWNS WITH THE OWNER PER SPECIFICATION REQUIREMENTS.

TRENCH SAFETY NOTES:

1. IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REGULATIONS, THE CONTRACTOR IS TO PROVIDE A TRENCH SAFETY PLAN THAT IS SEALED BY A REGISTERED PROFESSIONAL ENGINEER LICENSED IN THE STATE OF TEXAS.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

GENERAL CONSTRUCTION NOTES:

1. ALL CONTRACTORS CONDUCTING REGULATED ACTIVITIES ASSOCIATED WITH THIS PROJECT WILL BE PROVIDED WITH COMPLETE COPIES OF THE T.C.E.O. LETTER INDICATING THE SPECIFIC CONDITIONS OF ITS APPROVAL. DURING THE COURSE OF THESE REGULATED ACTIVITIES, THE CONTRACTOR(S) SHALL KEEP COPIES OF THE APPROVED PLAN AND APPROVAL LETTER ON-SITE.
2. NO TEMPORARY ABOVE-GROUND HYDROCARBON AND/OR HAZARDOUS SUBSTANCE STORAGE TANK SYSTEM MAY BE INSTALLED WITHIN 150 FEET OF A DOMESTIC, INDUSTRIAL, IRRIGATION, OR PUBLIC WATER SUPPLY WELL.
3. PRIOR TO COMMENCING CONSTRUCTION, ALL TEMPORARY EROSION AND SEDIMENTATION (E&S) CONTROL MEASURES MUST BE PROPERLY SELECTED, INSTALLED, AND MAINTAINED IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS AND GOOD ENGINEERING PRACTICES. IF INSPECTIONS INDICATE A CONTROL HAS BEEN USED INAPPROPRIATELY, OR INCORRECTLY, THE CONTRACTOR MUST REPLACE OR MODIFY THE CONTROL FOR SITE CONDITIONS. THE CONTROLS MUST REMAIN IN PLACE UNTIL DISTURBED AREAS ARE REVEGETATED AND THE AREAS HAVE BECOME PERMANENTLY STABILIZED.
4. IF SEDIMENT ESCAPES THE CONSTRUCTION SITE, OFF-SITE ACCUMULATIONS OF SEDIMENT MUST BE REMOVED AT A FREQUENCY SUFFICIENT TO MINIMIZE OFFSITE IMPACTS TO WATER QUALITY (E.G., FUGITIVE SEDIMENT IN STREET BEING WASHED INTO SURFACE STREAMS OR SENSITIVE FEATURES BY THE NEXT RAIN).
5. SEDIMENT MUST BE REMOVED FROM SEDIMENT TRAPS OR SEDIMENTATION PONDS NOT LATER THAN WHEN DESIGN CAPACITY HAS BEEN REDUCED BY 50%. A PERMANENT STAKE MUST BE PROVIDED THAT CAN INDICATE WHEN THE SEDIMENT OCCUPIES 50% OF THE BASIN VOLUME.
6. LITTER, CONSTRUCTION DEBRIS, AND CONSTRUCTION CHEMICALS EXPOSED TO STORMWATER SHALL BE PREVENTED FROM BECOMING A POLLUTANT SOURCE FOR STORMWATER DISCHARGES (E.G., SCREENING OUTFALLS, PICKED UP DAILY).
7. ALL SPOILS (EXCAVATED MATERIAL) GENERATED FROM THE PROJECT SITE AND STORED ON-SITE MUST HAVE PROPER E&S CONTROLS INSTALLED. SPOILS ON-SITE MUST BE STORED OUTSIDE OF THE 100-YEAR FLOODPLAIN.
8. STABILIZATION MEASURES SHALL BE INITIATED AS SOON AS PRACTICABLE IN PORTIONS OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE TEMPORARILY OR PERMANENTLY CEASED, AND CONSTRUCTION ACTIVITIES WILL NOT RESUME WITHIN 21 DAYS. WHEN THE INITIATION OF STABILIZATION MEASURES BY THE 14TH DAY IS PRECLUDED BY WEATHER CONDITIONS, STABILIZATION MEASURES SHALL BE INITIATED AS SOON AS PRACTICABLE.
9. THE FOLLOWING RECORDS SHALL BE MAINTAINED AND MADE AVAILABLE TO THE T.C.E.O. UPON REQUEST: THE DATES WHEN EROSION GRADING ACTIVITIES OCCUR, THE DATES WHEN CONSTRUCTION ACTIVITIES TEMPORARILY OR PERMANENTLY CEASE ON A PORTION OF THE SITE, AND THE DATES WHEN STABILIZATION MEASURES ARE INITIATED.
10. THESE GENERAL CONSTRUCTION NOTES MUST BE PROVIDED TO ALL SUBCONTRACTORS.

GENERAL NOTES:

1. ALL STRUCTURES, EQUIPMENT, PIPING, ETC. SHOWN AS EXISTING AND/OR TO BE REMOVED IS REPRESENTATIVE OF EXISTING CONDITIONS BASED ON AS-RECORDED DOCUMENTS. NOT ALL EXISTING PIPING AND EQUIPMENT IS SHOWN.
2. A MINIMUM OF TWO (2) WORKING DAYS PRIOR TO ANY EXCAVATION ACTIVITIES, THE CONTRACTOR SHALL CONTACT THE TEXAS "ONE CALL CENTER" (DIAL "811" OR "800-344-8377").
3. PRIOR TO CONSTRUCTION, FIELD VERIFY THE LOCATION, ELEVATION, MATERIAL, FITTING TYPE, AND USAGE OF ALL PIPING TO BE CONNECTED TO.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING FACILITIES (UTILITIES, PIPING, EQUIPMENT, STREETS, SIDEWALKS, PAVEMENT, SIDEWALKS, SIGNAGE, ETC.) WHICH ARE NOT TO BE REMOVED DURING THE CONSTRUCTION OF THIS PROJECT.
5. THE CONTRACTOR SHALL INSTALL AND UTILIZE APPROPRIATELY SIZED TEMPORARY PIPE PLUGS AS REQUIRED TO PROVIDE REQUIRED PROCESS FLOW.
6. THE CONTRACTOR SHALL COORDINATE WITH THE OWNER TO DETERMINE WHICH EXISTING EQUIPMENT SHOWN ON THE DRAWING TO BE REMOVED PUMPS, VALVES, PANELS, SENSORS, LIGHTS, ETC.) SHALL BE SALVAGED BY THE OWNER OR DISPOSED OF BY THE CONTRACTOR IN ACCORDANCE WITH THE SPECIFICATIONS.



			PROJECT MANAGER	S. E. MABROUK
			DESIGNED BY:	S. E. MABROUK
			DESIGNED BY:	
			DRAWN BY:	M. E. WAJER
			CHECKED BY:	ALLABEN/BEROSET
-	11/30/2022	ISSUED FOR BID		
ISSUE	DATE	DESCRIPTION	PROJECT NUMBER	10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

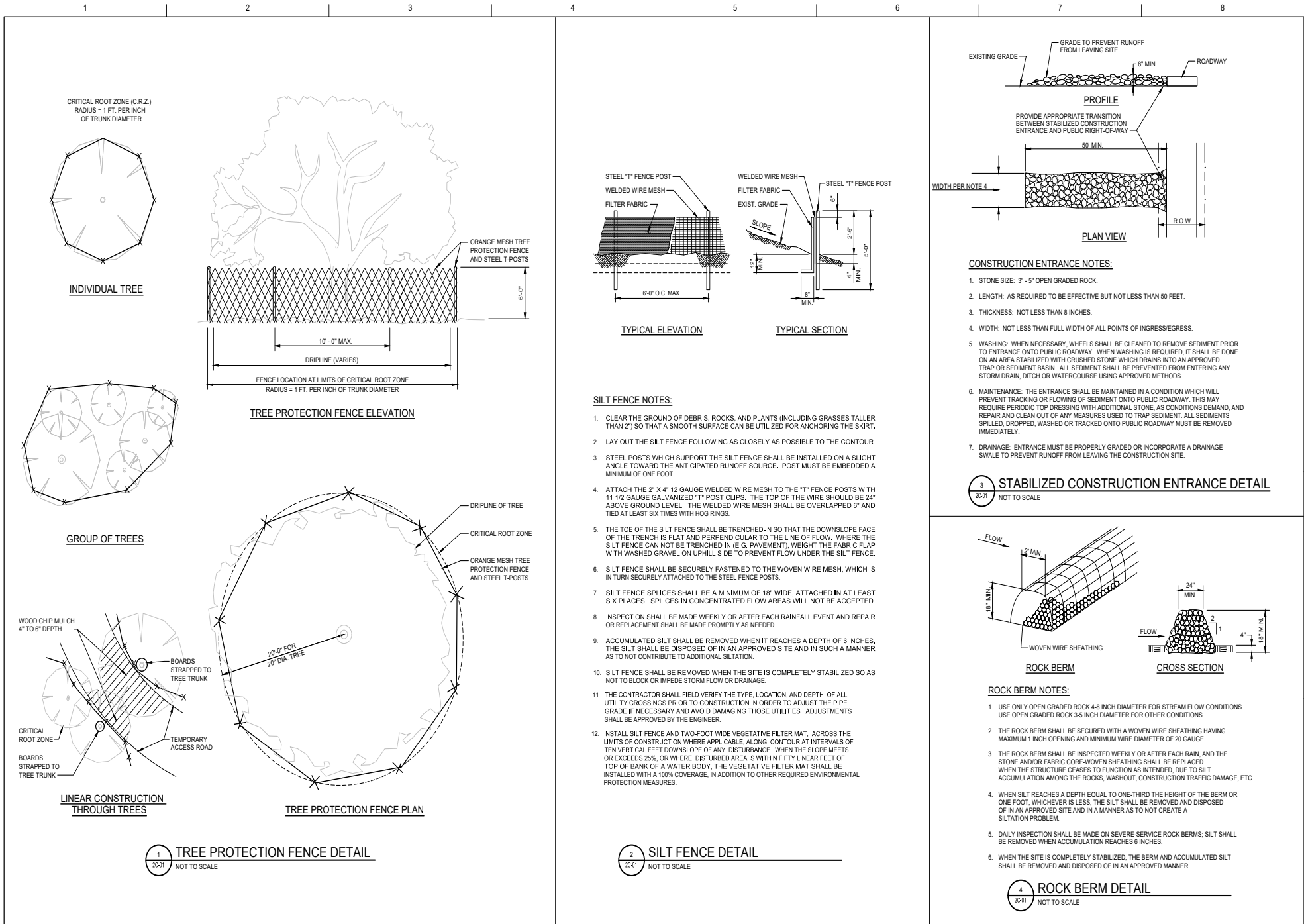
GENERAL CONSTRUCTION AND PROTECTION NOTES

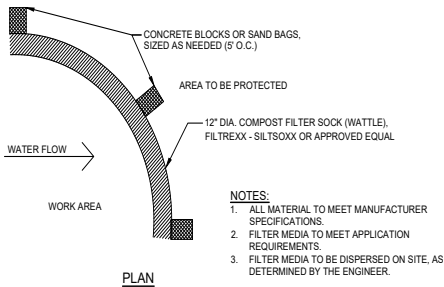
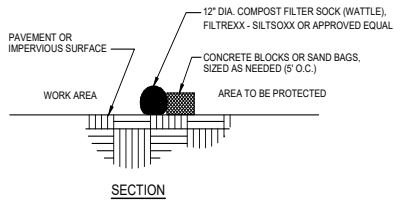


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SCALE	NO SCALE

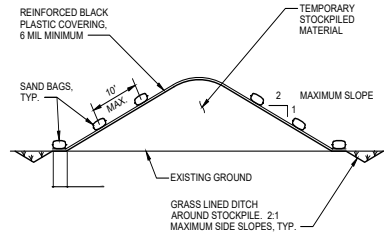
SHEET

1G-04



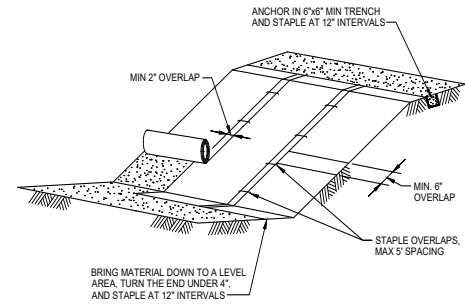


1 COMPOST FILTER SOCK ON PAVEMENT
NOT TO SCALE



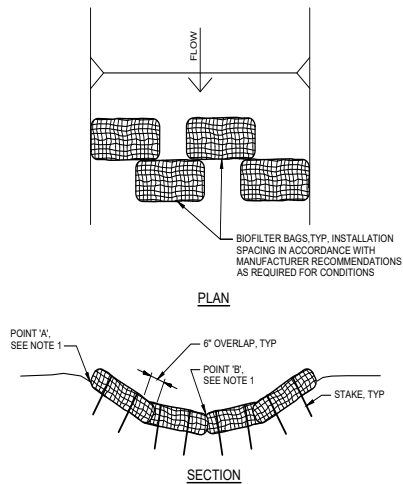
- NOTES:
- ALL SEAMS SHALL BE TAPED OR WEIGHTED DOWN FULL LENGTH. ALL SEAMS SHALL HAVE A MINIMUM 12" OVERLAP.
 - SEAMS PARALLEL TO THE SLOPE CONTOUR SHALL HAVE THE UPHILL SHEET OVERLAP THE DOWN HILL SHEET.
 - NO SURFACE RUN-OFF SHALL BE ALLOWED TO RUN UNDER THE PLASTIC COVERING.
 - DRAINAGE FROM AREAS COVERED BY REINFORCED PLASTIC SHEETING SHALL BE CONTROLLED SUCH THAT NO DISCHARGE OCCURS DIRECTLY ONTO UNCONTROLLED DISTURBED AREAS OF THE CONSTRUCTION SITE.
 - ALL SAND BAGS SHALL BE MAINTAINED IN PLACE WITH ROPE.

2 COVERING OF TEMPORARY STOCKPILE
NOT TO SCALE

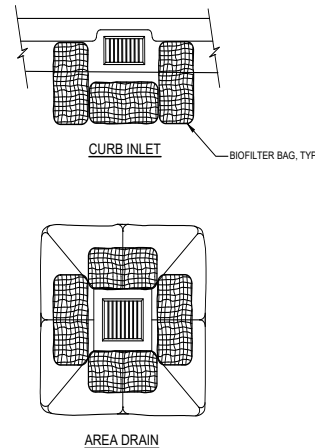


- NOTES:
- IF THERE IS A BERM AT THE TOP OF SLOPE, ANCHOR UPSLOPE OF THE BERM.
 - SLOPE SURFACE SHALL BE SMOOTH BEFORE PLACEMENT FOR PROPER SOIL CONTACT.
 - DO NOT STRETCH BLANKETS/MATTINGS TIGHT, ALLOW THE ROLLS TO MOLD TO ANY IRREGULARITIES.
 - STAPLING PATTERN AS PER MANUFACTURER'S RECOMMENDATIONS.
 - FOR SLOPES LESS THAN 3:1, ROLLS MAY BE PLACED IN HORIZONTAL STRIPS.
 - LIME, FERTILIZER AND SEED BEFORE INSTALLATION. PLANTING OF SHRUBS, TREES, ETC SHOULD OCCUR AFTER INSTALLATION.

3 SOIL RETENTION BLANKET ON SLOPE
NOT TO SCALE



4 BIOFILTER BAGS IN DITCH
NOT TO SCALE



5 BIOFILTER BAG BARRIER AT INLET
NOT TO SCALE



PONDS - OVERALL SITE PLAN

			PROJECT MANAGER: S. E. MABROUK
			DESIGNED BY:
			DESIGNED BY: R. G. BOEHM
			DRAWN BY: J. A. CANTU
			CHECKED BY: C. M. ABRAMS
--	11/30/2022	ISSUED FOR BID	
ISSUE	DATE	DESCRIPTION	
		PROJECT DATE:	NOVEMBER 2022
		PROJECT NUMBER:	10301516



WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

PLANT FARM PONDS
CIVIL
OVERALL SITE PLAN

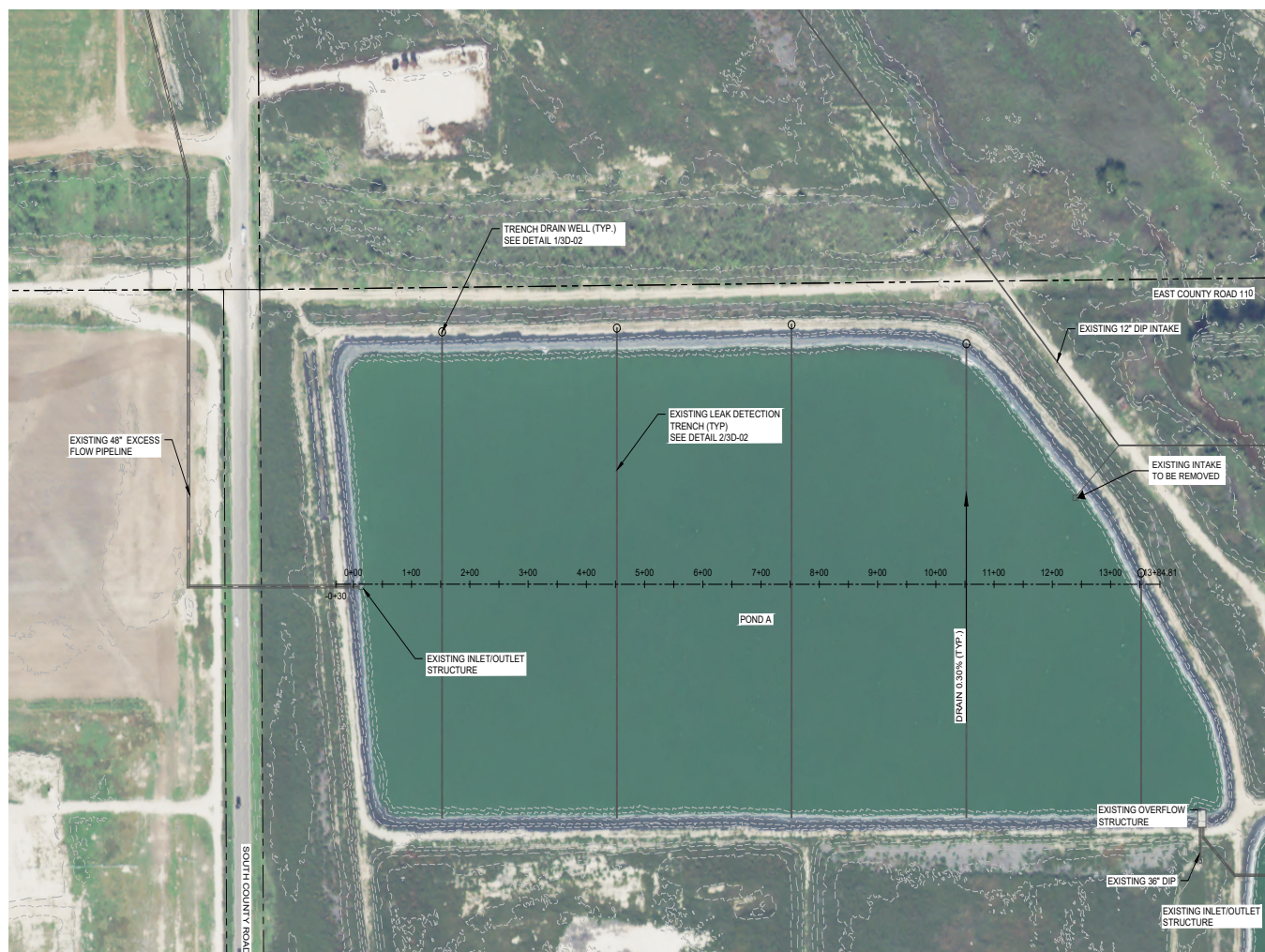


| SHEET



NOTE:

1. STAGING AND STORAGE AREA TO BE COORDINATED WITH THE CITY OF MIDLAND.



EAST COUNTY ROAD 110

EXISTING 12" DIP INTAKE

EXISTING INTAKE
TO BE REMOVED

EXISTING 48" EXCESS
FLOW PIPELINE

EXISTING LEAK DETECTION
TRENCH (TYP)
SEE DETAIL 2/3D-02

POND A

UNIVERSITY OF CALIFORNIA

EXISTING INLET/OUTLET
STRUCTURE

EXISTING OVERFLOW
STRUCTURE

EXISTING 36° DIP

EXISTING INLET/OUTLET
STRUCTURE

POND A - EXISTING PLAN

SCALE: 1" = 100'



--	11/30/2022	ISSUED FOR BID
ISSUE	DATE	DESCRIPTION

PROJECT MANAGER: S. E. MABROUK	
DESIGNED BY:	
DESIGNED BY:	R. G. BOEHM
DRAWN BY:	J. A. CANTU
CHECKED BY:	C.M. ABRAMS
PROJECT DATE:	NOVEMBER 2022
PROJECT NUMBER	10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

WATER TREATMENT FACILITY POND REHABILITATION

PLANT FARM PONDS
CIVIL
POND A
EXISTING PLAN VIEW

February 14, 2023



FILENAME	
SCALE	1" = 60'

| SHEET

3C-02



NOTE:

1. STAGING AND STORAGE AREA TO BE COORDINATED WITH THE CITY OF MIDLAND.

POND B - EXISTING PLAN

SCALE: 1" = 100'



ISSUE	DATE	DESCRIPTION
1	11/30/2022	ISSUED FOR BID

PROJECT MANAGER: S. E. MABROUK

DESIGNED BY: R. G. BOEHM

DRAWN BY: J. A. CANTU

CHECKED BY: C. M. ABRAMS

PROJECT DATE: NOVEMBER 2022

PROJECT NUMBER: 10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

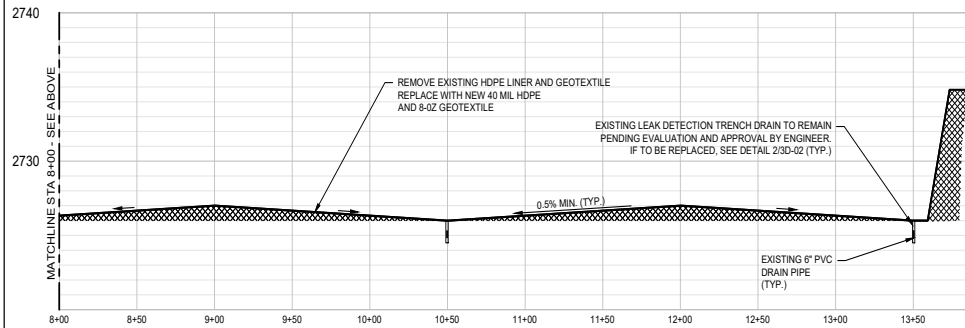
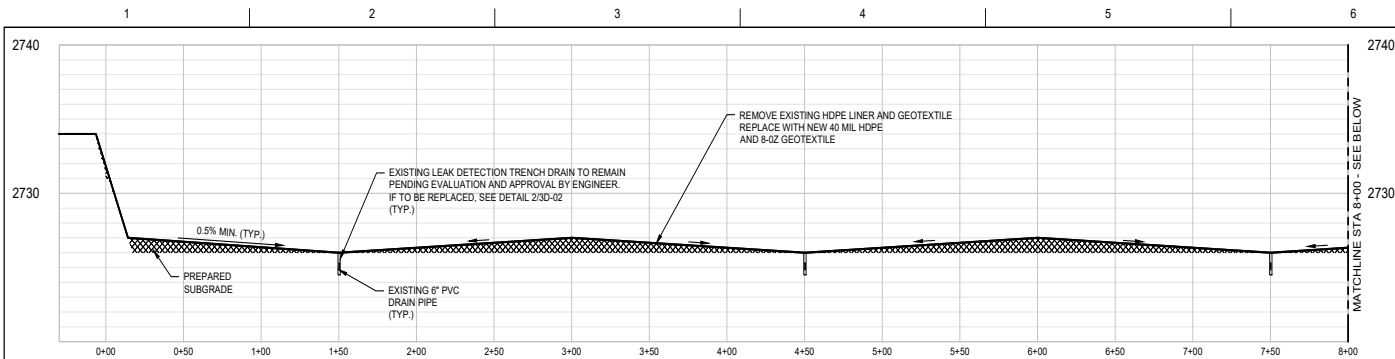
PLANT FARM PONDS
CIVIL
POND B
EXISTING PLAN VIEW
February 14, 2023



FILENAME
SCALE: 1" = 60'

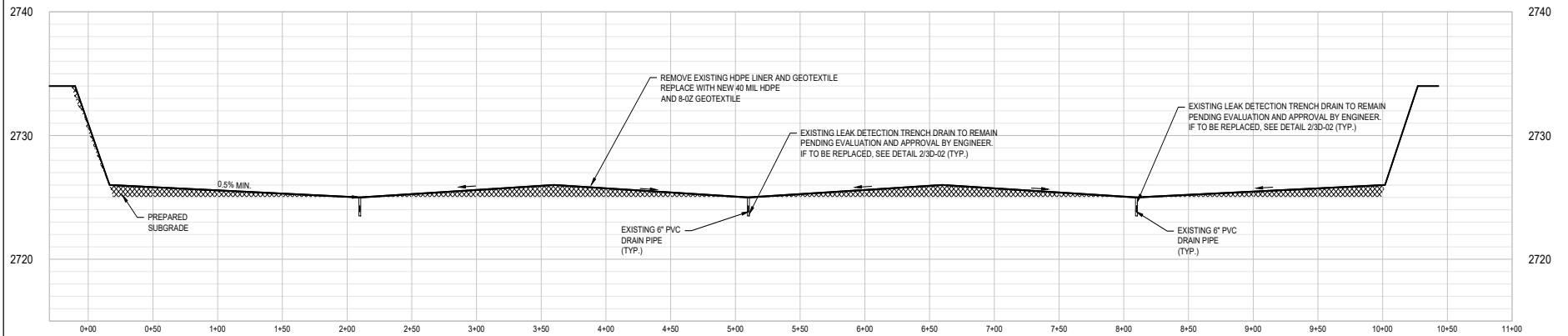
SHEET

3C-03



POND A SECTION

SCALE: 1" = 40' - HORZ
1" = 5' - VERT



POND B SECTION

SCALE: 1" = 40' - HORZ
1" = 5' - VERT

GENERAL NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DEWATERING OF THE PONDS, AND DISPOSAL OF THE SLUDGE AT THE CITY-OWNED LANDFILL, AFTER IT HAS BEEN PROPERLY DEWATERED AND MEETS THE CRITERIA FOR A SOLID WASTE (I.E. PASSES PAINT FILTER TEST). CONTRACTOR SHALL BEAR ALL COSTS ASSOCIATED WITH REMOVAL, DEWATERING, TRANSPORTATION, AND TIPPING FEES. THE CONTRACTOR MAY ASSUME THE DEWATERED SLUDGE IS ACCEPTABLE FOR DISPOSAL AT THE CITY OWNED LANDFILL.
2. EXISTING POND LINERS AND GEOTEXTILE TO BE REMOVED AND DISPOSED OF OFF SITE.
3. PERFORM MINOR GRADING AND SUBGRADE PREP AS DIRECTED BY ENGINEER TO MEET MINIMUM GRADES AND SUBGRADE CONDITION.
4. UNCOVER 25-FT OF DRAIN TRENCHES AT A MINIMUM OF FIVE LOCATIONS PER POND AS DIRECTED BY ENGINEER FOR INSPECTION PURPOSES.
5. REPLACE PORTIONS OF LEAK DETECTION SYSTEM DETERMINED TO BE NON FUNCTIONAL OR POTENTIALLY NON FUNCTIONAL BY ENGINEER.
6. OBTAIN ENGINEER'S APPROVAL OF SUBGRADE AND LEAK DETECTION SYSTEM BEFORE INSTALLING NEW GEOTEXTILE AND LINER
7. INSTALL 8-OZ GEOTEXTILE ON APPROVED SUBGRADE.
8. INSTALL 40-MIL SMOOTH HDPE LINER PER SPECIFICATIONS.



ISSUE	DATE	DESCRIPTION
1	11/30/2022	ISSUED FOR BID

PROJECT MANAGER	S. E. MABROUK
DESIGNED BY	R. G. BOEHM
DRAWN BY	J. A. CANTU
CHECKED BY	C. M. ABRAMS
PROJECT DATE	NOVEMBER 2022
PROJECT NUMBER	10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

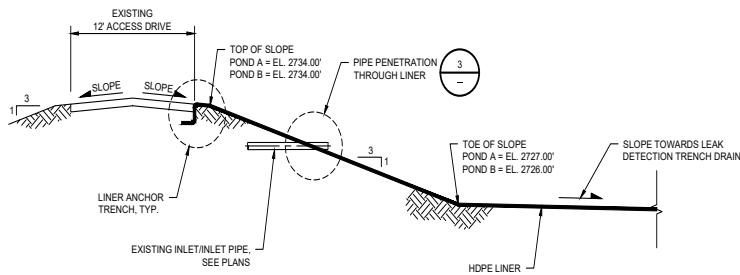
PLANT FARM PONDS
CIVIL
POND LIVER SECTIONS

February 14, 2023

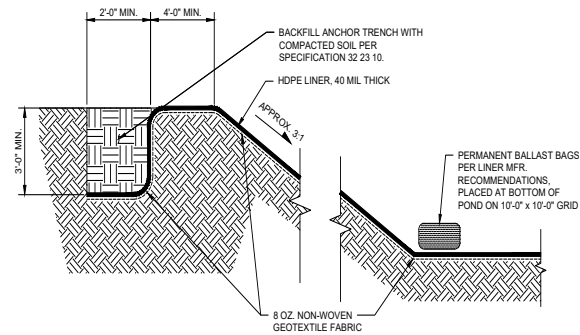


FILENAME 3C-04.dwg
SCALE AS NOTED

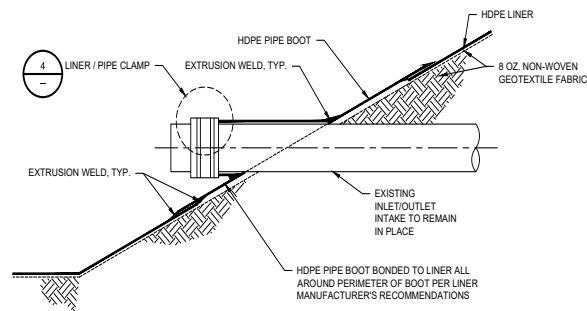
SHEET
3C-04



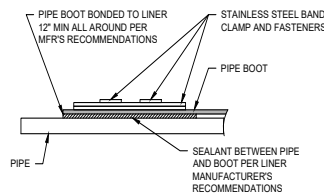
1
TYPICAL
POND SIDE SLOPE SECTION
NOT TO SCALE



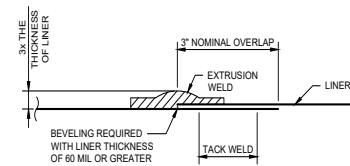
2
LINER SECTION
AND TRENCH ANCHOR DETAIL
NOT TO SCALE



3
PIPE PENETRATION
THROUGH LINER DETAIL
NOT TO SCALE

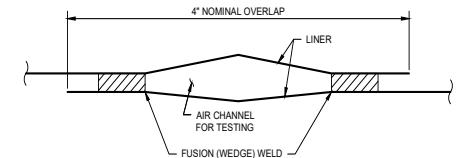


4
LINER / PIPE CLAMP DETAIL
NOT TO SCALE



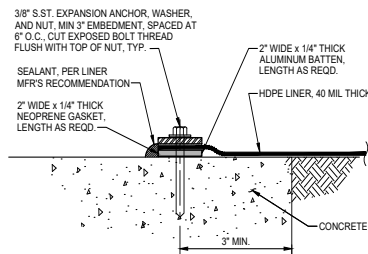
- NOTES:
1. LINER SHEETS MAY BE TACK WELDED TOGETHER AT OVERLAP TO FORM TEMPORARY BOND PRIOR TO WELDING.
 2. GRINDING NOT TO EXCEED 1/4" PAST "SQUEEZE-OUT" ON EITHER SIDE. PROPER CARE SHALL BE TAKEN TO NOT REMOVE TOO MUCH MATERIAL WHEN GRINDING.
 3. VACUUM TESTING SHALL BE THE NON-DESTRUCTIVE SEAM TEST METHOD FOR EXTRUSION WELDS.
 4. CONTRACTOR SHALL NOTIFY ENGINEER IF MANUFACTURER'S RECOMMENDATIONS FOR EXTRUSION WELD DIFFER FROM THIS DETAIL.

5
LINER
EXTRUSION WELD DETAIL
NOT TO SCALE



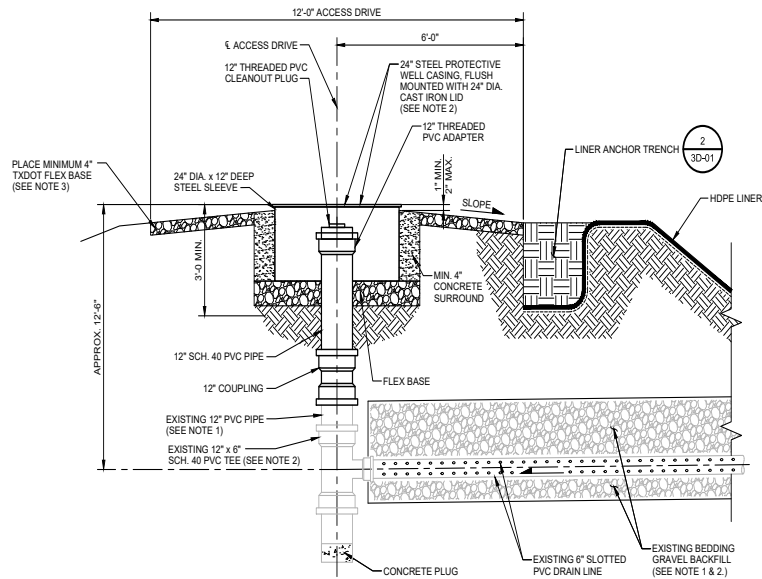
- NOTES:
1. DOUBLE FUSION WELDING SHALL BE THE PRIMARY SEAMING TECHNIQUE USED.
 2. AIR PRESSURE OR VACUUM TESTING SHALL BE THE NON-DESTRUCTIVE SEAM TEST METHODS USED FOR DOUBLE FUSION WELDS.
 3. CONTRACTOR SHALL NOTIFY ENGINEER IF MANUFACTURER'S RECOMMENDATIONS FOR DOUBLE FUSION WELDS DIFFER FROM THIS DETAIL.

6
LINER
DOUBLE FUSION WELD DETAIL
NOT TO SCALE



7
LINER ATTACHMENT TO
CONCRETE DETAIL
NOT TO SCALE

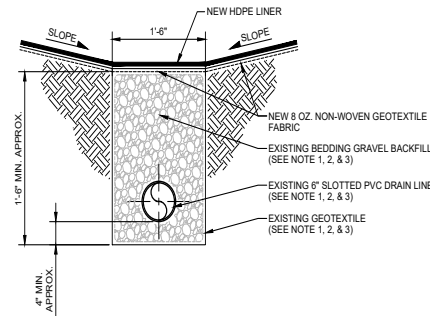
PROJECT MANAGER S. E. MABROUK		
DESIGNED BY: R. G. BOEHM		
DRAWN BY: M. E. WAJER		
CHECKED BY: C. M. ABRAMS		
PROJECT DATE: NOVEMBER 2022		
PROJECT NUMBER: 1030156		
ISSUE	DATE	DESCRIPTION
1	11/30/2022	ISSUED FOR BID



1
-
-
LEAK DETECTION WELL
HEAD MODIFICATION DETAIL
NOT TO SCALE

NOTES:

1. REMOVE ANY DEBRIS, DIRT, OR SLUDGE FROM EXISTING LEAK DETECTION WELL.
2. REMOVE AT LEAST 3 FEET OF EXISTING PVC VERTICAL DRAIN PIPE (SOLID) OR MORE AS DIRECTED BY ENGINEER. COUPLE NEW SECTION OF DRAIN PIPE AS SHOWN ON DETAIL AND IN ACCORDANCE WITH SPECIFICATION 33 46 13 LEAK DETECTION SYSTEM.
3. INSTALL STEEL PROJECTIVE WELL CASING AROUND UPPER PORTION OF DRAIN PIPE AS SHOWN ON DETAIL AND IN ACCORDANCE WITH SPECIFICATION 33 46 13 LEAK DETECTION SYSTEM.
4. PLACE MINIMUM 4 INCHES OF TxDOT FLEX BASE, ITEM 247, GRADES 1, 2, OR 3, TYPES A, B, C OR D. PLACE NEW MATERIAL ON EXISTING SUBGRADE THAT HAS BEEN GRADED AND COMPACTED, AS APPROVED BY ENGINEER.



2
-
-
EXISTING LEAK DETECTION
TRENCH DRAIN DETAIL
NOT TO SCALE

NOTES:

1. CONFIRM EXISTING GRAVEL AND PIPE IS FREE FLOWING PER INSPECTION BY ENGINEER.
2. REMOVE AND REPLACE MATERIALS AS DETERMINED OR DIRECTED BY ENGINEER
3. REPLACEMENT MATERIALS SHALL BE IN ACCORDANCE WITH SPECIFICATION 33 46 13 LEAK DETECTION.

ISSUE	DATE	DESCRIPTION
1	11/30/2022	ISSUED FOR BID

PROJECT MANAGER S. E. MABROUK

DESIGNED BY:	R. G. BOEHM
DRAWN BY:	M. E. WAUER
CHECKED BY:	C. M. ABRAMS
PROJECT DATE:	NOVEMBER 2022
PROJECT NUMBER:	10301516



CITY OF MIDLAND, TEXAS
WATER AND WASTEWATER
UTILITIES DEPARTMENT

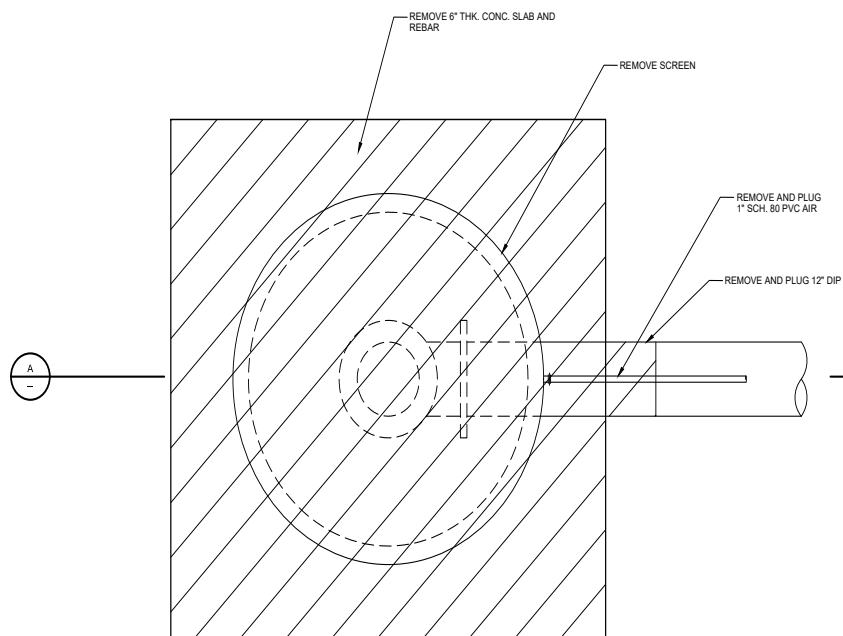
WATER RECLAMATION FACILITY
PLANT FARM PONDS REHABILITATION

PLANT FARM PONDS
PROCESS
LEACHATE COLLECTION PIPING DETAILS
February 14, 2023

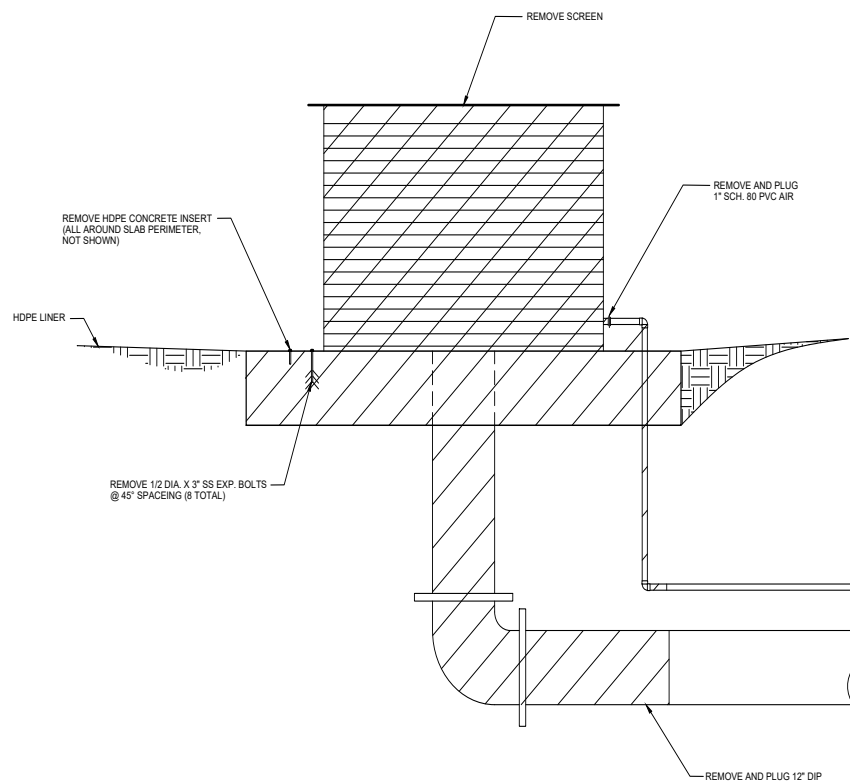


FILENAME
SCALE NOT TO SCALE

SHEET
3D-02



1 PLAN - INTAKE SCREEN DEMOLITION
- NOT TO SCALE



SECTION
NOT TO SCALE

			PROJECT MANAGER	S. E. MABROUK
			DESIGNED BY:	
			DESIGNED BY:	R. G. BOEHM
			DRAWN BY:	J. A. CANTU
			CHECKED BY:	C. M. ABRAMS
			PROJECT DATE:	NOVEMBER 2022
			PROJECT NUMBER	10301516
--	11/30/2022	ISSUED FOR BID		
ISSUE	DATE	DESCRIPTION		

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 Oblige.

*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 Oblige, 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 Oblige, 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

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

"General Decision Number: TX20220261 08/05/2022

Superseded General Decision Number: TX20210261

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

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

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

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

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

Modification Number Publication Date

0
1 PACKET01/07/2022
02/25/2022

8.239

February 14, 2023

2

08/05/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 29.47	24.10

ENGI0178-005 06/01/2020

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

* IRON0084-011 06/01/2022

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 26.76	7.88

PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER.....	\$ 26.05	8.81

* SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER.....	\$ 13.82 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.76 **	0.00
ELECTRICIAN.....	\$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 11.80 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.38 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR:		

PACKET

8.240

February 14, 2023

Backhoe/Excavator/Trackhoe.....	\$ 14.25 **	0.00
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....	\$ 13.37 **	0.00
OPERATOR: Loader.....	\$ 13.55 **	0.94
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 15.00	0.73
PIPEFITTER.....	\$ 25.80	8.55
ROOFER.....	\$ 14.75 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 19.50	0.00
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

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

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

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is **PACKET** by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours

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they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The 007 number, 007 in the example, is an internal number used in producing the

February 14, 2023

wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

PACKET

8.243

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

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

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

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

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END OF GENERAL DECISIO"

"General Decision Number: TX20220002 02/25/2022

Superseded General Decision Number: TX20210002

State: Texas

Construction Types: Heavy and Highway

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

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

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

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

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

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

Modification Number
8.245Publication Date
01/07/2022

8.245

February 14, 2023

1

02/25/2022

* SUTX2011-002 08/02/2011

Rates Fringes

CEMENT MASON/CONCRETE

FINISHER (Paving & Structures)...\$ 13.55 **

ELECTRICIAN.....\$ 20.96

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.36 **

Structures.....\$ 13.52 **

LABORER

Asphalt Raker.....\$ 12.28 **

Flagger.....\$ 9.30 **

Laborer, Common.....\$ 10.30 **

Laborer, Utility.....\$ 11.80 **

Work Zone Barricade

Servicer.....\$ 10.30 **

POWER EQUIPMENT OPERATOR:

Asphalt Distributer.....\$ 14.87 **

Asphalt Paving Machine.....\$ 13.40 **

Broom and Sweeper.....\$ 11.21 **

Crane, Lattice Boom 80

Tons or Less.....\$ 16.82

Crawler Tractor Operator....\$ 13.96 **

Excavator, 50,000 lbs or

less.....\$ 13.46 **

Front End Loader Operator,

Over 3 CY.....\$ 12.77 **

Front End Loader, 3CY or

less.....\$ 12.28 **

Loader/Backhoe.....\$ 14.18 **

Mechanic.....\$ 20.14

Milling Machine.....\$ 15.54

Motor Grader, Rough.....\$ 16.15

Motor Grader, Fine.....\$ 17.49

Pavement Marking Machine...\$ 16.42

Reclaimer/Pulverizer.....\$ 12.85 **

Roller, Asphalt.....\$ 10.95 **

Roller, Other.....\$ 10.36 **

Scraper.....\$ 10.61 **

Spreader Box.....\$ 12.60 **

Servicer.....\$ 13.98 **

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

TRUCK DRIVER

Lowboy-Float.....\$ 14.46 **

Single Axle.....\$ 12.74 **

Single or Tandem Axle Dump..\$ 11.33 **

Tandem Axle Tractor with

Semi.....\$ 12.49 **

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

=====PACKET=====

8-246

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

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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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

PACKET

8.247

February 14, 2023

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.

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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
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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
1400 Constitution Avenue, N.W.
Washington, DC 20210

8.248

February 14, 2023

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

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

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

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

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

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

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END OF GENERAL DECISIO"

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. INSURANCE –

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

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit -
	Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE SELLER AND BUYER ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

33. **CONSIDERATION** - The terms of this agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

34. **CERTIFICATION** - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

35. **FEDERAL WAGE REQUIREMENTS** - If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement. The terms and requirements under said laws, by such incorporation, are made terms and requirements of this agreement, to which the parties to this agreement have agreed to be bound.

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.



DIVISION 01

GENERAL REQUIREMENTS

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SECTION 01 11 00
SUMMARY OF WORK

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Location and description of Work and prior uses of the Site.
2. Construction Contracts for this Project.
3. Others retained by Owner for the Project.
4. Sequence and progress of Work.
5. Contractor's use of the Site.
6. Easements and rights-of-way.
7. Utility owners.

1.2 LOCATION AND DESCRIPTION OF WORK

A. The Work is located at:

1. The City of Midland's Farm Ponds along S County Road 1150, between Farm to Market 307 and TX-158.

B. The Project includes constructing the Work broadly described below, in accordance with the Contract Documents, with all related appurtenances. Work shown on the Drawings, or indicated in the Specifications, or indicated elsewhere in the Contract Documents is part of the Work, regardless of whether indicated below. The Work includes, but is not limited to, the following:

1. All labor, materials, equipment, and necessary incidentals required for: the draining, sludge removal and hauling and removal and replacement the pond liners at Farm Pond A and Farm Pond B. Work also includes all labor, materials, equipment, and necessary incidentals required for grading and subgrade preparation of the ponds; the removal and replacement of the leak detection well heads, and leak detection piping; and backfill replacement based on the condition of the existing system.

C. Contracting Method: The Project will be constructed under a single prime construction Contract.

1.3 CONSTRUCTION CONTRACTS FOR THIS PROJECT

A. Single Prime Construction Contract: The Contract requires all the Work for the Project not expressly allocated to Owner or others in the Contract Documents.

1.4 OTHERS RETAINED BY OWNER FOR THE PROJECT

A. Engineer:

1. Engineer is identified in the Agreement.
2. Engineer's responsibilities for the Project, relative to Contractor, are indicated throughout the Contract Documents.
3. Whether the Engineer will furnish the services of a Resident Project Representative (RPR) for the Project is indicated in the Supplementary Conditions.

B. Non-Professional Services Contracted by Owner: Owner will retain services of the following entities to perform the services indicated relative to the Project. Contractor shall coordinate and schedule the Work with, and cooperate with, the entities performing the following services for Owner.

1. Code-Required Special Inspections and Testing:
 - a. Owner has, or will, retain the services of a qualified testing laboratory to perform code-required testing and special inspections for the Work, in accordance with specifications and selected other provisions of the Contract Documents related to field testing.

1 **1.5 SEQUENCE AND PROGRESS OF WORK**

2 A. Sequencing:

- 3 1. The CONTRACTOR shall organize and plan the construction activities to assure the safety
4 and reliability of and to minimize the interruption to all utilities.
- 5 2. Incorporate sequencing of the Work into the Progress Schedule.
- 6 3. The CONTRACTOR shall submit to Owner and Engineer a written plan for the sequence o
7 work to dewater the ponds and sludge, and remove the sludge from the ponds, and must
8 receive acceptance of the plan before proceeding with the work. Below is one sequence of
9 work that may be followed. The CONTRACTOR is not required to follow this sequence
10 and may develop a different sequence of work to be submitted for review and acceptance.
11 The CONTRACTOR is solely responsible for developing and implementing the sequence of
12 work.
- 13 a. All material shall be disposed of in the City own landfill and disposal shall meet the
14 requirements of all applicable laws and regulations.
- 15 b. All material originating in the storage lagoons and being transported to the landfill shall
16 pass the Toxicity Characteristic Leaching Procedure (TCLP) before being transported
17 from the site.
- 18 c. Remove all in-situ material that do not require dewatering and is capable of passing the
19 TCLP and dispose of in the local landfill.
- 20 d. Relocate remaining material to higher elevations within the pond and allow material to
21 dry via natural means.
- 22 e. When material is sufficiently dry and capable of passing the TCLP, transport material
23 to local landfill.
- 24 f. If material cannot pass the TCLP based upon the construction schedule, General
25 Contractor shall take necessary action to ensure the material is dewatered via
26 mechanical means, filter bags or any other means deemed appropriate by the contractor,
27 passes the TCLP and is disposed of in the local landfill.
- 28 g. Areas of standing water shall be dewatered, and liquid can be sprayed at the near-by
29 fields owned by the City of Midland, south of the Plant Farm ponds.
30 1) There will be no cost or fee to spray the liquid.

31 **1.6 CONTRACTOR'S USE OF SITE**

32 A. Use of Site - General:

- 33 1. Limits on Contractor's use of the Site are as shown on the Drawings.
- 34 2. Relocate stored materials and equipment that interfere with operations of Owner, other
35 contractors, and others performing work for Owner.

- 36 B. Owner will occupy the Site jointly with Contractor during construction for performance of
37 Owner's typical operations. Coordinate with Owner in all construction operations to minimize
38 conflicts between Contractor and Owner's employees and others under Owner's control. If the
39 Site is a treatment facility or other production facility, Owner will have Owner's suppliers for
40 deliveries of chemicals and other items accessing the Site from time to time, possibly on a daily
41 basis.

42 **1.7 EASEMENTS AND RIGHTS-OF-WAY**

43 A. Easements and Rights-of-Way - General:

- 44 1. Easements and rights-of-way required for the permanent improvements included in the
45 Work will be provided by Owner in accordance with the General Conditions and
46 Supplementary Conditions.
- 47 2. Confine construction operations within Owner's property, public rights-of-way, easements
48 obtained by Owner, and limits shown, and property for which Contractor has made
49 arrangements directly with property owner(s).
- 50 3. Use care in placing construction tools, machinery and equipment, excavated materials, and
51 materials and equipment to be incorporated into the Work to avoid damaging property and
52 interfering with traffic.

1 4. Do not enter private property outside the construction limits without permission from the
2 owner of the property.

3 B. On Private Property:

4 1. General limits of Owner-furnished easements are shown on the Drawings.

5 **1.8 UTILITY OWNERS**

6 A. Utilities known to Engineer and that may have Underground Facilities or other facilities in the
7 vicinity of the Work may be contacted as follows:

8 1. Carl Craigo, City of Midland:

9 a. Telephone: 432-685-7261.

10

11 B. Utilities and their owners indicated in the Contract Documents are for Contractor's convenience.
12 Neither Owner nor Engineer will be liable to Contractor or any utility owner for failure to
13 indicate utility, its owner, or complete and correct contact information in the Contract
14 Documents where Contractor's reasonable and ordinarily-exercised diligence would reveal the
15 presence of the utility and its owner. Nothing in the Contract mitigates Contractor's
16 responsibilities under the General Conditions, and Property, and Laws and Regulations,
17 including "call before you dig" regulations.

18 **PART 2 - PRODUCTS - (NOT USED)**

19 **PART 3 - EXECUTION - (NOT USED)**

21 **END OF SECTION**

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SECTION 01 21 00
BID ITEMS: SCOPE OF WORK

PART 1 - GENERAL

- A. Section Includes:
1. A description of the work included with each Bid Item.
 2. Basis of measurement for each Bid Item.
- B. Related Sections include but are not necessarily limited to:
1. Division 00 - Bidding Requirements, Contract Forms, and Conditions of the Contract.
 2. Division 01 - General Requirements.

1.2 DEFINITIONS

- A. "Base Bid Items" refers to those bid items that will be included in the contract without exception.
- B. Except in the case of allowances, "Cost" refers to the total cost to the OWNER for the work described, including all of direct and indirect costs borne by the Contractor in conjunction with the work described, plus Contractor's overhead and profit associated with the work described.
1. In the case of allowances identified on the bid form, "Cost" refers to the direct cost to the Contractor of the materials or services described and shall be equal to the stated allowance. "Cost" shall exclude indirect costs borne by the Contractor and the Contractor's overhead and profit, which shall be included in the various base bid items.

1.3 BASE BID:

- A. Dry Sludge Removal and Disposal:
1. Includes all labor, materials, equipment and necessary incidentals required to remove in-situ sludge from the farm ponds, test each load to confirm the sludge meets the criteria for a solid waste (passes the Toxic Characteristic Leaching Procedure (TCLP)), load, transport and dispose of sludge at the City-owned landfill. Assumed 18 to 20% solids for the in-situ sludge.
 2. Includes all work associated with this item not specifically included in other Bid Items.
 3. Measurement shall be by unit cost and shall be based on the actual number of tons of in-situ dry sludge disposed of at the City-owned landfill. Scale tickets generated by the landfill shall be used to determine weight.
- B. Wet Sludge Dewatering and Disposal:
1. Includes all labor, materials, equipment and necessary incidentals required for the draining of the farm ponds, dewatering sludge, testing each load to confirm the sludge meets the criteria for a solid waste (passes the Toxic Characteristic Leaching Procedure (TCLP)), load, transport and dispose of sludge at the City-owned Landfill. Assume 18 to 20 % solids for the dewatered sludge.
 2. Includes all work associated with this item not specifically included in other Bid Items.
 3. Measurement shall be by unit cost and shall be based on the actual number of tons of wet sludge dewatered disposed of at the City-owned landfill. Scale tickets generated by the landfill shall be used to determine weight.
- C. Liner Removal and Disposal:
1. Includes all labor, materials, equipment and necessary incidentals required for the removal of the existing pond liners in the farm ponds as well as the intake screens in Ponds A and B, but not limited to dewatering, temporary controls, the removal of the existing intake screens and plugging of the intake lines, the removal of the liners, the removal of the geotextile, and the disposal of the material.
 2. Includes all work associated with this item not specifically included in other Bid Items.
 3. Measurement shall be by Lump Sum.

D. Grading and Subgrade Preparation:

1. Includes all labor, materials, equipment and necessary incidentals required for the grading and subgrade preparation of the existing farm ponds as necessary.
2. Includes all work associated with this item not specifically included in other Bid Items.
3. Measurement shall be by Lump Sum.

E. Leak Detection Well Head Modification:

1. Includes all labor, materials, equipment and necessary incidentals required for the modification of the leak detection well heads per the contract documents, but not limited to disposal of material, dewatering, temporary controls, the piping, the fittings, the well casing and cover, and the backfill.
2. Includes all work associated with this item not specifically included in other Bid Items.
3. Measurement shall be per each leak detection well head.

F. Leak Detection Pipe and Trench Replacement:

1. Includes all labor, materials, equipment and necessary incidentals required for the replacement and installation of new leak detection piping in the farm ponds, but not limited to disposal of material, dewatering, temporary controls, trench and backfill replacement, pipe and fitting replacement, connection to existing piping as necessary.
2. Includes all work associated with this item not specifically included in other Bid Items.
3. Measurement shall be by Linear Foot.

G. Plant Farm Pond Liner Installation:

1. Includes all labor, materials, equipment and necessary incidentals required for the installation of new pond liners in the farm ponds, but not limited to dewatering, temporary controls, the material and installation of the new geotextile and liner, liner anchor trench, sandbags, testing and documentation.
2. Includes all work associated with this item not specifically included in other Bid Items.
3. Measurement shall be by Lump Sum.

END OF SECTION

SECTION 01 25 00

SUBSTITUTION PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Requirements applicable to all substitution requests.
 - 2. Provisions specific to Contractor's substitution requests for:
 - a. Materials and equipment to be incorporated into the Work.
 - b. Methods, procedures, and sequences indicated in the Contract Documents.
- B. Scope:
 - 1. Contractor shall provide all labor, materials, equipment, tools, services, and incidentals, and pay all costs associated with requests for approval of substitutes.
 - 2. Where the Contract Documents expressly indicate that substitutes are not allowed, are unacceptable, or time-barred, do not submit substitution requests for such items or procedures.
 - 3. Requirements for Contractor's proposal of "or-equals", where allowed by the Contract, are in the General Conditions, as may be modified by the Supplementary Conditions.

1.2 REFERENCES

- A. Terminology:
 - 1. The following terminology, although not indicated with initial capital letters, has the following meaning in this Section:
 - a. "Or-equal" and "or equal" each means material or equipment items to be incorporated into the completed Work as a functioning whole, or method, procedure, or sequence that, in Engineer's sole opinion, are equivalent to that shown or indicated in the Contract Documents.
 - b. "Substitute" means a proposed materials or equipment to be incorporated into the completed Work as a functioning whole, or a proposed construction method, procedure, or sequence that is not, in Engineer's sole opinion, equivalent to the associated, similar material or equipment item or method, procedure, or sequence shown or indicated in the Contract Documents, but accomplishes the same or similar purpose. Unless expressly indicated otherwise in the Contract Documents, Contractor's proposals for "value engineering" (and similar terms) are substitutes.
 - c. "Substitution request" means Contractor's written request for Engineer's approval of a proposed substitute, in accordance with this Section. Substitution requests are separate from Shop drawings and other Submittals required by the Contract Documents.

1.3 SUBSTITUTES - GENERAL

- A. This Article applies to all substitutes and substitution requests, whether for substitute materials or equipment, or for substitute methods, procedures, or sequences.
- B. This Section expands on the provisions on substitutes in the General Conditions, as may be modified by the Supplementary Conditions.
- C. Time Limits for Submitting Substitution Requests:
 - 1. Where the Contract allows Contractor's substitution requests, such proposals will be considered by Engineer only during a period of 30 days after the date the Contract Times start to run, unless otherwise indicated.
 - 2. Substitution requests will be accepted for consideration by Engineer after the time limit indicated in the paragraph above this, when materials or equipment shown or indicated, and all associated "or-equals", are either:
 - a. Unavailable; or

- b. Despite Contractor's due diligence, are unavailable in time for the Work to be completed within the Contract Times.
 - 3. The foregoing notwithstanding, substitutes will not be approved when received by Engineer after Contractor has commenced the associated Work at the Site, where approval of the substitute would require rework or removing Work already installed.
- D. Design Professional:
 - 1. Engineer is responsible for design of the completed Project as a functioning whole and has responsible charge of the Project except for Work for which design responsibility is expressly delegated by the Contract Documents.
 - 2. Do not retain services of any third-party design professional to prepare modifications of Engineer's design of the completed Project as a functioning whole without Engineer's express, written consent via an appropriate Contract modification setting forth appropriate performance and design criteria for delegating the design of the substitute.
- E. Contractor's Representations:
 - 1. In submitting each substitution request, Contractor represents that:
 - a. Contractor has read and understands the Contract's provisions on substitutes, as indicated in the General Conditions, as may be modified by the Supplementary Conditions, this Section, and elsewhere in the Contract Documents.
 - b. Substitution request is complete and includes all documents and information required by the Contract Documents.
 - c. Contractor certifications required by the General Conditions, as may be modified by the Supplementary Conditions, and this Section are valid and made with Contractor's full knowledge, information, and belief.
 - d. Contractor will provide the same or better guarantees and warranties for substitute as for the specified materials, equipment, methods, procedures, and sequences (as applicable).
 - e. Contractor waives all rights for increasing the Contract Price or extending the Contract Times, related to the substitute, that subsequently may become apparent to Contractor after issuance of the associated Contract modification instrument approving such substitute, except for those associated with differing subsurface or physical conditions or discovery of a previously unforeseen Hazardous Environmental Condition associated with the Work involving the approved substitute.
- F. Submittal of Substitution Requests - General:
 - 1. Substitution requests must be submitted by Contractor. Engineer will not accept or review substitution requests from prospective or bona-fide Subcontractors or Suppliers.
 - 2. Submit separate substitution request for each proposed substitute.
 - 3. Submit substitution requests in accordance with requirements for Shop Drawings and other Submittals, as indicated in the General Conditions, as may be modified by the Supplementary Conditions, and Section 01 33 00 - Submittal Procedures.
 - 4. Do not submit substitution requests as any of the following (such substitution requests will be returned by Engineer without review):
 - a. Shop Drawing, Sample, or other Submittal.
 - b. Request for approval of an "or-equal".
 - c. Request for interpretation (RFI) or clarification.
 - d. Change Proposal without all other, required substitution request elements indicated below.
 - e. Other oral or written communication not in accordance with this Section.
 - 5. Each substitution request shall include:
 - a. Transmittal letter (one per substitution request) expressly indicating the communication is a substitution request.
 - b. Completed substitution request form, on the form attached to this Section.
 - c. Change Proposal, submitted in accordance with the Contract Documents. Clearly indicate the proposed changes in Contract Price and Contract Times if substitute is approved; if none, clearly so indicate on the Change Proposal.

- d. Certifications and written representations required by the Contract Documents to accompany substitution requests.
 - e. Other information: (1) required elsewhere in this Section and in other elements of the Contract Documents, and (2) deemed appropriate by Contractor to support Contractor's substitution request.
 - 6. When Engineer requires additional information to evaluate a substitution request, furnish such information within five days of receipt of Engineer's request, unless additional time is granted by Engineer, in writing.
 - 7. Engineer and Owner have the right to rely upon the completeness and accuracy of information, documents, certifications, and representations in Contractor's substitution request. Contractor accepts full responsibility for completeness and accuracy of substitution requests (except for Engineer's professional liability).
- G. Engineer's Review of Substitution Requests:
- 1. Engineer has no obligation to approve any substitute.
 - 2. Substitutes will not be approved unless all of the following are satisfied for the associated substitute:
 - a. The Contract supports submittal of such substitution request; and
 - b. Substitute is reasonably consistent with Engineer's design intent for the Project as a completed, functioning whole; and
 - c. As indicated in Paragraph 1.3.A.3 of this Section.
 - d. Substitute will not have an adverse effect on the work of other contractors, or existing or proposed construction; and
 - e. Substitution request is complete in accordance with the Contract Documents and Engineer's requests, and
 - f. Owner agrees to the substitute; and
 - g. Associated changes in Contract Price and Contract Times, if any, are acceptable to Owner.
 - 3. Engineer is not obligated to approve any substitute where such approval is conditioned on an increase in the Contract Price, the Contract Times, or both.
 - 4. Timeliness of Engineer's Review:
 - a. Allow not less than 21 days for Engineer's review of each substitute. Allow longer for larger, more-complex substitutes.
 - b. Engineer will endeavor to perform timely review of substitution requests. However, Contractor is responsible for complying with the Contract Times, regardless of whether the substitute is approved.
 - c. Where approval of a substitute would necessitate other changes to the Project's design, additional time, beyond that indicated above, will be necessary for Engineer's preparation of revisions to the design.
 - 5. When Design Changes are Required with Approval of Substitute:
 - a. Engineer will advise Contractor promptly following Engineer's review (and Owner's comment, if any) on substitution request to indicate whether the substitute will be acceptable. Engineer's advisory to Contractor will indicate whether changes in Engineer's design are necessary and include a preliminary estimate of Engineer's fee and time required for modifying the design and preparing an associated Proposal Request to Contractor.
 - b. Engineer's preliminary estimates of fee and time for design modifications will be prepared in good faith, but are not binding on Owner or Engineer.
 - c. Contractor shall reimburse Owner for costs incurred by Owner for design modifications necessitated by approval of substitute. Owner may deduct such amounts, as one or more set-offs, from payments due Contractor under the Contract.
 - d. Upon Contractor's receipt of Engineer's estimate of fee and time for design modifications, contractor shall advise Engineer, in writing, within three days whether Contractor will continue pursuing approval of the substitute.
 - e. Request to Contractor.

- f. Engineer may reject a substitute that would require substantial changes in the Project's design.
- H. Approval of Substitutes:
 - 1. Substitutes are approved only via issuance of an appropriate Field Order or Change Order in accordance with the General Conditions, as may be modified by the Supplementary Conditions.
 - 2. Approval of a substitute does not relieve Contractor from obligation to comply with the Contract Documents, including submitting Shop Drawings, Samples, and other Submittals in accordance with the Contract Documents.

1.4 SUBSTITUTE MATERIALS AND EQUIPMENT

- A. In addition to other requirements of this Section and elsewhere in the Contract Documents, substitution requests for substitute materials or equipment shall include:
 - 1. Manufacturer and Location:
 - a. Name and address of manufacturer of the proposed substitute. Indicate country where manufacturer is incorporated and owned.
 - b. Companies and brands owned by or affiliated with manufacturer.
 - c. Name of manufacturers of principal component items, such as motors, bearings, and similar items.
 - d. Location where the items would be manufactured, including country and address. Indicate the total percentage of the items' value that will be manufactured outside of the United States and its territories.
 - e. Name, address, and driving distance from the Site of:
 - 1) Manufacturer's sales representative.
 - 2) Nearest service center offering full array of service capabilities.
 - 3) Warehouse or other location where spare parts for the proposed substitute are available.
 - f. Number of years that manufacturer has actively participated the North American market.
 - 2. Proposed Materials and Equipment:
 - a. Model designation and quantity of each proposed for the Work.
 - b. Manufacturer's literature for proposed substitute, with description of the materials and equipment.
 - c. Performance information and representative test data.
 - d. Indication of reference standards with which materials and equipment comply.
 - e. Preliminary process and instrumentation diagrams (P&ID), where applicable.
 - f. Identification of hazardous materials, including Constituents of Concern, used in the materials and equipment, and associated permitting or licensing required.
 - g. Manufacturer's standard warranty and applicable, proposed special or extended warranties, including indication of specific entities that will be beneficiary of such warranties.
 - h. Complete list of proposed deviations from requirements of the Contract Documents.
 - i. Itemized comparison of specified materials and equipment and proposed substitute, indicating:
 - 1) Size (physical dimensions) when: item is in use, when not in use, and space required for routine and major maintenance.
 - 2) Weight and loading at supports, when item is full and empty.Materials of construction.
 - 3. Operation requirements, including:
 - a. Anticipated consumption of each item of: Electricity, other energy sources, water, chemicals (indicate each), and other needs for operation at the Site.
 - b. Typical labor required for operation and associated skill level.
 - c. Description of remote monitoring and control capabilities, as applicable.
 - 4. Maintenance requirements, including:
 - a. Anticipated life in the service and environment required.

- b. Frequency and general scope of routine and major maintenance typically necessary.
 - c. Typical labor requirements and general qualifications of personnel performing routine maintenance.
 - d. Major, associated equipment necessary for routing and major maintenance, including hoisting equipment type and capacity (when applicable).
 - e. Availability, scope, cost, and general conditions of service and maintenance contracts, if any.
- 5. References for similar projects on which the materials and equipment were used. Indicate for each:
 - a. Project owner name, name of facility where installed, and name of project.
 - b. City, state, and country of installation.
 - c. Model number/size and quantity furnished and installed.
 - d. Year of installation.
 - e. Contact information for owner and design professional, including telephone numbers.
 - 6. Other information required by the Contract Documents.
 - 7. Other information reasonably requested by Engineer.

1.5 SUBSTITUTE CONSTRUCTION METHODS, PROCEDURES, OR SEQUENCES

- A. Provisions of the General Conditions, as may be modified by the Supplementary Conditions, regarding substitutes of materials and equipment are hereby extended to apply to substitute methods, procedures, and sequences as shown or indicated in the Contract Documents.
- B. In addition to other requirements of this Section and elsewhere in the Contract Documents, substitution requests for substitute methods, procedures, or sequences shall include:
 - 1. Clear identification of the method, procedure, or sequence shown or indicated in the Contract Documents for which substitute is requested.
 - 2. Detailed description of proposed substitute method, procedure, sequence, or combination thereof.
 - 3. Reasons why substitute is proposed and benefits to the Project should the substitute be approved.
 - 4. Detailed list of how the proposed substitute deviates from associated method, procedure, or sequence shown or indicated in the Contract Documents.
 - 5. Impact of the substitute, if approved, on Owner's or facility manager's operations, when the Work is at an existing facility.
 - 6. Effect on other contractors working at the Site, if substitute is approved.
 - 7. Description of temporary equipment and temporary facilities needed, should the substitute be approved, including quantity of items, capacities, performance characteristics, permitting and approvals required by authorities having jurisdiction, and proposed location at the Site.
 - 8. Written evaluation of how substitute method, procedure, or sequence complies with Laws and Regulations.
 - 9. Drawings illustrating method, procedure, or sequence.
 - 10. Materials to be used that contain Constituents of Concern or that have potential to cause or exacerbate a Hazardous Environmental Condition.
 - 11. Other information and data required by the Contract Documents.
 - 12. Other information reasonably required by Engineer.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 ATTACHMENTS

- A. The following, bound after this Section's "End of Section" designation, are part of this Specifications Section:
 - 1. Exhibit A - Substitution Request Form (one page).

END OF SECTION

EXHIBIT A

Substitution Request Form

(One Item per each Form)

Project:		Date:	
Substitution Requestor:			
Contractor:			
Specification Section No:	Paragraph No. (i.e. 2.1.A.1.c):	Specified Item:	
Proposed Substitution:			
Provide Product Data Sheets, Manufacturer's written installation instructions, drawings, diagrams, or any other information as an attached to this Form that will demonstrate the proposed substitution is an Approved Equal.			
State differences between proposed substitutions and specified item. Differences include but are not limited to interrelationship with other items; materials, equipment, function, utility, life cycle costs, applied finished, appearances, and quality.			
Document how the proposed substitution is compatible with or modifies other systems, parts, equipment or components of the Project and Work under the Contract			
Describe what effect the proposed substitution has on dimensions indicated on the Drawings and previously reviewed Shop Drawings?			
Describe what effect the proposed substitution has on the Construction Schedule and Contract Time.			
Describe what effect the proposed substitution has on the Contract Price. This includes all direct, indirect, impact and delay costs.			
Manufacturer's guarantees of the proposed and specified items are: ☐ Same ☐ Different (explain on attachment)			
The undersigned state that the function, utility, life cycle costs, applied finishes, appearance and quality of the proposed substitution are equal or superior to those of the specified item.			
For use by Engineer: ☐ Accepted – eligible for approval via Change Order ☐ Accepted as Noted – approval via Change Order ☐ Not Accepted _____ Date _____ (Telephone): _____ Signature of PE, RA, or PG in Responsible Charge		_____ (Contractor's Signature) _____ (Contractor's Firm) _____ (Firms Address) _____ (Telephone)	

Comments:

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SECTION 01 26 00
CONTRACT MODIFICATION PROCEDURES

1.1 SUMMARY

A. Section Includes:

1. This Specifications section expands upon provisions of the General Conditions, as may be modified by the Supplementary Conditions, and includes:
 - a. Requests for Information/Interpretation.
 - b. Written clarifications.
 - c. Minor changes in the Work and Field Orders.
 - d. Change Proposal Requests.
 - e. Change Orders.

1.2 GENERAL – APPLICABLE TO ALL PROVISIONS OF THIS SECTION

- A. Submit Contract modification documents to Engineer, addressed to the contact person and contact information indicated in Section 01 33 00 - Submittal Procedures, and in accordance with Section 01 31 26 - Electronic Communication Protocols.
- B. Retain at Contractor's office and at the Site complete copy of each Contract modification document, all interpretations and clarifications, related documents, and Engineer's response.

1.3 REQUESTS FOR INFORMATION/INTERPRETATION

A. General.

1. Transmit written requests for information/interpretation to Engineer. Contractor and Owner may prepare and transmit requests for information/interpretation.
2. Prepare and transmit request for information/interpretation to obtain clarifications or interpretations of the Contract Documents. Report conflicts, errors, ambiguities, and discrepancies in the Contract Documents by requesting information/interpretation.
3. Do not transmit request for information/interpretation when other form of communication is appropriate, such as Submittals, requests for approvals of substitutes, notices, ordinary correspondence, or other form of communication. Improperly prepared or inappropriate requests for information/interpretation will be returned without response or action by Engineer.
4. Do not submit request for information/interpretation or clarification when:
 - a. answer may be obtained by observations at the Site; or.
 - b. required information is clearly indicated in the Contract Documents; or.
 - c. required information is included in industry standards referenced in the Contract Documents or Supplier's instructions that are consistent with the Contract Documents; or.
 - d. are reasonably inferable from any of foregoing.
5. Engineer will return requests for information/interpretation without response for any of the following reasons:
 - a. Request is regarding one of the items addressed in Paragraphs 1.3.A.3 and 4 of this Specifications section.
 - b. Request is unclear or incomplete.
 - c. Request was answered in Engineer's response to a prior request for information/interpretation.
 - d. Request is related to construction means, methods, techniques, procedures, or sequences of construction that are not required by the Contract Documents.
 - e. Request is related to safety and protection matters that are solely Contractor's responsibility.
 - f. Request resulted in whole or in part to lack of adequate coordination by Contractor, including coordination of Subcontractors and Suppliers.
 - g. Requests that are otherwise frivolous or unnecessary.

6. Should requests be categorized by Engineer as within the limits of Paragraphs 1.3.A.3, 4, or 5 of this Specifications Section, Engineer may recommend and Owner may withhold from payments due Contractor under the Contract set-off(s) sufficient to cover Owner's costs of Contractor's submittal of invalid, frivolous, unnecessary, or inappropriate requests for interpretation or clarification..
7. Contractor shall have sole financial responsibility for Contractor's costs for requests for interpretation or clarification that are submitted late, out of sequence, or that are unnecessary.

B. Procedure.

1. Transmit requests for information/interpretation in accordance with Section 01 31 26 - Electronic Communication Protocols, and requirements of this Specifications section.
2. If Engineer requests additional information to make an interpretation, entity requesting the interpretation shall transmit the information requested within 10 days, unless Engineer allows additional time, via correspondence referring to request for information/interpretation number.
3. Engineer will review and respond to requests for information/interpretation with reasonable promptness. Allow sufficient time for review and response.
4. Engineer will maintain log of requests for information/interpretation. Upon request, copy of log will be transmitted to requestor.
5. Engineer's response to requests for information/interpretation will be transmitted in accordance with Section 01 31 26 - Electronic Communication Protocols, and requirements of this Specifications section.
6. Engineer's response to each request for information/interpretation will be distributed to:
 - a. Contractor.
 - b. Owner.
 - c. Engineer.
7. If Contractor desires to appeal Engineer's interpretation or clarification, comply with the appeals procedure set forth in the General Conditions, as may be modified by the Supplementary Conditions.
8. Interpretations that One or Both Parties Believes Entails a Change to the Contract:
 - a. If Contractor or Owner believes that a change in the Contract Price or Contract Times or other change to the Contract is required as a result of Engineer's interpretation, so advise Engineer in writing before proceeding with the Work associated with the request for information/interpretation.
 - b. If, after this initial communication, either Owner or Contractor believes that change in Contract Price, Contract Times, both, or other relief with respect to the terms of the Contract is necessary, recourse shall be in accordance with the Contract Documents.

C. Preparation of Requests for Information/Interpretation:

1. Prepare each request for information/interpretation on the "Request for Information" form that will be provided electronically to Contractor.
2. Number each request for information/interpretation sequentially: Example: RFI 01, 02, etc.
3. In space provided on form, describe the interpretation requested. Provide additional sheets as necessary. Include text and sketches as required in sufficient detail to describe the need for interpretation.
4. When applicable, request for information/interpretation shall include Contractor's recommended resolution.

1.4 WRITTEN CLARIFICATIONS

A. General:

1. Written clarifications, when required, will be initiated and issued by Engineer.
2. Written clarifications do not change the Contract Price or Contract Times, and do not alter the Contract Documents.
3. Written clarifications will be issued as correspondence or using clarification notice form acceptable to Engineer, with additional information as required.

1 B. Procedure.

- 2 1. Engineer's written clarifications will be transmitted in accordance with Section 01 31 26 -
3 Electronic Communication Protocols, and requirements of this Specifications section.
4 2. Each written clarification will be distributed to:
5 a. Contractor.
6 b. Owner.
7 c. Engineer.
8 3. If Contractor desires to appeal Engineer's interpretation or clarification, comply with the
9 appeals procedure set forth in the General Conditions, as may be modified by the
10 Supplementary Conditions.
11 4. Written Clarifications that One or Both Parties Believes Entails a Change to the Contract:
12 a. If Contractor or Owner believe that a change in the Contract Price or Contract Times or
13 other change to the Contract is required as a result of Engineer's written clarification,
14 so advise Engineer in writing before proceeding with the Work associated with the
15 written clarification.
16 b. If, after this initial communication, either Owner or Contractor believes that change in
17 the Contract Price, Contract Times, both, or other relief with respect to the terms of the
18 Contract is necessary, recourse shall be in accordance with the Contract Documents.
19 5. If Engineer's written clarification is unclear, prepare and transmit a request for
20 interpretation in accordance with the Contract Documents.

21 **1.5 MINOR CHANGES IN THE WORK AND FIELD ORDERS**

22 A. General:

- 23 1. Field Orders, when required, will be initiated and issued by Engineer.
24 2. Field Orders authorize minor changes in the Work but do not change the Contract Price or
25 Contract Times.
26 3. Field Orders will be in the form of document that will be provided electronically to
27 Contractor.
28 4. Engineer will maintain a log of Field Orders issued. Copy of Engineer's log of Field Orders
29 will be transmitted to Contractor or Owner upon request.

30 B. Procedure:

- 31 1. Field Orders will be transmitted in accordance with Section 01 31 26 - Electronic
32 Communication Protocols, and requirements of this Specifications section.
33 2. Each Field Order will be distributed to the following:
34 a. Contractor.
35 b. Owner.
36 c. Engineer.
37 3. Field Orders that One or Both Parties Believes Entails a Change to the Contract Price or
38 Contract Times:
39 a. If Contractor or Owner believes that a change in the Contract Price or Contract Times
40 or other change to the Contract is required as a result of a Field Order, so advise
41 Engineer in writing before proceeding with the Work associated with the Field Order.
42 b. If, after this initial communication, Contractor believes that change in Contract Price,
43 Contract Times, both, or other relief with respect to the terms of the Contract is
44 necessary, recourse shall be in accordance with the Contract Documents.
45 4. If the Field Order is unclear, submit request for information/interpretation.
46 5. If Owner disagrees with the Field Order, Engineer may issue a revised or amended Field
47 Order, or a Change Proposal Request/Change Order.

48 **1.6 CHANGE PROPOSALS**

49 A. General:

- 50 1. Prepare and transmit written Change Proposal to Engineer in response to each Proposal
51 Request; or when Contractor believes a change in the Contract Price, Contract Times, both,
52 or other change to the terms of the Contract is required; or to appeal an initial decision by
53 Engineer concerning the requirements of the Contract Documents or relating to the

acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract.

B. Procedure:

1. Prepare and transmit Change Proposal Requests within time limits indicated in the General Conditions, as may be modified by the Supplementary Conditions.
2. Submit only one Change Proposal Request for each change issue, unless Engineer requires additional information or clarification. Do not submit repeated Change Proposal Requests for the same change issue. Rather, when Contractor is dissatisfied with Engineer's decision on a Change Proposal Request, recourse is set forth in the General Conditions, as may be modified by the Supplementary Conditions, and elsewhere in this Article.
3. Transmit Change Proposal Requests in accordance with Section 01 31 26 - Electronic Communication Protocols, and requirements of this Specifications section. Include with each Change Proposal Request all required supporting documentation and a separate letter of transmittal.
4. Engineer's Review and Requests for Additional Information:
 - a. Engineer will review and act on each Change Proposal Request in accordance with, and within the time limits indicated in, the General Conditions, as may be modified by the Supplementary Conditions.
 - b. When, Engineer requests additional information to render a decision, submit required information within five days of receipt of Engineer's request, unless Engineer allows more time. Submit the required information via correspondence that refers to the specific Change Proposal Request number.
 - c. Owner shall transmit to Engineer such comments, if any, that Owner has on the Change Proposal Request, within 10 days of Owner's receipt of the Change Proposal Request.
 - d. Engineer will render a written decision on the Change Proposal Request or take other action in accordance with the General Conditions, as may be modified by the Supplementary Conditions.
 - e. Engineer's response to Change Proposal Request will be transmitted in accordance with Section 01 31 26 - Electronic Communication Protocols, and requirements of this Specifications section, the General Conditions, and the Supplementary Conditions.
5. Engineer's response to each Change Proposal Request will be distributed to:
 - a. Contractor.
 - b. Owner.
 - c. Engineer.
6. If Change Proposal Request is recommended for approval by Engineer and is approved by Owner, a Change Order will be issued or, when applicable, an appropriate use of an allowance (already included in the Contract Price) will be authorized by Owner.
7. Change Proposal Requests may be grouped together and rolled into a Change Order.
8. If parties do not agree on terms for the change, Owner or Contractor may file a Claim against the other, in accordance with the General Conditions, as may be modified by the Supplementary Conditions.

C. Preparation of Change Proposals:

1. Each Change Proposal shall be submitted on the "Change Proposal Request" form that will be transmitted electronically to Contractor.
2. Number each Change Proposal Request sequentially. Example: CPR 01, 02, etc.
3. In space provided on Change Proposal Request form:
 - a. Describe scope of each proposed change. Include text and sketches on additional sheets as required to provide detail sufficient for Engineer's review and response.
 - b. Submit justification for each proposed change.
 - c. Indicate the total change in the Contract Price and Contract Times for each separate change item included in the Change Proposal Request.
4. Proposed Effect on Contract Price: Unless otherwise directed by Engineer, attach to the Change Proposal Request detailed breakdowns of pricing (Contractor's cost and Contractor's fee) including:

- a. List of Work tasks to accomplish the change.
 - b. For each task, labor cost breakdown including labor classification, total hours per labor classification, and hourly cost rate for each labor classification. Where overtime is included, indicate the overtime hours, labor classifications, and associated overhead rates.
 - c. Construction equipment and machinery to be used, including manufacturer, model, and year of manufacture, and number of hours for each. Indicate whether the construction equipment or machinery is owned by Contractor, Subcontractor, or leased from a rental firm; if leased, include with the Change Proposal Request a copy of the rental agreement. Indicate whether the construction equipment and machinery is already onsite and used for other activities, or whether it is required solely for the Work in the contemplated change. Indicate overtime hours budgeted, if any, and the associated cost rate for overtime compared with the straight-time rate.
 - d. Indicate temporary materials required, including description of extent, scope, and quality, and associated cost. Temporary materials include items such as temporary sheeting for support of excavations, scaffolding, temporary plates to cover open excavations, temporary barriers, and other temporary items. Indicate ownership or source of such items. Include copy of rental agreement if rented from a third-party rental firm in which neither Contractor nor any Subcontractor has a financial interest. Indicate intended duration of use for such items and purchase cost of such items.
 - e. Detailed breakdown of cost of materials and equipment to be incorporated into the Work, including quantities, unit costs, and total cost, with Supplier's written quotations. When requested by Engineer, submit quotes by multiple prospective Suppliers.
 - f. Breakdowns of each Subcontractors' pricing, including labor, construction equipment and machinery, temporary materials, and materials and equipment incorporated into the Work, other costs, and Subcontractor fees (e.g., overhead and profit). Breakdown of Subcontractors' pricing shall be the same level of detail as that for Contractor.
 - g. Breakdown of other costs eligible, in accordance with the General Conditions and the Supplementary Conditions under "Cost of the Work" provisions.
 - h. Other information required by Engineer.
 - i. Contractor's fees (overhead and profit) applied to eligible Contractor costs and eligible Subcontractor costs.
5. Proposed Effect on Contract Times: Unless otherwise directed by Engineer, attach to the Change Proposal detailed information substantiating the proposed change in Contract Times, including:
- a. Time impact analysis required by Section 01 32 16 - Construction Progress Schedule.
 - b. Indication of whether the Work associated with the contemplated change will affect Contractor's ability to comply with the Contract Times.
 - c. Other time-related information requested by Engineer.

1.7 CHANGE ORDERS

A. General:

1. Change Orders will be recommended by Engineer (when required by the General Conditions) and will be signed by Owner and Contractor (subject to the General Conditions related to a party withholding its signature from a contractually-required Change Order)), to authorize additions, deletions, or revisions to the Work, changes to the Contract Price, changes in the or Contract Times, changes to the terms of the Contract, or a combination thereof.
2. Change Orders will be in the form approved by the Engineer.

B. Procedure.

1. Change Orders for signature by Contractor will be transmitted in accordance with Section 01 31 26 - Electronic Communication Protocols, and requirements of this Specifications section.
2. Contractor shall promptly sign each original Change Order and, within five days of receipt, deliver all originals to Engineer.

- 1 3. Engineer will sign each original Change Order and forward them to Owner.
- 2 4. After approval and signature by Owner, original Change Orders will be distributed as
- 3 indicated below.
- 4 5. Original, signed Change Orders will be distributed as follows:
- 5 a. Contractor: One original.
- 6 b. Owner: One original.
- 7 c. Engineer: One original.
- 8 6. Upon Contractor's receipt of the fully-signed Change Order, promptly perform the Work
- 9 ordered thereby in accordance with the Contract Documents and the Progress Schedule
- 10 accepted by Engineer.

11 **PART 2 - PRODUCTS - (NOT USED)**

12 **PART 3 - EXECUTION (NOT USED)**

14 **END OF SECTION**

SECTION 01 29 73
SCHEDULE OF VALUES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Administrative and procedural requirements for the Schedule of values.

B. Scope:

1. Contractor shall prepare and submit to Engineer for acceptance a Schedule of Values that allocates cost to each item of the Work, for which compensation is on a lump sum basis, Schedule of Value list of line items shall correspond to each aspect of the Work, establishing in detail the portion of the Contract Price allocated to each component of the Work.
2. Upon request of Engineer, promptly furnish data and information that substantiates and supports the amounts indicated in the Schedule of Values.
3. Submit preliminary Schedule of Values to Engineer for initial review. Contractor shall incorporate Engineer's comments into the Schedule of Values and resubmit to Engineer. Engineer may require corrections and re-submittals until Schedule of Values is acceptable.
4. Schedule of Values may be used as a basis for negotiating price of changes, if any, in the Work.

1.2 SUBMITTALS

A. Informational Submittals: Submit the following:

1. Submit to Engineer the Schedule of Values in the form and quantity required in Section 01 33 00 - Submittals.
2. Content of Schedule of Values Submittals shall be in accordance with Article 1.3 of this Specifications section.
3. Timing of Submittals:
 - a. Submit preliminary Schedule of Values within time limit indicated in the General Conditions.
 - c. Submittal of the Schedule of Values for acceptance by Engineer shall be in accordance with the General Conditions. Engineer will not accept Applications for Payment without an acceptable Schedule of Values.
 - d. When required by Engineer, promptly submit updated Schedule of Values to include cost breakdowns for changes in the Contract Price.

1.3 SCHEDULE OF VALUES FORMAT AND CONTENT

A. Organization and Major Elements of Schedule of Values.

1. Prepare Schedule of Values on the "progress estimate" or "continuation sheets", as applicable, of the Application for Payment form.
2. Include in Schedule of Values itemized list of Work for each major work area included in the Work, for each payment item included in the Contract. Group the Work in the Schedule of Values into the following areas:
 - a. Plant Farm Ponds.
3. Organization in Accordance with Specification Sections:
 - a. Within each work area, organize the Schedule of Values by the various Specifications section numbers and titles included in the Contract Documents.
 - b. Label each row in the Schedule of Values with the appropriate Specifications section number. Include an amount for each row in the Schedule of Values.
 - c. List sub-items of major materials, equipment, or systems, as appropriate or when requested by Engineer.

- 1 B. Requirements for preliminary Schedule of Values Submittal and the Schedule of Values
2 Submittal for acceptance by Engineer are:
3 1. Subcontracted Work:
4 a. Schedule of Values shall indicate division of Work between Contractor and each
5 Subcontractor.
6 b. Line items for Work to be performed by each Subcontractor shall include the word,
7 “(SUBCONTRACTED)” and the name of the Subcontractor once the associated
8 subcontract is signed and effective.
9 2. Apportionment between Materials and Equipment, and Installation: Schedule of Values
10 shall include separate apportionment of costs for:
11 a. Cost of materials and equipment to be incorporated into the completed construction.
12 b. Cost of delivery, handling, and storage of materials and equipment to be incorporated
13 into the completed construction.
14 c. Cost of temporary materials (such as excavation supports, scaffolding, and other
15 temporary materials), and their associated delivery, handling, and storage costs, if any.
16 d. Cost of rentals of construction equipment and machinery, whether owned by Contractor
17 or Subcontractor or leased from a third-party equipment rental entity.
18 e. Cost of installing materials and equipment.
19 f. Travel and subsistence costs, if any.
20 g. Other costs used in preparing the Bid by Contractor and each Subcontractor.
21 3. Sum of individual line item amounts indicated on the Schedule of Values shall equal the
22 total of associated bid/payment item. Sum of bid/payment item totals in the Schedule of
23 Values shall equal the total lump sum component of the Contract Price.
24 4. Overhead and Profit:
25 a. Include in each line item a directly proportional amount of Contractor’s overhead and
26 profit in the Contract Price.
27 b. Do not include overhead and profit as separate line item(s).
28 5. Allowances: Include separate line item for each allowance.
29 6. Unit Price Work: Separately indicate items of Unit Price Work in the overall Schedule of
30 Values. Where the required form includes a separate worksheet or page for Unit Price
31 Work, indicate all items of Unit Price Work on such worksheet or page of the form.
32 7. Bonds and Insurance Costs:
33 a. Include line item for bonds and insurance in payment item , in amount not exceeding
34 2.0% of the Contract Price.
35 b. When greater than the amount stipulated immediately above is proposed by Contractor
36 in the Schedule of Values, submit to Engineer documentation substantiating the
37 proposed amounts. Submit to Engineer such documentation when otherwise requested
38 by Engineer.
39 c. When Contractor has furnished bonds and evidence of insurance acceptable to Owner
40 and in accordance with the Contract Documents, entire amount for bonds and insurance
41 may be applied for in the first Application for Payment.
42 8. “Site Overhead” and Administrative Cost Elements:
43 a. Include in the Schedule of Values relevant line items and amounts for work and
44 services required by the General Conditions and specific Division 01 Specifications
45 sections, such as:
46 1) Superintendence and supervision costs and other costs.
47 2) Itemized list of Work by work area, as applicable, for costs associated with
48 coordination with the Owner’s operations, including required sequencing, as set
49 forth in the Contract Documents.
50 3) Construction Progress Schedule and scheduling, schedule updates, time impact
51 analyses, and preparation of recovery schedules.
52 4) Construction photographic documentation.
53 5) Permits (when applicable).
54 6) Temporary utilities and temporary facilities.

- 1 7) Field offices (monthly rental and maintenance) and storage facilities (excluding
2 costs of establishment and removal, which are part of mobilization and
3 demobilization).
4 8) Site maintenance, such as temporary controls (dust, air pollution, water pollution,
5 solid waste control, pest and rodent control, temporary erosion and sediment
6 controls, and others), snow and ice removal, and similar activities.
7 9) Field engineering and surveying.
8 10) Progress cleaning and cleaning for Substantial Completion.
9 11) Record documents (preparation, maintenance, and submittal).
10 a) If adequate record documents are maintained, up to 50% of the value of the
11 record documents line item will be eligible for payment, spread evenly over
12 those progress payments in which construction at the Site is performed.
13 b) Remainder of Project record documents line item will be eligible for payment
14 when complete record documents are submitted in accordance with the
15 Contract Documents. If record documents submitted are unsatisfactory to
16 Engineer, amount may be reduced via set-offs in accordance with the Contract
17 Documents.
18 12) Other items required by Engineer.
19 b. Include such items in Applications for Payment on payment schedule acceptable to
20 Engineer
21 c. Such line items in the Schedule of Values shall exclude any and all costs associated
22 with Contractor's permanent place(s) of business, personnel stationed at permanent
23 office(s), salaries and bonuses of executive and administrative personnel not directly
24 performing work on the Project, and general business expenses, all of which are part of
25 Contractor's overhead costs.
26 9. Mobilization and Demobilization: In accordance with Section 01 71 14 - Mobilization and
27 Demobilization.

28 **PART 2 - PRODUCTS - (NOT USED)**

29 **PART 3 - EXECUTION - (NOT USED)**

31 **END OF SECTION**

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SECTION 01 29 76
PROGRESS PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Administrative and procedural requirements for Contractor's progress payments.
- B. Scope:
1. Contractor's requests for payment shall be in accordance with the Agreement, General Conditions and Supplementary Conditions, and the Specifications.
 2. Form: Applications for Payment shall be the Engineers Joint Contract Documents Committee (EJCDC) document EJCDC C-620, "Contractor's Application for Payment" (2018 edition or later) or other form acceptable to the Owner and Engineer.

1.2 CONTENT AND PROCEDURE FOR REQUESTING PROGRESS FOR PAYMENTS

- A. Procedure:
1. Review with Owner and Engineer quantities and the Work proposed for inclusion in each progress payment request. Application for Payment shall cover only the Work and quantities recommended by the Owner or Engineer.
 2. Contractor will review with Engineer the status of Project record documents, in connection with Engineer's review of each Application for Payment. Failure to maintain record document current will be cause for Engineer to recommend a reduction in payment for record documents and will entitle Owner to set-offs in accordance with the Contract Documents.
 3. Submit to Engineer two printed originals, each with Contractor's signature, of each complete Application for Payment and other documents to accompany the Application for Payment.
 4. Engineer will act on request for payment in accordance with the General Conditions and Supplementary Conditions.
- B. Content: Each request for payment shall include:
1. Completed Application for Payment form, including summary/signature page, progress estimate sheets, and stored materials summary. Progress estimate sheets shall have the same level of detail as the Schedule of Values.
 2. Documentation for Stored Materials and Equipment:
 - a. For materials and equipment not incorporated in the Work but suitably stored, submit documentation in accordance with the General Conditions and Supplementary Conditions.
 - b. UCC-1 Financial Statement:
 - 1) For each lot or delivery of stored materials and equipment for which payment is requested prior to installation of the item(s) at the Site, complete UCC-1, "Financial Statement" form. On UCC-1 form, indicate Owner as "security party"; indicate Supplier as "debtor" when stored item(s) are in Supplier's custody, and indicate Contractor as "debtor" when stored item(s) are in Contractor's custody; and clearly indicate in detail all stored item(s) included in the filing as "collateral" on the form. Include attachments to the form when necessary to clearly and fully indicate in detail the associated "collateral".
 - 2) File completed UCC-1 form with the secretary of state in the state where the subject item(s) are stored.
 - 3) Include with Application for Payment the completed UCC-1 form together with evidence of filing with the required state(s). Submit UCC-1 form and related documentation once for each lot or delivery of stored items.

- c. Photographs of the stored items at the storage location. Submit photographs sufficient to clearly indicate each stored item, clearly showing marking of Owner's property in accordance with Paragraph 1.2.C.1 of this section. . For each month that such item(s) are stored, take and submit monthly new photographs of each stored item, with date-stamp on each photograph.
 - d. Legibly indicate on invoice or bill of sale the specific stored materials or equipment included in the payment request and corresponding bid/payment item number for each and the Supplier price for each item.
 - 3. Listing of Subcontractors and Suppliers:
 - a. In accordance with the General Conditions, submit not less than monthly updated listing of all Subcontractors and Suppliers known to Contractor, whether or not such entities have a contract directly with Contractor.
 - b. Submit complete information using the form attached to this Specifications section.
 - 4. Partial Release or Reduction of Retainage:
 - a. For each Application for Payment where Contractor requests partial release or reduction of retainage in any amount (other than request for final payment), submit with associated progress payment request consent of surety to partial release or reduction of retainage, duly completed by Contractor and surety.
 - b. Acceptable form includes AIA G707A, "Consent of Surety to Reduction in or Partial Release of Retainage" (1994 or later edition), or other form acceptable to Owner.
 - c. For payment requests that include reduction in or payment of retainage in an amount greater than that required by the Contract Documents, obtain Owner's concurrence for partial release or reduction in retainage prior to submitting such Application for Payment.
- C. Final Payment:
- 1. Requirements for request for final payment are in the General Conditions, as may be modified by the Supplementary Conditions, and Section 01 77 19 - Closeout Requirements.

1.3 ADDITIONAL PROCEDURES FOR PAYMENT FOR STORED MATERIALS AND EQUIPMENT

- A. Observation of Stored Materials and Equipment as Condition Precedent to Eligibility for Payment:
- 1. General:
 - a. Prior to materials or equipment suitably stored but not yet incorporated into the Work can be eligible for payment, Engineer or Resident Project Representative (RPR) shall visit the storage location and verify the extent, condition, and storage environment of the stored items.
 - b. When the same material or equipment item is stored for more than two months, such visits to storage location shall be not less than once every two months.
 - 2. Cost Responsibility for Observations:
 - a. When storage location is less than 20 miles from the Site or less than 20 miles from Engineer's office, Contractor is not responsible for reimbursing Owner for cost of Engineer's time and expenses for observing stored materials and equipment.
 - b. When storage location is more than 20 miles from the Site and more than 20 miles from Engineer's office, Contractor shall reimburse Owner, via a set-off under the Contract Documents, for reasonable cost of Engineer's time and expenses, including travel time, to visit the storage location and observe the stored materials and equipment.
- B. Other Requirements for Stored Items: Regardless of storage location, perform the following for stored materials and equipment for which payment is sought:
- 1. Clearly mark each stored container, crate, or item as follows: "Property of City of Midland" using permanent marking. Such marking shall not blemish or deface the finish of items that will be exposed to view after installation at the Site.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 ATTACHMENTS

- A. The forms listed below, following this Specifications section's "End of Section" designation, are part of this Specifications section:
 - 1. List of Subcontractors and Suppliers form (two pages).

END OF SECTION

LIST OF SUBCONTRACTORS AND SUPPLIERS

Owner: _____
Project Name: _____
Contractor: _____ Date: _____
Contract Designation: _____

Indicate below complete information for each Subcontractor and Supplier known to Contractor, regardless of whether the firm has a direct contract with Contractor. Include all lower-tier Subcontractors and associated Suppliers. Copy and paste the paragraphs below as required to indicate all Subcontractors and Suppliers.

SUBCONTRACTORS

1. **Subcontractor Name:**

- Address:
- Contact Person:
- Telephone No.:
- E-mail Address:
- Work Under Specifications Section Nos.:
- Brief Description of Work:
- Current Subcontract Price:
- Approximate Subcontract Start Date:
- Approximate Subcontract End Date:

2. **Subcontractor Name:**

- Address:
- Contact Person:
- Telephone No.:
- E-mail Address:
- Work Under Specifications Section Nos.:
- Brief Description of Work:
- Current Subcontract Price:
- Approximate Subcontract Start Date:
- Approximate Subcontract End Date:

3. **Subcontractor Name:**

- Address:
- Contact Person:
- Telephone No.:
- E-mail Address:
- Work Under Specifications Section Nos.:
- Brief Description of Work:
- Current Subcontract Price:
- Approximate Subcontract Start Date:
- Approximate Subcontract End Date:

Total of Subcontract Prices for all subcontracts equals approximately ____ percent of the Contract Price (Contractor to fill in blank monthly)

1 **SUPPLIERS**

2
3 1. **Supplier Name:**

- 4 • *Address:*
5 • *Contact Person:*
6 • *Telephone No.:*
7 • *E-mail Address:*
8 • *Furnishing Items Under Specifications Section Nos.:*
9 • *Brief Description of Items:*
10 • *Current Purchase Order Amount:*
11 • *Approximate Purchase Order Date:*
12 • *Approximate Purchase Order End Date:*
13

14 2. **Supplier Name:**

- 15 • *Address:*
16 • *Contact Person:*
17 • *Telephone No.:*
18 • *E-mail Address:*
19 • *Furnishing Items Under Specifications Section Nos.:*
20 • *Brief Description of Items:*
21 • *Current Purchase Order Amount:*
22 • *Approximate Purchase Order Date:*
23 • *Approximate Purchase Order End Date:*
24

25 3. **Supplier Name:**

- 26 • *Address:*
27 • *Contact Person:*
28 • *Telephone No.:*
29 • *E-mail Address:*
30 • *Furnishing Items Under Specifications Section Nos.:*
31 • *Brief Description of Items:*
32 • *Current Purchase Order Amount:*
33 • *Approximate Purchase Order Date:*
34 • *Approximate Purchase Order End Date:*
35
36

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SECTION 01 31 19
PROJECT MEETINGS

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Preconstruction, progress and other project meetings.
- B. Related Sections include but are not necessarily limited to:

1.2 PRECONSTRUCTION MEETING

- A. Meet with the Owner and Engineer for a pre-construction conference at a time mutually agreed upon after the contract is awarded, but before any work is performed,
- B. The Engineer will schedule a meeting of the Owner, Contractor, Contractor's Subcontractors, and their respective representatives.
 - 1. The purpose of the meeting will be to clarify construction contract administration procedures, to establish lines of authority and communication and identify duties and responsibilities of the parties.
- C. The Engineer will schedule the pre-construction conference after receipt of the Contractor's draft proposed schedule.
- D. Agenda:
 - 1. Procedural and Administrative:
 - a. Personnel and Teams:
 - 1) Designation of roles and personnel.
 - 2) Limitations of authority of personnel, including personnel who will sign Contract modifications and make binding decisions.
 - 3) Subcontractors and Suppliers in attendance.
 - 4) Authorities having jurisdiction.
 - b. Procedures for communications and correspondence, including electronic communication protocols.
 - c. Copies of the Contract Documents and availability.
 - d. The Work and Scheduling:
 - 1) General scope of the Work.
 - 2) Contract Times, including Milestones (if any).
 - 3) Phasing and sequencing.
 - 4) Preliminary Progress Schedule.
 - 5) Critical path activities.
 - e. Safety:
 - 1) Responsibility for safety.
 - 2) Contractor's safety representative.
 - 3) Emergency procedures and accident reporting.
 - 4) Emergency contact information.
 - 5) Confined space entry permits.
 - 6) Hazardous materials communication program.
 - 7) Impact of Project on public safety.
 - f. Permits.
 - g. Review of insurance requirements and insurance claims.
 - h. Coordination:
 - 1) Coordination of Subcontractors and Suppliers.
 - 2) Construction coordinator (for projects with multiple prime construction contracts).
 - 3) Coordination with Owner's operations.

- 4) Progress meetings – schedule and frequency.
- 5) Coordination meetings.
- i. Submittals:
 - 1) Current critical Submittals:
 - a) Preliminary Schedule of Submittals.
 - b) Other schedules (Progress Schedule, Schedule of Values).
 - c) Preconstruction photographic documentation.
 - d) List of proposed Subcontractors and Suppliers.
 - e) List of emergency contact information.
 - f) Notice of elements of Contractor's safety program with which Owner and Engineer are to comply.
 - g) Site use plan.
 - h) Form of Contractor's site superintendent's daily reports.
 - 2) Work not eligible for payment without approved or accepted Submittals (as applicable).
 - 3) Submittal procedures.
 - a) Compliance with accepted Schedule of Submittals.
 - b) Actions required of Contractor prior to furnishing Shop Drawings and other Submittals
 - c) Contractor's Submittal approval stamp required; Contractor's coordination of Submittals.
 - d) Furnishing of Submittals.
 - e) Submittal types and meaning of Engineer's action on each
 - f) Resubmittals—responsibility for, limitations on quantity.
 - 4) Identification of initial, critical Shop Drawings and product data.
 - 5) Construction photographic documentation.
- j. Substitutes and "Or-Equals":
 - 1) Product options.
 - 2) Procedures for proposing "or-equals".
 - 3) Procedures for proposing substitutes.
- k. Contract Modification Procedures:
 - 1) Requests for information/interpretation.
 - 2) Written clarifications.
 - 3) Field Orders.
 - 4) Change Proposal Requests.
 - 5) Change Orders.
 - 6) Differing site conditions or discovery of Hazardous Environmental Condition.
 - 7) Substantiating and documenting Change Proposals and Claims.
 - 8) Claims.
- l. Progress Payment:
 - 1) Owner's Project financing and funding, as applicable.
 - 2) Owner's tax-exempt status.
 - 3) Preliminary Schedule of Values
 - 4) Procedures for measuring for payment (Unit Price Work).
 - 5) Retainage.
 - 6) Progress payment procedures; documents to accompany Applications for Payment.
 - 7) Payment for stored items not yet installed.
 - 8) Date of Owner's payments; payment is due.
- m. Subcontractors and Suppliers:
 - 1) List of proposed Subcontractors and Suppliers; monthly updates.
 - 2) Coordination and management.
 - 3) Subcontracts and purchase orders.
- n. Testing and inspections:
 - 1) Owner-hired and contractor-hired.
 - 2) Identification of Owner-hired testing entity and special inspectors.

- 3) Responsibility for advising testing entity and special inspectors of need for services.
- 4) Results of code-required special inspections and tests.
- 5) Prompt remedy of apparent defects.
- 6) Notice of defective Work.
- 7) Remedy of defective Work.
- 8) Defective Work not eligible for payment.
- 9) Covering up defective Work.
- 10) Cost responsibility for defective Work and retesting/re-inspection.
- o. Disposal of demolition materials.
- p. Record documents.
- q. Preliminary discussion of Contract closeout:
 - 1) Procedures for Substantial Completion.
 - 2) Partial utilization procedures; property insurance.
 - 3) Contract closeout requirements.
 - 4) Correction period; duration of Contractor's general warranty and guarantee.
 - 5) Duration of bonds and insurance.
2. Authorities Having Jurisdiction (if not covered in a separate meeting):
 - a. Municipal licenses.
 - b. Municipal permits required:
 - 1) Permits required and status.
 - 2) Inspections for building code official.
 - 3) Code-required special inspections and tests (if not covered in Administrative and Procedures part of meeting).
 - c. Right-of-way work permits; status of occupancy permit(s).
 - d. Environmental permits:
 - 1) Storm water discharges during construction.
 - 2) Spill prevention control and countermeasures plan (40 CFR 112).
3. Site Mobilization (if not covered in a separate meeting):
 - a. Working days, working hours, and overtime.
 - b. Use of Site and other areas; use of existing facilities.
 - c. Field offices, storage trailers, and staging areas.
 - d. Temporary facilities.
 - e. Temporary utilities and limitations on utility use (where applicable).
 - f. Utility company coordination (if not done as a separate meeting).
 - g. Access to Site, access roads, and parking for construction vehicles.
 - h. Traffic controls.
 - i. Temporary controls:
 - 1) Erosion and sediment control; storm water pollution prevention plans.
 - 2) Dust control and air pollution control (including emissions control).
 - 3) Water control (storm water, surface water, groundwater).
 - 4) Water pollution control; spill prevention control and countermeasures plan.
 - 5) Solid waste control.
 - 6) Pest control.
 - 7) Other temporary controls.
 - j. Security; temporary security fencing (where required).
 - k. Storage of materials and equipment to be incorporated into the Work.
 - l. Protection of the Work and property; protective barriers.
 - m. Field engineering:
 - 1) Reference points and benchmarks.
 - 2) Surveys and layouts.
 - 3) Professional services for Contractor's means and methods (not delegated design).
 - 4) Contractor's site superintendent's daily records and submittal requirements.
 - n. Site maintenance during the Project:
 - 1) Progress cleaning; removal of trash and debris.
 - 2) Maintenance and cleaning of existing access roads and parking areas.

- 1 o. Restoration.
- 2 4. Next meeting.
- 3 5. Site visit, as necessary.
- 4 E. The Engineer will compile meeting minutes from the transcribed record of the meeting and
- 5 electronically distribute copies to all participants.
- 6 F. Pre-Construction Conference Submittals:
- 7 1. The names and telephone numbers of Contractor's Superintendent and Office Manager.
- 8 2. List of personnel authorized to sign change orders and receive progress payments.
- 9 3. The name, address and telephone numbers of two or more persons employed by the
- 10 Contractor who can be reached at any time of the day or night to handle emergency matters.
- 11 4. A list of all subcontractors that will work on the project, a description of work they will
- 12 perform, and a contact list for each subcontractor with phone numbers and address.
- 13 5. A list of materials suppliers and products.
- 14 6. A draft proposed Construction Schedule.
- 15 7. Material Safety Data Sheets for all hazardous chemical products to be used by the
- 16 Contractor on this project.
- 17 8. Temporary Erosion and Sediment Controls Plan.
- 18 9. Traffic Control Plan.

19 1.3 PROGRESS MEETINGS

- 20 A. Monthly progress meetings will be held a location determined by the Engineer, unless otherwise
- 21 arranged.
- 22 B. Attendees will include the Owner, Engineer, Contractor, subcontractors, and suppliers'
- 23 representatives as may be needed, other Contractors working at the site, and other interested or
- 24 affected parties.
- 25 C. Preliminary Agenda: Be prepared to discuss in detail the topics indicated below. Revised
- 26 agenda, if any, will be furnished to Contractor prior to associated progress meeting(s). Progress
- 27 meeting agenda may be modified by Engineer during the Project as necessary.
- 28 1. Review, comment, and amendment (if necessary) of minutes of previous progress meeting.
- 29 2. Review of progress since the previous progress meeting.
- 30 3. Planned progress through next progress meeting.
- 31 4. Review of Progress Schedule:
- 32 a. Review of the Contract Times; Contractor's ability to comply with Contract Times.
- 33 b. Identification of critical path activities.
- 34 c. Schedules for fabrication and delivery of materials and equipment.
- 35 d. Corrective measures, if necessary, including recovery schedule(s).
- 36 5. Submittals:
- 37 a. Review status of critical Submittals.
- 38 b. Review revisions to Schedule of Submittals.
- 39 6. Contract Modifications:
- 40 a. Requests for interpretation.
- 41 b. Written clarifications.
- 42 c. Field Orders.
- 43 d. Proposal Requests.
- 44 e. Change Proposals.
- 45 f. Work Change Directives.
- 46 g. Change Orders.
- 47 h. Claims.
- 48 7. Applications for progress payments:
- 49 a. Status and deadline for submittal.
- 50 b. Stored materials and equipment; observation by Engineer or RPR; documents required.
- 51 c. Set-offs to which Owner is entitled (as applicable).
- 52 d. Other matters related to progress payments.

8. Problems, conflicts, and observations.
 9. Quality standards, testing, and inspections.
 10. Coordination between Project participants.
 11. Site management issues, including vehicular access and parking, traffic control, security, status of temporary controls and temporary utilities, site maintenance and cleaning, and other Site matters.
 12. Safety and protection.
 13. Permits.
 14. Construction photographic documentation.
 15. Record documents status.
 16. Completion matters (as appropriate):
 - a. Status of checkout, startup, field quality control activities.
 - b. Status of training of facility O&M personnel and O&M manuals.
 - c. Partial utilization; inspection for Substantial Completion.
 - d. Punch list status (as applicable).
 - e. Other closeout matters (if any).
 17. Other business.
- D. Bring a six-week look ahead schedule to each meeting, including the following items:
1. Work completed last week.
 2. Work anticipated for the next two weeks ("Look Ahead").
 3. Subcontractors on site the prior week.
 4. Subcontractors scheduled on site for the next two weeks.
 5. Contract document deficiencies or questions noted during prior week.
 6. Anything that could impede the progress of the work or affect the critical path on the project schedule.
 7. Corrective measures and procedures planned to regain planned schedule, cost or quality assurance, if necessary.
 8. Report of any accidents, and any site safety issues that need to be addressed.
- E. Other Agenda items to be discussed:
1. Review and revise as necessary and approve minutes of previous meetings.
 2. Status of submittals of equipment and shop drawings.
 3. Identify problems that impede planned progress.
 4. Other current business.
- F. Revision of Minutes:
1. Unless published minutes are challenged in writing prior to the next regularly scheduled progress meeting, they will be accepted as properly stating the activities and decisions of the meeting.
 2. Persons challenging published minutes shall reproduce and distribute copies of the challenge to all indicated recipients of the particular set of minutes.
 3. Challenge to minutes shall be settled as priority item of "old business" at the next regularly scheduled meeting.
- G. Minutes of Meeting:
1. The Engineer will compile minutes of each project meeting and will furnish electronic copies to the Contractor.

1.4 OTHER MEETINGS

- A. Other meetings will be required to facilitate progress of the Work. These include, but are not limited to the following:
1. Pre-Installation Conferences:
 - a. Coordinate and schedule with Engineer for each material, product or system specified.
 - 1) Conferences to be held prior to initiating installation, but not more than two weeks before scheduled initiation of installation.

- 1 2) Conferences may be combined if installation schedule of multiple components
- 2 occurs within the same two week interval.
- 3 3) Review manufacturers recommendations and Contract Documents Specification
- 4 Sections.
- 5 2. Facility Startup Planning and Coordination Meeting. See Section 01 75 00.

6 **PART 2 - PRODUCTS - (NOT USED)**

7 **PART 3 - EXECUTION - (NOT USED)**

9 **END OF SECTION**

SECTION 01 31 26
ELECTRONIC COMMUNICATION PROTOCOLS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Procedures with which Users will comply regarding transmission or exchange of Electronic Documents for the Project.

B. Related Requirements:

1. Refer to the General Conditions, as may be modified by the Supplementary Conditions, regarding transmitting Electronic Documents by Electronic Means.
2. In addition to the requirements of this Specifications Section, comply with the requirements for Electronic Documents in the following Specifications:
 - a. Section 01 32 16 - Construction Progress Schedule.
 - b. Section 01 33 00 - Submittals.

1.2 DEFINITIONS

A. The following terms are defined for use in this Specifications Section and are indicated herein using initial capital letters. The terms have the associated meaning regardless of whether indicated in singular or plural.

1. Electronic Documents Protocol (abbreviated as "EDP"): Procedures and requirements set forth in this Specifications Section for the exchange of Electronic Documents by Electronic Means.
2. Project Website: An internet-based software platform, such as a website or other project management information system (PMIS) designated by Contract or mutual consent of Users as the means of exchanging Electronic Documents during the Project.
3. System Infrastructure: Hardware, operating system(s) software, internet access, e-mail service and software, security software, and large-file transfer functions.
4. Users: Owner, Contractor, Engineer, and others exchanging Electronic Documents on the Project in accordance with the EDP.

1.3 ADMINISTRATIVE REQUIREMENTS.

A. Coordination:

1. Contractor shall require all Subcontractors and Suppliers to comply with the EDP established in the Contract Documents.

1.4 GENERAL PROVISIONS OF ELECTRONIC DOCUMENT PROTOCOL

A. EDP – General:

1. To the fullest extent practical, Users agree to and will transmit and accept Electronic Documents transmitted by Electronic Means in accordance with the requirements of this Specifications Section. Use of the Electronic Documents and any information contained therein is subject to requirements of this Specifications Section and other provisions of the Contract Documents governing transmittal of Electronic Documents.
2. Content of Electronic Documents will be the responsibility of transmitting User.
3. Unless otherwise provided in: (1) the EDP, (2) elsewhere in the Contract Documents, or (3) or other agreement between two or more Users governing use of Electronic Documents, Electronic Documents exchanged in accordance with the Contract Documents may be used in the same manner as paper or other printed versions of the same documents exchanged using other than Electronic Means, subject to the same governing requirements, limitations, and restrictions set forth in the Contract Documents.
4. Except as otherwise explicitly indicated in the EDP, the terms of this EDP will be incorporated into any other agreement or subcontract between a party and a third party for a

- portion of the Work or Project-related services, where such third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Contractor, or Engineer. Nothing in this EDP modifies the requirements of the Contract Documents regarding communications between and among Owner, Contractor, and Engineer Subcontractors, Suppliers, consultants, and others for which each is responsible.
5. When transmitting Electronic Documents, transmitting User makes no representations regarding long-term compatibility, usability, or readability of the items resulting from the receiving User's use of software applications or System Infrastructure differing from those established in this EDP.
 6. This EDP does not negate or mitigate any obligation: (1) in the Contract Documents to create, provide, or maintain an original paper record version of Drawings and Specifications, signed and sealed in accordance with Laws or Regulations; (2) to comply with Laws and Regulations governing signing and sealing of design documents or signing and electronic transmission of other documents; or (3) to comply with notice requirements of the General Conditions (as. May be modified by the Supplementary Conditions).
 7. Modifications to EDP:
 - a. When modifications to the EDP are necessary to address issues affecting System Infrastructure, Users shall cooperatively resolve the issues.
 - b. If resolution within a reasonable time is not achieved, Owner is empowered to require reasonable and necessary changes to the EDP consistent with the original intent of the EDP.
 - c. If such changes result in additional cost or delay to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in the Contract Price, Contract Times, or both in accordance with the Contract Documents.

B. System Infrastructure and Systems for Exchanging Electronic Document:

1. Each User will provide System Infrastructure (as defined in this EDP) at its own cost and sufficient for complying with EDP requirements. Except for minimum standards set forth in this EDP and explicit system requirements specified by attachment to this EDP, it is the obligation of each User to determine, for itself, such User's own System Infrastructure.
 - a. Maximum size of e-mail file attachment under this EDP is 10 megabytes (MB). Attachments larger than the maximum size indicated in this paragraph shall be exchanged via secure electronic transfer using method mutually acceptable to Owner, Engineer, and Contractor.
 - b. Each entity transmitting or receiving Electronic Documents has full responsibility for its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, and otherwise enabling its System Infrastructure for use in accordance with this EDP.
 - c. Each User will provide its own printing facilities and will be responsible for its own costs of printing Electronic Documents.
2. Each User is responsible for its own system operations, security, back-up, archiving, audits, and other technology and resources for operations of its System Infrastructure during the Project, including coordination with the User's individual(s) or subcontractor(s) responsible for managing its System Infrastructure and capable of addressing communications and other technology issues affecting exchange of Electronic Documents.
3. Security:
 - a. Each User will operate and maintain industry-standard, industry-accepted, ISO standard, commercial-grade security software and systems to protect against threats including software viruses and other malicious software including worms, trojans, adware; data breaches; loss of confidentiality; and other threats in transmission to, or storage of, Electronic Documents from other Users, including transmission of Electronic Documents by physical media including flash drives/thumb drives, hard drives, compact discs (CD), digital video discs (DVD), and other portable devices, whether connected physically or wirelessly.

- 1 b. To the extent that a User maintains and operates such security software and appropriate
2 System Infrastructure, such User will not be liable to other Users participating in the
3 Project for breach of system security.
- 4 4. Archiving and Electronic Document Backup:
- 5 a. Each User is responsible for its own back-up and archive of Electronic Documents and
6 data transmitted and received during the Project, unless this EDP establishes a Project
7 Electronic Document archive, either as a mandatory Project Website or other
8 communications protocol, upon which Users may rely for Electronic Document
9 archiving for the duration of the Project Website or archiving system established in this
10 EDP.
- 11 b. Each User is solely responsible for its own post-Project back-up and archive of
12 Electronic Documents after the Project is complete or after termination of the Project
13 Website or other Project archive (as applicable), for the longer of: (1) required by the
14 Contract Documents, (2) required by Laws and Regulations, and (3) as each User
15 deems necessary for its purposes.
- 16 5. Receipt of Damaged, Incomplete, or Corrupt Electronic Documents: When a receiving User
17 receives an obviously corrupted, damaged, or unreadable Electronic Document, the
18 receiving User will advise the transmitting User of the incomplete transmission and
19 transmitting User will retransmit the Electronic Document.
- 20 6. Completion of Transmittals: Users will bring non-conforming Electronic Documents into
21 compliance with the EDP. Users will attempt to complete a successful transmission of the
22 Electronic Document or use an alternative delivery method to complete the transfer of the
23 Electronic Documents.
- 24 7. Principal means of exchanging Electronic Documents will be e-mail and files attached to e-
25 mail, in accordance with the EDP.
- 26 C. General Requirements and Limitations for Software for Electronic Document Exchange:
- 27 1. Software and file formats for exchange of Electronic Documents shall be as indicated in
28 Article 1.5 of this Specifications Section.
- 29 2. Software Versions:
- 30 a. Each User will acquire the software and associated licenses necessary to create,
31 transmit, receive, read, and use Electronic Documents for the Project, using the software
32 and file formats indicate in Article 1.5 of this Specifications Section.
- 33 b. Prior to using any updated version of the software required in the EDP for Electronic
34 Document(s) transmitted to other User(s), the originating User will first notify and
35 either (1) receive concurrence from receiving User(s) for use of the updated version, or
36 (2) adjust its transmission to comply with the EDP.
- 37 3. Preservation of Intellectual Property and Confidentiality of Electronic Documents:
- 38 a. Users agree to not intentionally edit, reverse-engineer, decrypt, remove security or
39 encryption features, or convert to another format for modification purposes Electronic
40 Documents, and information and data contained therein, transmitted in a file format,
41 including portable document format (PDF), intended by transmitting User to not be
42 modified, unless the receiving User (1) obtains permission from owner of the Electronic
43 Document and intellectual property contained therein, or (2) is expressly allowed by the
44 EDP to edit or modify the Electronic Document.
- 45 b. Where modifying, editing, decryption, or reverse-engineering is allowed by the EDP,
46 such use is conferred only for the Project.
- 47 c. The EDP does not transfer any ownership or rights of any sort regarding use outside of
48 the Project of Electronic Documents.
- 49 d. Users shall not cite or quote excerpts of Electronic Documents for purposes outside of
50 the Project unless required to do so by Laws and Regulations.
- 51 D. Contractor's Requests for Electronic Documents in Other Formats:
- 52 1. Release of Electronic Documents in format(s) other than those indicated in in Article 1.5 of
53 this Specifications Section and elsewhere in the Contract Documents will be at the

- discretion of Owner and subject to terms and conditions required by the owner of such files and documents, and the provisions indicated below.
2. To extent determined by Owner, in its sole discretion, to be appropriate, release of Electronic Documents in alternative format(s) requested by Contractor (“Request”) are subject to provisions of Owner’s response to the Request and to the following:
- a. Contractor’s Request shall be in writing. Owner and others, as appropriate, will consider and respond to Request promptly, but neither Owner nor Engineer will be responsible for any time or cost impacts on Contractor associated with timing of the Request, or with Owner’s decision associated therewith.
 - b. When Engineer is the owner of the Electronic Documents requested by Contractor in native format, prior to Engineer transmitting such Electronic Documents to Contractor, Contractor shall sign and deliver to Engineer, without modifying or amending, Engineer’s “Electronic Media Release” agreement.
 - c. Content included in Electronic Documents created by Engineer and furnished in response to the Request was prepared by Engineer as an internal working document for Engineer’s purposes solely and, when provided to Contractor, is on an “as-is” basis without warranties of any kind, including, but not limited to any implied warranties of fitness for purpose. Contractor acknowledges that content of Electronic Documents furnished in response to the Request may not be suitable for Contractor’s purpose(s), or may require substantial modification and independent verification by Contractor. Content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other shown or indicated information that may affect subsequent use by Contractor or others for whom Contractor is responsible.
 - d. Electronic Documents containing text, graphics, metadata, or other types of data furnished by Engineer in response to the Request are only for Contractor’s convenience and any and all conclusions or information obtained or derived from such Electronic Documents will be at Contractor’s sole risk and expense. Contractor waives any and all claims against Engineer, Owner, or both arising from Contractor’s use of Electronic Documents furnished in response to the Request.
 - e. Contractor shall indemnify and hold harmless Owner, Engineer, and their respective consultants and subconsultants from any and all claims, damages, losses, and expenses, including attorneys’ fees and defense costs, fees and costs of engineers, architects, geologists, accountants, and other professionals, and any and all other costs, direct and indirect, resulting from Contractor’s use, adaptation, or distribution of Electronic Document(s) furnished in response to the Request.
 - f. Contractor shall not sell, copy, transfer, forward, give away or otherwise distribute the Electronic Documents (in source format or modified file format) to any third party without direct written authorization of Engineer or other entity that owns the Electronic document(s), unless such distribution is specifically indicated in the Request and is limited to Subcontractors and Suppliers. Contractor warrants that subsequent use by Subcontractors and Suppliers complies with terms and conditions of the Contract Documents, Owner’s response to the Request, and release agreement(s) (if any) by owner of the Electronic Documents (including Engineer, where applicable).
3. When the Request is for Electronic Documents in a format not other than that indicated in the Contract Documents, and Owner (and others, as applicable) decide to comply with the Request, and when the requested Electronic Documents are not easily available in the format(s) requested, Contractor shall reimburse Owner for costs incurred by Owner, either directly or indirectly, to furnish Electronic Documents in accordance with the Request at a rate of \$35 per labor-hour to furnish the requested format(s). In compensation, Owner may retain such amount(s) as set-off(s) under the Contract Documents.

1.5 EXCHANGE OF ELECTRONIC DOCUMENTS

- A. Comply with the Electronic Document formats, transmission methods, and permitted uses set forth in Table 01 31 26-A, Exchange of Electronic Documents, below, when transmitting or using Electronic Documents on the Project. Where a row in the table has no indicated means of transmitting Electronic Documents, use for such documents only paper copies transmitted to the receiving party via appropriate delivery method.

TABLE 01 31 26-A – EXCHANGE OF ELECTRONIC DOCUMENTS

Electronic Document Type	Format	Transmitting User	Transmission Method	Receiving User	Allowed Uses	Notes
1.5.A.1. Project communications						
General communications & correspondence	EM, PDF	O, E, C	EM, EMA	O, E, C	R	
Meeting notices and agendas	EM, PDF	E	EM, EMA	O, C	R	
Meeting minutes	PDF	E	EM, EMA	O, C	R	
1.5.A.2. Contractor's Submittals to Engineer						
Shop Drawings	PDF	C	EMA	E	M (1)	(1)
Product data Submittals, delegated design Submittals, and other action Submittals (except Samples)	PDF	C	EMA	E	M (1)	(1)
Informational and closeout Submittals:	PDF	C	EMA	E	M (1)	(1) (6)
Documentation of delivery of maintenance materials submittals	PDF	C	EMA	E	M (1)	
1.5.A.3. Engineer's return of reviewed Submittals to Contractor						
Shop Drawings	PDF	E	EMA	O., C	R	
Product data Submittals, delegated design Submittals, and other action Submittals	PDF	E	EMA	O., C	R	
Informational and closeout Submittals:	PDF	E	EMA	O., C	R	(6)
Documentation of delivery of maintenance materials submittals	PDF	E	EMA	O. C	R	
1.5.A.4. Contract Modifications Documents						
Requests for interpretation to Engineer	PDF	C., O	EMA	E	M (1)	(1)
Engineer's interpretations (RFI responses)	PDF	E	EMA	C, O	R	
Engineer's clarifications to Contractor	EM, PDF	E	EM, EMA	C, O	R	
Engineer's issuance of Field Orders	PDF	E	EMA	C, O	R	
Proposal Requests	PDF	E, O	EMA	C	R	
Change Proposals – submitted to Engineer	PDF	C	EMA	O, E	S	
Change Proposals – Engineer's response	PDF	E	EMA	C. O		

Electronic Document Type	Format	Transmitting User	Transmission Method	Receiving User	Allowed Uses	Notes
Work Change Directives (for Contractor signature)	PDF	E	EMA	C	R	(2)
Change Orders (for Contractor signature)	PDF	E	EMA	C	R	(2)
1.5.A.5. Applications for Payment						(3)
1.5.A.6. Claims and other notices						(4)
1.5.A.7. Closeout Documents						
Record drawings	DWG and PDF	C	EMA	E, O	M (5)	(5)
Other record documents	PDF	C	EMA	E, O	M (5)	(5)
Contract closeout documents						

1. Key to Table 01 31 26-A:

a. Data Format:

- 1) EM: .msg, .htm, .txt, .rtf, e-mail text.
- 2) W: .docx, Microsoft Word 2013 or later.
- 3) EX: .xlsx, Microsoft Excel 2013 or later.
- 4) PDF: .pdf, portable document format.
- 5) DWG: .dwg, Autodesk AutoCAD 2014 drawing.

b. Transmitting User:

- 1) O: Owner.
- 2) C: Contractor.
- 3) E: Engineer.

c. Transmission Method:

- 1) EM: Via e-mail.
- 2) EMA: Attachment to e-mail transmission.
- 3) PORT: Delivered via portable media such as flash drive/thumb drive, CD, or DVD
- 4) PW: Posted to Project Website.
- 5) FTP: FTP transfer to receiving FTP server.

d. Receiving User:

- 1) O: Owner.
- 2) C: Contractor.
- 3) E: Engineer.

e. Permitted Uses:

- 1) S: Store and view only.
- 2) R: Reproduce and distribute.
- 3) I: Integrate (incorporate additional electronic data without modifying data received)
- 4) M: Modify as required to fulfill obligations for the Project.

f. Notes:

- 1) Modifications by Engineer to Contractor's Submittals and requests for interpretations are limited to printing, marking-up, and adding comment sheets.
- 2) May be distributed only to affected Subcontractors and Suppliers. Print, sign document, and return signed paper originals to Engineer.
- 3) Submit printed Applications for Payment with original ("wet") signatures.
- 4) Submit notices, including Claims, in accordance with the notice provisions of the General Conditions, as may be modified by the Supplementary Conditions.

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SECTION 01 32 16
CONSTRUCTION PROGRESS SCHEDULE

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Specific requirements for the preparation, submittal, updating, and status reporting of the construction Progress Schedule.
- B. Related Specification Sections include, but are not necessarily limited to:
1. Division 00 - Procurement and Contracting Requirements.
 2. Division 01 - General Requirements.
- C. Review of the CPM Schedule:
1. In so far as the Contractor is solely responsible for its means and methods and the CPM schedule represents in part its means and methods, the review of the CPM schedules (preliminary, baseline, updates, revisions, etc.) is for compliance with the requirements as defined in the contract documents.
 2. The review of the CPM schedule is not intended to be complete or exhaustive or check every activity and its relation to the work.
 3. The Engineer/Owner will provide comments on the CPM schedule compliance with those contract requirements and anomalies that might appear to the Engineer/Owner.
 4. If the Contractor fails to include contract requirements (e.g. specified cure times, commissioning periods) in the CPM schedule, or the Engineer/Owner fails to notify the Contractor of anomalies the Contractor is not relieved of the contract requirements.
 5. Acceptance of the CPM schedule does not imply that the Owner has approved or accepted the Contractor's means and methods or sequence for performing the work to construct the project.
 6. If the Contractor has questions or concerns about comments, the Contractor and Engineer/Owner shall meet to resolve those issues prior to issuance of future updates or revisions.

1.2 DEFINITIONS

- A. The following definitions shall apply to this Specification Section:
1. Execution Of The Contract: The date the contract is signed by the last party, either the Owner or the Contractor.
 2. Working Days: Monday through Friday except holidays as directed by the Owner.
 3. Preliminary Schedule: A schedule showing detailed activity for the first 90 days of the Project, and a general work plan for construction activity from the 91st day until the Contractual Completion Date.
 4. Baseline Schedule: The initial detailed Progress Schedule prepared by the Contractor defining its plan for constructing the Project in accordance with the Contract Documents.
 5. Schedule Update: The initially accepted Baseline Schedule, or subsequently approved Revised Baseline Schedules, updated each month to reflect actual start and finish dates of each schedule activity and the remaining duration of activities that began during the period.
 6. Current Schedule: The current schedule is either the Baseline Schedule or Revised Baseline Schedule including and incorporating Schedule Updates.
 7. Revised Baseline Schedule: The initially accepted Baseline Schedule revised to reflect approved contract change orders and modifications.
 8. Recovery Schedule:
 - a. A schedule indicating the Contractor's plan for recovering lost time.

- b. A recovery schedule will be requested when the Contractor is forecasting at least 10 working days or more delays in meeting a contract milestone or the contract completion date.
- 9. Short Interval Schedule:
 - a. Schedule prepared by the Contractor reflecting the work planned for the coming weeks.
 - b. This is also known as a Look-Ahead Schedule.

1.3 SUBMITTALS

A. Preliminary Schedule:

- 1. Submittal and review:
 - a. Submit within 10 days after Execution of the Contract or the effective date of the contract, whichever is earlier.
 - b. The Engineer/Owner will review and provide comments to the Contractor within 10 working days after receipt of the schedule.
 - c. The Contractor will review and modify the preliminary schedule and return the schedule within 5 working days. If there are concerns about the comments provided, the Engineer/Owner and Contractor will meet to review and resolve those concerns.
- 2. Submittal package:
 - a. Provide a detailed plan for the first 90 days of the project and summary activities of the work to achieve the project milestones.
 - b. CPM time-scaled network diagram:
 - 1) A printed logic diagram and PDF that include the following information:
 - a) Unique activity number/identifier; numeric, alpha or combination of numeric/alpha.
 - b) Activity description.
 - c) Activity duration.
 - d) Early start and early finish for each activity.
 - e) Late start and late finish for each activity.
 - f) Total float (TF) for each activity.
 - g) Predecessor activities.
 - h) Successor activities.
 - i) Bar showing the early start and completion dates of each activity.
 - 2) The activities will be sorted by area, trades, and subcontractors as agreed on with the Engineer/Owner.
 - 3) Print the CPM time-scaled network diagram on minimum sheet size of 11 IN x 17 IN.

B. Baseline Schedule:

- 1. Submittal and review:
 - a. Submit within 30 days after Execution of the Contract or the effective date of the contract, whichever is earlier.
 - b. The Engineer/Owner shall review the baseline schedule and provide comments to the Contractor within 20 working days after receipt of the schedule.
 - c. After receiving comments, the Contractor and Engineer/Owner shall meet to review the comments within five working days.
 - d. After the meeting, the Contractor will modify the schedule as agreed and resubmit the baseline schedule within 5 working days.
 - e. After the Engineer/Owner confirms that the Contractor has made the changes as agreed, the schedule will become the baseline schedule.
- 2. Submittal package:
 - a. CPM time-scaled network diagram:
 - 1) A printed logic diagram and PDF that include the following information:
 - a) Unique activity number/identifier; numeric, alpha or combination of numeric/alpha.
 - b) Activity description.
 - c) Activity duration.

- d) Early start and early finish for each activity.
 - e) Late start and late finish for each activity.
 - f) Total float (TF) for each activity.
 - g) Predecessor activities.
 - h) Successor activities.
 - i) Cost/budget to complete the work in the activity.
 - j) Resources needed to complete the activity.
 - k) Bar showing the early start and completion dates of each activity.
 - 2) The activities will be sorted by area, trades, and subcontractors as agreed on with the Engineer/Owner.
 - 3) Print the CPM time-scaled network diagram on minimum sheet size of 11 IN x 17 IN.
- C. Schedule Updates:
1. Submittal and Review:
 - a. Provide a Schedule Update on the 4th of each month after the Baseline Schedule is completed.
 - b. The Engineer/Owner shall provide comments to the Contractor on the Schedule Update.
 - c. Incorporate the Engineer/Owner comments into the next Schedule Update.
 2. CPM time-scaled network diagram as described for the Baseline Schedule:
 - a. Do not change the description of an activity number.
 - 1) Any activity added to the schedule shall have a new unique activity number and description.
 - 2) If activities are deleted, the deleted activity number(s) will not be used again.
- D. Recovery Schedule:
1. When the activities on the critical path or the completion milestones appear to be 15 working days beyond the contract time, the Engineer/Owner may request and provide a Recovery Schedule demonstrating how the Contractor will recover the lost time so that the Work will be completed within the Contract Time.
 2. Provide the Recovery schedule within 10 working days after requested by the Engineer/Owner.
 3. Activities will be added or the durations modified to reflect the changes to the work.
 4. The Engineer/Owner will review and provide comments to the Contractor on the Recovery Schedule within five working days.
 5. Incorporate the Engineer/Owner comments into the Recovery Schedule.
 6. After acceptance by the Engineer/Owner, the Recovery Schedule use for future Schedule Updates.
 7. CPM time-scaled network diagram as described for the Baseline Schedule:
 - a. Do not change the description of an activity number.
 - 1) Any activity added to the schedule shall have a new activity number and description.
 - 2) If activities are deleted, the deleted activity number(s) will not be used again.
 8. Provide a narrative with an explanation of the changes in logic and/or activity durations.
- E. Short Interval Schedule:
1. Provide a four-week schedule each week during the Contract Time. This schedule can be reviewed at each progress meeting.
 - a. Provide an accurate representation of the work performed the previous week and work planned for the current week and subsequent three weeks.
 2. Provide in a tabular format with bars or other graphic representing work duration.
 - a. Reference activity ID numbers on the Baseline, Revised Baseline, or Updated Schedule, which ever is being currently used.
 - b. Note by color, highlight or underscore all activities on the critical path.
 3. Identify inspection hold points including special inspections needed before the Contractor can move forward with the work.
 4. Identify the day materials provided by the Owner or others needed on site.

5. Identify utility tie-ins and traffic changes including road and/or lane closures.

1.4 GENERAL REQUIREMENTS

- A. Prepare and submit construction progress schedules as specified herein.
1. Develop and maintain Baseline, Updates and Recovery schedules using Microsoft Project or equal as approved by the Engineer/Owner.
 2. Include the following information:
 - a. Construction start dates (Award date, Notice(s) to Proceed date).
 - b. Procurement activities.
 - c. Preparation of key submittals for materials and equipment.
 - d. Engineers review and approval of key submittals.
 - e. Material and equipment fabrication lead times.
 - f. Material and equipment deliveries for Contractor, Owner and third parties.
 - g. Water curing of concrete after placement for all structures.
 - h. Shutdowns.
 - i. Utility tie-ins.
 - j. Plant tie-ins.
 - k. Traffic changes and closures.
 - l. Inspections and hold points.
 - m. Start-up of equipment.
 - n. Testing of equipment and systems.
 - o. Training
 - p. Commissioning.
 - q. Contract milestones:
 - 1) Intermediate milestones.
 - 2) Substantial Completion Date.
 - 3) Physical Completion Date.
 3. The following CPM schedule outputs will be rejected without further review:
 - a. Schedules indicating the start of the critical path at a date point or activity beyond the date of Notice to Proceed, or schedules indicating a discontinuous critical path from Notice to Proceed to Contract completion.
 - b. Schedules defining critical activities as those on a path or paths having some minimum value of float.
 - c. Schedules with multiple critical paths.
 - d. Schedules indicating a completion date beyond the contractual completion date.
- B. The number of activities shall be sufficient to assure adequate planning of the project, to permit monitoring and evaluation of progress, and to do an analysis of time impacts.
1. Work activities shall not exceed durations of 10 days or two weeks.
 - a. Procurement and fabrication activity durations may exceed 10 days or two weeks.
 2. Schedule activities shall include the following:
 - a. A clear and legible description.
 - b. At least one predecessor and one successor activity, except for project start and finish milestones.
- C. Early Completion Schedule:
1. Contractor may show early completion time on any schedule provided that the requirements of the contract are met.
 2. Contractor may increase early completion time by improving production, reallocating resources to be more efficient, performing sequential activities concurrently or by completing activities earlier than planned.
 3. Any time between the Contractor's early completion and the Contract Time will be considered float.
- D. Plan working durations to incorporate the effects of normal weather impacts.
- E. Float:

- 1 1. The project owns the float, therefore neither the Owner nor the Contractor has exclusive use
- 2 of the float; the float can used by either party.
- 3 2. Once float is used, liability for delay of the project completion date rests with the party
- 4 actually causing delay to the project completion date.

5 **PART 2 - PRODUCTS - (NOT USED)**

6 **PART 3 - EXECUTION - (NOT USED)**

8 **END OF SECTION**

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SECTION 01 33 00
SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Definition of various types of Submittals.
 2. Coordination requirements for Submittals.
 3. General provisions concerning Submittals.
 4. Schedule of Submittals.
 5. Contractor's preparation of Submittals, including:
 - a. Numbering.
 - b. Marking.
 - c. Organization and content.
 - d. Proposed "or-equals", substitutes, and deviations from Contract requirements.
 - e. Electronic Documents Submittals.
 - f. Contractor's review and approval of each Submittal.
 - g. Resubmittals.
 6. Contractor's transmittal of Submittals, including transmittal letters, transmittal and delivery method, and delivery of Samples, Closeout Submittals, and Maintenance Materials Submittals.
 7. Engineer's review, including:
 - a. Timing.
 - b. Meaning of Engineer's Submittal action code(disposition) assigned.
 - c. Delivery of Engineer's responses on Submittals.
- B. Scope:
1. Contractor shall provide all labor, materials, equipment, tools, services, incidentals, and other effort necessary to furnish Shop Drawings, product data Submittals, Samples, and other Submittals in accordance with the Contract Documents.
 2. This Section's Article, "General Provisions Concerning Submittals" includes a summary of the Contract Documents' locations of Submittals requirements.
 3. Shop Drawings, product data Submittals, Samples, and other Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Engineer's approval or acceptance, as applicable, of a Submittal does not alter or modify the Contract Documents.
 4. Engineer and Owner have the right to rely on Contractor's representations and certifications made regarding each Submittal.
- C. Related Requirements: Include but are not limited to:
1. Section 01 25 00 - Substitution Procedures.
 2. Section 01 32 16 - Construction Progress Schedule.

1.2 REFERENCES

- A. References – Introduction:
1. This Article presents definitions and terminology used in this Section and throughout the Contract Documents.
 2. Applicability of the Term "Submittals": Where reference is made to Shop Drawings, product data Submittals, Samples, or other Submittals in this Section and elsewhere in the Contract Documents, the term "Submittals", as defined in the Contract Documents, is intended. The foregoing applies regardless of whether such term is indicated with an initial capital letter, unless context of the subject provision clearly indicates otherwise.
 3. Types of Submittals:

- a. Submittal types are classified as follows: (1) Action Submittals, (2) Informational Submittals, (3) Closeout Submittals, and (4) Maintenance Materials Submittals.
 - b. Type of each required Submittal is indicated in the associated Specifications section. When Submittal type is not clearly indicated in the associated Specifications section, Submittal will be classified as indicated in this Article. Submit request for interpretation when Contractor is uncertain of required Submittal type.
- B. Action Submittals:
1. Action Submittals require an explicit, written approval or other appropriate action by Engineer (or other entity to whom the Submittal is required to be furnished, in accordance with the Contract Documents) before Contractor may release the associated item(s) for raw materials procurement, fabrication, production, and shipping.
 2. Unless otherwise indicated in the Contract Documents, Action Submittals include the following:
 - a. Shop Drawings.
 - b. Product data.
 - c. Samples.
 - d. Testing plans for quality control activities required by the Contract Documents.
 - e. Delegated Designs: Delegated design professional's "instruments of service" Submittals required by the Contract Documents.
 3. General Conditions' requirements for Shop Drawings and Samples hereby apply to all Action Submittals.
- C. Informational Submittals:
1. Informational Submittals are so indicated in the Contract Documents. Unless otherwise indicated, Informational Submittals include certifications, evaluation reports, results of source quality control activities, results of field quality control activities, Supplier instructions, reports of Suppliers' visits to the Site, sustainable design Submittals (that are not Closeout Submittals), delegated design Submittals that are not "instruments of service" Submittals, qualifications statements, and others.
 2. Informational Submittals, when submitted in accordance with the Contract and indicating full compliance with the Contract Documents, do not require explicit response from Engineer (or other entity to whom the Submittal is to be delivered); Engineer's (or other entity's) acceptance thereof will be indicated in the Engineer's Submittals log. Copy of Engineer's Submittals log is available to Contractor upon Contractor's written request.
 3. When Informational Submittal does not indicate full compliance with the Contract Documents, Engineer (or other entity to which Submittal is to be delivered) will indicate the non-compliance in a written response to Contractor.
- D. Closeout Submittals:
1. Closeout Submittals are so indicated in the Contract Documents and are, in general, required before the associated Work is completed, unless earlier submittal is required by the Contract Documents.
 2. Unless indicated otherwise in the Contract Documents, Closeout Submittals include maintenance contracts, operation and maintenance data, warranties, bonds (other than performance and payment bonds required prior to the start of construction), record documents, sustainable design closeout Submittals, software, keys, and others.
 3. Closeout Submittals are processed in the same manner as described above for Informational Submittals.
- E. Maintenance Materials Submittals:
1. Maintenance materials include spare parts, extra materials, tools, and similar items required to be furnished in accordance with the Contract Documents.
 2. Furnish required physical maintenance materials, delivered to Owner or facility manager (if other than Owner), as applicable, at the location(s) indicated in the Contract Documents, for the corresponding required Maintenance Materials Submittals.

3. Maintenance Materials Submittals are documentation of delivery to Owner's or facility manager, and their acceptance of, required physical maintenance materials.
4. Maintenance Materials Submittals are processed in the same manner as described above for Informational Submittals.

F. Additional Terms:

1. The following terms have the meanings indicated below, regardless of whether such terms are indicated using initial capital letters, and apply to singular and plural of each:
 - a. "Product data" means illustrations, standard schedules, performance charts, Supplier's published instructions, brochures, diagrams, and other information furnished by Contractor to illustrate or describe materials or equipment for some portion of the Work. In general, product data are manufacturers' pre-published information on the items proposed to be incorporated into the Work. Product data includes manufacturer's catalog pages and similar documents with contractor-made markings and indications of proposed products and proposed options.
 - b. The term "Shop Drawings", defined in the General Conditions, is supplemented by the following: Shop Drawings include: (1) fabrication and assembly drawings, usually having a title block, or (2) schedules, prepared specifically for the Project. Here, "schedules" means a Project-specific summary of systems and components, such as a schedule of HVAC equipment, schedules of doors and door hardware, or windows, or a schedule of paint systems by room and surface, or other, similar Project information in a tabular format. In contrast, construction Progress Schedules, Schedules of Submittals, and Schedules of Values are not Shop Drawings.

1.3 ADMINISTRATIVE REQUIREMENTS

A. Coordination:

1. Furnish Submittals well in advance of need for the associated material or equipment, or procedure (as applicable), in the Work and with ample time necessary for delivery of materials and equipment and to implement procedures following Engineer's approval or acceptance of the associated Submittal.
2. Work covered by a Submittal will not be included in payments by Owner until approval or acceptance (as applicable) of related Submittals has been obtained in accordance with the Contract Documents.

1.4 GENERAL PROVISIONS CONCERNING SUBMITTALS

A. Locations of Requirements:

1. Requirements concerning Submittals are generally located as follows:
 - a. General Conditions, as may be modified by the Supplementary Conditions, applicable to the Project.
 - b. This Section, which presents general requirements for Submittals applicable to the Project.
 - c. Other Division 01 Specifications that include general requirements for certain types of Submittals, such as Section 01 78 23 - Operation and Maintenance Data,, and others.
 - d. The "Submittals" Article of the various Specifications sections, which indicates the required Submittals for the associated Work. Furnish all Submittals required by the Contract Documents regardless of whether explicitly indicated in the associated Specifications' "Submittals" Article.

- B. This Section augments and supplements the requirements of the General Conditions, as may be modified by the Supplementary Conditions, relative to Submittals.

1.5 SCHEDULE OF SUBMITTALS

A. Informational Submittals: Submit the following:

1. Schedule of Submittals:
 - a. Timing:

- 1) Furnish Schedule of Submittals within time frames indicated in the General Conditions, as may be modified by the Supplementary Conditions.
 - 2) Submit updated Schedule of Submittals with each submittal of the updated Progress Schedule.
- b. Content: In accordance with the General Conditions, as may be modified by the Supplementary Conditions, and this Section. Requirements for content of preliminary Schedule of Submittals and subsequent Submittals of the Schedule of Submittals are identical. Identify on Schedule of Submittals all Submittals required in the Contract Documents. Updates of Schedule of Submittals shall show scheduled dates and actual dates for completed tasks. Clearly indicate Submittals that are on the Project's critical path. Indicate the following for each Submittal:
- 1) Date by which Submittal will be received by Engineer.
 - 2) Whether Submittal will be for a substitution or "or-equal".
 - 3) Date by which Engineer's response is required. Allow not less than 14 days for Engineer's review, starting on Engineer's actual receipt of each Submittal. Allow increased time for large or complex Submittals.
 - 4) For Submittals for materials or equipment, date by which material or equipment must be at the Site to avoid delaying the Work and to avoid delaying the work of others (if any).
- c. Prepare Schedule of Submittals using same software, and in same format, specified for Progress Schedules in Section 01 32 16 - Construction Progress Schedule.
- d. Coordinate Schedule of Submittals with the Progress Schedule.
- e. Schedule of Submittals that is not compatible with the Progress Schedule, or that does not indicate Submittals on the Project's critical path, or that places extraordinary demands on Engineer for time and resources, is unacceptable. Do not include Submittals not required by the Contract Documents.
- f. In preparing Schedule of Submittals:
- 1) Considering the nature and complexity of each Submittal, allow sufficient time for reviews and revisions.
 - 2) Allow reasonable time for: Engineer's review and processing of Submittals, for Submittals to be revised and resubmitted, and for returning Submittals to Contractor.
 - 3) Identify and accordingly schedule Submittals that are expected to have long anticipated review times.

1.6 PREPARATION OF SUBMITTALS

A. Prior to Submittal Preparation:

1. The General Conditions, as may be modified by the Supplementary Conditions, address Contractor's responsibility for submitting for Owner's acceptance identification of Subcontractors and Suppliers. Obtain Owner's acceptance before entering into subcontracts and purchase orders for the Work.
2. Comply with the Contract Documents relative to terms and conditions of subcontracts and purchase orders for the Work.
3. Contractor's responsibilities for the following are set forth in the General Conditions, as may be modified by the Supplementary Conditions, and as may be augmented elsewhere in the Contract Documents:
 - a. Obtaining field measurements and dimensions.
 - b. Determining and verifying required quantities.
 - c. Verifying compatibility of materials.
 - d. Apportioning the Work among Subcontractors, Suppliers, and Contractor.
 - e. Reconciling required materials, equipment, and other Contract requirements with Contractor's means, methods, techniques, sequences, and procedures of construction and with Contractor's safety and protection programs and precautions incident thereto.
 - f. Reviewing applicable provisions of the Contract Documents and obtaining from Engineer necessary interpretations or clarifications.

B. Submittal Identification:

1. Submittal Number: Shall be a unique number assigned to each individual Submittal. Assign Submittal numbers as follows:
 - a. First part of Submittal number shall be the applicable Specifications section number, followed by a hyphen.
 - b. Second part of Submittal number shall be a three-digit number (sequentially numbered from 001 through 999) assigned to each separate Submittal furnished under the associated Specifications section.
 - c. Example: Submittal number for the third Submittal furnished for Section 10 14 00 - Signage, would be "10 14 00-003".
2. Review Cycle Number: Each resubmittal of a given Submittal shall be indicated with a lower-case letter designation:
 - a. No letter designation for initial (first) submittal of the Submittal number.
 - b. "a" shall indicate first resubmittal of the Submittal number.
 - c. "b" shall indicate second resubmittal of the Submittal number.
3. Examples:

Example Description	Submittal Identification	
	Submittal No.	Review Cycle
Initial (first) review cycle of the third Submittal furnished under Section 10 14 00 – Signage	10 14 00-003-	
Second review cycle (first resubmittal) of third Submittal furnished under Section 10 14 00 - Signage	10 14 00-003-	a

C. Marking of Submittals:

1. Mark on each page of each Submittal and each individual component submitted with Submittal number and applicable Specifications paragraph.
2. Mark each page of each Submittal with the Submittal page number.
3. Each Shop Drawing sheet shall have title block with complete identifying information satisfactory to Engineer.
4. For product data Submittals, operation and maintenance data Submittals, and other Submittals:
 - a. Mark options to be furnished using broad, dark arrows or "clouds" clearly drawn around the relevant text or diagrams. Do not use highlighter for indicating options and features.
 - b. Indicate options and features not furnished using clear strikeouts through the text or diagrams.

D. Submittal Organization and Content – General:

1. Page or Sheet Size; Furnish Submittals with one or more of the following page or sheet sizes: (a) 8.5 IN by 11 IN; (b) 11 IN by 17 IN; (c) 22 IN by 34 IN; unless another sheet size is acceptable to Engineer.
2. Language: All parts of each Submittal shall be in the English language.
3. Units of Measurement: Clearly indicate units of measurement on Shop Drawings, product data Submittals, record documentation, and operation and maintenance data Submittals.
4. Organize each Submittal logically to facilitate ease of understanding and review.
5. To the extent practicable, arrange Submittal information in same order as requirements are written in the associated Specifications section.
6. To the extent practicable, package together Submittals for the same Specifications section. Do not furnish required information piecemeal.
7. For large or complex Submittals, include a title page and table of contents.
8. Include appropriately labeled fly sheets to separate distinct parts of each Submittal.
9. Ensure legibility of all pages in each Submittal.

10. Minimize extraneous and unnecessary information in Submittals for materials and equipment. Do not submit information not relevant to the Submittal and associated requirements of the Contract Documents.
 11. Contractor's, Subcontractor's, and Supplier's written comments on Shop Drawings and product data diagrams shall be colored green
 12. Do not submit under Specifications sections with title that include "Basic Requirements", unless the subject material or equipment is specified, in total, in a Specifications section with the words, "Basic Requirements" in its title.
- E. Electronic Documents Submittals:
1. Format: Electronic Documents Submittals shall be "portable document format" (.PDF) files unless expressly required otherwise by applicable provisions of the Contract Documents.
 2. Electronic Documents Submittals must be electronically searchable when delivered to Engineer and other recipients.
 3. Organization and Content:
 - a. Each Electronic Documents Submittal shall be one file; do not divide individual Submittals into multiple Electronic Documents files each unless file size will exceed 20 MB.
 - b. When Submittal is large or contains multiple parts, furnish PDF file with suitably titled electronic bookmark for each section of the Submittal.
 - c. Content shall be identical to paper or other original Submittal. First page of each Electronic Documents Submittal shall be Contractor's transmittal letter.
 4. Quality and Legibility: Electronic Documents Submittal files shall be made from the original and shall be clear and legible. Markings applied by Contractor, Subcontractor, or Supplier shall be clear, distinct, and readily apparent. Electronic Documents file shall be full size of original documents. Properly orient all pages for convenient reading on a computer display; do not furnish pages sideways or upside-down..
 5. Provide sufficient internet service, software, and systems for Contractor with capability appropriate for transmitting the necessary files and receiving responses from Engineer or other entities.
 6. Check not less than once per day for distribution of Electronic Documents Submittals responses and related Electronic Documents correspondence.
- F. Proposed "Or-Equals", Substitutes, and Deviations from Contract Requirements:
1. "Or-Equals":
 - a. The meaning of "or-equal" is addressed in Section 01 25 00 - Substitution Procedures.
 - b. Contractor's request for approval of "or-equals" is to be presented via the associated Action Submittal(s) and shall include the information required in provisions governing "or-equals" in specifications.
 - c. Expressly and prominently indicate, "Proposed Or-Equal" on the associated Action Submittals when Submittal is for an "or-equal".
 - d. Submittals requesting approval of an "or-equal" but not accompanied by the required, supplemental information will be deemed incomplete by Engineer and returned to Contractor without approval.
 2. Substitutes:
 - a. The meaning of "substitute" is indicated in Section 01 25 00 - Substitution Procedures.
 - b. Requests for approval of substitutes shall comply with Section 01 25 00 - Substitution procedures, and other relevant provisions of the Contract Documents.
 - c. Contractor's request for approval of substitute is separate from the associated Action Submittal(s). Action Submittals that request approval of a substitute when a separate, formal substitution request (furnished in accordance with the Contract Documents) was not previously furnished to Engineer, followed by formal approval in via an appropriate contract modification (typically either a Field Order or Change Order), will be deemed by Engineer as non-compliant with the Contract Documents and will be returned to Contractor without approval.

- d. Contractor is solely responsible for delays incurred due to substitutes proposed via Submittals that have not been previously duly approved via an appropriate Contract modification.
- e. Action Submittals for items or procedures approved via an appropriate Contract modification shall include a copy of the Contract modification in which the substitute was approved.
- 3. Submittals with Proposed Deviations from Contract Requirements:
 - a. When Submittal proposes deviations from requirements of the Contract Documents, the Submittal shall clearly and expressly indicate each proposed deviation.
 - b. Also comply with this Section's provision, in the Article below, on Contractor's transmittal letter expressly alerting Engineer to the proposed deviations.
 - c. Comply with requirements of the Contract regarding substitutes and "or-equals".
 - d. When deviation is proposed, also appropriately revise text of Contractor's approval, from that required below in this Article.
 - e. When Submittal includes deviations from Contract requirements and either the Submittal itself, Contractor's transmittal letter, or both, do not comply fully with Contract requirements for indicating deviations in Submittals and giving separate written notice thereof, Engineer's approval of such deviations will be deemed null and void unless Engineer's written response to the Submittal has expressly acknowledged such deviation and indicated Engineer's approval thereof.
 - f. Contractor is solely responsible for delays and costs incurred due to any and all Submittals with deviations from Contract requirements that were not properly, expressly indicated and approved in accordance with the Contract Documents. Deviations not duly approved in accordance with the Contract Documents may be deemed defective Work. Contractor is solely responsible for remedying defective Work and all associated cost and time impacts.

G. Contractor's Approval of Submittals:

- 1. Contractor's Review: Before transmitting Submittals to Engineer, review each Submittal to:
 - a. Ensure proper coordination of the Work.
 - b. Determine that each Submittal is in accordance with Contractor's desires.
 - c. Verify that Submittal contains sufficient information for Engineer to determine compliance with the Contract Documents.
- 2. Incomplete or inadequate Submittals will be returned without detailed review by Engineer.
- 3. Contractor's Approval Stamp and Signature:
 - a. Each Submittal furnished shall bear Contractor's approval stamp (or facsimile thereof) and signature, as evidence that the Submittal has been reviewed and approved by Contractor and verified as complete and in accordance with the Contract Documents.
 - b. Submittals without Contractor's approval and signature (as required by the contract Documents) will be returned to Contractor without further review by Engineer and deemed incomplete.
 - c. Engineer reserves the right to reject as incomplete Submittals where Contractor's approval signature appears computer-generated or reproduced without the active involvement or review of Contractor's signatory.
 - d. Contractor's approval shall contain the following text:

Project Name: _____
 Contractor's Name: _____
 Contract Designation: _____
 Date: _____

----- Reference -----

Submittal Title: _____
 Specifications: _____
 Section: _____

Page No.: _____
Paragraph No.: _____
Drawing No.: _____ of _____
Location of Work: _____

Submittal No. and Review Cycle: _____
Coordinated by Contractor with Submittal Nos.: _____

I hereby certify that Contractor has satisfied Contractor's obligations under the Contract Documents relative to Contractor's review and approval of this Submittal, including: (1) reviewed and coordinated the Submittal with other Submittals and with the requirements of the Work and the Contract Documents; (2) determined and verified all: field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, (b) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work, and (c) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; (3) confirmed the Submittal is complete with respect to all related data included in the Submittal; and (4) clearly and expressly indicated all proposed deviations (if any) from the requirements of the Contract Documents both in the Submittal itself and in the Submittal's transmittal letter. Accordingly, this Submittal is hereby approved for Contractor by:

Approved for Contractor by: _____

H. Resubmittals:

1. Refer to the General Conditions, as may be modified by the Supplementary Conditions, for requirements regarding resubmitting required Submittals.
2. In addition to limits on the quantity of resubmittals, as indicated in the General Conditions, Contractor shall furnish Submittals with such completeness, accuracy, and compliance with the Contract Documents to obtain Engineer's approval or acceptance, as applicable, without the total quantity of Submittals furnished, including all initial Submittals and all resubmittals, exceeding 125 % of the number of Submittals indicated on the Schedule of Submittals initially accepted by Engineer, plus a corresponding percentage of the quantity of Submittals required by Change Orders, Work Change Directives, and Field Orders.
3. Do not increase the scope of prior review cycle of the same Submittal.
4. Indicate on Contractor's transmittal letter how Submittal was revised from previous review cycle of the Submittal and where the revisions or corrections are located within the resubmittal.
5. Expressly address and provide response for all components previously transmitted by Engineer on prior review cycles of the subject Submittal. Where resubmittal lacks complete response to Engineer's prior comments, Engineer may deem such resubmittal as incomplete and return it to Contractor without further review.
6. Where part of the Submittal's prior review cycle was expressly approved or accepted, as applicable, by Engineer, do not include such items in subsequent resubmittals.
7. Indicate, "Not Yet Resolved—To Be Resubmitted at a Later Date" for any items not approved in prior review cycle of the Submittal for items not included in the subject resubmittal. Engineer reserves the right to deem incomplete Submittals "Not Approved" or "Revise and Resubmit". Furnishing incomplete or partial resubmittals is discouraged.
8. Resubmittal of Previously Approved or Accepted Items:
 - a. Do not resubmit on a given item previously approved or accepted, as applicable, by Engineer, without Engineer's advance consent. Consent will be given for bona-fide unavailability of a previously approved or accepted item where Contractor has acted in good faith in a timely manner with due diligence to comply with the Contract Times.

- b. Destroy or conspicuously mark “SUPERSEDED” on all documents having previously received Engineer’s approval or acceptance, as applicable, that are superseded by a resubmittal.

1.7 TRANSMITTAL OF SUBMITTALS BY CONTRACTOR

- A. Contractor’s Transmittal Letters for Submittals:
 1. Furnish separate transmittal letter with each Submittal. Each Submittal shall be for one Specifications section.
 2. At beginning of each transmittal letter, include a reference heading indicating: Contractor’s name, Owner’s name, Project designation, Contract designation, transmittal number, and Submittal number (with review cycle).
 3. “Or-Equals”: When the Submittal is proposing an “or-equal”, expressly so indicate on Contractor’s transmittal letter.
 4. Proposed Deviations from Contract Requirements: When the Submittal proposes deviations from requirements of the Contract Documents, transmittal letter shall specifically describe each proposed deviation:
- B. Submittal Delivery Method:
 1. This provision presents general requirements for delivery of all Submittals unless otherwise required elsewhere in the Contract Documents.
 2. Furnish Submittals as Electronic Documents delivered in accordance with Section 01 31 26 – Electronic Communication Protocols..
 3. Furnish Submittals to Engineer and each other entity indicated in the Contract Documents as receiving a Submittal directly from Contractor.
 4. Address Submittals to Engineer as follows: HDR, 4401 West Gate Blvd., Suite 400, Austin, TX 78745, to attention of Lisa Singer, Lisa.Singer@hdrinc.com.
- C. Closeout Submittals –Transmittal and Delivery:
 1. Furnish the following Closeout Submittals in accordance with general requirements for transmitting and delivering Submittals, indicated above in this Article: maintenance contracts; warranty bonds (when required) and other bonds required for specific materials, equipment, or systems; warranty documentation; and sustainable design closeout documentation (when required). On documents such as maintenance contracts and bonds, include on each document furnished original (“wet”) signature of entity issuing said document. When original “wet” signatures are required, furnish such Submittals to Engineer both on original paper and as Electronic Documents, and to other entities furnish as indicated above in this Article for general requirements for Submittals.
 2. Operations and Maintenance Manuals: Submit in accordance with Section 01 78 23 - Operation and Maintenance Data.
 3. Record Documents.
 4. Software: In addition to software installed on Owner’s computer system, furnish number of copies of software required in the Specifications section where the software is specified. Preferred means of transmittal is via secure file transfer directly to Owner (or facility manager, if other than Owner) via secure file transfer method mutually acceptable to software developer and the receiving entity. When secure file transfer is used, submit to Engineer documentation signed or electronically acknowledged by Owner that the files were received. Where such software is available only on the software developer's portable media, furnish such software on software developer’s original, portable media, sealed in software developer’s original, unopened, clearly labeled packaging.
- D. Maintenance Materials Submittals – Delivery:
 1. Deliver physical maintenance materials required by the Contract Documents in accordance with applicable provisions of the Contract.
 2. Submit documentation of delivery of (Maintenance Materials Submittals) in accordance with general requirements for Submittals as indicated in this Section.

1.8 ENGINEER'S REVIEW OF SUBMITTALS

- A. This Article applies to review of all Submittals by Engineer or other entity to whom the Contract Documents require such Submittal be furnished.
- B. Timing:
 - 1. Timing of Engineer's review will be in accordance with the Schedule of Submittals accepted by Engineer.
 - 2. When Submittal is delivered to Engineer on a date other than that indicated in the Schedule of Submittals accepted by Engineer, duration of Engineer's review may differ from that indicated in the Schedule of Submittals, based on Engineer's availability and resources. Engineer will make good-faith effort to furnish responses to Submittals in a timely manner.
 - 3. Contractor is responsible for communicating to Engineer when a Submittal is on the Project's critical path.
- C. Engineer's Review:
 - 1. Markings:
 - a. Comments or responses marked directly on Submittal by Engineer (or other entity reviewing Submittal) will be colored red.
 - b. Engineer may also present narrative comments on a comment sheet inserted by Engineer into the Submittal or included on Engineer's transmittal letter for the Submittal. Such comments will be in black text. When a separate comment sheet is included by Engineer, such sheet will be clearly identified as Engineer's comments.
 - 2. Engineer's review and disposition assigned to Submittal are subject to the following:
 - a. Submittal disposition is subject to: Engineer's comments on the Submittal; disclaimer language on Engineer's Submittal transmittal letter; Engineer's Submittal review stamp (when used) or equivalent (when used); and this provision.
 - b. Engineer's review is only for general compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, and for general compliance with the information given in the Contract Documents.
 - c. Contractor shall be solely responsible for complying with the Contract Documents, as well as with Supplier instructions consistent with the Contract Documents, Owner's directions, and Laws and Regulations. Contractor is solely responsible for obtaining, correlating, confirming, and correcting dimensions at the Site; quantities; information and choices pertaining to fabrication processes; means, methods, sequences, procedures, and techniques of construction; safety precautions and programs incident thereto; and for coordinating the work of all trades.
 - d. Engineer is not responsible for resubmittals not yet furnished by Contractor or tracking Contractor's progress on resubmittals.
 - 3. Documents not required by the Contract Documents but nonetheless furnished by Contractor as submittals will not be reviewed by Engineer.
- D. Meaning of Submittal disposition Assigned by Engineer:
 - 1. Action Submittals:
 - a. "Approved" (Action Code A): Upon return of Submittal marked "Approved", order, ship, or fabricate materials and equipment included in the Submittal (pending Engineer's approval or acceptance, as applicable, of production-related qualifications statements and certifications, and required source quality control Submittals) or otherwise proceed with the Work in accordance with the Submittal and the Contract Documents.
 - b. "Approved as Noted" (Action Code B): Upon return of Submittal marked "Approved as Noted", order, ship, or fabricate materials and equipment included in the Submittal (pending Engineer's approval or acceptance, as applicable, of production-related qualifications statements and certifications, and required source quality control Submittals) or otherwise proceed with the Work in accordance with the Submittal and the Contract Documents, and in accordance with Engineer's comments and notes indicated in Engineer's Submittal response

- c. “Revise and Resubmit” (Action Code C): Upon return of Submittal marked “Revise and Resubmit”, make the revisions necessary and indicated and resubmit to Engineer for approval.
 - d. “Not Approved” (Action Code D): This disposition indicates material or equipment that cannot be approved. “Not Approved” disposition may also be applied to Submittals that are incomplete. Upon return of Submittal marked “Not Approved”, repeat initial submittal procedure utilizing approvable material or equipment, with a complete Submittal clearly indicating all information required.
 - 2. Informational, Closeout, and Maintenance Materials Submittals:
 - a. “Accepted” (Action Code F): Information included in Submittal complies with the applicable requirements of the Contract Documents and is acceptable. No further action by Contractor is required relative to such Submittal, and the Work covered by the Submittal may proceed. Materials and equipment with Submittals with this disposition may be shipped or operated, as applicable. Submittals assigned “Accepted” by Engineer (or other reviewing entity) does not indicate Engineer’s acceptance of the associated Work, which is indicated only as set forth in the General Conditions and Section 01 77 19 – Closeout Requirements.
 - b. “Not Acceptable” (Action Code G): Submittal, or part thereof, does not indicate full compliance with applicable requirements of the Contract Documents and is not acceptable. Provide labor, materials, equipment, services, and incidentals necessary to properly and accurately revise Submittal and resubmit to indicate acceptability and compliance with the Contract Documents
 - 3. Other:
 - a. “Submittal Not Reviewed” (Action Code E): Documents so marked by Engineer are not required by the Contract Documents. Submittals may also be marked with this disposition when information in the document was previously reviewed and approved or accepted by Engineer, as applicable.
- E. Distribution of Engineer’s Responses:
- 1. Unless otherwise indicated in the Contract Documents, Engineer will distribute written responses (as Electronic Documents) to Submittals to the following:
 - a. Contractor.
 - b. Owner.
 - c. Engineer’s file.
 - 2. Engineer’s acceptance of Informational Submittals, Closeout Submittals, and Maintenance Materials Submittals will be recorded in Engineer’s Submittal log. Copy of Engineer’s Submittals log is available from Engineer upon written request of Owner or Contractor. If no such request is received by Engineer, Engineer will distribute copy of Engineer’s Submittals log once per month (when Submittals have been received or acted on by Engineer). Engineer may distribute copy of Engineer’s Submittals log as an Electronic Document or as handout at construction progress meetings.
 - 3. Paper copies of Engineer’s Submittal responses will not be distributed unless otherwise required by the Contract Documents or otherwise agreed to by Engineer.
 - 4. Contractor is responsible for forwarding Engineer’s Submittals responses to Subcontractors and Suppliers as appropriate, and for coordinating the Work of all trades.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 ATTACHMENTS

- A. The documents listed below, following this Section’s “End of Section” designation, are part of this Specifications Section:
 - 1. “Exhibit 01 33 00-A - Engineer’s Submittal Transmittal” (one page).

END OF SECTION

Engineer's Submittal Transmittal

No. _____ - _____
(Spec Section) (Series)

Project Name:				Date Received:	
Project Owner:				Checked By:	
Contractor:		HDR Engineering, Inc.		Log Page:	
Address:		Address:		HDR No.:	
				Spec Section:	
				Drawing/Detail No.:	
Attn:		Attn:		1st. Sub	
Date Transmitted:		Previous Transmittal Date:			
Item No.	Submittal No.	Description (indicate number of copies where paper copies of physical Samples are returned)	Manufacturer	Supplier Dwg or Data No.	Engineer's Disposition (Action Code) *
1					
2					
3					
4					
5					
Remarks:					
* Legend for Action Code indicated above, assigned by Engineer:					
Action Submittal: A – Approved B – Approved as Noted C – Revise and Submit D – Not Approved			E – Submittal Not Reviewed Informational, Closeout, or Maintenance Materials Submittal: F – Accepted (this code normally recorded in Engineer's Submittals log). G – Not Acceptable		

Engineer's Disclaimer (for Submittals that do not involve delegated design):

- Submittal action code is subject to: Engineer's comments on the Submittal, comment sheets (if any), and this transmittal letter; disclaimer language on Engineer's Submittal review stamp or equivalent; and Specifications Section 01 33 00 – Submittal Procedures.
- Engineer's review is only for general compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, and for general compliance with the information given in the Contract Documents.
- Contractor shall be solely responsible for complying with the Contract Documents, as well as with Supplier instructions consistent with the Contract Documents, Owner's directions, and Laws and Regulations. Contractor is solely responsible for obtaining, correlating, confirming, and correcting dimensions at the Site; quantities; information and choices pertaining to fabrication processes; means, methods, sequences, procedures, and techniques of construction; safety precautions and programs incident thereto; and for coordinating the work of all trades.

Distribution:	Contractor	File	Field	Owner	Other
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SECTION 01 57 05
TEMPORARY CONTROLS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Requirements for temporary controls during construction, including:
 - a. Temporary erosion and sediment controls.
 - b. Noise control.
 - c. Dust control.
 - d. Temporary pest and rodent controls.
 - e. Water control, including storm water, surface water, and groundwater.
 - f. Pollution control, including solid waste, water pollution, atmospheric pollution, and other types of pollution.
 - g. Odor control.

B. Scope:

1. Contractor shall provide and maintain materials, equipment, labor, services, and temporary construction as necessary and required to control environmental conditions at the Site and adjacent areas during construction.
2. Contractor shall pay all costs, including fines and civil penalties, if any, for failure to implement and maintain temporary controls in accordance with the Contract Documents and Laws and Regulations. Contractor is not eligible for increase in Contract Price or Contract Times due to failure to comply with requirements for temporary controls.
3. Maintain temporary controls until no longer necessary or required. Provide temporary controls at all times when Contractor is working at the Site.

C. Related Requirements:

1. Include, but are not necessarily limited to, the following:
2. Section 01 74 00 - Cleaning.
3. Section 31 23 10 - Excavation and Backfill
4. Section 31 23 33 - Trenching, Backfilling, and Compacting for Utilities.
5. Section 31 23 19 - Dewatering.

1.2 QUALITY ASSURANCE

A. Regulatory Requirements:

1. Comply with applicable provisions and recommendations of the following:
 - a. Erosion control standards: Standards and Specifications for Soil Erosion and Sediment Control in Developing Urban Areas by the United States Department of Agriculture (USDA), Soil Conservation Service, College Park, Maryland.

1.3 SUBMITTALS

A. Action Submittals:

1. Submit the following:
 - a. Shop Drawings:
 - 1) Plan for construction staging and maintenance of the Site relative to erosion and sediment controls. Indicate on a site plan approximate areas of planned disturbance of soils and soil cover over time during the Project. For areas not indicated in the Contract Documents as being disturbed and that Contractor proposes to disturb, Shop Drawing shall include proposed erosion and sediment control measures for the additional areas.
 - 2) Location and details of each temporary settlement basin.
 - b. Product Data:

- 1) Silt fencing materials.
 - 2) Other materials proposed for temporary erosion and sediment controls, when requested by Engineer.
- B. Informational Submittals:
1. Submit the following:
 - a. Procedural Submittals:
 - 1) Proposed dust control measure, when Submittal is requested by Engineer.
 - b. Field Quality Control:
 - 1) When requested by Engineer, promptly obtain and submit results of field measurements and field test data substantiating compliance of Contractor's temporary controls with the Contract Documents.

PART 2 - PRODUCTS

2.1 MATERIALS FOR TEMPORARY EROSION AND SEDIMENT CONTROLS

- A. Materials for temporary erosion and sediment controls shall be as shown or indicated on the Drawings.

PART 3 - EXECUTION

3.1 NOISE CONTROL

- A. Noise Control – General:
1. Contractor's vehicles, construction equipment, and machinery shall minimize noise emissions to greatest degree practicable. When necessary, provide mufflers and silencers on construction equipment, machinery, and vehicles, and provide temporary sound barriers sound-absorbing blankets, sound-reducing enclosures, modified backup alarms, and other mitigation measures when necessary.
 2. Noise threshold levels shall comply with Laws and Regulations, including (a) OSHA requirements and recommendations, and (b) local ordinances or other Laws or Regulations.
 3. Noise emissions shall not interfere with the work of Owner, facility manager (if other than Owner), or others. The use of noise-producing signals, including horns, whistles, alarms, and bells shall be for safety warning and emergency purposes only.
 4. Music or entertainment systems, including personal and vehicle radios, media players, and the like, when used, shall not be audible at the property line and shall not disturb others at the Site.
 5. Field Quality Control of Noise:
 - a. If Owner or Engineer believes potential exists that allowable noise levels are being exceeded, Contractor will be required to, and shall promptly perform, appropriate noise monitoring in presence of Owner or Engineer and shall submit written results to Engineer.
 - b. Owner and Engineer reserve the right to perform independent noise monitoring at any time during the Work.
 6. If noise level exceeds allowable maximum, Contractor shall immediately cease the activity emitting the excessive noise and promptly implement noise-mitigating measures to comply with noise limitations.

3.2 DUST CONTROL

- A. Dust Control – General:
1. Control objectionable dust caused by Contractor's operation of vehicles and construction equipment and machinery, site clearing, demolition, cleaning, and other actions. To minimize airborne dust, apply water or use other methods subject to acceptance of Engineer and approval of authorities having jurisdiction.

- 1 2. Contractor shall prevent blowing and movement of dust from exposed soil surfaces and
2 access roads to reduce onsite and off-Site damage, inconvenience, nuisances, and health
3 hazards associated with dust emissions from Contractor's activities.
- 4 B. Dust Control Methods:
- 5 1. Dust control may be accomplished by irrigation in which the dust-prone work activity or
6 area of the Site is sprinkled with water until the surface is moist.
- 7 2. Apply dust controls as frequently as necessary or required without creating inconveniences,
8 nuisances, or hazards, such as excessive mud and ponding of water at or adjacent to the Site.
9 Do not use water for dust control when water will cause hazardous or objectionable
10 conditions such as ice, mud, ponds, and pollution.
- 11 3. Provide dust control that is non-polluting and does not contribute to tracking-out of dirt,
12 mud, and dust onto pavement.
- 13 4. Do not allow water used for dust control to discharge to storm water drainage system or
14 surface waters.
- 15 5. Where appropriate, reduce travel speed of construction vehicles and construction equipment
16 to reduce the potential for dust emissions arising from vehicle and equipment passage.
- 17 6. Where appropriate, apply gravel or other appropriate binder to access roads and parking
18 areas.
- 19 C. Removal of Dust and Dirt from Pavement and Other Travelled Ways:
- 20 1. Remove dust, mud, and dirt from roads, parking areas, and other travelled ways not less
21 than the frequency indicated in Section 01 74 00 - Cleaning.
- 22 2. Perform dust and dirt removal from travelled ways by mechanical wet vacuum sweeping or
23 other method acceptable to Engineer.
- 24 3. Remove mud from roads, parking areas, and other travelled ways by appropriate means,
25 including scraping. Avoid damaging surface of travelled way. Remedy damage to roads,
26 parking areas, and travelled ways resulting from mud removal activities.
- 27 D. Removal of Dust and Dirt from Buildings and Structures:
- 28 1. When dust and dirt from Contractor's activities has accumulated to a noticeable or
29 objectionable extent (compared with preconstruction conditions) on buildings or structures,
30 remove the dust and dirt caused by Contractor's operations by appropriate methods,
31 including power-washing using mild detergent. Remedy damage caused by dust, dirt, and
32 power-washing.
- 33 2. Dust in sensitive equipment, such as electrical and control panels, instruments, HVAC
34 systems and other equipment shall be cleaned by a Subcontractor specializing in cleaning
35 such items.
- 36 3. During the Project, remove objectionable and noticeable dust, dirt, and mud in areas
37 occupied by Owner or facility manager, and Contractor's work areas, resulting from
38 Contractor's activities. Owner and facility manager will take reasonable measures to avoid
39 tracking dust, dirt, and mud into their occupied areas.
- 40 4. Comply with Section 01 74 00 - Cleaning.

41 **3.3 PEST AND RODENT CONTROL**

42 A. Pest and Rodent Control – General:

- 43 1. Provide pest and rodent controls as necessary to prevent infestation of the Site, storage
44 areas, and adjacent areas.
- 45 2. Pests and rodents include, but are not limited to: flies, mosquitoes, gnats, midges, stinging
46 insects, other insects and the like, worms, rats, mice, moles, voles, and similar animals,
47 objectionable numbers and species of birds, and others.
- 48 3. Implement appropriate pest and rodent controls when pests, rodents, or both are apparent at
49 the Site or offsite storage, staging, or laydown areas.
- 50 4. Control or remove pests and rodents from adjacent properties when Contractor's activities
51 have fostered or exacerbated pest or rodent problems. For example, ground vibration, such
52 as that associated with horizontal directional drilling, may cause migrations of subterranean

- 1 animals such as moles and voles. Coordinate with affected property owners regarding
2 appropriate control methods, materials, equipment, and disposal techniques.
- 3 B. Methods, Materials, and Equipment for Pest and Rodent Control during Construction:
- 4 1. Employ methods and use materials and equipment for pest and rodent control that do not
5 adversely affect conditions at the Site or on adjacent and nearby properties.
- 6 2. Do not use control methods or poisons injurious to household pets or animals other than
7 targeted pests and rodents.
- 8 3. Avoid control methods that present hazards to humans, including children.
- 9 C. Disposal of Pests and Rodents:
- 10 1. In accordance with Laws and Regulations, promptly and properly dispose of pests and
11 rodents trapped or otherwise controlled. Do not bury or dispose of deceased animals at the
12 Site or in adjacent areas.

13 3.4 WATER CONTROL

- 14 A. Water Control – General:
- 15 1. During the Project, provide methods to appropriately control storm water, surface water,
16 water from excavations and structures, groundwater flows altered by Contractor’s activities,
17 and groundwater discharges from the Site, to prevent damage to the Work, the Site, adjacent
18 properties, and downstream properties.
- 19 2. Control trenching, filling, and grading to direct water away from excavations, pits, tunnels
20 and other construction areas, and prevent water from entering existing buildings and
21 structures.
- 22 3. Properly manage and control storm water, surface water, and groundwater entering the Site
23 from upstream, where such flows or discharges have potential to affect the Work or to be
24 exacerbated by Contractor’s activities.
- 25 4. Avoid ponding of water onsite, except in specially-designated, temporary settlement basins.
26 Where water ponding occurs during construction, perform rough grading to eliminate
27 ponding.
- 28 5. Prevent water from discharging onto roads, parking areas, paved or finished areas, and other
29 travelled ways. Prevent storm water runoff from discharging across access roads and
30 parking areas.
- 31 B. Materials, Equipment, and Facilities for Water Control:
- 32 1. Provide, operate, and maintain materials, equipment, and facilities of adequate size,
33 materials, and capacity to control storm water, surface water, groundwater, and discharges
34 from tanks.
- 35 C. Discharge and Disposal of Water during Construction:
- 36 1. Discharge storm water, surface water, and groundwater from the Site, and discharges of
37 clean water from tanks, to proper discharge locations, in accordance with Laws and
38 Regulations and the Contract Documents.
- 39 2. Prevent damage and nuisances arising from water discharges on the Site and discharges
40 from the Site.
- 41 3. Dispose of water in manner that avoids flooding, erosion, sediment transport, and other
42 damage, in accordance with Laws and Regulations.
- 43 4. Avoid overland discharges from the Site and construction activities to adjacent properties,
44 Water discharges from the Site and construction activities shall be via a storm water
45 drainage route or conduit with sufficient capacity for the flow under associated weather and
46 flow conditions and in accordance with requirements of authorities having jurisdiction
- 47 6. Do not discharge storm water, surface water, groundwater, or clean water from tanks, into
48 sanitary sewers. Obtain consent of sewerage system owner before discharging such flows
49 into existing combined sewers.
- 50 7. Obtain sewerage system owner’s consent and approval before discharging polluted water to
51 sewerage system.

1 **3.5 POLLUTION CONTROL**

2 A. Pollution Control – General:

- 3 1. Provide means, methods, and facilities necessary and required to prevent contamination of
- 4 soil, water, and atmosphere caused by accumulation or discharge of substances and
- 5 materials that are either noxious, polluting, or both, from or caused by construction and
- 6 related activities.
- 7 2. Construction equipment and machinery shall comply with Laws and Regulations.

8 B. Spills and Contamination:

- 9 1. Perform emergency containment, cleanup, and remedy of spills and contamination resulting
- 10 from construction and related activities. Promptly remove and properly dispose of
- 11 contaminated soils and liquids.
- 12 2. Excavate contaminated material and properly dispose of off-Site, and replace with suitable
- 13 compacted fill and appropriate cover.

14 C. Protection of Surface Water and Groundwater:

- 15 1. Provide and maintain appropriate, temporary measures to prevent harmful substances from
- 16 entering surface water, groundwater, and drinking water. Prevent disposal of wastes,
- 17 effluents, chemicals, and the like into or adjacent to groundwater, surface water, drainage
- 18 routes (including swales, ditches, and storm sewers) and drinking water.
- 19 2. Obtain sewerage system owner’s consent and approval prior to discharging into sanitary
- 20 sewers or combined sewers. Do not discharge pollutants not in accordance with Laws and
- 21 Regulations into combined sewers, or sewers tributary to combined sewers, when wet
- 22 weather overflows to receiving waters may occur.

23 D. Atmospheric Pollutants:

- 24 1. Provide and maintain temporary controls for atmospheric pollutants resulting from
- 25 construction and related activities, whether to outdoor or indoor atmospheres.
- 26 2. Prevent harmful dispersal of pollutants into atmosphere.
- 27 3. Do not discharge exhaust from internal combustion engines or combustion operations into
- 28 buildings, structures, or near ventilation intakes for buildings or structures.
- 29 4. Prevent toxic and noxious concentrations of chemicals, fumes, and vapors.

30 E. Solid Waste:

- 31 1. Provide and maintain temporary controls for managing solid waste related to the Work.
- 32 2. Prevent solid waste from:
- 33 a. Becoming airborne or blowing in the wind.
- 34 b. Being inadvertently transmitted to adjacent, offsite properties, and areas of the Site not
- 35 part of the Project.
- 36 c. Being deposited in or discharging to surface waters, open process tanks, and drainage
- 37 routes.
- 38 3. Properly handle and dispose of solid waste. Burning or burying solid waste, including
- 39 unused materials, at the Site or adjacent areas is prohibited.
- 40 4. Cleaning and Disposal of Debris: Comply with applicable requirements of the General
- 41 Conditions, as may be modified by the Supplementary Conditions, and Section 01 74 00 -
- 42 Cleaning.
- 43 5. Do not mix or store in the same container solid waste containing Constituents of Concern
- 44 (and constitutes, or may constitute, a Hazardous Environmental Condition) with solid waste
- 45 that does not contain Constituents of Concern.
- 46 6. Store solid waste in appropriate, covered, containers.
- 47 7. Promptly, and at regular intervals, remove solid waste from the Site for transport and
- 48 disposal in accordance with Laws and Regulations.

49 **3.6 ODOR CONTROL DURING CONSTRUCTION**

50 A. Odors – General:

1. Avoid discharges of unpleasant or noxious odors from construction and related activities. Whether nature of the Work is such that odor generation is unavoidable, provide appropriate temporary controls for odors.
2. Give priority to avoiding odor generation, followed by:
 - a. Counteracting (treating the cause of) odors.
 - b. Containing odors.
 - c. Odor masking as the last resort for odor control.

3.7 EROSION AND SEDIMENT CONTROLS

A. Installation and Maintenance of Temporary Erosion and Sediment Controls – General:

1. General Provisions:
 - a. Provide temporary erosion and sediment controls as shown and indicated on the Drawings and as indicated in this Section and elsewhere in the Contract Documents, and as necessary for compliance with Laws and Regulations.
 - b. Provide erosion and sediment controls as the Work progresses into areas where ground cover was previously undisturbed.
 - c. Use necessary and required methods to appropriately control erosion and sediment transport in storm water runoff, including using soil conservation-oriented construction practices (including scheduling and sequencing), vegetative measures, and temporary physical controls.
 - d. Use best management practices (BMP) in accordance with Laws and Regulations, and regulatory requirements indicated in this Section's "Quality Assurance" Article (unless more-stringent requirement are shown or indicated in the Contract Documents), to control erosion and sediment transport in storm water runoff during the Project.
 - e. Plan and execute disturbances of soils and soil cover, and earthwork by methods to control storm water runoff from exposed soil (including stockpiles, borrow areas, and spoil disposal areas), banks of surface waters affected by the Work, and discharges of groundwater, to prevent erosion and sediment transport.
 - f. Where areas must be cleared for storage of materials or equipment, or for temporary facilities, provide measures for regulating storm water discharges and controlling erosion and sediment transport. Where Owner is a co-permittee with Contractor for applicable permits, or when plans for temporary erosion and sediment controls were sealed and signed by Engineer, such methods are subject to Engineer's approval or acceptance, as applicable.
 - g. Provide erosion and sediment controls, including stabilization of soils, at the end of each workday.
2. Coordination:
 - a. Coordinate temporary erosion and sediment controls with this Section's requirements on water control.
 - b. Coordinate temporary erosion and sediment controls with construction of permanent drainage facilities, permanent erosion controls and soil stabilization (if any), and other Work, to the extent necessary for effective and continuous erosion and sediment controls.
3. Before commencing activities that will disturb soil or soil cover at the Site or other areas to be occupied by Contractor during the Project, provide all appropriate temporary erosion and sediment controls required by the Contract Documents for the areas where soil or soil cover will be disturbed.
4. Vegetation Removal and Disturbance:
 - a. Remove only those shrubs, grasses, trees, and other vegetation that must be removed for construction.
 - b. Protect undisturbed vegetation. Do not wantonly or unnecessarily drive construction vehicles and equipment over undisturbed vegetation and soil cover.
 - c. Promptly stabilize exposed soil where vegetation or soil cover was unnecessarily disturbed. Fill and restore ruts and damage to vegetation and soil cover caused by wanton or unnecessary passage of construction vehicles and equipment.

5. Access Roads and Parking Areas:
 - a. When possible, locate and construct temporary access roads and parking areas to avoid adverse effects on the environment.
 - b. Provide measures to regulate drainage, avoid erosion and sediment transport in storm water runoff, and minimize damage to vegetation and soil cover.
6. Earthwork and Temporary Controls:
 - a. Perform excavation, fill, and related activities in accordance with Section 31 23 10 - Excavation and Backfill, Section 31 23 33 - Trenching, Backfilling, and Compacting for Utilities and Section 31 23 19 - Dewatering.
 - b. Temporary erosion and sediment control measures may include, but are not limited to, using berms, swales and ditches, silt fencing, straw bale sediment barriers, gravel or crushed stone, mulching and soil stabilization, slope drains, and other methods. Apply such temporary measures to erodible soils and other erodible materials exposed by construction activities.
 - c. Minimize areas of bare soil exposed at one time. Provide fills and spoil areas by selectively placing fill and spoil materials to reduce or eliminate exposed erodible soils.
 - d. Exercise special care on and above steep slopes, where disturbance of vegetation and soil cover shall be minimized to greatest extent reasonably practicable.
 - e. Protect stockpile storage not in active use by providing suitable, durable covering prevent sediment transport in storm water runoff and windblown transport. Covering shall be suitable for outdoor exposure.
7. Inspection and Maintenance:
 - a. Periodically inspect areas of non-stabilized, erodible soils, including all areas of soil cover disturbance and stockpiles, for evidence of start of erosion and sediment transport. Promptly implement corrective action as necessary and appropriate to control erosion and sediment transport. Continue inspections and corrective action until soils are permanently stabilized and permanent vegetation has been appropriately established.
 - b. Inspect not less often than once per week and after each precipitation event of 0.5 IN of water or greater.
 - c. Repair or replace damaged erosion and sediment controls within 24 HRS of Contractor becoming aware of such damage.
 - d. Periodically remove sediment that has accumulated in or behind sediment and erosion controls. Remove sediment not less often than when sediment is at approximately one-half of storage capacity of associated control element, unless more-frequent interval is indicated elsewhere in the Contract Documents Properly dispose of sediment.
8. Duration of Temporary Erosion and Sediment Controls:
 - a. Maintain temporary erosion and sediment controls in effective, working condition until soil cover of the associated storm water drainage area has been permanently stabilized.
9. Work Stoppage:
 - a. If the Work is temporarily stopped or suspended for any reason, Contractor shall provide additional temporary controls necessary to prevent environmental damage to the Site and adjacent areas while the Work is stopped or suspended.
 - b. When temporary erosion and sediment controls remain in place during periods of stopped or suspended Work, continue to perform Contractor's obligations relative to periodic inspection and maintenance of temporary erosion and sediment controls, including removal of accumulated sediment.
10. Failure to Provide Adequate Temporary Erosion and Sediment Controls:
 - a. If Contractor repeatedly fails to satisfactorily control erosion and sediment transport in storm water runoff, Owner reserves the right to use Owner's own forces or employ a third-party contractors for temporary erosion and sediment control. Owner's costs for such work, including engineering and inspection costs, will be deducted from amounts due Contractor, as set-offs in accordance with the Contract Documents.

B. Silt Fencing:

1. Provide and maintain silt fencing in a vertical plane, at the locations shown or indicated in the Contract Documents and where necessary or required.
2. Locations of Temporary Silt Fencing:
 - a. Where possible, provide silt fencing along contour lines, so each run of silt fencing is at the same elevation.
 - b. On slopes, provide temporary silt fencing at intervals that do not exceed the maximum indicated in the following table:

Silt Fence Spacing on Slopes	
Slope (percent)	Maxim Allowable Length of Slope Above Each Silt Fence (feet)
2 and less	150
2.1 to 5	100
5.1 to 10	50
10.1 to 20	25
20.1 to 25	20
25.1 to 40	15
40.1 to 50	10

- c. Provide temporary silt fencing around perimeter of each stockpile of topsoil, general fill material, and excavated spoil material. Install silt fencing before expected soil is subject to precipitation. Maintain until stockpile is removed.
- d. Do not install temporary silt fencing at the following types of locations:
 - 1) Area of concentrated storm water flows such as ditches, swales, or channels.
 - 2) Where rock or rocky soils prevent full and uniform anchoring of silt fencing.
 - 3) Across upstream or discharge ends of storm water conduits.
3. Installation:
 - a. Securely fasten wire mesh to posts, and securely fasten filter cloth to wire mesh.
 - b. When two sections of filter cloth are adjacent to each other, fold over edges and overlap by not less than 6 IN and securely fasten to wire mesh.
 - c. Embed posts in the ground to the depth necessary for proper controls; embed posts to not less than 16 IN below ground.
 - d. Filter cloth and wire mesh shall extend not less than 8 IN below ground and not less than 16 IN above ground.
 - e. Remove accumulated sediment from behind silt fencing as necessary or required. Repair and reinstall silt fencing as necessary or required.
4. Maintenance:
 - a. Do not allow formation of concentrated storm water flows on slopes above temporary silt fencing unless so shown or indicated in the Contract Documents. If unauthorized concentrated storm water flows occur, stabilize the slope via other appropriate stabilization methods as necessary and required to prevent flow of concentrated storm water flows toward temporary silt fencing.

C. Straw Bale Dike.

1. Provide temporary straw bale dikes where shown or indicated and where necessary or required, including in swales, along contours, and along toe of slopes.
2. Provide temporary straw bales in shallow excavation as wide as the bale and approximately 4 to 6 IN below surrounding grade.
3. Ends of straw bales shall tightly abut ends of adjacent straw bales.

- 1 4. Securely install each straw bale using two support posts, driven into the ground not less than
2 1.5 to 2 FT below bottom of straw bale. Top of post shall be flush with top of straw bale.
3 Angle first post for each straw bale toward the previously-installed straw bale.
4 5. Frequently inspect straw bales and repair or replace as required. Remove accumulated
5 sediment and debris from behind straw bales.
- 6 D. Mulching and Soil Stabilization:
- 7 1. Use mulching to temporarily stabilize exposed soil, including spoil and fill materials.
- 8 a. Immediately following final grading, provide mulch and stabilize with mats or netting,
9 or sprayed soil stabilization emulsion with fiber additive.
- 10 b. Application of mulching for soil stabilization shall be as follows.
- 11 1) Non-Rotted Straw or Salt Hay: Provide 1.5 to two tons per acre.
- 12 2) Soil stabilization emulsions, when used, shall be applied in accordance with
13 manufacturer's instructions, and shall be applied with mulch or stabilization fibers.
- 14 3) Wood-Fiber or Paper-Fiber Application: Provide 1,500 LBS per acre, installed by
15 hydroseeding.
- 16 c. Where mats or netting are used:
- 17 1) Cover entire area to be stabilized with mats or netting.
- 18 2) Provide anchoring trenches at the top and bottom of slopes to receive mats or
19 netting. Bury at least the top and bottom ends of mat or netting, 4 IN or more
20 wide, at top and bottom of slope. Ensure that mesh or netting is secure and will not
21 wash out over time. Tamp trench full of soil. 4 IN from trench, secure mat or
22 netting with appropriate staples at intervals of 10 IN.
- 23 3) Overlap adjacent strips of mat or netting by not less than 4 IN.
- 24 E. Protection of Storm Water Drainage Inlets and Catch Basins:
- 25 1. Protect each drainage inlet and catch basin that has potential to receive storm water runoff
26 from exposed soils and does not discharge into a storm water settlement basin.
- 27 2. Provide temporary inlet filter bags inside of drainage inlet or catch basin in accordance with
28 inlet filter bag manufacturer's instructions. Secure inlet filter bag with the structure's grate
29 or by other acceptable means.
- 30 3. Inlet filter bags shall not pose any obstruction, above the preconstruction elevation of the
31 drainage inlet or catch basin grate that would necessitate or require temporary barricades or
32 warning lights.
- 33 4. When removing sediment from inlet filter bags, do not dump filter bag's contents into the
34 drainage inlet or catch basin. Promptly remove from drainage inlets and catch basins
35 sediment accidentally dumped into the structure.
- 36 5. Remove sediment from inlet filter bags, or replace inlet filter bags, when inlet filter bag is
37 not more than half-full.
- 38 F. Temporary Settlement Basin:
- 39 1. For constructing embankments comply with requirements in Division 31 Specifications on
40 embankments, excavation, and fill.
- 41 2. Overflow Weir and Discharge Pipe:
- 42 a. Provide piping in accordance with manufacturer's instructions. Where permanent
43 piping will be used for temporary settlement basin, provide piping in accordance with
44 the Contract Documents and fully clean piping prior to Substantial Completion.
- 45 b. Provide overflow weirs at elevation(s) shown or indicated on the Drawings. When not
46 shown or indicated in the Contract Documents, discharge weir elevation(s) shall be in
47 accordance with design by licensed, professional civil engineer retained by Contractor
48 or Subcontractor. Such design and temporary construction shall avoid overtopping and
49 overfilling of settlement basin without short-circuiting the settlement basin's hydraulic
50 performance.
- 51 c. Wrap and secure geotextile material specified for temporary silt fencing around
52 discharge structures of temporary settlement basins

3. Crushed Stone and Riprap: Provide in accordance with Division 31 Specifications on excavation, fill, and riprap. Provide in areas of temporary settlement basin subject to erosion, and at upstream and downstream ends of each settlement basin's discharge piping.
 4. Remove sediment when necessary or required, based on accumulation of material.
 5. When temporary settlement basin is no longer required, remove the temporary settlement basin discharge weir, discharge piping, and spillway, fill the temporary settlement basin to required grade in accordance with requirements of Division 31 Specifications on excavation and fill, and provide landscaping in accordance with the Contract Documents.
- G. Filter Bag on Dewatering Pump Discharge:
1. Provide dewatering of excavations in compliance with Section 31 23 10 - Excavation and Backfill, Section 31 23 33 - Trenching, Backfilling, and Compacting for Utilities and Section 31 23 19 - Dewatering.
 2. Locate filter bags and temporary pump discharge lines to avoid interfering with the public, use of private and public property, and Owner's and facility manager's operations. Relocate filter bags and appurtenances when necessary or required.
 3. Filter bag discharge shall be directed to appropriate storm water drainage route. Do not discharge into roads, driveways, access roads, parking areas, other travelled ways, or overland. When temporary settlement basin is used, locate filter bags to discharge to temporary settlement basin when practicable.
 4. Provide filter bag on discharge of each dewatering pump drawing from an excavation or other area with exposed soil.
 5. Securely attach filter bag to pump discharge pipe or hose.
 6. Maintain, clean out, and replace filter bags as necessary or required.
- H. Temporary Stone Construction Entrance:
1. Where shown on the Drawings, and where construction vehicles will regularly transition to paved surfaces from unsterilized surfaces, provide temporary stone construction entrance. Contractor vehicles and mobile construction equipment and machinery shall use temporary stone construction entrances.
 2. Provide temporary stone construction entrances of the width, length, and thickness shown or indicated on the Drawings. When not shown or indicated on the Drawings, temporary stone construction entrance shall be not less than 50 FT long, by 20 FT wide, by 8 IN deep.
 3. Installation:
 - a. Ensure that subgrade under each temporary stone construction entrance is suitably dense for the intended purpose and dry. Suitably prepare subgrade as necessary for temporary stone construction entrance.
 - b. Provide on subgrade a layer of geotextile separation fabric, installed in accordance with geotextile separation fabric manufacturer's recommendations for separation.
 - c. Provide stone on installed geotextile separation fabric. Grade the stone for passage of vehicles.
 4. Maintenance:
 - a. Maintain temporary stone construction entrance at not less than the minimum required thickness. Add stone as required to maintain thickness.
 - b. When upper layer of temporary stone construction entrance becomes contaminated with soil, mud, or other material, remove the contaminated material and replace with clean stone.
 - c. Using water to wash down temporary construction entrance or paved areas onto which soil material has been tracked is unacceptable.

3.8 REMOVAL OF TEMPORARY CONTROLS

A. Removals – General:

1. Unless otherwise indicated elsewhere in this Section in requirements for respective temporary controls, upon completion of the associated Work and when temporary controls are no longer necessary, remove temporary controls and restore the Site to condition in

- 1 accordance with the Contract Documents; if condition is not shown or indicated, restore the
- 2 Site to pre-construction condition.
- 3 2. After soils are permanently stabilized, remove from the Site temporary erosion and sediment
- 4 controls.

6 **END OF SECTION**

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FSECTION 01 61 03
EQUIPMENT - BASIC REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Requirements of this Specification Section apply to all equipment provided on the Project including those found in other Divisions even if not specifically referenced in individual "Equipment" Articles of those Specification Sections.
- B. Related Sections include but are not necessarily limited to:
1. Section 03 15 19 - Anchorage to Concrete.

1.2 QUALITY ASSURANCE

- A. Referenced Standards:
1. American Bearing Manufacturers Association (ABMA).
 2. American Gear Manufacturers Association (AGMA).
 3. ASTM International (ASTM):
 - a. E1934, Standard Guide for Examining Electrical and Mechanical Equipment with Infrared Thermography.
 - b. F593, Standard Specification for Stainless Steel Bolts, Hex Cap Screws, and Studs.
 4. Hydraulic Institute (HI):
 - a. 9.6.4, Rotodynamic Pumps for Vibration Measurements and Allowable Values.
 5. International Electrotechnical Commission (IEC).
 6. Institute of Electrical and Electronics Engineers, Inc. (IEEE).
 7. International Organization for Standardization (ISO):
 - a. 1940, Mechanical Vibration - Balance Quality Requirements for Rotors in a Constant (Rigid) State - Part 1: Specification and Verification of Balance Tolerances.
 - b. 21940-11, Mechanical Vibration - Rotor Balancing - Part 11: Procedures and Tolerances for Rotors with Rigid Behavior.
 8. National Electrical Manufacturers Association (NEMA):
 - a. 250, Enclosures for Electrical Equipment (1000 Volts Maximum).
 - b. ICS 6, Enclosures for Industrial Control and System.
 - c. MG 1, Motors and Generators.
 9. InterNational Electrical Testing Association (NETA):
 - a. ATS, Acceptance Testing Specification for Electrical Power Distribution Equipment and Systems.
 10. National Fire Protection Association (NFPA):
 - a. 70, National Electrical Code (NEC):
 11. National Institute for Certification in Engineering Technologies (NICET).
 12. National Institute of Standards and Technology (NIST).
 13. Occupational Safety and Health Administration (OSHA):
 - a. 29 CFR 1910, Occupational Safety and Health Standards, referred to herein as OSHA Standards.
 14. Underwriters Laboratories, Inc. (UL).
 - a. 508, Standard for Safety Industrial Control Equipment.
 - b. 508A, Standard for Safety Industrial Control Panels.
 - c. 698A, Standard for Industrial Control Panels Relating to Hazardous (Classified) Locations.
 15. Vibration Institute.
- B. Supplier's Vibration Analyst:

1. Supplier's vibration analyst shall prepare pre-Shop Drawing vibration analysis of equipment.
 2. Where required, Supplier's vibration analyst shall be either equipment manufacturer's qualified employee or independent business entity whose sole business, or principal part of its business, is evaluating and determining natural frequencies of rotating equipment.
 3. Shall possess not less than 10 years' relevant experience.
 4. Supplier's Vibration Analyst's Professional Engineer:
 - a. Vibration analysis shall be performed by, or under the direct, personal supervision of, professional engineer licensed and registered in the same jurisdiction as the Site experienced in preparing finite element analyses, rotordynamic analyses, and experimental modal analysis similar to that required for the Work.
 - b. Professional engineer shall possess not less than five years' combined experience in field testing and data analysis for vibration analysis.
 - c. Vibration analysis professional engineer's seal and signature, with indication of date seal and signature were applied to the subject document, shall clearly appear on all results and reports furnished as Submittals.
- C. Field Vibration Testing Subcontractor:
1. Field vibration testing Subcontractor shall, where required by the Contract Documents, perform vibration testing of equipment installed at the Site and perform associated vibration analyses.
 2. Vibration testing Subcontractor shall be an independent entity that has performed as its sole business, or principal part of its business, for not less than 10 years, inspection, testing, calibrating, adjusting equipment and systems, and performing vibration testing of equipment.
 3. Entities whose principal business is one or more of the following are not considered independent vibration testing entities and, therefore, shall not be field vibration testing Subcontractor:
 - a. Motor sales, service, or repairs.
 - b. Process equipment sales, service, or repairs.
 4. Acceptable entities include, but are not necessarily limited to:
 - a. AVS Engineering: <https://www.avsengineering.net/>
 - b. Engineering Testing Services: <https://etestinc.com/>
 - c. Maritech, LLC: <http://www.maritech-llc.com/contact.html>
 - d. Or equal.
 5. Field vibration testing Subcontractor must have an established program for monitoring and testing equipment calibration, with accuracy traceable in an unbroken chain, in accordance with NIST requirements.
 6. Field Personnel: Each person employed for field vibration testing on the Work shall possess not less than the following qualifications:
 - a. Three years' field experience covering all phases of field vibration testing and data gathering.
 - b. Current, valid Vibration Category II certification from Vibration Institute.
 7. Analysis Personnel: Personnel performing analysis for field vibration testing Subcontractor shall possess not less than the following qualifications:
 - a. Five years' combined field testing and data analysis experience.
 - b. Current, valid Vibration Category III certification from the Vibration Institute.
 8. Analysis Equipment: Field vibration testing Subcontractor shall have access to and use, where appropriate, the following testing equipment, properly maintained and calibrated:
 - a. Impact Hammer:
 - 1) Frequency Range: 1 kHz.
 - 2) Range (5v output) 5,000 pounds-force (22,200 newtons).
 - 3) Hammer sensitivity (approx.) 1mV/lbf (0.23 mV/N)
 - b. Analyzer:
 - 1) Frequency Range: 1 Hz to 10,000Hz.
 - 2) Frequency Accuracy: 0.02 percent.

- 3) Non-Integrated Spectral Amplitude Accuracy: 5 percent, 3 Hz to 65 Hz.
- 4) Single Integrated Spectral Amplitude Accuracy: 5 percent, 10 Hz to 20 Hz.
- 5) Supports measurements of acceleration, velocity, and displacement.
- c. Vibration Sensor:
 - 1) Sensitivity: ± 5 percent = 100 mV/g
 - 2) Acceleration Range: ± 5 g.
 - 3) Amplitude Nonlinearity: ± 1 percent
 - 4) Frequency Response: ± 10 Hz to 7kHz (± 3 dB)
- d. Data logging equipment for simultaneous recording of the following data points:
 - 1) Vibration in the X, Y, and axial planes (for all pumps pursuant to ANSI/HSI Standard).
 - 2) Digital tachometer recording RPM.
 - 3) Discharge Pressure Transmitter
 - a) Accuracy: 0.3 percent of range
 - b) Fluid Temperature Range: 32 to 100 DegF
 - 4) Suction Pressure Transmitter (when other than submersible pump or vertical turbine (suspended) pump).
 - a) Accuracy 0.35 percent of range.
 - b) Fluid Temperature Range: 32 to 100 DegF.
 - c) For submersible pumps and vertical turbine (suspended) type pumps, suction liquid surface level signal from Site's monitoring and control system (e.g., plant PLC/SCADA system).
 - 5) For pumps, pumping rate (flow) signal from Site's monitoring and control system (e.g., plant PLC/SCADA system)
 - 6) Equipment/motor bearing temperature signal from Site's monitoring and control system (e.g., plant PLC/SCADA system)).
 - 7) Pump/motor vibration signal from Site's monitoring and control system (e.g., plant PLC/SCADA system).
- D. Infrared Thermography Testing Program:
 - 1. Testing firm:
 - a. An independent firm performing, as the sole or principal part of its business for a minimum of 10 years, the inspection, testing, calibration, and adjusting of systems.
 - b. Must have an established monitoring and testing equipment calibration program with accuracy traceable in an unbroken chain, according to NIST.
 - 2. Field personnel:
 - a. Minimum of one year field experience covering all phases of field thermography testing and data gathering.
 - b. Supervisor certified by NETA or NICET.
 - 3. Analysis personnel:
 - a. Minimum three years combined field testing and data analysis experience.
 - b. Supervisor certified by NETA or NICET.
- E. Electrical Equipment and Connections Testing Program:
 - 1. Testing firm:
 - a. An independent firm performing, as the sole or principal part of its business for a minimum of 10 years, the inspection, testing, calibration, and adjusting of systems.
 - b. Must have an established monitoring and testing equipment calibration program with accuracy traceable in an unbroken chain, according to NIST.
 - 2. Field personnel:
 - a. Minimum of one year field experience covering all phases of electrical equipment inspection, testing, and calibration.
 - b. Relay test technician having previous experience with testing and calibration of relays of the same manufacturer and type used on project and proficient in setting and testing the types of protection elements used.
 - c. Supervisor certified by NETA or NICET.

3. Analysis personnel:
 - a. Minimum three years combined field testing and data analysis experience.
 - b. Supervisor certified by NETA or NICET.
- F. Miscellaneous:
 1. A single manufacturer of a "product" shall be selected and utilized uniformly throughout Project even if:
 - a. More than one manufacturer is listed for a given "product" in Specifications.
 - b. No manufacturer is listed.
 2. Equipment, electrical assemblies, related electrical wiring, instrumentation, controls, and system components shall fully comply with specific NEC requirements related to area classification and to NEMA 250 and NEMA ICS 6 designations shown on Electrical Power Drawings and defined in the Electrical specifications.
 3. Variable speed equipment applications: The driven equipment manufacturer shall have single source responsibility for coordination of the equipment and VFD system and verify their compatibility.

1.3 DEFINITIONS

- A. Product: Manufactured materials and equipment.
- B. Major Equipment Supports - Supports for Equipment:
 1. Located on or suspended from elevated slabs with supported equipment weighing 2000 LBS or greater, or;
 2. Located on or suspended from roofs with supported equipment weighing 500 LBS or greater, or;
 3. Located on slab-on-grade or earth with supported equipment weighing 5000 LBS or more.
- C. Equipment:
 1. One or more assemblies capable of performing a complete function.
 2. Mechanical, electrical, instrumentation or other devices requiring an electrical, pneumatic, electronic or hydraulic connection.
 3. Not limited to items specifically referenced in "Equipment" articles within individual Specifications.
- D. Installer or Applicator:
 1. Installer or applicator is the person actually installing or applying the product in the field at the Project site.
 2. Installer and applicator are synonymous.

1.4 SUBMITTALS

- A. Shop Drawings:
 1. General for all equipment:
 - a. Data sheets that include manufacturer's name and complete product model number.
 - 1) Clearly identify all optional accessories that are included.
 - b. Acknowledgement that products submitted comply with the requirements of the standards referenced.
 - c. Manufacturer's delivery, storage, handling, and installation instructions.
 - d. Equipment identification utilizing numbering system and name utilized in Drawings.
 - e. Equipment installation details:
 - 1) Location of anchorage.
 - 2) Type, size, and materials of construction of anchorage.
 - 3) Anchorage setting templates.
 - 4) Manufacturer's installation instructions.
 - f. Equipment area classification rating.
 - g. Shipping and operating weight.
 - h. Equipment physical characteristics:
 - 1) Dimensions (both horizontal and vertical).

- 2) Materials of construction and construction details.
 - i. Equipment factory primer and paint data.
 - j. Manufacturer's recommended spare parts list.
 - k. Equipment lining and coatings.
 - l. Equipment utility requirements include air, natural gas, electricity, and water.
 - m. Ladders and platforms provided with equipment:
 - 1) Certification that all components comply fully with OSHA requirements.
 - 2) Full details of construction/fabrication.
 - 3) Scaled plan and sections showing relationship to equipment.
- 2. Mechanical and process equipment:
 - a. Operating characteristics:
 - 1) Technical information including applicable performance curves showing specified equipment capacity, rangeability, and efficiencies.
 - 2) Brake horsepower requirements.
 - 3) Copies of equipment data plates.
 - b. Piping and duct connection size, type and location.
 - c. Equipment bearing life certification.
 - d. Equipment foundation data:
 - 1) Equipment center of gravity.
 - 2) Criteria for designing vibration, special or unbalanced forces resulting from equipment operation.
- 3. Electric motor:
 - a. Motor manufacturer and model number.
 - b. Complete motor nameplate data.
 - c. Weight.
 - d. NEMA design type.
 - e. Enclosure type.
 - f. Frame size.
 - g. Winding insulation class and temperature rise.
 - h. Starts per hour.
 - i. Performance data:
 - 1) Motor speed-torque curve superimposed over driven machine speed-torque curve during start-up acceleration and at rated terminal voltage a minimum permissible or specified terminal voltage for all motors over 15 HP.
 - 2) Time-current plots with acceleration versus current and thermal damage curves at the operating and ambient temperatures and at rated terminal voltage and minimum permissible or specified terminal voltage for all motors over 15 HP.
 - 3) Guaranteed minimum efficiencies at 100 percent, 75 percent, and 50 percent of full load.
 - 4) Guaranteed minimum power factor at 100 percent, 75 percent, and 50 percent of full load.
 - 5) Locked rotor and full load current at rated terminal voltage and minimum permissible or specified terminal voltage.
 - 6) Starting, full load, and breakdown torque at rated terminal voltage and minimum permissible or specified terminal voltage.
 - j. Bearing data and lubrication system.
 - k. Natural frequency calculations for:
 - 1) Completed assembly including but not limited to the equipment base, rotating piece of equipment, and the rotating piece of equipment driver.
 - 2) Individual piece of rotating equipment.
 - 3) Equipment driver and connected gear reducer, if applicable.
 - l. Thermal protection system including recommended alarm and trip settings for winding and bearing RTD's.
 - m. Maximum permissible capacitor (kVAC) that can be connected to the motor.
 - n. Recommended size of power factor correction capacitors to improve power factor to 0.95 lagging when operated at full load.

- o. Fabrication and/or layout drawings:
 - 1) Dimensioned outlined drawing.
 - 2) Connection diagrams including accessories (strip heaters, thermal protection, etc.).
- p. Certifications:
 - 1) When utilized with a reduced voltage starter, certify that motor and driven equipment are compatible.
 - 2) When utilized with a variable frequency controller, certify motor is inverter duty and the controller and motor are compatible.
 - a) Include minimum speed at which the motor may be operated for the driven machinery.
- q. Electrical gear:
 - 1) Unless specified in a narrow-scope Specification Section, provide the following:
 - a) Equipment ratings: Voltage, continuous current, kVa, watts, short circuit with stand, etc., as applicable.
 - 2) Control panels:
 - a) Panel construction.
 - b) Point-to-point ladder diagrams.
 - c) Scaled panel face and subpanel layout.
 - d) Technical product data on panel components.
 - e) Panel and subpanel dimensions and weights.
 - f) Panel access openings.
 - g) Nameplate schedule.
 - h) Panel anchorage.
 - i) Short Circuit Current Rating (SCCR) nameplate marking per NFPA 70. Include any required calculations.
- 4. Systems schematics and data:
 - a. Provide system schematics where required in system specifications.
 - 1) Acknowledge all system components being supplied as part of the system.
 - 2) Utilize equipment, instrument and valving tag numbers defined in the Contract Documents for all components.
 - 3) Provide technical data for each system component showing compliance with the Contract Document requirements.
 - 4) For piping components, identify all utility connections, vents and drains which will be included as part of the system.
- 5. Qualifications for:
 - a. Natural frequency analysis firm and personnel.
 - b. Vibration testing firm and personnel.
 - c. Infrared thermography testing firm and personnel.
 - d. Electrical equipment and connections testing firm and personnel.
- 6. Equipment Monitoring and Testing plans, in accordance with PART 3 of this Specification Section:
 - a. Natural frequency analysis and calculations.
 - b. Vibration testing.
 - c. Thermography testing.
 - d. Electrical equipment and connection testing.
- B. Factory Test Reports:
 - 1. Natural frequency bump test reports where required for rotating equipment.
 - a. Minimum characteristics of impact hammer.
 - 1) Frequency Range 1 kHz.
 - 2) Range (5v output) 5,000 LBF (22,200 N).
 - 3) Hammer Sensitivity (7pprox.) 1 mV/lbf (0.23 mV/N).
 - 4) Resonant Frequency 12 kHz
 - 2. Motor, equipment and final assembled equipment including motor.
 - a. Determine natural frequency of assembled motor prior to shipping to equipment manufacturer or job site.

- 1) Individual motor fastened to an “infinitely rigid” mass at the same bolt circle as the final assembled equipment.
 - b. Determine natural frequency of the pump.
 - 1) Pump fastened to an “infinitely rigid” mass at the same bolt circle as the final assembled equipment.
 - c. Determine natural frequency of the pump/motor assembly.
 - 1) Pump/motor assembly fastened to an “infinitely rigid” mass at the same bolt circle as the final field assembled equipment.
 - d. For this use, the "infinitely rigid" mass shall be at least 10 times the weight of the equipment being tested.
 3. Submit natural frequency report(s) for approval prior to shipment.
 4. Equipment performance tests.
 - a. As listed in individual equipment specifications.
- C. Contract Closeout Information:
1. Operation and Maintenance Data:
 - a. See Section 01 78 23 for requirements for the mechanics, administration, and the content of Operation and Maintenance Manual submittals.
- D. Informational Submittals:
1. Notification, at least one week in advance, that testing will be conducted at factory.
 2. Certification from equipment manufacturer that all manufacturer-supplied control panels that interface in any way with other controls or panels have been submitted to and coordinated with the supplier/installer of those interfacing systems.
 3. Submit sample Manufacturer's Field Service Report (MFSR). Report shall use manufacturer's standard report or use the form in the Exhibits and have at least the following information:
 - a. Certification that equipment has been installed properly, has been initially started up, has been calibrated and/or adjusted as required, and is ready for operation.
 - b. Certification for major equipment supports that equipment foundation design loads shown on the Drawings or specified have been compared to actual loads exhibited by equipment provided for this Project and that said design loadings are equal to or greater than the loads produced by the equipment provided.
 - c. Motor test reports.
 - d. Field noise testing reports if such testing is specified.
 - e. Preliminary field quality control testing format to be used as a basis for final field quality control reporting.
 - f. Provide three bound final written reports documenting natural frequency testing, vibration monitoring and testing for specified equipment.
 - 1) Include the acceptance criteria of all equipment tested.
 - 2) Provide individual tabbed sections for information associated with each piece of tested equipment.
 - g. Certification prior to Project closeout that electrical panel drawings for manufacturer-supplied control panels truly represent panel wiring including any field-made modifications.
 - h. Testing and monitoring reports in accordance with PART 3 of this Specification Section.
 - i. Certification that driven equipment and VFD are compatible.
 4. Submit completed Manufacturer's Field Service Report (MFSR) for each piece of equipment supplied.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. Subject to compliance with the Contract Documents, the following manufacturers are acceptable:

1. Motors:
 - a. Baldor.
 - b. General Electric.
 - c. Hyundai Heavy Industries.
 - d. Marathon Electric.
 - e. Rockwell - Reliance.
 - f. Siemens.
 - g. TECO-Westinghouse.
 - h. Toshiba U.S.
 - i. U.S. Motors, Nidec Motor Corporation.
 - j. WEG.
2. Mechanical variable speed drives:
 - a. Reeves.
 - b. U.S. Motors (VariDrive).

2.2 MANUFACTURED UNITS

A. Electric Motors:

1. Where used in conjunction with adjustable speed AC or DC drives, provide motors that are fully compatible with the speed controllers.
2. Design for frequent starting duty equivalent to duty service required by driven equipment.
3. Design for full voltage starting.
4. Design bearing life based upon actual operating load conditions imposed by driven equipment.
5. Size for altitude of Project.
6. Furnish with stainless steel nameplates which include all data required by NEC Article 430.
7. Use of manufacturer's standard motor will be permitted on integrally constructed motor driven equipment specified by model number in which a redesign of the complete unit would be required in order to provide a motor with features specified.
8. AC electric motors less than 1/3 HP:
 - a. Single phase, 60 Hz, designed for the supply voltage shown on the Drawings.
 - b. Permanently lubricated sealed bearings conforming to ABMA standards.
 - c. Built-in manual reset thermal protector or integrally mounted manual motor starter with thermal overload element with stainless steel enclosure.
9. AC electric motors 1/3 to 1 HP:
 - a. Single or 3 PH, 60 Hz, designed for the supply voltage shown on the Drawings.
 - b. Permanently lubricated sealed bearings conforming to ABMA standards.
 - 1) For single phase motors, provide built-in manual reset thermal protector or integrally mounted manual motor starter with thermal overload element.
10. AC electric motors 1-1/2 to 10 HP:
 - a. Single or 3 PH, 60 Hz, designed for the supply voltage shown on the Drawings.
 - b. Permanently lubricated sealed bearings conforming to ABMA standards.
 - c. For vertical motors provide 15 year, average-life thrust bearings conforming to ABMA standards.
11. AC electric motors greater than 10 HP:
 - a. Single or 3 PH, 60 Hz, designed for the supply voltage shown on the Drawings.
 - b. Oil or grease lubricated antifriction bearings conforming to ABMA standards.
 - 1) Design bearing life for 90 percent survival rating at 50,000 HRS of operation for motors up to and including 100 HP.
 - 2) For motors greater than 100 HP, design bearing life for 90 percent survival rating at 100,000 HRS of operation.
 - c. For vertical motors provide 15 year, average-life thrust bearings conforming to ABMA standards.
 - d. Thermal protection:
 - 1) For motors 50 HP and above controlled from a variable frequency drive and for all other motors 100 HP and above, provide integral thermal detectors with normally

closed contacts that will open on overtemperature or resistance type temperature detector (RTD) complete with monitor and alarm panel having a normally closed contact that will open on overtemperature.

- a) Two thermal sensing devices per phase in each phase hot-spot location.
- b) Monitor and alarm panel:
 - (1) For constant speed motors, install panel in and energize from the motor starter equipment.
 - (2) For variable speed motors, install panel in and energize from the variable speed drive equipment.

12. Severe duty motor to have the following minimum features:

- a. All cast iron construction.
- b. Gasketed conduit box.
- c. Epoxy finish for corrosion protection.
- d. Hydrosopic varnish on windings for corrosion protection.
- e. Drain plug and breather.

2.3 COMPONENTS

A. Gear Drives and Drive Components:

- 1. Size drive equipment capable of supporting full load including losses in speed reducers and power transmission.
- 2. Provide nominal input horsepower rating of each gear or speed reducer at least equal to nameplate horsepower of drive motor.
- 3. Design drive units for 24 HR continuous service, constructed so oil leakage around shafts is precluded.
- 4. Utilize gears, gear lubrication systems, gear drives, speed reducers, speed increasers and flexible couplings meeting applicable standards of AGMA.
- 5. Gear reducers:
 - a. Provide gear reducer totally enclosed and oil lubricated.
 - b. Utilize antifriction bearings throughout.
 - c. Provide worm gear reducers having a service factor of at least 1.20.
 - d. Furnish other helical, spiral bevel, and combination bevel-helical gear reducers with a service factor of at least 1.50.

2.4 ACCESSORIES

A. Guards:

- 1. Provide each piece of equipment having exposed moving parts with full length, easily removable guards, meeting OSHA requirements.
- 2. Interior applications:
 - a. Construct from expanded galvanized steel rolled to conform to shaft or coupling surface.
 - b. Utilize non-flattened type 16 GA galvanized steel with nominal 1/2 IN spacing.
 - c. Connect to equipment frame with hot-dip galvanized bolts and wing nuts.
- 3. Exterior applications:
 - a. Construct from 16 GA stainless steel or aluminum.
 - b. Construct to preclude entrance of rain, snow, or moisture.
 - c. Roll to conform to shaft or coupling surface.
 - d. Connect to equipment frame with stainless steel bolts and wing nuts.

B. Anchorage:

- 1. Cast-in-place anchorage:
 - a. Provide ASTM F593, Type 316 stainless steel anchorage for all equipment.
 - b. Configuration and number of anchor bolts shall be per manufacturer's recommendations.
 - c. Provide two nuts for each bolt.
- 2. Drilled anchorage:
 - a. Adhesive anchors per Section 03 15 19.

- b. Threaded rods same as cast-in-place.
- C. Data Plate:
 - 1. Attach a stainless steel data plate to each piece of rotary or reciprocating equipment.
 - 2. Permanently stamp information on data plate including manufacturer's name, equipment operating parameters, serial number and speed.
- D. Lifting Eye Bolts or Lugs:
 - 1. Provide on all equipment 50 LBS or greater.
 - 2. Provide on other equipment or products as specified in the narrow-scope Specification Sections.
- E. Platforms and Ladders:
 - 1. Design and fabricate in accordance with OSHA Standards.
 - 2. Fabricate components from stainless steel grade 316.
 - 3. Provide platform surface: Non-skid grating, unless specified in narrow-scope Specification Sections.

2.5 FABRICATION

- A. Design, fabricate, and assemble equipment in accordance with modern engineering and shop practices.
- B. Manufacture individual parts to standard sizes and gages so that repair parts, furnished at any time, can be installed in field.
- C. Furnish like parts of duplicate units to be interchangeable.
- D. Ensure that equipment has not been in service at any time prior to delivery, except as required by tests.
- E. Furnish equipment which requires periodic internal inspection or adjustment with access panels which will not require disassembly of guards, dismantling of piping or equipment or similar major efforts.
 - 1. Quick opening but sound, securable access ports or windows shall be provided for inspection of chains, belts, or similar items.
- F. Provide common, lipped base plate mounting for equipment and equipment motor where said mounting is a manufacturer's standard option.
 - 1. Provide drain connection for 3/4 IN PVC tubing.
- G. Machine the mounting feet of rotating equipment.
- H. Fabricate equipment which will be subject to Corrosive Environment in such a way as to avoid back to back placement of surfaces that cannot be properly prepared and painted.
 - 1. When such back to back fabrication cannot be avoided, provide continuous welds to seal such surfaces from contact with corrosive environment.
- I. Natural frequency/critical Speed:
 - 1. All rotating parts accurately machined and in as near perfect rotational balance as practicable.
 - 2. Excessive vibration is sufficient cause for equipment rejection.
 - 3. Ratio of all rotative speeds to natural frequency/critical speed of a unit or components: Greater than 1.2.
- J. Control Panels Engineered and Provided with the Equipment by the Manufacturer:
 - 1. Manufacturer's standard design for components and control logic unless specific requirements are specified in the specific equipment Specification Section.
 - 2. NEMA or IEC rated components are acceptable, whichever is used in the manufacturer's standard engineered design, unless specific requirements are required in the specific equipment Specification Section.

3. Affix entire assembly with a UL 508A or UL 698A label "Listed Enclosed Industrial Control Panel" prior to delivery.
 - a. Control panels without an affixed UL 508A or UL 698A label shall be rejected.
4. Provide equipment or control panels with Short Circuit Current Rating (SCCR) labeling as required by NFPA 70 and other applicable codes.
 - a. Determine the SCCR rating by one of the following methods:
 - 1) Method 1: SCCR rating meets or exceeds the available fault current of the source equipment when indicated on the Drawings.
 - 2) Method 2: SCCR rating meets or exceeds the source equipment's Amp Interrupting Current (AIC) rating as indicated on the Drawings.
 - 3) Method 3: SCCR rating meets or exceeds the calculated available short circuit current at the control panel.
 - b. The source equipment is the switchboard, panelboard, motor control center or similar equipment where the control panel circuit originates.
 - c. For Method 3, provide calculations justifying the SCCR rating. Utilize source equipment available fault current or AIC rating as indicated on the Drawings.

2.6 SOURCE QUALITY CONTROL

A. Motor Tests:

1. Test motors in accordance with NEMA and IEEE standards.
2. Provide routine test for all motors.
3. The Owner reserves the right to select and have tested, either routine or complete, any motor included in the project.
 - a. The Owner will pay all costs, including shipping and handling, for all motors successfully passing the tests.
 - b. Pay all costs, including shipping and handling, for all motors failing the tests.
 - c. If two successive motors of the same manufacturer fail testing, the Owner has the right to reject all motors from that manufacturer.

B. Balance:

1. Unless specified otherwise, for all equipment 10 HP or greater, all rotating elements in motors, pumps, blowers, and centrifugal compressors shall be fully assembled, including coupling hubs, before being statically and dynamically balanced. Balance all rotating elements to the following criteria, per ISO 21940-11:

$$U_{per} = \frac{G \times 6.015 \times W / 2}{N}$$

Where:

U_{per} = Permissible residual unbalance for each correction plane in ounce-inches (OZ-IN). See ISO 21940-11 for acceptable values.

G = ISO Balance Quality Grade Number, per ISO 21940-11

W = Rotor weight in pounds

N = Maximum continuous operating RPM

- a. Where specified, balancing reports, demonstrating compliance with this requirement, shall be submitted as product data.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. Install equipment as shown on Drawings and in accordance with manufacturer's directions.
- B. Utilize templates for anchorage placement for slab-mounted equipment.

- C. For equipment having drainage requirements such as seal water, provide 3/4 IN PVC or clear plastic tubing from equipment base to nearest floor or equipment drain.
 - 1. Route clear of major traffic areas and as approved by Engineer.
- D. DO NOT construct foundations until major equipment supports are approved.
- E. Extend all non-accessible grease fittings using stainless steel tubing to a location which allows easy access of fittings from closest operating floor level.
- F. Equipment Base:
 - 1. Construct level in both directions.
 - 2. Take particular care at anchor bolt locations so these areas are flat and level.
- G. Machine Base:
 - 1. Mount machine base of rotating equipment on equipment base.
 - a. Level in both directions, using a machinist level, according to machined surfaces on base.
 - 2. Level machine base on equipment base and align couplings between driver and driven unit using stainless steel blocks and shims.
 - a. Blocks and shims milled flat and coplanar of both faces.
 - b. Maximum of 3 shims under each foot.
 - c. Size blocks and shims to provide solid support at each mounting bolt location.
 - 1) Provide area size of blocks and shims approximately 1-1/2 times area support surface at each mounting bolt point.
 - d. Provide blocks and shims at each mounting bolt.
 - 1) Furnish blocks and shims that are square shape with "U" cut out to allow blocks and shims to be centered on mounting bolts.
 - e. After all leveling and alignment has been completed and before grouting, tighten mounting bolts to proper torque value.
- H. Rotating equipment Couplings:
 - 1. Align in the annular and parallel positions.
 - a. For equipment rotating at 1200 RPM or less, align both annular and parallel within 0.001 IN tolerance for couplings 4 IN size and smaller.
 - b. Couplings larger than 4 IN size: Increase tolerance 0.0005 IN per inches of coupling diameter, i.e., allow 6 IN coupling 0.002 IN tolerance, and allow a 10 IN coupling 0.004 IN tolerance.
 - c. For equipment rotating at speeds greater than 1200 RPM allow both annular and parallel positions within a tolerance rate of 0.00025 IN per inch coupling diameter.
 - 2. If equipment is delivered as a mounted unit from factory, verify factory alignment on site after installation and realigned if necessary.
 - 3. Check surfaces for runout before attempting to trim or align units.
- I. Grouting:
 - 1. After machine base has been shimmed, leveled onto equipment base with jack screws, couplings aligned and mounting bolts tightened to correct torque value, place a dam or formwork around base to contain grouting between equipment base and equipment support pad.
 - a. Extend dam or formwork to cover leveling shims and blocks.
 - b. Grease anchor bolts and jack screws to inhibit grout from adhering to bolts.
 - c. If anchor sleeve were used, fill voids in anchor sleeves with foam to keep grout from filling sleeves.
 - d. Do not use nuts below the machine base to level the unit.
 - 2. Saturate top of roughened concrete subbase with water before grouting.
 - a. Add grout until entire space under machine base is filled to the top of the base underside.
 - b. Puddle grout by working a stiff wire through the grout and vent holes to work grout in place and release any entrained air in the grout or base cavity.

3. When the grout has sufficiently hardened, remove dam or formwork and finish the exposed grout surface to fine, smooth surface.
 - a. Cover exposed grout surfaces with wet burlap and keep covering sufficiently wet to prevent too rapid evaporation of water from the grout.
 - b. When the grout has fully hardened (after a minimum of seven days), remove jack screws, tighten all anchor bolts to engage equipment base to grout, shims, and equipment support pad.
 - c. Recheck driver-driven unit for proper alignment.

3.2 INSTALLATION CHECKS

- A. For all equipment specifically required in detailed specifications, secure services of experienced, competent, and authorized representative(s) of equipment manufacturer to visit site of work and inspect, check, adjust and approve equipment installation.
 1. In each case, representative(s) shall be present during placement and start-up of equipment and as often as necessary to resolve any operational issues which may arise.
- B. Secure from equipment manufacturer's representative(s) a written report certifying that equipment:
 1. Has been properly installed and lubricated.
 2. Is in accurate alignment.
 3. Is free from any undue stress imposed by connecting piping or anchor bolts.
 4. Has been operated under full load conditions and that it operated satisfactorily.
 - a. Secure and deliver a field written report to Owner immediately prior to leaving jobsite.
- C. No separate payment shall be made for installation checks.
 1. All or any time expended during installation check does not qualify as Operation and Maintenance training or instruction time when specified.

3.3 WIRING CONNECTIONS AND TERMINATION

- A. Clean wires before installing lugs and connectors.
- B. Coat connection with oxidation eliminating compound for aluminum wire.
- C. Terminate motor circuit conductors with copper lugs bolted to motor leads.
- D. Tape stripped ends of conductors and associated connectors with electrical tape.
 1. Wrapping thickness shall be 150 percent of the conductor insulation thickness.
- E. Connections to carry full ampacity of conductors without temperature rise.
- F. Terminate spare conductors with electrical tape.

3.4 FIELD QUALITY CONTROL

- A. General:
 1. Furnish equipment manufacturer's field quality control services and testing as specified in the individual equipment Specification Sections.
 2. Execute pre-demonstration requirements in accordance with Section 01 75 00.
 3. Perform and report on all tests required by the equipment manufacturer's Operation and Maintenance Manual.
 4. Provide testing of electrical equipment and connections in accordance with the Electrical specifications.
 5. Equip testing and analysis personnel with all appropriate project related reference material required to perform tests, analyze results, and provide documentation including, but not limited to:
 - a. Contract Drawings and Specifications.
 - b. Related construction change documentation.
 - c. Approved Shop Drawings.
 - d. Approved Operation and Maintenance Manuals.
 - e. Other pertinent information as required.

- B. Equipment Monitoring and Testing Plans:
 - 1. Approved in accordance with Shop Drawing submittal schedule.
 - 2. Included as a minimum:
 - a. Qualifications of firm, field personnel, and analysis personnel doing the Work.
 - b. List and description of testing and analysis equipment to be utilized.
 - c. List of all equipment to be testing, including:
 - 1) Name and tag numbers identified in the Contract Documents.
 - 2) Manufacturer's serial numbers.
 - 3) Other pertinent manufacturer identification,
- C. Instruments Used in Equipment and Connections Quality Control Testing:
 - 1. Minimum calibration frequency:
 - a. Field analog instruments: Not more than 6 months.
 - b. Field digital instruments: Not more than 12 months.
 - c. Laboratory instruments: Not more than 12 months.
 - d. If instrument manufacturer's calibration requirements are more stringent, those requirements shall govern.
 - 2. Carry current calibration status and labels on all testing instruments.
 - 3. See individual testing programs for additional instrumentation compliance requirements.
- D. Testing and Monitoring Program Documentation:
 - 1. Provide reports with tabbed sections for each piece of equipment tested.
 - 2. Include all testing results associated with each piece of equipment under that equipment's tabbed section.
 - a. Include legible copies of all forms used to record field test information.
 - 3. Prior to start of testing, submit one copy of preliminary report format for Engineer review and comment
 - a. Include data gathering and sample test report forms that will be utilized.
 - 4. In the final report, include as a minimum, the following information for all equipment tested:
 - a. Equipment identification, including:
 - 1) Name and tag numbers identified in the Contract Documents.
 - 2) Manufacturer's serial numbers.
 - 3) Other pertinent manufacturer identification,
 - b. Date and time of each test.
 - c. Ambient conditions including temperature, humidity, and precipitation.
 - d. Visual inspection report.
 - e. Description of test and referenced standards, if any, followed while conducting tests.
 - f. Results of initial and all retesting.
 - g. Acceptance criteria.
 - h. "As found" and "as left" conditions.
 - i. Corrective action, if required, taken to meet acceptance.
 - j. Verification of corrective action signed by the Contractor, equipment supplier, and Owner's representative.
 - k. Instrument calibration dates of all instruments used in testing.
 - 5. Provide three (3) bound final reports prior to Project final completion.
- E. Electrical Equipment and Connections Testing Program:
 - 1. Perform testing on Electrical equipment and connections in accordance with the Electrical specification requirements.
 - 2. Testing of motors:
 - a. After installation and prior to energizing the motor, perform inspections and tests per NETA ATS 7.15 for all motors 15 HP or above.
 - b. Ensure motor has been lubricated.
 - c. Bump motor to check for correct rotation.
 - 3. Repair or replace equipment shown to be out of range of the acceptable tolerance until the equipment meets or exceeds acceptability standards.

- F. Other Testing:
1. Perform tests and inspections not specifically listed but required to assure equipment is safe to energize and operate.
 2. Subbase that supports the equipment base and that is made in the form of a cast iron or steel structure that has supporting beams, legs, and cross members that are cast, welded, or bolted shall be tested for a natural frequency of vibration after equipment is mounted.
 - a. The ratio of the natural frequency of the structure to the frequency of the disturbing force shall not be between 0.5 and 1.5.
- G. Infrared Thermography Testing Program:
1. Perform infrared thermography testing for equipment specified in other Divisions during the Equipment Demonstration Period.
 - a. Perform on all rotating and reciprocating equipment having drivers 25 HP or greater.
 - b. Perform on electrical equipment and connections.
 2. Additional requirements for infrared thermography monitoring and testing equipment:
 - a. Temperature range: -10 to 350 DEGC.
 - b. Accuracy: ± 2 percent or 2 DEGC, whichever is greater.
 - c. Repeatability: ± 1 percent or 1 DEGC, whichever is greater.
 - d. Temperature indication resolution: 0.1 DEGC.
 - e. Minimum focus distance: 0.3 meters.
 - f. Output in color palettes: JPEG, BMP, or other digital format compatible with Windows.
 3. Perform inspection per ASTM E1934.
 - a. Operate VFD driven equipment at 100 percent speed during thermographic inspection.
 4. Acceptability of electrical connections and components based on temperature comparison between components and ambient air temperatures not greater than 10 DEGC per ASTM E1934.
 5. Acceptability of motors and equipment bearings based on temperature rise not greater than 5 DEGC above the equipment and/or bearing manufacturers published criteria.
 6. Repair or replace equipment shown to be out of range of the acceptable tolerance until the equipment meets or exceeds acceptability standards.
- H. Equipment Field Vibration Monitoring and Testing Program:
1. Perform vibration monitoring and testing for equipment specified in other Divisions during the Equipment Demonstration Period.
 2. Perform field vibration testing on each item of rotating and reciprocating equipment having driver 15 HP and greater
 3. Acceptability of equipment conditions, except pumps, based on ISO 1940-1 Balance Quality Grade G6.3 criteria.
 4. Acceptability of pumping equipment to be based on current ANSI/HI criteria:
 - a. ANSI/HI 11.6-2012 for Submersible Pumps in a Wet-pit or Dry-pit configuration.
 - b. ANSI/HI 9.6.4-2016 for all other centrifugal pumps.
 5. Repair or replace equipment shown to be out of range of the acceptable tolerance until the equipment meets or exceeds acceptability standards.
 6. Utilize an Engineer approved 3rd party testing agency to perform vibration monitoring and testing on equipment.
 7. For variable speed equipment provide vibration testing at no more than 3 percent increments of maximum speed throughout entire operating range.
 8. Provide machinery condition diagnosis based on an acceptable machinery vibration severity guide or machinery fault guide analysis provided by the testing agency.
 9. Tolerances for pumping equipment shall be per HI published standards.
 10. Repair or replace equipment shown to be out of range of the specified tolerance until the equipment meets the specified normal operation range required in the machinery fault guide analysis.
 11. Document testing with written report.

- a. Report to include initial testing results, acceptance criteria, corrective action taken to meet acceptance, verification of corrective action and acceptance report and baseline.
- b. Natural frequency of installed equipment utilizing an impact hammer.
- c. Report to include graphical plots of vibration signature for each test point at a scale which illustrates all vibration levels greater than 0.025 ips RMS.

3.5 DEMONSTRATION

- A. Demonstrate equipment in accordance with Section 01 75 00.

3.6 ABBREVIATION TABLE

- A. As indicated on the Drawings.

END OF SECTION

EXHIBIT A

MANUFACTURER FIELD SERVICE REPORT

This field service report is generic in nature. An electronic copy of this form will be furnished upon request from the Engineer. This report is to reflect that all requirements of the Operations and Maintenance Manual and the individual equipment specification requirements have been performed for the installation and operation and also to provide a baseline for amperage draw for each phase, vibration readings, rotation, alignment and all other applicable tests required to insure that the equipment has been installed properly. A MFSR will be required for each individual piece of equipment requiring a MFSR.

Definitions of Reports:

Initial service report: Required for construction preparations. Equipment delivered to site is in good condition and conforms to specification requirements. Anchor bolts, hardware and ancillary items (piping, flanges, conduits, fuel/power supply) are compatible with equipment.

Interim service report: Required for equipment installation onto base or foundation. Piping connections, electrical and control connections or structural attachment are complete. For equipment stored on site over four weeks, interim service report will document that manufacturer's long-term storage procedures have been incorporated and equipment has not been damaged, nor coatings deteriorated.

Final service report is to be completed when equipment can be started, electrical amperage and voltage draw measured, cold and hot alignments performed, vibration testing and monitoring performed and the equipment is found to be in compliance with Manufacturer's operating parameters and the requirements of the individual equipment specifications.

PROJECT: _____

Report Status:

Initial Service Report completed and submitted on _____

Interim Service Report completed and submitted on _____

Final Service Report completed and submitted on _____

Commencement of Warranty _____

I Description

A. Equipment Name and Identification: _____

B. Serial Number: _____

C. Specification Section Number: _____

D. Manufacturer: _____

E. Representative: _____

F. Type of Service: Initial _____ Interim _____ Final _____

II General Review

A. The above referenced equipment/material/supplies have been inspected, checked, and adjusted. Yes _____ No _____

Summary: _____

B. The above referenced equipment/material/supplies were placed upon properly prepared or suitable substrate. N/A _____ Yes _____ No _____

Summary: _____

C. The above referenced equipment/material/supplies are free from any undue stress imposed by any connected piping, anchor bolts or any other load. N/A _____ Yes _____ No _____

Summary: _____

- D. The above referenced equipment/material/supplies have operated under design conditions.
N/A _____ Yes _____ No _____

Summary: _____

- E. The above referenced equipment/material/supplies have been installed in accordance with the manufacturer's recommendations and the Procurement Documents, require no corrective work, and are hereby approved. Yes _____ No _____

Summary: _____

- F. The above referenced equipment/material/supplies are acceptable to the manufacturer as installed providing the following corrective action(s) are performed:

1. _____
2. _____
3. _____
4. _____
5. _____

III Inspection Checklist

Item	Acceptable (Yes/No)	Readings/Comments
Bearings (1)		
Belts (tension reading)		
Lubrication Levels		
Vibration (1) (2) (MILS/SEC)		
Infrared Thermography (1) (2)		
Starting AMPS		
Full Load AMPS		
Volts		
Rotation		
Jacket Temperature (DEGF)		
Seal Water Flow Rate (GPH or GPM)		
Seal Water Pressure (PSI)		
O-rings/Packing		
Alignment (1)		
Anchor Bolts		
Grout		

Item	Acceptable (Yes/No)	Readings/Comments
Substrate Approval		
Sound level (4 FT from unit) (1) (dB)		
Other		

(1) Inspection or testing reports must be attached.

(2) Provide vibration testing and monitoring procedures for Engineer's review and approval prior to testing.

IV O&M Manuals

- A. The O&M manual as presented contains all information required for proper operation, maintenance, and instruction of this system. N/A ____ Yes ____ No ____

Summary: _____

V Preventive Maintenance

- A. The preventive maintenance summary outlined in the O&M manual is acceptable for operation of the system throughout the warranty period. N/A ____ Yes ____ No ____

Summary: _____

VI Operator Training/Classroom Instruction

- A. Training and instruction have been performed in accordance with the requirements of the Procurement Documents. N/A ____ Yes ____ No ____

- B. Final Training/Classroom Instruction Completed on: _____

Summary: _____

VII Remarks

VIII Certification

I hereby certify, that I, _____, am a duly authorized representative of the manufacturer, that I am empowered by the manufacturer to inspect, approve, and operate his equipment, and that I am authorized to make recommendations required to assure that the equipment furnished by the manufacturer is complete and operational, except as modified herein. I also certify that all information contained herein is true and accurate.

By: _____
(Authorized Representative)

For: _____

Date: _____

IX Acknowledgments

By: _____

For: _____
(Contractor)

Date: _____

By: _____

For: _____
(Engineer)

Date: _____

SECTION 01 66 00
PRODUCT STORAGE AND HANDLING REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. General requirements for:

- a. Payment considerations for stored materials and equipment.
- b. Handling of materials and equipment.
- c. Storage of materials and equipment, including:
 - 1) General provisions for storage.
 - 2) Storage locations.
 - 3) Protection of stored items.
 - 4) Storage of items containing Constituents of Concern.
 - 5) Outdoor, uncovered storage.
 - 6) Outdoor, covered storage.
 - 7) Fully-protected storage.
 - 8) Removal of temporary storage facilities and restoration of storage areas.
- d. Maintenance of storage.

B. Scope:

1. Contractor shall provide all labor, materials, equipment, tools, services, lands, and incidentals necessary and required to store and handle materials and equipment to be incorporated into the Work, and other materials and equipment at the Site, adjacent areas, and offsite storage areas.

C. Related Requirements: Include but are not limited to:

1. Section 01 57 05 - Temporary Controls.

1.2 PRICE AND PAYMENT PROCEDURES

A. Measurement and Payment:

1. Materials and equipment delivered but not suitably stored and protected will not be eligible for payment.
2. Engineer may recommend reduction in payment, and Owner may reduce payments to Contractor ("set-offs") by an appropriate amount when stored items are subsequently revealed to be improperly stored or protected.
3. Payment for Suitably Stored Items:
 - a. Requirements for payment for materials and equipment delivered and suitably stored, but not yet incorporated into the Work, are in the General Conditions, as may be modified by the Supplementary Conditions.
 - b. Materials and equipment delivered and suitably stored, but not yet incorporated into the Work, will not be eligible for payment until the inspection upon delivery is completed and Engineer concurs that such items generally appear to be in good condition, in accordance with the Contract Documents, and are of the required quality and quantity.

1.3 SUBMITTALS

A. Informational Submittals: Submit the following:

1. Affidavits of Inspection and Maintenance Performed on Mechanical and Electrical Equipment in Long-Term Storage:
 - a. Submit in accordance with requirements of Article 3.1 of this Section.
2. Other Records of Inspection and Maintenance of Stored Materials and Equipment:
 - a. Establish and maintain such records as required by this Section.

- b. Submit to Engineer or Owner (as applicable) within three days of Contractor's receipt of such request.

1.4 HANDLING

A. Handling of Materials and Equipment – General:

1. Handle materials and equipment to be incorporated into the Work in accordance with the Contract Documents and manufacturer's written instructions.
2. During handling and assembling materials and equipment:
 - a. Maintain validity of manufacturers' warranties.
 - b. Do not drop, drag (without appropriate rollers or skids), or scrape materials and equipment.
 - c. Use proper construction equipment and machinery, and tools, operated by sufficient number of qualified personnel.
 - d. Maintain materials and equipment in neutral position.
 - e. Do not exert undue stress on materials and equipment.
 - f. Do not deform, bend, or damage materials and equipment.
 - g. Do not deform or mar shafts, bearings, or other parts.

B. Additional Requirements for Hoisting and Lifting:

1. When lifting or hoisting, support materials and equipment from appropriate lifting points using proper hooks and suitable nylon lifting straps, chains, and cables. Do not mar or scrape surfaces of materials and equipment during handling.
2. Do not support rigging from building or structure without written approval of Engineer.
3. Contractor is responsible for and shall remedy damage to building, structure, resulting from Contractor's operations.

1.5 STORAGE

A. Storage – General:

1. Contractor shall make all arrangements and provide all measures necessary and required for, and pay all costs associated with, storing materials and equipment.
2. Store materials and equipment in accordance with the Contract Documents and manufacturer's written instructions. In event of conflict between the Contract Documents and manufacturer's written instructions regarding storage and protection, comply with the more-stringent, more-protective requirements.
3. Records:
 - a. Establish and maintain up-to-date account of materials and equipment in storage, to facilitate preparation of progress payment requests, if the Contract Documents provide for payment for materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing.
 - b. Submit affidavits of inspection and maintenance of mechanical and electrical equipment in long-term storage in accordance with this Section's Article 3.1 ("Maintenance of Storage").
4. Arrange stored materials and equipment to allow easy access for observation or inspection by Owner, Engineer, Owner-hired testing and inspection entities, and authorities having jurisdiction.
5. Inspect and maintain stored materials and equipment in accordance with this Section's Article 3.1 ("Maintenance of Storage").

B. Storage Location:

1. When onsite storage is insufficient, Contractor shall provide additional lands for storage facilities as necessary and required for the Work.
2. Restrictions on Storage Locations:
 - a. Do not store materials or equipment in structures being constructed unless approved by Engineer in writing.
 - b. Do not use lawns, landscaped areas, or private property for storage without written permission of property owner.

1 C. Protection of Stored Items – General:

- 2 1. Store materials and equipment indicated below to ensure preservation of quality and fitness
3 for intended uses in the Work, including proper protection against damage and deterioration
4 resulting from: water (including precipitation, flood, and other), moisture, humidity, wind,
5 dust, freezing, and outdoor ambient air high temperature as high as 85 degrees F.
6 Temperature and humidity inside crates, containers, storage structures, and packaging may
7 be significantly higher than outdoor ambient air temperature.
8 2. Store in indoor, climate-controlled storage all materials and equipment subject to damage or
9 deterioration by water, moisture, humidity, heat, cold, and other elements, unless otherwise
10 acceptable to Owner and Engineer.
11 3. Do not open manufacturer's crates, containers, and packaging until time of installation,
12 unless recommended by the manufacturer or otherwise required in the Contract Documents.
13 4. Store all materials and equipment off the ground (or floor) on raised supports such as skids
14 or pallets.
15 5. Electrical Equipment, Instrumentation and Controls, Items Containing Computer Chips,
16 Solid-State Devices, and Other Electronics:
17 a. Contractor shall obtain, coordinate, and comply with specific temperature, humidity,
18 and environmental limitations on materials and equipment, because temperature inside
19 cabinets and components stored in warm temperatures can approach 200 degrees F.
20 b. Protect from water, moisture, humidity, dust, heat, cold, and other potentially harmful
21 elements and environments. Space heaters provided in equipment shall be connected
22 and operating at all times until equipment is connected to active, permanent, electrical
23 power.
24 c. Provide inside each electrical panel, control panel, and other enclosures with electronic
25 device(s) each of the following: (1) desiccant, (2) volatile corrosion inhibitor (VCI)
26 blocks, (3) moisture indicator, and (4) maximum- and minimum-indicating
27 thermometer.
28 d. Check panels and equipment not less than once per month. Replace desiccant, VCI,
29 and moisture indicator the earlier of: (1) as often as necessary, or (2) every six months.
30 e. Establish and maintain certified record of daily maximum and minimum temperature
31 and humidity in storage facility. Such records shall be available for Engineer's and
32 Owner's inspection upon request. Certified record of monthly inspection, noting
33 maximum and minimum temperature for month, condition of desiccant, VCI, and
34 moisture indicator, shall be available to Engineer and Owner upon request..
35 6. Finished Surfaces:
36 a. Protect finished surfaces against impact, abrasion, discoloration, and other damage.
37 b. Remedy, in accordance with requirements of item manufacturer and finishing system
38 manufacturer damaged, marred, or deteriorated finishes, to Engineer's satisfaction.
39 7. Contractor is fully responsible for loss, damage, and deterioration, including theft and
40 vandalism, to stored materials and equipment.

41 D. Storage of Materials or Equipment Containing Constituents of Concern:

- 42 1. Prevent contamination of personnel, storage areas, the Site, and adjacent areas.
43 2. Comply with Laws and Regulations, and other provisions of the Contract Documents
44 relative to Constituents of Concern and Hazardous Environmental Conditions.

45 E. Uncovered Storage:

- 46 1. The following materials may be stored outdoors without cover on supports, so there is no
47 contact with the ground:
48 a. Reinforcing steel.
49 b. Precast concrete materials.
50 c. Structural steel.
51 d. Metal stairs.
52 e. Handrails and railings.
53 f. Grating.
54 g. Checker plate.

- h. Metal access hatches, such as floor doors, roof hatches, and the like.
 - i. Castings.
 - j. Fiberglass items.
 - k. Rigid electrical conduit, except PVC-coated conduit.
 - l. Fencing intended for permanent, outdoor installation.
 - m. Piping, except PVC or chlorinated PVC (CPVC) pipe.
- F. Covered Storage:
1. The following materials and equipment may be stored outdoors on supports and completely covered with covering impervious to water:
 - a. Grout and mortar materials.
 - b. Masonry units.
 - c. Metal decking.
 - d. Rough lumber.
 - e. Soil materials and granular materials such as aggregate.
 - f. PVC and CPVC pipe.
 - g. PVC-coated electrical conduit.
 - h. Filter media.
 2. Properly and fully secure covers against coming loose in strong winds.
 3. Install coverings properly sloped to prevent accumulation of water.
 4. Loose Soil Material and Loose Granular Material:
 - a. Store such materials in well-drained areas.
 - b. Prevent mixing of such materials with foreign matter. Provide underlying separation layer or store on solid, impervious surface, where appropriate.
 - c. Provide temporary erosion and sediment controls for stockpiled soil materials in accordance with Section 01 57 05 - Temporary Controls.
- G. Fully-Protected Storage:
1. Store all materials and equipment not indicated in the provisions above regarding uncovered storage and covered storage on supports, in buildings, trailers, or other suitable temporary storage facility with concrete or wood flooring, solid and impervious roof, and fully closed walls on all sides.
 2. Covering with visqueen plastic sheeting or similar material in storage space without floor, roof, and walls is unacceptable.
 3. Provide heated storage for materials and equipment that could be damaged or deteriorate by low temperatures or freezing.
 4. Provide air-conditioned storage for materials and equipment that could be damaged or deteriorate by high temperature or humidity.
 5. Protect mechanical and electrical equipment from being contaminated by dust, dirt, and moisture.
 6. Maintain temperature and humidity at levels recommended by materials and equipment manufacturers.
 7. Prevent infestation of stored items by pests and rodents. Promptly and properly remedy such infestation when apparent.
- H. Removal of Temporary Storage Facilities and Restoration of Storage Areas:
1. Completely remove temporary storage facilities when no longer necessary for the Work.
 2. Restore areas used for storage and areas occupied by temporary storage facilities, in accordance with the Contract Documents.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 MAINTENANCE OF STORAGE

- A. On a scheduled basis, periodically inspect stored materials and equipment to ensure that:

1. Condition and status of storage facilities is adequate to provide required storage conditions.
 2. Required environmental conditions are maintained on continuing basis.
 3. Materials and equipment exposed to weather elements or other environment are not adversely affected.
- B. Mechanical and Electrical Equipment in Long-Term Storage:
1. Meaning of the term “long-term storage” is as established in written instructions of manufacturer of associated materials or equipment.
 2. Mechanical and electrical equipment requiring long-term storage shall have complete manufacturer’s written instructions for servicing each item, with notice of enclosed instructions shown on exterior of crate, container, or packaging.
 3. Frequency of inspections and maintenance of stored items shall be in accordance with manufacturer’s written instructions.
 4. For mechanical equipment with bearings and shafts, manually rotate shaft during inspection and maintenance, as recommended by equipment manufacturer.
 5. Space heaters that are part of electrical equipment shall be connected and operated continuously until equipment is connected to permanent electrical power supply.
 6. Other requirements for maintenance during storage of electrical equipment, instrumentation and controls, items with computer chips, solid-state devices and other electronics are in this Section’s provision on general protection during storage.
- C. Affidavits:
1. Submit to Engineer affidavit for each time maintenance and inspection was performed on materials and equipment in long-term storage. Affidavit shall be signed by Contractor and entity performing the inspection and maintenance on the stored items.
 2. Indicate on affidavit:
 - a. Date of inspection.
 - b. Personnel involved and employer of each.
 - c. Condition of storage environment.
 - d. Specific stored items inspected, equipment condition, problems observed, problems corrected, maintenance tasks performed, and other relevant information.
 - e. Signature of Contractor’s person responsible for the inspection and maintenance.
 - f. Signed and notarized statement by items’ manufacturer indicating whether storage conditions and tasks performed are suitable for continued compliance with manufacturer’s warranties.
 3. Submit each affidavit, complete, not later than seven days after performing associated inspection and maintenance.

END OF SECTION

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SECTION 01 71 14
MOBILIZATION AND DEMOBILIZATION

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Project mobilization and demobilization.

1.2 GENERAL

- A. Mobilization work shall consist of preparatory work and operations necessary to be ready to perform the Work required under the Contract, and for other work and operations which must be performed, or costs incurred prior to the beginning of the Work.
- B. Demobilization work shall consist of all activities and costs for transportation of personnel, equipment, and supplies necessary to demobilize the contractor from the site.
- C. Mobilization and Demobilization shall not include mobilization or demobilization for specific items of work for which payment is provided elsewhere in the Contract.
- D. When the Contract or proposed Schedule of Values includes a separate item for mobilization or demobilization, payment will include full compensation for the furnishings of all labor, materials, tools, equipment, administrative costs, and incidentals to mobilization or demobilization.
- E. If additional mobilization and demobilization activities and costs are required during the performance of the Contract as a result of the changed, deleted, or added items of work for which the Contractor is entitled to an adjustment in Contract price, compensation for such costs shall be included in the price adjustment for the item of Work changed or added.

1.3 ITEMS INCLUDED

- A. Mobilization costs shall be limited to the following items:
1. Obtaining bonds and insurance.
 2. Obtaining required permits and licenses.
 3. Developing Project Work Schedule.
 4. Attending Preconstruction Conference.
 5. Processing Permits.
 6. Furnishing and installing signs.
 7. Any work that is necessary to provide access to the site, including, but not limited to, grading and clearing.
 8. Installing temporary construction power wiring.
 9. Necessary assembly and testing required prior to start of the Work.
 10. Establishment of all and other facilities necessary for the Work, including utilities and specified field offices.
 11. Providing for and establishing Contractor's work and storage yard.
 12. Movement of personnel, major equipment, supplies, and incidentals to the site.
 13. Cost incurred prior to the start of the Work which must be performed, such as a down payment on a long lead item.
- B. Demobilization costs shall be limited to the following items:
1. Disassembly, removal and site cleanup/repair of offices, buildings, and other facilities assembled on the site for the Contract.
 2. Costs for final site cleanup, packaging of miscellaneous items for return to the yard and other project closeout related expenses.
 3. Cost for final payment documents, and provision of Acknowledgement Certification Request, Bond, and Certificate of Completion.

- 1 C. The Owner will pay all costs for the Mobilization and Demobilization of all of the Contractor's
2 personnel, equipment, supplies, and incidentals at the contract lump sum price as follows:
3 1. The Owner will pay no greater than 5% of the original Contract Amount as a separate pay
4 item for mobilization.
5 2. The Owner will pay no greater than 1/2% of the original Contract Amount as a separate pay
6 item for demobilization.
7 3. Owner will pay 50% of the Mobilization lump sum price when 5% of the original Contract
8 Amount is earned.
9 4. Owner will pay the remaining 50% of the Mobilization lump sum price when 10% of the
10 original Contract Amount is earned.
11 5. Owner will pay 100% of the Demobilization lump sum price when all closeout activities
12 and documents are completed.
13 6. Furnish cost data and documentation to justify this portion of the bid if Owner believes that
14 the percentages in this paragraph do not bear a reasonable relation to the cost of the work in
15 this contract.
16 7. Failure to justify such price to the satisfaction of the Owner will result in payment as
17 determined by the Owner, of:
18 a. Actual mobilization costs at completion of mobilization.
19 b. Actual demobilization costs at completion of demobilization; and.
20 c. The remainder of this item in the final payment under this contract.
21 8. The Owner's determination of the actual costs in this paragraph is not subject to appeal.
22 9. This schedule of mobilization progress payments will not limit or preclude progress
23 payments otherwise provided by the Contract.

24 **PART 2 - PRODUCTS - (NOT USED)**

25 **PART 3 - EXECUTION - (NOT USED)**

27 **END OF SECTION**

SECTION 01 74 00
CLEANING

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Requirements for keeping the Site free of accumulations of waste materials during construction (“progress cleaning”).
2. Cleaning for Substantial Completion and prior to final inspection (collectively, “closeout cleaning”).

B. Scope:

1. Contractor shall perform cleaning during the Project, including progress cleaning, as condition precedent to Substantial Completion, upon completion of the Work, and as required by the General Conditions, as may be modified by the Supplementary Conditions, this Specifications section, and elsewhere in the Contract Documents.
2. Maintain in a clean manner the Site, the Work, and areas adjacent to or affected by the Work.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. National Fire Protection Association (NFPA):
 - a. 241, Safeguarding Construction, Alteration, and Demolition Operations.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 PROGRESS CLEANING

A. Progress Cleaning – General:

1. Clean the Site, work areas, and other areas occupied by Contractor not less than weekly. Dispose of waste materials in accordance with the General Conditions, as may be modified by the Supplementary Conditions, and the following:
 - a. Comply with NFPA 241 for removing combustible waste materials and debris.
 - b. Do not hold non-combustible materials at the Site more than three days if the ambient air temperature is expected to rise above 80 DEGF. When ambient air temperature is less than 80 DEGF, dispose of non-combustible materials within seven days of their generation.
 - c. Provide suitable containers for storage of waste materials and debris. Avoid generation of odors and creation of nuisances.
 - d. Containerize hazardous and unsanitary waste materials separately from other waste. Mark containers appropriately.

B. Progress Cleaning – Site:

1. Keep outdoor, dust-generating areas wetted down or otherwise control dust emissions.
2. Not less than weekly, brush-sweep roadways and paved areas at the Site and adjacent areas used by construction vehicles or otherwise affected by construction activities.
3. Comply with dust control requirements of Section 01 57 05 - Temporary Controls.

C. Progress Cleaning – Work Areas:

1. Clean areas where the Work is in progress to maintain an extent of cleanliness necessary for proper execution of the Work and safety of personnel.

2. Remove liquid spills promptly. Where spills may have harmful effects on health, safety, protection of facilities, or the environment, immediately report spills to Owner, Engineer, and authorities having jurisdiction, in accordance with the Contract Documents and Laws and Regulations.
 3. Where dust would impair proper execution of or quality of the Work, broom-clean or vacuum entire work area, as necessary.
 4. Concealed Spaces: Remove waste material and debris from concealed spaces before enclosing the space.
- D. Progress Cleaning – Installed Work:
1. Keep installed Work clean. Clean installed surfaces according to written instructions of manufacturer or fabricator of installed materials and equipment, using only cleaning agents and methods specifically recommended by material or equipment Supplier.
 2. If Supplier does not recommend specific cleaning agents or methods, use cleaning agents and methods that are not hazardous to health and property and that will not damage or mar exposed surfaces.
- E. Progress Cleaning – Exposed Surfaces:
1. Clean exposed surfaces and protect as necessary to ensure freedom from damage and deterioration until Substantial Completion.
- F. Progress Cleaning – Cutting and Patching:
1. Clean areas and spaces where cutting and patching are performed. Completely remove paint, mortar, oils, putty, trailings and cuttings, and similar materials.
 2. Thoroughly clean piping, ductwork, conduits, and similar features before applying patching material, paint, or other finishing materials.
 3. Restore damaged insulation and coverings on piping, cutwork, and similar items to its pre-construction condition.
- G. Cleaning of Hydraulic Structures:
1. Clean hydraulic structures that will contain fluid, such as tanks and channels, in accordance with this Specifications section.
 2. Do not perform field quality control activities such as testing tanks, channels, and other hydraulic structures for leakage or disinfecting (where applicable), and do not apply for inspection for Substantial Completion for hydraulic structures, until the associated hydraulic structures are clean and free of all waste materials, and ready for intended use.
- H. Waste Disposal:
1. Properly dispose of waste materials (including surplus materials, debris, rubbish, and other waste) off the Site.
 2. Do not burn or bury waste materials at the Site.
 3. Remove waste material and rubbish from excavations before backfilling.
 4. Do not discharge volatile or hazardous substances, such as mineral spirits, oil, or paint thinner, into storm sewers, gutters, sanitary sewers, or other location in the environment. Dispose of such materials in accordance with Laws and Regulations.
 5. Do not discharge wastes to surface waters, drainage routes, or groundwater.
 6. Contractor is solely responsible for complying with Laws and Regulations regarding storing, transporting, and disposing of waste generated by Contractor's operations or brought to the Site by Contractor.
- I. During handling and installation of materials and equipment, clean and protect construction in progress and adjoining materials and equipment already in place. Apply protective covering where necessary or required for protection from damage or deterioration, until Substantial Completion.
- J. Clean completed construction as frequently as necessary throughout the construction period.

3.2 CLOSEOUT CLEANING

- A. Complete the following prior to requesting inspection for Substantial Completion:

1. Clean and remove from the Site waste material (including rubbish and debris) and other foreign and undesirable items and substances.
 2. Sweep broom-clean paved areas suitable for access by vehicles.
 3. Remove spills and stains or petroleum, oils, solvents, other chemicals, and other foreign and undesirable deposits.
 4. Hose-clean sidewalks and loading areas.
 5. Rake grounds that are neither planted nor paved to a smooth, even-textured surface.
 6. Surface waterways and drainage routes (including storm sewers, gutters, and ditches) shall be open and clean.
 7. Repair pavement, roads, sod, and other areas affected by construction operations and restore to specified condition; if condition is not specified, restore to preconstruction condition.
 8. Clean exposed exterior and interior hard-surfaced finishes to dirt-free condition, free of spatter, grease, stains, fingerprints, films, and similar foreign and undesirable substances.
 9. Clean, wax, and polish wood, vinyl, and painted floors.
 10. Remove waste material and surface dust from limited-access spaces, including roofs, plenums, shafts, trenchway, equipment vaults, manholes, and similar spaces.
 11. In unoccupied spaces, sweep concrete floors broom-clean.
 12. Clean transparent materials, including mirrors and glazing in doors and windows. Remove glazing compounds and other noticeable, vision-obscuring materials. Replace chipped or broken glass and other damaged transparent materials.
 13. Remove non-permanent tags and labels.
 14. Surface Finishes:
 - a. Touch-up and otherwise repair and restore chipped, scratched, dented or otherwise marred surfaces to specified finish and match adjacent surfaces.
 - b. Do not paint over "UL" or similar labels, including mechanical and electrical nameplates.
 15. Wipe surfaces of mechanical and electrical equipment, and similar equipment. Remove excess lubrication, paint, and mortar droppings, and other foreign or undesirable substances.
 16. Clean plumbing fixtures to sanitary condition, free of stains, including stains resulting from water exposure.
 17. Replace disposable air filters and clean permanent air filters. Clean exposed surfaces of diffusers, registers, and grills.
 18. Clean lighting fixtures, lamps, globes, and reflectors to function with full efficiency. Replace temporary lamps provided in permanent fixtures. Replace existing lighting fixture components that are burned out or noticeably dimmed from use during construction. Replace defective and noisy starters in fluorescent and mercury vapor fixtures to comply with requirements for new fixtures.
 19. Leave the Site clean, and in neat, orderly condition, satisfactory to Owner and Engineer.
- B. Complete the following prior to requesting final inspection:
1. After Substantial Completion of all the Work, following completion of items of incomplete or damaged Work ("punch list Work"), clean "punch list Work areas in accordance with Paragraph 3.2.A of this Specifications Section.
 2. Remove field offices, Contractor's storage sheds, and remaining stockpiles and clean all such areas in accordance with Paragraph 3.2.B of this Specifications Section, and in accordance with Contract Documents for landscaping and restoration.

END OF SECTION

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SECTION 01 75 00
CHECKOUT AND START-UP PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Administrative and procedural requirements for checkout and startup of equipment, systems, and facilities.
- B. Scope:
1. Contractor shall initially check out, start up, and place equipment and systems installed under the Contract into successful operation, in accordance with the material and equipment manufacturers' written instructions, Suppliers' recommendations at the Site, and the Contract Documents.
 2. Provide the following:
 - a. All labor, tools, materials, and equipment required to complete equipment and system checkout and startup.
 - b. Chemicals, lubricants, and other required operating fluids necessary for checkout, startup, and initial operation of the Work.
 - c. Filters and other temporary or consumable items necessary for checkout, startup, and initial operation of the Work.
 - d. Fuel, electricity, water, and other temporary utilities and temporary facilities necessary for checkout and startup of equipment and systems, unless otherwise specified.
 3. The General Conditions, as may be modified by the Supplementary Conditions address requirements for documenting Substantial Completion.
- C. Related Sections include but are not necessarily limited to:
1. Section 01 78 23 - Operation and Maintenance Data
 2. Section 01 61 03 - Equipment - Basic Requirements.

1.2 ADMINISTRATIVE REQUIREMENTS

- A. Coordination:
1. Coordinate checkout and startup with other contractors, as necessary.
 2. Do not start up equipment or system(s) for continuous operation until all components of that equipment item or system, including instrumentation and controls, have been tested to the extent practicable and proven to be operable as intended by the Contract Documents.
 3. Subject to the constraints of this Specifications section, Owner will furnish sufficient personnel to assist Contractor in starting up equipment and system(s), but responsibility for proper operation of the Work is Contractor's.
 4. Supplier shall be present during checkout, startup, and initial operation, unless otherwise acceptable to Engineer or otherwise required by the Contract Documents.
 5. For startup of heating equipment, air conditioning equipment, and other equipment and systems that provide temperature control, that are dependent upon the time of year, return to the Site at beginning of next heating or cooling season (as applicable) to recheck and start the appropriate equipment and system(s).
 6. Do not start up equipment and system(s), without submitting acceptable preliminary operations and maintenance manuals by Contractor in accordance with the Contract Documents.
- B. Checkout and Startup Planning Meeting:
1. Contractor, with appropriate Subcontractors and Suppliers, shall attend and participate in a meeting with Owner, facility manager, and Engineer to discuss planning, scheduling, and coordination of checkout and startup activities.

2. Meeting shall be held by the earlier of: (1) not less than 60 days prior to first scheduled training session for the equipment and system(s) to be checked out and started-up, and (2) not less than 60 days prior to the checkout and startup of the associated equipment and system(s).
 3. Attend meeting prepared to knowledgeably and effectively discuss:
 - a. Status of the Work and schedule-to-complete for requirements prerequisite to checkout and startup.
 - b. Schedule for and status of training required for each equipment item and system.
 - c. Schedule for checkout, startup, and field quality control activities for the subject Work.
 - d. Status and quantities of required consumables, lubricants, and utility services necessary for checkout and startup.
 4. Meeting will be chaired by Engineer. Engineer will prepare and distribute a record of topics discussed and decisions made during the meeting.
 5. Comply with decisions made at the meeting and the Contract Documents.
- C. Sequencing:
1. Coordinate with Owner's Operations, regarding staging (phasing) of the Work and allowable shutdowns.
- D. Scheduling:
1. Progress Schedule:
 - a. Clearly indicate in the Progress Schedule planned and actual dates for checkout, startup, and field quality control activities, including all demonstration testing activities addressed in this Specifications section and elsewhere in the Contract Documents. Separately indicate checkout, startup, and field quality control activities for each equipment item and system.
 - b. Perform startup and field quality control activities on the associated, scheduled dates, unless otherwise acceptable to Owner, facility manager, and Engineer.
 2. Restrictions for Scheduling:
 - a. Checkout of materials, equipment, and systems by Contractor that do not involve or require Owner's or facility manager's personnel may be performed at any time during normal working hours. Where required by the Contract Documents or requested by Engineer, perform checkout in the presence of Engineer or Resident Project Representative (RPR).
 - b. Startup, including initial operation of materials, equipment, and systems, shall not be initiated on: Monday, Friday, Saturday, Sunday, Owen's holidays, the day immediately prior to a holiday, or the day immediately following a holiday, unless otherwise acceptable to Owner, facility manager, and Engineer.
 - c. Unless otherwise indicated in the Contract Documents or acceptable to Owner, facility manager, and Engineer, perform all startup during normal working hours of the day shift.
 - d. To the extent practicable, where extended-duration startup or field quality control activities are required by the Contract, avoid having such activities extend into evening, night, weekend, or holiday hours.
 - e. Owner reserves the right to require a minimum seven days' notice of rescheduled startup when Contractor cannot perform the associated activities as scheduled.
 3. Operation and Maintenance Data:
 - a. Comply with Section 01 78 23 - Operation and Maintenance Data.
 - b. A preliminary copy of all operation and maintenance manuals shall be received by Engineer prior to the start of the demonstration period "OAT".
 4. Spare Parts, Tools, and Extra Materials.
 - a. Deliver to Owner or facility manager (as applicable) all required spare parts, tools, and extra materials prior to commencing the demonstration period "OAT", unless earlier delivery is required elsewhere in the Contract Documents.

1.3 QUALITY ASSURANCE

A. Regulatory Requirements:

1. Do not start up equipment or systems or place into initial operation until required operating permits are obtained from authorities having jurisdiction.
2. Where Owner (with or without assistance of Engineer) has applied for and obtained initial approvals or permits necessary for operation, Contractor shall furnish information and assistance to Owner or Engineer for Owner to secure final approvals from authorities having jurisdiction for required operating permits.

B. Qualifications:

1.4 DEFINITIONS

A. The following defined terms are used in this Specifications Section:

1. Instrumentation Supplier: Entity retained by Contractor, Subcontractor, or Supplier to furnish instrumentation or controls that will be part of the completed Work, including manufacturers, manufacturer representatives, wholesalers, retailers, and others, including entities retained to perform systems integration Work.
2. Project Classified System (PCS): An established, distinct part of the Project, consisting of an arrangement of items, such as equipment, structures, components, piping, cabling, materials, and incidentals, so related or connected to form an identifiable, unified, functional, operational, safe, and independent system. PCSs may be specifically indicated in this Specifications section or elsewhere in the Contract Documents.
3. Pre-Demonstration Period: The period of time, of unspecified duration after initial construction and installation activities during which Contractor, with assistance from manufacturer's representatives, performs in the following sequence:
 - a. Finishing type construction work to ensure the Project has reached a state of Substantial Completion.
 - b. Equipment start-up.
 - c. Personnel training.
4. Demonstration Period: A period of time, of specified duration, following the Pre-Demonstration Period, during which the Contractor initiates process flow through the Project Classified System and starts up and operates the Project Classified System, without exceeding specified downtime limitations, to prove the functional integrity of the mechanical and electrical equipment and components and the control interfaces of the respective equipment and components comprising the Project Classified System as evidence of Substantial Completion.

1.5 SUBMITTALS

A. Action Submittals: Submit the following:

1. Data collection and reporting log for each required Demonstration Period.

B. Informational Submittals: Submit the following:

1. Progress Schedules indicating dates for checkout, startup, and field quality control activities.
2. Completed checkout and startup log required in Paragraph 3.2.C of this Specifications section.
3. Manufacturer's installation check letters (also known as Manufacturer's Field Services Report) required in Paragraph 3.2.C of this Specifications section.
4. Instrumentation Supplier's Instrumentation Installation Certificate, required in Paragraph 3.2.C of this Specifications section.
5. Letter verifying completion of all pre-demonstration startup activities, required in Paragraph 3.2.C of this Specifications section.
6. Report of data collected during each required Demonstration Period.
7. Qualifications Statements:
 - a. Qualifications, including resume' and copy of license, of Contractor-retained licensed operator.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 CHECKOUT AND STARTUP – GENERAL

- A. Facility Startup Divided into Two Periods:
 - 1. Pre-Demonstration Period including:
 - a. Obtain Engineer's approval or acceptance (as applicable) of Submittals required prior to checkout and startup, including all Shop Drawings, Samples, source quality control (shop testing) Submittals, preliminary operation and maintenance manuals, and other Submittals required by the Contract Documents, other than Submittals that cannot be furnished until after startup.
 - b. Complete the Work to a point ready for checkout and startup, including operation available in all manual, automatic, and other modes.
 - c. Checkout and initial field quality control activities that can be performed prior to startup of the equipment or system.
 - d. Startup of the associated Work.
 - e. Field quality control activities for the subject Work as indicated elsewhere in the Specifications and other Contract Documents, other than this section.
 - f. Training of operations and maintenance personnel.
 - 2. Demonstration Period, including:
 - a. Demonstration of functional integrity of equipment, system, or PCS.

3.2 PRE-DEMONSTRATION PERIOD

- A. Prior to the Pre-Demonstration Period, complete the Work to the point where it is ready for checkout and startup.
- B. Checkout.
 - 1. Comply with Section 01 61 03 - Equipment - Basic Requirements, including provisions concerning installation checks
- C. Startup:
 - 1. Comply with requirements for startup of materials, equipment, and systems indicated in the associated Specification sections and elsewhere in the Contract Documents.
 - 2. Prepare the Work so it will operate properly and safely and be ready to demonstrate functional integrity during the Demonstration Period.
 - 3. Perform startup without introducing process flow.
 - 4. Introduce process flow to complete startup:
 - 5. Procedures include but are not necessarily limited to the following:
 - a. Test or check and correct deficiencies of:
 - 1) Power, control, and monitoring circuits for continuity prior to connection to power source.
 - 2) Voltage of all circuits.
 - 3) Phase sequence.
 - 4) Cleanliness of connecting piping systems.
 - 5) Alignment of connected machinery.
 - 6) Vacuum and pressure of all closed systems.
 - 7) Lubrication.
 - 8) Valve orientation and position status for manual operating mode.
 - 9) Tankage for integrity using clean water.
 - 10) Proper connections, alignment, calibration and adjustment.
 - b. Calibrate safety equipment.
 - c. Manually rotate or move moving parts to assure freedom of movement.
 - d. "Bump-start" electric motors to verify proper rotation.
 - e. Perform other tests, checks, and activities required to make the Work ready for Demonstration Period.

- f. Checkout and Startup Log:
 - 1) Prepare a log showing each equipment item and system requiring checkout and startup. Indicate in the log activities to be accomplished during checkout and startup.
 - 2) Provide a place for Contractor to record date and person performing required checkout and startup. Indicate associated date(s), personnel, and employer of each.
 - 3) Submit completed checkout and startup log to Engineer and obtain Engineer's acceptance.
6. Obtain Suppliers' certifications of the installed and operational Work, without restrictions or conditions, and submit to Engineer:
 - a. Manufacturer's installation check letters (sometimes referred to as Manufacturer's Field Services Report).
 - b. Instrumentation Supplier's Instrumentation Installation Certificate.
7. Letter verifying completion of all pre-demonstration startup activities including receipt of all specified items from Suppliers as final item prior to initiation of Demonstration Period.
8. Personnel Training:

3.3 DEMONSTRATION PERIOD

A. Demonstration Period – General:

1. Demonstrate the operation and performance of mechanical, electrical, instrumentation, and control interfaces of the Work undergoing the Demonstration Period, in accordance with the Contract Documents.
2. Duration of Demonstration Period: 120 consecutive hours.
3. If, during the Demonstration Period, the aggregate time used for repair, alteration, or unscheduled adjustments to any part of the Work that renders the affected Work inoperative or operation outside of recommended ranges exceeds 10% of the Demonstration Period, the demonstration of operation and performance will be deemed unacceptable and Contractor shall provide appropriate adjustments and remedies and re-perform the Demonstration Test, at no additional cost to Owner or facility manager, until acceptable results are obtained. Re-performance of the Demonstration Period shall comply with the same requirements as the original Demonstration Period.
4. Perform the demonstration of operation and performance of the Work under full operational conditions.
5. Owner's or Facility Manager's Personnel:
 - a. Owner or facility manager (as applicable) will make available operations personnel to make process decisions affecting facility performance and compliance with applicable operating permits.
 - b. Owner's or facility manager's assistance will be available only for process decisions.
 - c. Contractor will perform all other functions associated with the Demonstration Period including but not limited to equipment operation and maintenance until successful completion of the Demonstration Period in accordance with the Contract Documents.
6. Owner or facility manager reserves the right to simulate operational variables, equipment failures, routine maintenance scenarios, and similar actions and events during the Demonstration Period to verify the operation and performance of the Work in automatic, manual, and other types of operating modes, backup systems, and alternate operating modes.
7. Prior to Starting Demonstration Period:
 - a. Prepare data collection and reporting log for sampling, analytical data, and data to be obtained by manually recording data from field or panel indicators. Not less than 30 days prior to the start of the Demonstration Period, submit the data collection and reporting log to Engineer for acceptance.
8. Timing of Start and End of Demonstration Period:
 - a. Schedule the end of the Demonstration Period at a convenient time such as midnight, so the Owner or facility manager can assume operational responsibility on a new day beginning immediately after completion of the Demonstration Period.

SECTION 01 77 19
CLOSEOUT REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes: Administrative and procedural requirements for:
1. Substantial Completion.
 2. Final inspection.
 3. Request for final payment and acceptance of the Work.

1.2 SUBSTANTIAL COMPLETION

- A. Substantial Completion – General:
1. Prior to requesting inspect no for Substantial Completion, perform the following for the substantially completed Work:
 - a. Materials and equipment for which Substantial Completion is requested shall be fully ready for their intended use, including full operating and monitoring capability in automatic, manual, and other operating modes set forth in the Contract Documents.
 - b. Permanent provisions for safety and protection, shown and indicated in the Contract Documents and associated with the substantially completed Work or for personnel accessing and using the substantially completed Work, shall be in place and ready for their intended use.
 - c. Complete field quality control Work, including inspections and testing at the Site, indicated in Specifications sections for individual materials and equipment items and related Contract Documents. Submit results of, and obtain Engineer's acceptance of, field quality control tests and inspections required by the Contract Documents.
 - d. Complete checkout and startup in accordance with requirements of the Specifications for the various materials and equipment in the substantially completed Work, and related Contract Documents.
 - e. Cleaning for Substantial Completion shall be completed in accordance with Section 01 74 00 - Cleaning.
 - f. Submit and obtain Engineer's acceptance of final operations and maintenance manuals in accordance with Section 01 78 23 - Operation and Maintenance Data.
 - g. Obtain and submit to Engineer all required permits, inspections, and approvals of authorities having jurisdiction for the substantially completed Work to be occupied and used by Owner.
 - h. Complete other tasks that the Contract requires be completed prior to Substantial Completion.
 2. Procedures for requesting and documenting Substantial Completion are in the General Conditions, as may be modified by the Supplementary Conditions.
 3. Sample letter for Contractor's request for inspection for Substantial Completion is attached to this Specifications section. Use the model language of the sample letter, modified to suit the Project and the needs of Contractor's request.
 4. Unless decided otherwise by Owner and Engineer, form of certificate of Substantial Completion will be EJCDC C-625, "Certificate of Substantial Completion" (2018 edition or later), prepared by Engineer.
 5. Refer to the Agreement and Section 01 29 76 - Progress Payment Procedures, for requirements regarding consent of surety to partial release of or reduction in retainage.

1.3 FINAL INSPECTION

- A. Final Inspection – General:
1. Prior to requesting final inspection, verify that all the Work is fully complete and ready for final payment. Partial checklist for this purpose is attached to this Specifications section.

2. Sample letter for Contractor to request final inspection is attached to this Specifications section. Use the model language of the sample letter, modified to suit the Project.
3. Procedures for requesting and documenting the final inspection are in the General Conditions, as may be modified by the Supplementary Conditions, and as augmented in this Specifications section.

1.4 REQUEST FOR FINAL PAYMENT AND ACCEPTANCE OF THE WORK

A. Procedure:

1. After successful completion of the final inspection, submit request for final payment in accordance with the Agreement and General Conditions, as may be modified by the Supplementary Conditions, and using procedure specified in Section 01 29 76 - Progress Payment Procedures, and this Specifications section.
2. Acceptance of the Work:
 - a. Upon Engineer's concurrence that the Work is complete and ready for final payment (as a result of the final inspection and other communications between the parties and Engineer) and receipt of the final Application for Payment, accompanied by other required Contract closeout documentation, all in accordance with the Contract Documents, Engineer will issue to Owner and Contractor a notice of acceptability of the Work, in accordance with the General Conditions, as may be modified by the Supplementary Conditions.
 - b. Unless decided otherwise by Owner and Engineer, form of acceptance will be EJCDC C-626, "Notice of Acceptability of Work", (2018 edition or later).
 - c. Nothing other than receipt of such notice of acceptability from Engineer constitutes acceptance of the Work.
 - d. Receipt of Engineer's notice of acceptability of the Work does not relieve Contractor of Contractor's continuing obligations under the Contract, including correction period obligations, warranty obligations, indemnification obligations, insurance requirements, and Contractor's other obligations following acceptance of the Work by Engineer and final payment. Such obligations shall commence and remain in effect as indicated elsewhere in the Contract Documents.

B. Request for final payment shall include:

1. Documents required for progress payments in Section 01 29 76 - Progress Payment Procedures.
2. Documents required in the General Conditions, as may be modified by the Supplementary Conditions.
3. List, on Contractor's letterhead, of all Change Proposals, Claims, and disputes that Contractor believes are unsettled. If there are no such Change Proposals, Claims, or disputes, so indicate in writing.
4. Consent of Surety to Final Payment:
 - a. Acceptable form includes AIA G707, "Consent of Surety to Final Payment" (1994 or later edition), or other form acceptable to Owner.
5. Releases of Liens:
 - a. Submit complete and legally effective releases (satisfactory to Owner) of all Liens filed in connection with the Work, regardless of whether such Lien was filed by Contractor, Subcontractor, or Supplier.
 - b. Each release of Lien shall be signed by an authorized representative of the entity submitting the release of Lien, and shall include Contractor's, Subcontractor's, or Supplier's (as applicable) corporate seal, when applicable.
6. Waivers of Lien Rights:
 - a. Submit legally-binding waivers of rights to file Liens, acceptable to Owner, as required in the General Conditions (as may be modified by the Supplementary Conditions) from Contractor and each Subcontractor and Supplier that furnished or provided labor, material, or equipment totaling \$1,000 or more for the Work.
 - b. Furnish final list of Subcontractors and Suppliers indicating final amount of the associated subcontract or purchase order for each. Include on the list all lower-tier

Subcontractors and Suppliers retained by higher-tier Subcontractors and Suppliers. Prepare the list using the form included in Section 01 29 76 - Progress Payment Procedures.

- c. Each waiver of Lien rights shall be signed by an authorized representative of the entity submitting waiver of Lien rights, and shall include Contractor's, Subcontractor's, or Supplier's (as applicable) corporate seal, when applicable.
- d. Waiver of Lien rights may be conditional upon receipt of final payment.
- e. Required Affidavits: Submit the following:
 - 1) Affidavit of payment of debts and claims, submitted by Contractor. Acceptable form includes AIA G706, "Contractor's Affidavit of Payment of Debts and Claims" (1994 or later edition), or other form acceptable to Owner, and;
 - 2) Affidavit of release of Liens, submitted by Contractor. Acceptable form includes AIA G706A, "Affidavit of Release of Liens" (1994 or later edition).
 - 3) Each affidavit shall be signed by an authorized representative of Contractor and shall bear Contractor's corporate seal, as applicable.
- f. In the event Contractor is unable to obtain one or more required waivers of Lien rights, recourse is set forth in the General Conditions, as may be modified by the Supplementary Conditions.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 ATTACHMENTS

- A. The documents listed below, following this Specification section's "End of Section" designation, are part of this Specifications section:
 - 1. Sample letter for Contractor's use in requesting inspection for Substantial Completion (two pages).
 - 2. Sample partial checklist to identify readiness for final inspection (four pages).
 - 3. Sample letter for Contractor's use in requesting final inspection (one page).
- B. In the model language of the attached sample letters for Contractor to request inspection for Substantial Completion and the final inspection, italicized language in brackets, e.g., "[insert date]" indicates instructions to the drafter of the letter and often indicates specific information to be inserted by Contractor; do not include bracketed, italicized text in the final version of the letter(s) prepared for the Project. Non-italicized language in brackets is optional language; use the appropriate language to complete the actual letter for the Project and edit where required to suit the specific circumstances.

END OF SECTION

**SAMPLE LETTER FOR CONTRACTOR'S USE IN
REQUESTING INSPECTION FOR SUBSTANTIAL COMPLETION**

SENT VIA E-MAIL AND U.S. CERTIFIED MAIL/RETURN RECEIPT REQUESTED

[Date]

[Name of Engineer's contact person]

HDR

[Street address]

[City, state, postal code]

Subject:

[Project name, Contract designation]

Request for Inspection for Substantial Completion

Dear [addressee]:

In our opinion, [all of] [or] [a portion of] the Work under the above-referenced Contract is substantially complete as of [insert month, day, year on which Substantial Completion was achieved]. [The specific portion of the Work that we believe is substantially complete is [insert identification of that portion of the Work that is substantially complete].]

Enclosed is our listing of uncompleted Work items ("punch list"). In accordance with Paragraph 15.03.A of the General Conditions, we hereby request: (1) That the Engineer schedule and perform the inspection for Substantial Completion as soon as possible, and (2) Issuance of the certificate of Substantial Completion.

In accordance with Paragraph 15.03.D of the General Conditions, upon Substantial Completion, we propose the following relative to apportionment of responsibilities between the Owner and the Contractor:

1. Security, Protection, Insurance:
 - a. Site Security: [insert proposal; address whether Owner or Contractor will be responsible for security of the Site].
 - b. Protection of the Substantially Completed Work: [insert proposal; address whether Owner or Contractor will be responsible for protection].
 - c. Property Insurance: [insert proposal; typically Owner assumes responsibility for property insurance upon Substantial Completion]
2. Operation and Maintenance:
 - a. Operation: [insert proposal; address whether Owner or Contractor will be responsible for operating the substantially completed Work].
 - b. Maintenance: [insert proposal; address whether Owner or Contractor will be responsible for maintaining the substantially completed Work].
3. Utilities: [for each of the following, indicate whether Owner or Contractor will be responsible for utilities and services, or whether responsibility will be shared; if shared, indicate proposed cost-sharing]
 - a. Electricity: [insert proposal].
 - b. Natural Gas/Fuel/Heating: [insert proposal].
 - c. Water Supply: [insert proposal].

- d. Wastewater: [insert proposal].
- e. Communications (Telephone, Internet, Video): [insert proposal].

In accordance with Paragraph 15.08.A of the General Conditions, we understand that the Contract's correction period for the Work covered by the certificate of Substantial Completion commences on the Substantial Completion date documented in said certificate. [Drafter: Also see Paragraph 15.04 ("Partial Utilization") of the General Conditions and, where necessary, edit this paragraph of the letter accordingly.]

Should you have questions or comments regarding this notice, please contact [the undersigned] [or] [insert other contact person's name], at [insert telephone number and e-mail address].

Sincerely,

[Contractor's company name]

[Signatory name]
[Signatory's title]

Attachments:

Preliminary list of uncompleted Work items ("punch list"; [##] pages)

Copies:

[Owner's project manager]

SAMPLE PARTIAL CHECKLIST TO IDENTIFY READINESS FOR FINAL INSPECTION

Project: _____

Contract: _____

Contractor: _____

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
1. All Submittals, including all Shop Drawings and Samples, approved or accepted by Engineer	☐	☐	☐	☐		
Remarks:						
1. Final services completed by Suppliers, including submittal of "Manufacturer Field Service Report" in Section 01 61 03 Equipment - Basic Requirements	☐	☐	☐	☐		
Remarks:						
2. Final Work completed by Subcontractors	☐	☐	☐	☐		
Remarks:						
3. Permits closed out and regulatory compliance transitioned from construction to operations	☐	☐	☐	☐		
Remarks:						
4. All outstanding change issues are addressed and all Change Proposals submitted	☐	☐	☐	☐		
Remarks:						
5. All Change Proposals and Claims are resolved	☐	☐	☐	☐		

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
Remarks:						
6. All defective Work of which Contractor is aware has been corrected in accordance with the Contract Documents	☐	☐	☐	☐		
Remarks:						
7. Issues related to Constituents of Concern and potential Hazardous Environmental Condition have been fully addressed	☐	☐	☐	☐		
Remarks:						
8. All spare parts, tools, and extra materials have been furnished in accordance with the Contract Documents, and documentation thereof submitted to Engineer	☐	☐	☐	☐		
Remarks:						
9. All final operations & maintenance manuals have been submitted and accepted by Engineer	☐	☐	☐	☐		
Remarks:						
10. Manufacturer warranties and software license(s) furnished	☐	☐	☐	☐		
Remarks:						
11. Instruction and training of operations and maintenance personnel is complete and records of training submitted	☐	☐	☐	☐		

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
Remarks:						
12. MBE/WBE/DBE/VBE compliance report(s) submitted (when applicable)	☐	☐	☐	☐		
Remarks:						
13. All field engineering Submittals, including survey data, furnished	☐	☐	☐	☐		
Remarks:						
14. All Work on "punch list" is complete in accordance with the Contract Documents	☐	☐	☐	☐		
Remarks:						
15. All record documents submitted to and accepted by Engineer	☐	☐	☐	☐		
Remarks:						
16. Contractor is fully demobilized from the Site	☐	☐	☐	☐		
Remarks:						
17. All Site restoration is complete	☐	☐	☐	☐		
Remarks:						
18. Final cleaning of all work areas is complete	☐	☐	☐	☐		
Remarks:						
19. Releases of Liens and waivers of Lien rights (or acceptable	☐	☐	☐	☐		

Item No./Description	Completed/Date	In Progress	Not Started	Not Applicable	Target Date	Responsible Entity/Person
alternative) obtained from Subcontractors and Suppliers						
Remarks:						
20. Evidence of Contractor liability insurance furnished for correction period	☐	☐	☐	☐		
Remarks:						
21. All other required Contract closeout documents obtained	☐	☐	☐	☐		
Remarks:						
Remarks:						
22. All other Work and documentation required prior to final payment is complete and provided in accordance with the Contract Documents	☐	☐	☐	☐		
Remarks:						

1 **SAMPLE LETTER FOR CONTRACTOR'S USE IN**
2 **REQUESTING FINAL INSPECTION**

3
4 **SENT VIA E-MAIL AND U.S. CERTIFIED MAIL/RETURN RECEIPT REQUESTED**
5

6
7 [Date]
8

9 [Name of Engineer's contact person]
10 HDR

11 [Street address]

12 [City, state, postal code]
13

14 Subject:

15 [Project name, Contract designation]

16 Request for Final Inspection
17

18 Dear [addressee]:
19

20 The Work under the above-referenced Contract is complete and ready for final payment as of [insert month,
21 day, year on which final completion was achieved]. In accordance with Paragraph 15.05 of the General
22 Conditions, we hereby request that the Engineer schedule and perform the final inspection as soon as
23 possible. Upon successful completion of the final inspection, we will submit our final Application for
24 Payment accompanied by the required Contract closeout documentation in accordance with the Contract
25 Documents.
26

27 Should you have questions or comments regarding this notice, please contact [the undersigned] [or] [insert
28 other contact person's name], at [insert telephone number and e-mail address].
29

30 Sincerely,
31

32 [Contractor's company name]
33

34
35 [Signatory name]

36 [Signatory's title]
37

38 Attachments:

39 None
40

41 Copies:

42 [Owner's project manager]
43
44

SECTION 01 78 23
OPERATION AND MAINTENANCE DATA

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Administration of the submittal process for Operation and Maintenance Manuals.
 - 2. Content requirements for Operation and Maintenance Manuals.
- B. Related Specification Sections include but are not necessarily limited to:
 - 1. General submittal requirements are specified in Specification Section 01 33 00 - Submittals.
 - 2. Technical Specification Sections identifying required Operation and Maintenance Manual submittals.

1.2 DEFINITIONS

- A. Equipment Operation and Maintenance Manuals:
 - 1. Contain the technical information required for proper installation, operation and maintenance of process, electrical and mechanical equipment and systems.
- B. Building Materials and Finishes Operation and Maintenance Manuals:
 - 1. Contain the information required for proper installation and maintenance of building materials and finishes.

1.3 SUBMITTALS

- A. List of all the Operation and Maintenance Manuals required by the Contract as identified in the Technical Specification Sections. These may be referred to as "Operation and Maintenance Data" submittals.
- B. Operation and Maintenance Manuals:
 - 1. Draft and final electronic copies.
 - 2. Final paper copies: One.

1.4 SUBMITTAL SCHEDULE

- A. List of Required Operation and Maintenance Manuals:
 - 1. Submit list with Specification Section number and title within 90 days after Notice to Proceed.
- B. Draft Operation and Maintenance Manuals:
 - 1. Submit approvable draft manuals in electronic format (PDF) within 30 days following approval of the respective Shop Drawing.
 - a. Include placeholders or fly sheet pages where information is not final or is missing from the draft manual.
 - 2. All Draft Operation and Maintenance Manuals shall be received by no later than 50% project completion.
- C. Final Operation and Maintenance Manuals:
 - 1. Final approval of Operation and Maintenance Manuals in electronic format (PDF) must be obtained 45 days prior to equipment start-up.
 - 2. Provide paper copies and Electronic Documents (in portable document format, PDF files) by Electronic Means of approved final Operation and Maintenance Manuals in electronic format (PDF), a minimum of 30 days prior to equipment start-up.
 - 3. Issue addenda to Final Approved Operation and Maintenance Manual to include:
 - a. Equipment data that requires collection after start-up, for example but not limited to HVAC balancing reports, electrical switchgear, automatic transfer switch and circuit breaker settings.

- b. Equipment field testing data.
- c. Equipment start-up reports.

1.5 PREPARATION OF SUBMITTALS

A. General:

1. All pages of the Operation and Maintenance Manual submittal shall be legible.
 - a. Submittals which, in the Engineer's sole opinion, are illegible will be rejected without review.
2. Identify each equipment item in a manner consistent with names and identification numbers used in the Contract Documents, not the manufacturer's catalog numbers.
3. Neatly type any data not furnished in printed form.
4. Operation and Maintenance Manuals are provided for Owner's use, to be reproduced and distributed as training and reference materials within Owner's organization.
 - a. This requirement is:
 - 1) Applicable to both paper copy and electronic files.
 - 2) Applicable to materials containing copyright notice as well as those with no copyright notice.
5. Notify supplier and/or manufacturer of the intended use of Operations and Maintenance Manuals provided under the Contract.

B. Operation and Maintenance Manual Format and Delivery:

1. Draft electronic submittals:
 - a. Provide manual in Adobe Acrobat Portable Document Format (PDF), latest version.
 - b. Create one (1) PDF file for each equipment Operation and Maintenance Manual.
 - c. Do not password protect or lock the PDF document.
 - d. Scanned images of paper documents are not acceptable. Create the Operation and Maintenance Manual PDF file from the original source document.
 - e. Drawings or other graphics must be converted to PDF file format from the original drawing file format and made part of the PDF document.
 - f. Scanning of drawings is to be used only where actual file conversion is not possible and drawings must be scanned at a resolution of 300 DPI or greater.
 - g. Rotate sheets that are normally viewed in landscape mode so that when the PDF file is opened the sheet is in the appropriate position for viewing.
 - h. Create bookmarks in the bookmarks panel for the Operation and Maintenance Manual cover, the Table of Contents and each major section of the Table of Contents.
 - i. Using Adobe Acrobat Standard or Adobe Acrobat Professional, set the PDF document properties, initial view as follows:
 - 1) Select File → Properties → Initial View.
 - 2) Select the Navigation tab: Bookmarks Panel and Page.
 - 3) Select the Page layout: Single Page Continuous.
 - 4) Select the Magnification: Fit Page.
 - 5) Select Open to page: 1.
 - 6) Set the file to open to the cover page of the manual with bookmarks to the left, and the first bookmark linked to the cover page.
 - 7) Window Options: Check the "Resize window to initial page" box.
 - j. Set the PDF file "Fast Web View" option to open the first several pages of the document while the rest of the document continues to load.
 - 1) To do this:
 - a) Select Edit → Preferences → Documents → Save Settings.
 - b) Check the "Save As optimizes for Fast Web View" box.
 - k. PDF file naming convention:
 - 1) Use the Specification Section number, the manufacturer's name and the equipment description, separated by underscores.
 - 2) Example: 46 51 21_Sanitaire_Coarse_Bubble_Diffusers.pdf.
 - 3) Do not put spaces in the file name.
2. Final electronic submittals:

- a. Submit two copies as Electronic Documents (in portable document format, PDF files) by Electronic Means (one copy per electronic media), each secured in a protective case.
 - b. Labeling:
 - 1) Provide the following printed labeling on all electronic media:
 - a) Project name.
 - b) Specification Section.
 - c) Equipment names and summary of tag(s) covered.
 - d) Manufacturer name.
 - e) Date (month, year).
 - c. Binding:
 - 1) Include labeled electronic media in a protective case.
 - a) Bind protective case in three-ring binder, inserted at the front of the Final paper copy submittal.
 - b) Protective case(s) to have means for securing electronic media to prevent loss (e.g., zip case, flap and strap, or equivalent).
3. Final paper copy submittals:
- a. Quantity: Provide two copies.
 - b. Paper: 8.5 x 11 IN or 11 x 17 IN bright white, 20 LB paper with standard three-hole punching.
 - c. 3-Ring Binder:
 - 1) Provide D-ring binder with clear vinyl sleeves (i.e. view binder) on front and spine.
 - 2) Insert binder title sheet with the following information under the front and spine sleeves:
 - a) Project name.
 - b) Specification Section.
 - c) Equipment names and summary of tag(s) covered.
 - d) Manufacturer name.
 - e) Date (month, year).
 - 3) Provide plastic sheet lifters prior to first page and following last page.
 - d. Drawings:
 - 1) Provide all drawings at 11 x 17 IN size, triple folded and three-hole punched for insertion into manual.
 - 2) Where reduction is not practical to ensure readability, fold larger drawings separately and place in three-hole punched vinyl envelopes inserted into the binder.
 - 3) Identify vinyl envelopes with drawing numbers.
 - e. Use plastic coated dividers to tab each section of each manual in accordance with the Table of Contents.
- C. Equipment Operation and Maintenance Manual Content:
1. Provide a cover page as the first page of each manual with the following information:
 - a. Manufacturer(s) Name and Contact Information.
 - b. Vendor's Name and Contact Information.
 - c. Date (month, year).
 - d. Project Owner and Project Name.
 - e. Specification Section.
 - f. Project Equipment Tag Numbers.
 - g. Model Numbers.
 - h. Engineer's Name.
 - i. Contractor's Name.
 2. Provide a Table of Contents for each manual.
 3. Provide Equipment Record sheets as follows:
 - a. Printed copies of the Equipment Record (Exhibits B1, B2 and B3), as the first tab following the Table of Contents.
 - 1) For Instrumentation and Control equipment, International Society of Automation (ISA) Data Sheets will be acceptable in lieu of the Equipment Record sheets.
 - b. Exhibits B1-B3 are available as Fillable PDF Form documents from the Engineer.

- c. Each section of the Equipment Record must be completed in detail; simply referencing the related equipment Operation and Maintenance Manual sections for nameplate, maintenance, spare parts or lubricant information is not acceptable.
 - d. For equipment involving separate components (for example, a motor and gearbox), a fully completed Equipment Record is required for each component.
 - e. Submittals that do not include the Equipment Record(s) will be rejected without further content review.
4. Provide a printed copy of the Manufacturer's Field Services report as required by Specification Section 01 75 00 following the Equipment Record sheets.
 5. Provide the following detailed information, as applicable:
 - a. Use equipment tag numbers from the Contract Documents to identify equipment and system components.
 - b. Equipment function, normal and limiting operating characteristics.
 - c. Instructions for assembly, disassembly, installation, alignment, adjustment, and inspection.
 - d. Operating instructions for start-up, normal operation, control, shutdown, and emergency conditions.
 - e. Maintenance instructions, including lubrication instructions if applicable
 - f. Troubleshooting guide.
 - g. Mark each sheet to clearly identify specific products and component parts and data applicable to the installation for the Project; delete or cross out information that does not specifically apply to the Project.
 - h. Parts lists:
 - 1) A parts list and identification number of each component part of the equipment.
 - 2) Exploded view or plan and section views of the equipment with a detailed parts callout matching the parts list.
 - 3) A list of recommended spare parts.
 - 4) List of spare parts provided as specified in the associated Specification Section.
 - 5) A list of any special storage precautions which may be required for all spare parts.
 - i. General arrangement, cross-section, and assembly drawings.
 - j. Electrical diagrams, including elementary diagrams, wiring diagrams, connection diagrams, and interconnection diagrams.
 - k. Factory and field test data and performance curves (if applicable).
 - l. As-constructed fabrication or layout drawings and wiring diagrams.
 - m. Copy of the equipment manufacturer's warranty meeting the requirements of the Contract.
 - n. Copy of any service contracts provided for the specific piece of equipment as part of the Contract.
 6. Additional information as required in the associated equipment or system Specification Section.
 7. Include in Submittal the final, configured control setpoints and similar configurable parameters provided in the equipment.
- D. Building Materials and Finishes Operation and Maintenance Manual Content:
1. Provide a cover page as the first page of each manual with the following information:
 - a. Manufacturer(s) Name and Contact Information.
 - b. Vendor's Name and Contact Information.
 - c. Date (month, year).
 - d. Project Owner and Project Name.
 - e. Specification Section.
 - f. Model Numbers.
 - g. Engineer's Name.
 - h. Contractor's Name.
 2. Provide a Table of Contents for each manual.
 3. Building products, applied materials and finishes:

- a. Include product data, with catalog number, size, composition and color and texture designations.
 - b. Provide information for ordering custom manufactured products.
- 4. Necessary precautions:
 - a. Include product MSDS for each approved product.
 - b. Include any precautionary application and storage guidelines.
- 5. Instructions for care and maintenance:
 - a. Include manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods and recommended schedule for cleaning and maintenance.
- 6. Moisture protection and weather exposed products:
 - a. Include product data listing, applicable reference standards, chemical composition, and details of installation.
 - b. Provide recommendations for inspections, maintenance and repair.
- 7. Additional requirements as specified in individual product specifications.
- E. National Fire Protection Association 70 (National Electrical Code) Documentation:
 - 1. Assemble documented calculations of Arc-Fault Current, Equipment Available Fault Current and Short Circuit Current Rating (SCCR) provided as part of equipment submittals into one O&M manual volume.

1.6 TRANSMITTAL OF SUBMITTALS

- A. Operation and Maintenance Manuals.
 - 1. Transmit all submittals to:
 - a. The address specified in Specification Section 01 33 00 - SUBMITTALS.
 - 2. Transmittal form: Use Operation and Maintenance Manual Transmittal, Exhibit A.
 - 3. Transmittal numbering:
 - a. Number each submittal with the Specification Section number followed by a series number beginning with "-01" and increasing sequentially with each additional transmittal, followed by "-OM" (for example: 43 23 14-01-OM).
 - 4. Submit draft and final Operation and Maintenance Manual in electronic format (PDF) to Engineer, until manual is approved.

1.7 ENGINEER'S REVIEW ACTION

- A. Draft Electronic (PDF) Submittals:
 - 1. Engineer will review and indicate one of the following review actions:
 - a. A - ACCEPTABLE
 - b. B - FURNISH AS NOTED
 - c. C - REVISE AND RESUBMIT
 - d. D - REJECTED
 - 2. Submittals marked as Acceptable or Furnish As Noted will be retained; however, the transmittal form will be returned with a request for the final paper and electronic documents to be submitted.
 - 3. Copies of submittals marked as Revise and Resubmit or Rejected will be returned with the transmittal form marked to indicate deficient areas.
 - 4. Resubmit until approved.
- B. Final Paper Copy Submittals:
 - 1. Engineer will review and indicate one of the following review actions:
 - a. A - ACCEPTABLE
 - b. D - REJECTED
 - 2. Submittals marked as Acceptable will be retained with the transmittal form returned as noted.
 - 3. Submittals marked as Rejected will be returned with the transmittal form marked to indicate deficient areas.
 - 4. Resubmit until approved.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION - (NOT USED)

END OF SECTION



EXHIBIT A **Operation and Maintenance Manual**
Transmittal _____ - _____ - OM
(Spec Section) (Series)

Project Name:		Date Received:
Project Owner:		Checked By:
Contractor:	Owner:	Log Page:
Address:	Address:	HDR No.:
Attn:	Attn:	1st. Sub. ReSub.

Date Transmitted:	Previous Transmittal Date:			
No.	Description of Item	Manufacturer	Dwg. or Data No.	Action Taken*
Copies				

Remarks:

To:	From:
	HDR Engineering, Inc.
	Date:

- * The Action designated above is in accordance with the following legend:
- A - Acceptable, provide one (1) additional paper copy and two (2) Electronic Documents (in portable document format, PDF files) by Electronic Means for final review.
- B - Furnish as Noted
- C - Revise and Resubmit
This Operation and Maintenance Manual Submittal is deficient in the following area:
1. Equipment Records.
 2. Functional description.
 3. Assembly, disassembly, installation, alignment, adjustment & checkout instructions.
 4. Operating instructions.
 5. Lubrication & maintenance instructions.
 6. Troubleshooting guide.
 7. Parts list and ordering instructions.
 8. Organization (binder, binder titles, index & tabbing).
 9. Wiring diagrams & schematics specific to installation.
 10. Outline, cross section & assembly diagrams.
 11. Test data & performance curves.
 12. Tag or equipment identification numbers.
 13. Inclusion of all components & subcomponents.
 14. Other - see comments.
- D - Rejected

Comments:

By		Date			
Distribution:	Contractor	File	Field	Owner	Other

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HDR Project No. 10301516

PACKET

City of Midland
Plant Farm Ponds Rehabilitation
OPERATION AND MAINTENANCE DATA
8-890
01 78 23 - 7

November 2022
Issued for Bid
February 14, 2023



EXHIBIT B1

Equipment Record

Equipment Data and Spare Parts Summary

Project Name	Specification Section:
Equipment Name	Year Installed:
Project Equipment Tag No(s).	

Equipment Manufacturer	Project/Order No.
Address	Phone

Fax	Web Site	E-mail
-----	----------	--------

Local Vendor/Service Center

Address	Phone
---------	-------

Fax	Web Site	E-mail
-----	----------	--------

MECHANICAL NAMEPLATE DATA

Equip.	Serial No.			
Make	Model No.			
ID No.	Frame No.	HP	RPM	Cap.
Size	TDH	Imp. Sz.	CFM	PSI
Other:				

ELECTRICAL NAMEPLATE DATA

Equip.	Serial No.							
Make	Model No.							
ID No.	Frame No.	HP	V.	Amp.	HZ	PH	RPM	SF
Duty	Code	Ins. Cl.	Type	NEMA	C Amb.	Temp. Rise	Rating	
Other:								

SPARE PARTS PROVIDED PER CONTRACT

Part No.	Part Name	Quantity

RECOMMENDED SPARE PARTS

Part No.	Part Name	Quantity

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HDR Project No. 10301516

PACKET

City of Midland
Plant Farm Ponds Rehabilitation
OPERATION AND MAINTENANCE DATA
8.894
01 78 23 - 8

November 2022
Issued for Bid
February 14, 2023



Recommended Maintenance Summary

Equipment Description	Project Equip. Tag No(s).							
RECOMMENDED BREAK-IN MAINTENANCE (FIRST OIL CHANGES, ETC.)	INITIAL COMPLETION * FOLLOWING START-UP							
	D	W	M	Q	S	A	RT	Hours
RECOMMENDED PREVENTIVE MAINTENANCE	PM TASK INTERVAL *							
	D	W	M	Q	S	A	RT	Hours

* D = Daily W = Weekly M = Monthly Q = Quarterly S = Semiannual A = Annual Hours = Run Time Interval

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EXHIBIT B3

Equipment Record

Lubrication Summary

Equipment Description		Project Equip. Tag No(s).				
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					
Lubricant Point						
Lubricant Type		Manufacturer	Product	AGMA #	SAE #	ISO
	1					
	2					
	3					
	4					
	5					

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2
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HDR Project No. 10301516

PACKET

City of Midland
Plant Farm Ponds Rehabilitation
OPERATION AND MAINTENANCE DATA
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DIVISION 02

EXISTING CONDITIONS

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SECTION 02 06 13
GEOTECHNICAL BASELINE REPORT

1. Plant Farm Ponds Site Conditions

a. Topography and Surface

The area immediately around ponds A and B consists of a combination of previous unlined lagoons with berms, oil and gas related development, cultivated land, and undeveloped land with sparse vegetation.

The natural topography is near relatively flat with surface elevations generally ranging from 2,720 feet to 2,750 feet within a one-mile radius of the site. Sub-regionally, there is a noticeable increase in elevation to the north and southwest.

The Midland Draw, located north and east of the site, is the primary surface drainage feature in the area.

b. Subsurface Conditions

Geology

The site is located in the Blackwater Draw Formation. Soils within the Blackwater Draw Formation are derived from aeolian sediments during the Quaternary period. Sediments can vary widely approaching 85 feet thickness though also be feathered to non-existent locally. Underlying the Blackwater Draw Formation is a resistant caliche caprock over of the Ogallala Formation. The Ogallala Formation often contains thick deposits of water bearing sands and gravels.

Soils

A total of 23 borings were completed at the site by Arcadis and SKG Engineering, LLC, in 2011 and 2019, respectively. Based on review of the associated boring logs, the upper 20 to 25 feet consists mostly of silty to clayey sands with variable amounts of gravel. Below 10 feet, these soils are generally cemented and possibly more appropriately described as sandstone and siltstone. Thick layers or deposits of gravel and clay were noted below the sand/siltstone and are likely associated with the Ogallala Formation.

Groundwater

Groundwater was generally encountered in the borings within the upper 20 feet and often at elevations ranging between 2,710 feet and 2,720 feet.

The geotechnical reports are available for review and can be provided by the City of Midland upon request.

END OF SECTION

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SECTION 02 41 00
DEMOLITION

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. General provisions applicable to all demolition and removals.
2. Civil/site demolition and removals.
3. Architectural and structural demolition and removals.
4. Mechanical demolition and removals
5. Disposal of demolition debris, materials, and equipment.

B. Scope:

1. Contractor shall provide all labor, materials, equipment, tools, and incidentals as shown, specified and required for demolition, removals, and disposal Work.
2. The Work under this Specifications section includes, but is not necessarily limited to:
 - a. Demolition and removal of existing materials and equipment as shown or indicated in the Contract Documents. The Work includes demolition of structural concrete, foundations, structural steel, metals, roofs, masonry, attachments, appurtenances, piping, electrical and mechanical systems and equipment, pavement, curbs, sidewalks, gutters, fencing, and similar existing materials, equipment, and items.
3. Demolitions and removals indicated in other Specifications sections shall comply with requirements of this Specifications section.
4. Perform demolition Work within areas shown or indicated.
5. Pay all costs associated with transporting and, as applicable, disposing of materials and equipment resulting from demolition and removals Work.

C. Related Requirements:

1. Section 31 10 00 - Site Clearing.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. National Fire Protection Association (NFPA):
 - a. 241, Safeguarding Construction, Alteration, and Demolition Operations.

B. Regulatory Requirements:

1. Demolition, removals, and disposal Work shall be in accordance with 29 CFR 1926.850 through 29 CFR 1926.860 (Subpart T – Demolition), and all other Laws and Regulations.
2. Comply with requirements of authorities having jurisdiction.

C. Qualifications:

1. Plumbing Removals: Entity and personnel performing plumbing removals shall be plumber(s) legally qualified to perform plumbing construction and plumbing work in the jurisdiction where the Site is located.

1.3 ADMINISTRATIVE REQUIREMENTS

A. Coordination:

1. Review procedures under this and other Specifications sections and coordinate the Work that will be performed with or before demolition and removals.

1.4 SUBMITTALS

A. Informational Submittals: Submit the following:

1. Procedure Submittals:

- a. Demolition and Removal Plan: Not less than ten days prior to starting demolition Work, submit acceptable plan for demolition and removal Work, including:
 - 1) Plan for coordinating shut-offs, capping, temporary services, and continuing utility services.
 - 2) Other proposed procedures as applicable.
 - 3) Equipment proposed for use in demolition operations.
 - 4) Recycling/disposal facility(ies) proposed, including facility owner, facility name, location, and processes. Include copy of appropriate permits and licenses, and compliance status.
 - 5) Planned demolition operating sequences.
 - 6) Detailed schedule of demolition Work in accordance with the Schedule accepted by Engineer.
2. Notification of Intended Demolition Start: Submit in accordance with Paragraph 3.1.A of this Specifications Section.
3. Field Quality Control Test Results:
 - a. Results of megger-testing of existing motors to remain Owner's property.
4. Qualifications Statements:
 - a. Name and qualifications of entity performing electrical removals, including copy of licenses required by authorities having jurisdiction.
 - b. Name and qualifications of entity performing plumbing removals,

1.5 SITE CONDITIONS

- A. Owner makes no representation of condition or structural integrity of area(s) to be demolished or where removals are required by the Contract Documents.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 PREPARATION

- A. Notification:
 1. Not less than 48 HRS prior to commencing demolition or removal, advise Engineer in writing of planned start of demolition Work. Do not start removals without permission of Engineer.
 2. Where demolition or removals has potential to affect adjacent properties, occupants, streets, or other public thoroughfare, transportation facilities, and utilities, furnish required notices to owners and occupants of properties, buildings, and structures that may be affected by the demolition or removal.
 3. In accordance with Laws and Regulations, furnish to authorities having jurisdiction, including emergency services as necessary, appropriate notices of planned demolition and removals.
 4. Submit to Engineer copies of notices furnished to adjacent property owners, occupants, and authorities having jurisdiction.
- B. Protection of Adjacent Areas and Facilities:
 1. Perform demolition and removal Work in manner that prevents damage and injury to property, structures, occupants, the public, and facilities. Do not interfere with use of, and free and safe access to and from, structures and properties unless allowed by the Contract Documents otherwise allowed in writing by Owner.
 2. Closing or obstructing of roads, drives, sidewalks, and passageways adjacent to the Work is not allowed unless indicated otherwise in the Contract Documents. Conduct the Work with minimum interference to vehicular and pedestrian traffic.
 3. Provide temporary partitions between demolition work areas and (a) areas that will be occupied during demolition and removals, and (b) areas accessible to the public or visitors. Temporary partitions shall be sturdy, braced plywood in good condition, of dimensions

- 1 sufficient to adequately screen demolition work from view of occupants, public, and
2 visitors. Maintain temporary partitions in place until demolition and removals work in the
3 subject area is complete or until other Work requires removal of temporary partitions.
4 4. Provide appropriate temporary barriers, lighting, sidewalk sheds, and other necessary
5 protection.
6 5. Repair damage to facilities that are to remain which such damages results from Contractor's
7 operations.

8 C. Existing Utilities: In addition to requirements of the General Conditions, Supplementary
9 Conditions, and Division 01 Specifications, perform the following:

- 10 1. Should unforeseen, unknown, or incorrectly shown or indicated Underground Facilities be
11 encountered, Contractor responsibilities shall be in accordance with the General Conditions
12 as may be modified by the Supplementary Conditions. Cooperate with utility owners in
13 keeping adjacent services and facilities in operation.
14 2. Sanitary Sewerage: Before proceeding with demolition, locate and cap all sewer lines and
15 service laterals discharging from the building or structure being demolished.
16 3. Storm Water Sewerage: Existing storm water system shall remain in place until demolition
17 of existing building or structure is complete. Upon completing demolition, cut and cap
18 storm sewerage at locations shown on the Drawings. Remove existing storm water piping
19 and related structures between points of cutting, and backfill, restore to grade, and stabilize
20 the area over the removed facilities in accordance with the Contract Documents.
21 4. Water Piping and Related Facilities: Before proceeding with demolition, locate and cap all
22 potable and non-potable waterlines and service laterals serving the building or structure
23 being demolished. Ensure compliance with Laws and Regulations regarding water quality.
24 5. Other Utilities: Before proceeding with demolition, locate and cap as required all other
25 utilities, such as fuel and gas; compressed air; heating, ventilating, and air conditioning;
26 electric; and communications; and service laterals serving the building or structure being
27 demolished.
28 6. Shutdown of utility services shall be coordinated by Contractor, assisted by Owner as
29 required relative to contacting utility owners.

30 D. Remediation:

- 31 1. If unanticipated Hazardous Environmental Condition is believed to be encountered during
32 demolition and removals, comply with requirements of the General Conditions, as may be
33 modified by the Supplementary Conditions.

34 **3.2 DEMOLITION - GENERAL**

35 A. Locate construction equipment used for demolition Work and remove demolished materials and
36 equipment to avoid imposing excessive loading on supporting and adjacent walls, floors,
37 framing, facilities, and Underground Facilities.

38 B. Pollution Controls:

- 39 1. Use water sprinkling, temporary enclosures, and other suitable methods to limit emissions
40 of dust and dirt to lowest practical level. Comply with Section 01 57 05 - Temporary
41 Controls, and Laws and Regulations.
42 2. Do not use water when water may create hazardous or objectionable conditions such as
43 icing, flooding, or pollution.
44 3. Clean adjacent structures, facilities, properties, and improvements of dust, dirt, and debris
45 caused by demolition Work, in accordance with the General Conditions and Section 01 74
46 00 - Cleaning.

47 C. Explosives:

- 48 1. Explosives are not allowed at the Site. Do not use explosives for demolition and removal
49 Work.

50 D. Finishing of Surfaces Exposed by Removals: Unless otherwise shown or indicated in the
51 Contract Documents, surfaces of walls, floors, ceilings, and other areas exposed by removals,

and that will remain as finished surfaces, shall be repaired and re-finished with materials that match existing adjacent surface, or as otherwise approved by Engineer.

3.3 STRUCTURAL REMOVALS

- A. Remove structures to lines and grades shown or indicated, unless otherwise directed by Engineer. Where limits are not shown or indicated, limits shall be four inches outside item to be installed. Removals beyond limits shown or indicated shall be at Contractor's risk and expense and such excess removals shall be reconstructed to satisfaction of Engineer without additional cost to Owner.
- B. Recycling and Reuse of Demolition Materials:
 - 1. All concrete, brick, tile, masonry, roofing materials, reinforcing steel, structural metals, miscellaneous metals, plaster, wire mesh, and other items contained in or upon building or structure to be demolished shall be removed, transported, and disposed of away from the Site, unless otherwise approved by Engineer.
 - 2. Do not use demolished materials as fill or backfill adjacent to structures, in pipeline trenches, or as subbase under structures or pavement.
- C. After removing concrete and masonry walls or portions thereof, mats, slabs, and similar construction that ties in to the Work or to existing construction, neatly repair the junction point to leave exposed only finished edges and finished surfaces.
- D. Where parts of existing structures are to remain in service following demolition, remove the portions shown or indicated for removal, repair damage, and leave the building or structure in proper condition for the intended use.
 - 1. Remove concrete and masonry to the lines shown or indicated by sawing, drilling, chipping, and other suitable methods. Leave the resulting surfaces true and even, with sharp, straight corners that will result in neat joints with new construction and be satisfactory for the purpose intended.
 - 2. Do not damage reinforcing bars beyond the area of concrete and masonry removal. Do not saw-cut beyond the area to be removed.
 - 3. Reinforcing bars that are exposed at surfaces of removed concrete and masonry that will not be covered with new concrete or masonry shall be removed to 1.5 IN below the final surface. Repair the resulting hole, with repair mortar for concrete and grout for masonry, to be flush with the surface.
 - 4. Where existing reinforcing bars are shown or indicated to extend into new construction, remove existing concrete so that reinforcing bars are clean and undamaged.
- E. Removal of Anchorages and Protruding Metals:
 - 1. Where equipment or material anchored to concrete or masonry are removed and anchors are not to be re-used, and where existing metals (and to be removed) protrude from concrete, remove the anchors and other metal to not less than 1.5 IN beneath surface of concrete or masonry member. Repair the resulting hole, using repair mortar for concrete and grout for masonry, to be flush with the surface.
 - 2. Alternately, when the anchor is stainless steel, the anchor may be cut flush with the surface of the concrete or masonry, when so approved by Engineer.
- F. Where anchoring materials, including bolts, nuts, hangers, welds, and reinforcing steel, are required to attach the Work to existing construction, provide such materials under this Specifications section, unless specified elsewhere in the Contract Documents.

3.4 MECHANICAL REMOVALS

- A. Mechanical demolition and removal Work includes dismantling and removing existing:
 - 1. Piping systems and ductwork systems.
 - 2. Mechanical equipment and appurtenances.
 - 3. Mechanical elements of instrumentation and control systems, such as sensors and transmitters and similar items.

4. Mechanical removals as required herein apply to systems exposed to view, hidden from view, and Underground Facilities. Mechanical removals may require work in spaces that may be classified confined spaces.
- B. Demolition and Removals of Piping, Ductwork, and Similar Items:
 1. Scope:
 - a. Safety purge piping and tanks (as applicable) of chemicals, fuel, solids, liquids, and gases (as applicable) and make safe for removal and capping. Discharge contents of existing piping appropriately while avoiding damaging property; restricting access to or use of property; and cresting unsafe, unsanitary, nuisances, and noisome conditions.
 - b. To the extent shown or indicated, remove existing piping conveying water (potable and non-potable), waste and vent, fuel (liquids and gases), heating fluids (such as water-glycol solutions), chemicals, solids and slurries, sludge, wastewater, other fluids, and processes gases, and other piping.
 - c. Remove piping to the nearest structurally sound (or “solid”) piping support, and provide caps on ends of remaining piping.
 - d. Where piping to be demolished passes through existing walls to remain, cut off and cap pipe on each side of the wall.
 2. Caps, Closures, Blind Flanges, and Plugs – General (All Piping and Ducts):
 - a. Provide closure pieces, such as blind flanges and caps, where shown or required to complete the Work.
 - b. Where used in this Specifications section, the term “cap” means the appropriate type closure for the piping or ductwork being closed, including caps, blind flanges, and other closures.
 - c. Caps shall be compatible with the piping or ductwork on which the cap is installed, fluid-tight and gastight, and appropriate for the fluid or gas conveyed in the pipe or duct.
 - d. Unless otherwise shown or indicated, caps shall be mechanically fastened, fused, or welded to pipe or duct. Plug piping with means other than specified in this Specifications section only when expressly so shown or indicated in the Contractor Documents or when allowed by Engineer.
 3. Underground Facilities:
 - a. When Underground Facilities are altered or removed, properly cut and cap piping left in place, unless otherwise shown or indicated.
- C. Equipment Demolition and Removals:
 1. To the extent shown or indicated and as required for the Work, remove existing mechanical equipment, including (but not limited to):
 - a. Facility equipment, such as food service equipment, laundry equipment, dumbwaiters, and similar facility items.
 - b. Flow control gates and valves.
 - c. Bulk materials conveying equipment.
 - d. Process equipment, including purification equipment, pollution control and solid waste equipment, and treatment process equipment.
 2. Where required, disassemble equipment to avoid imposing excessive loading on supporting walls, floors, framing, facilities, and Underground Facilities. Disassemble equipment as required for access through and egress from building or structure. Disassembly and removal shall comply with Laws and Regulations. Provide required means to remove equipment from building or structure.
 3. Tanks and Equipment Containing Process Material:
 - a. Purge contents in accordance with Paragraph 3.5.A of this Specifications Section and other requirements of the Contract Documents, as applicable.
 - b. Where contents of tank or equipment item may pose a potential hazard, such as hydrocarbon fuels or chemicals, properly dispose of contents in accordance with Laws and Regulations and the Contract Documents.

- c. Where tank or equipment contains wastewater or liquid sludge, and the Site is a wastewater treatment facility, transport and dispose of stored contents onsite at location acceptable to Owner and facility manager (if other than Owner) unless otherwise indicated in the Contract Documents. If Site is other than a wastewater treatment facility, dispose of contents appropriately in accordance with Laws and Regulations.
- d. Where tank or equipment contains solid or slurry-type material, remove, handle, and transport the contents and appropriately dispose of the materials offsite in accordance with Laws and Regulations, unless otherwise indicated in the Contract Documents.
- 4. Remove equipment supports as applicable, anchorages, base, grout, and piping. Remove anchorage systems in accordance with the "Structural Removals" Article in this Specifications section.
- 5. Remove small-diameter piping back to header unless otherwise indicated.

3.5 DEMOLITION OF SITE IMPROVEMENTS

- A. Underground Facilities Other than Manholes, Vaults, Chambers, and Handholes:
 - 1. Remove to the extent shown or indicated on the Drawings.
 - 2. Unless otherwise shown or indicated, cap ends of piping to remain in place in accordance with the "Mechanical Removals" Article in this Specifications section.
- B. Landscaping: Comply with Section 31 10 00 - Site Clearing.
- C. Other Site Improvements: When the Contract Documents require removal of other site improvements not addressed above, copy with Contract requirements for removal of buildings or structures.

3.6 DISPOSAL OF DEMOLITION DEBRIS

- A. Disposal – General:
 - 1. Promptly remove from the Site all debris, waste, rubbish, material, and equipment resulting from demolition and removal operations. Promptly upon completion of demolition and removal operations, remove from the Site construction equipment used in demolition Work.
 - 2. Do not sell at the Site demolition materials or removed equipment. If materials, equipment or debris will be sold by Contractor, remove the items from the Site and perform the sale or transaction elsewhere, in accordance with Laws and Regulations.
 - 3. Cleaning and Removal of Debris: Comply with the General Conditions, Supplementary Conditions, and Section 01 74 00 - Cleaning.
- B. Transportation and Disposal:
 - 1. Non-Hazardous Materials, Equipment, and Debris: Properly transport and dispose of non-hazardous demolition materials, equipment, and debris at appropriate landfill or other suitable location, in accordance with Laws and Regulations. Non-hazardous material does not contain Constituents of Concern such as (but not limited to) asbestos, PCBs, petroleum, hazardous waste, radioactive material, or other material designated as hazardous in Laws or Regulations.
 - 2. Hazardous Materials, Equipment, and Debris: When handling and disposal of items containing Constituents of Concern is included in the Work, properly transport and dispose of such items in accordance with the Contract Documents and Laws and Regulations.
- C. Submit to Engineer information required in this Specification Section on proposed facility(ies) where demolition materials, equipment, and debris will be recycled. Upon request, Engineer or Owner, shall be allowed to visit recycling facility(ies) to verify adequacy and compliance status. During such visits, recycling facility operator shall cooperate and assist Engineer and Owner.

END OF SECTION



DIVISION 03

CONCRETE

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SECTION 03 00 05
CONCRETE

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Cast-in-place concrete and grout.

B. Related Specification Sections include but are not necessarily limited to:

1. Section 03 15 19 - Anchorage to Concrete.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. American Concrete Institute (ACI):

- a. 117, Specification for Tolerances for Concrete Construction and Materials.
- b. 211.1, Standard Practice for Selecting Proportions for Normal, Heavyweight and Mass Concrete.
- c. 212.3R, Chemical Admixtures for Concrete.
- d. 304R, Guide for Measuring, Mixing, Transporting, and Placing Concrete.
- e. 304.2R, Placing Concrete by Pumping Methods.
- f. 305.1, Hot Weather Concreting.
- g. 306.1, Cold Weather Concreting.
- h. 318, Building Code Requirements for Structural Concrete.
- i. 347, Guide to Formwork for Concrete.
- j. CT-13, Concrete Terminology.

2. ASTM International (ASTM):

- a. A82, Standard Specification for Steel Wire, Plain, for Concrete Reinforcement.
- b. A185, Standard Specification for Steel Welded Wire Reinforcement, Plain, for Concrete.
- c. A615, Standard Specification for Deformed and Plain Carbon-Steel Bars for Concrete Reinforcement.
- d. A1064, Standard Specification for Steel Wire and Welded Wire Replacement, Plain and Deformed, for Concrete.
- e. C31, Standard Practice for Making and Curing Concrete Test Specimens in the Field.
- f. C33, Standard Specification for Concrete Aggregates.
- g. C39, Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens.
- h. C94/C94M, Standard Specification for Ready-Mixed Concrete.
- i. C138, Standard Method of Test for Density (Unit Weight), Yield, and Air Content (Gravimetric) of Concrete.
- j. C143, Standard Test Method for Slump of Hydraulic Cement Concrete.
- k. C150, Standard Specification for Portland Cement.
- l. C172, Standard Practice for Sampling Freshly Mixed Concrete.
- m. C173, Standard Test Method for Air Content of Freshly Mixed Concrete by the Volumetric Method.
- n. C231, Standard Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method.
- o. C260, Standard Specification for Air-Entraining Admixtures for Concrete.
- p. C309, Standard Specification for Liquid Membrane-Forming Compounds for Curing Concrete.
- q. C494, Standard Specification for Chemical Admixtures for Concrete.
- r. C618, Standard Specification for Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use in Concrete.

- s. C1293, Standard Test Method for Determination of Length Change of Concrete Due to Alkali-Silica Reaction.
 - t. C1315, Standard Specification for Liquid Membrane-Forming Compounds Having Special Properties for Curing and Sealing Concrete.
 - u. D882, Standard Test Method for Tensile Properties of Thin Plastic Sheeting.
 - v. D994, Standard Specification for Preformed Expansion Joint Filler for Concrete (Bituminous Type).
 - w. D1056, Standard Specification for Flexible Cellular Materials-Sponge or Expanded Rubber.
 - x. D1709, Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method.
 - y. D1751, Standard Specification for Preformed Expansion Joint Filler for Concrete Paving and Structural Construction (Nonextruding and Resilient Bituminous Types).
 - z. E96, Standard Test Methods for Water Vapor Transmission of Materials.
 - aa. E329, Standard Specification for Agencies Engaged in Construction Inspection and/or Testing.
3. Corps of Engineers (COE):
 - a. CRD-C621, Standard Specification for Packaged, Dry, Hydraulic-Cement Grout (Nonshrink).
 4. National Ready Mixed Concrete Association (NRMCA).
 5. National Sanitation Foundation (NSF):
 - a. 61, Drinking Water System Components - Health Effects.
- B. Quality Control:
1. Concrete testing agency:
 - a. Contractor to employ and pay for services of a testing laboratory to:
 - 1) Perform materials evaluation.
 - 2) Design concrete mixes.
 - b. Concrete testing agency to meet requirements of ASTM E329.
 2. Do not begin concrete production until proposed concrete mix design has been approved by Engineer.
 - a. Approval of concrete mix design by Engineer does not relieve Contractor of his responsibility to provide concrete that meets the requirements of this Specification.
 3. Adjust concrete mix designs when material characteristics, job conditions, weather, strength test results or other circumstances warrant.
 - a. Do not use revised concrete mixes until submitted to and approved by Engineer.
 4. Perform structural calculations as required to prove that all portions of the structure in combination with remaining forming and shoring system has sufficient strength to safely support its own weight plus the loads placed thereon.
- C. Qualifications:
1. Ready mixed concrete batch plant certified by NRMCA.
 2. Formwork, shoring and reshoring for slabs and beams except where cast on ground to be designed by a professional engineer currently registered in the state where the Project is located.

1.3 DEFINITIONS

- A. Per ACI CT-13 except as modified herein:
1. Concrete fill: Non-structural concrete.
 2. Concrete Testing Agency: Testing agency employed to perform materials evaluation, design of concrete mixes or testing of concrete placed during construction.
 3. Exposed concrete: Exposed to view after construction is complete.
 4. Indicated: Indicated by Contract Documents.
 5. Lean concrete: Concrete with low cement content.
 6. Nonexposed concrete: Not exposed to view after construction is complete.
 7. Required: Required by Contract Documents.

8. Specified strength: Specified compressive strength at 28 days.
9. Submitted: Submitted to Engineer.

1.4 SUBMITTALS

A. Shop Drawings:

1. Concrete mix designs proposed for use.
 - a. Concrete mix design submittal to include the following information:
 - 1) Sieve analysis and source of fine and coarse aggregates.
 - 2) Test for aggregate organic impurities.
 - 3) Test for deleterious aggregate per ASTM C1293.
 - 4) Proportioning of all materials.
 - 5) Type of cement with mill certificate for cement.
 - 6) Type of fly ash with certificate of conformance to specification requirements.
 - 7) Slump.
 - 8) Air content.
 - 9) Brand, type, ASTM designation, and quantity of each admixture proposed for use.
 - 10) 28-day cylinder compressive test results of trial mixes per ACI 318 and as indicated herein.
2. Product technical data including:
 - a. Acknowledgement that products submitted meet requirements of standards referenced.
 - b. Manufacturer's installation instructions.
 - c. Manufacturers and types:
 - 1) Joint fillers.
 - 2) Curing agents.
 - 3) Chemical sealer.
 - 4) Bonding and patching mortar.
 - 5) Construction joint bonding adhesive.
 - 6) Nonshrink grout with cure/seal compound.
 - 7) Waterstops.
3. Reinforcing steel:
 - a. Show grade, sizes, number, configuration, spacing, location and all fabrication and placement details.
 - b. In sufficient detail to permit installation of reinforcing without having to make reference to Contract Drawings.
 - c. Obtain approval of Shop Drawings by Engineer before fabrication.
 - d. Mill certificates.
4. Scaled (minimum 1/8 IN per foot) drawings showing proposed locations of construction joints, control joints, expansion joints (as applicable) and joint dimensions.
5. Strength test results of in place concrete including slump, air content and concrete temperature.
6. Certifications:
 - a. Certification of standard deviation value in psi for ready mix plant supplying the concrete.
 - b. Certification that the material and sources submitted in the mix design will be used in the concrete for this project.
7. Test reports:
 - a. Cement mill reports for all cement to be supplied.

1.5 DELIVERY, STORAGE, AND HANDLING

A. Storage of Material:

1. Cement and pozzolan:
 - a. Store in moisture proof, weathertight enclosures.
 - b. Do not use if caked or lumpy.
2. Aggregate:
 - a. Store to prevent segregation and contamination with other sizes or foreign materials.

- 1 b. Obtain samples for testing from aggregates at point of batching.
- 2 c. Do not use frozen or partially frozen aggregates.
- 3 d. Do not use bottom 6 IN of stockpiles in contact with ground.
- 4 e. Allow sand to drain until moisture content is uniform prior to use.
- 5 3. Admixtures:
- 6 a. Protect from contamination, evaporation, freezing, or damage.
- 7 b. Maintain within temperature range recommended by manufacturer.
- 8 c. Completely mix solutions and suspensions prior to use.
- 9 4. Reinforcing steel: Support and store all rebars above ground.
- 10 B. Delivery:
- 11 1. Concrete:
- 12 a. Prepare a delivery ticket for each load for ready-mixed concrete.
- 13 b. Truck operator shall hand ticket to Owner's Representative at the time of delivery.
- 14 c. Ticket to show:
- 15 1) Mix identification mark.
- 16 2) Quantity delivered.
- 17 3) Amount of each material in batch.
- 18 4) Outdoor temp in the shade.
- 19 5) Time at which cement was added.
- 20 6) Numerical sequence of the delivery.
- 21 7) Amount of water added.
- 22 2. Reinforcing steel:
- 23 a. Ship to jobsite with attached plastic or metal tags with permanent mark numbers.
- 24 b. Mark numbers to match Shop Drawing mark number.

25 PART 2 - PRODUCTS

26 2.1 MANUFACTURERS

- 27 A. Subject to compliance with the Contract Documents, the following products and manufacturers
- 28 are acceptable:
- 29 1. Nonshrink, nonmetallic grout:
- 30 a. Sika "SikaGrout 212."
- 31 b. Euclid Chemical "NS Grout."
- 32 c. Master Builders Solutions "Masterflow 713."
- 33 2. Epoxy grout:
- 34 a. Master Builders Solutions "Brutem MPG."
- 35 b. Euclid Chemical Company, "E3 Flowable."
- 36 c. Fosroc, "Conbextra EPHF".
- 37 3. Expansion joint fillers:
- 38 a. Permaglaze Co.
- 39 b. Rubatex Corp.
- 40 c. Williams Products, Inc.
- 41 4. Waterstops, Preformed - Strip-Type:
- 42 a. Greenstreak (Hydrotite).
- 43 b. Adeka Ultra Seal (2010MN).
- 44 c. DeNeef (Swellseal Plus).
- 45 5. Form coating:
- 46 a. Richmond "Rich Cote."
- 47 b. Industrial Lubricants "Nox-Crete Form Coating."
- 48 c. Euclid Chemical "Kurez DR VOX."
- 49 6. Cementitious concrete coating:
- 50 a. Aquafin International.
- 51 b. Master Builders Solutions.
- 52 c. Euclid Chemical Company.

7. Chemical sealer:
 - a. L&M Construction Chemicals, Inc.
 - b. Euclid Chemical Company.
 - c. Dayton Superior.

2.2 MATERIALS

- A. Portland Cement: Conform to ASTM C150 Type I/II Type V.
- B. Fly Ash:
 1. ASTM C618, Class F or Class C.
 2. Nonstaining.
 - a. Hardened concrete containing fly ash to be uniform light gray color.
 3. Maximum loss on ignition: 6%.
 4. Compatible with other concrete ingredients.
 5. Obtain proposed fly ash from a source approved by the State Highway Department in the state where the Project is located for use in concrete for bridges.
- C. Admixtures:
 1. Air entraining admixtures: ASTM C260.
 2. Water reducing, retarding, and accelerating admixtures:
 - a. ASTM C494 Type A through E.
 - b. Conform to provisions of ACI 212.3R.
 - c. Do not use retarding or accelerating admixtures unless specifically approved in writing by Engineer and at no cost to Owner.
 - d. Follow manufacturer's instructions.
 - e. Use chloride free admixtures only.
 3. Maximum total water-soluble chloride ion content contributed from all ingredients of concrete including water, aggregates, cementitious materials and admixtures by weight percent of cement:
 - a. 0.10 allconcrete.
 4. Do not use calcium chloride.
 5. Pozzolanic admixtures: ASTM C618.
 6. Provide admixtures of same type, manufacturer and quantity as used in establishing required concrete proportions in the mix design.
- D. Water: Potable, clean, free of oils, acids and organic matter.
- E. Aggregates:
 1. Normal weight concrete: ASTM C33, except as modified below.
 2. Fine aggregate:
 - a. Clean natural sand.
 - b. No manufactured or artificial sand.
 3. Coarse aggregate:
 - a. Crushed rock, natural gravel, or other inert granular material.
 - b. Maximum amount of clay or shale particles: 1%.
 4. Gradation of coarse aggregate:
 - a. Lean concrete: Size #7.
 - b. All other concrete: Size #57 or #67.
- F. Concrete Grout:
 1. Nonshrink, nonmetallic grout:
 - a. Nonmetallic, noncorrosive, nonstaining, premixed with only water to be added.
 - b. Grout to produce a positive but controlled expansion.
 - c. Mass expansion not to be created by gas liberation.
 - d. Minimum compressive strength of nonshrink grout at 28 days: 6500 PSI.
 - e. In accordance with COE CRD-C621.
 2. Epoxy grout:
 - a. 3-component epoxy resin system.

- 1) Two liquid epoxy components.
 - 2) One inert aggregate filler component.
 - b. Each component packaged separately for mixing at jobsite.
- G. Reinforcing Steel:
1. Reinforcing bars: ASTM A615, Grade 60.
 2. Welded wire reinforcement:
 - a. ASTM A185 or ASTM A1064.
 - b. Minimum yield strength: 60,000 PSI.
 3. Column spirals: ASTM A82 or ASTM A1064.
- H. Forms:
1. Prefabricated or job built.
 2. Wood forms:
 - a. 5/8 or 3/4 IN 5-ply structural plywood of concrete form grade.
 - b. Built-in-place or prefabricated type panel.
 3. Metal forms:
 - a. Metal forms may be used except for aluminum in contact with concrete.
 - b. Forms to be tight to prevent leakage, free of rust and straight without dents to provide members of uniform thickness.
 4. Chamfer strips: Clear white pine, surface against concrete planed.
- I. Form Ties:
1. Commercially fabricated for use in form construction.
 - a. Field fabricated ties are unacceptable.
 2. Constructed so that ends or end fasteners can be removed without causing spalling at surfaces of the concrete.
 3. 3/4 IN minimum diameter cones on both ends.
 4. Embedded portion of ties to be not less than 1-1/2 IN from face of concrete after ends have been removed.
 5. Cone size:
 - a. 3/4 IN minimum to 2 1/2 IN maximum diameter cones on both ends.
 - b. Depth of cone not to exceed the concrete reinforcing cover.
 6. Provide ties with built-in waterstops in all walls that will be in contact with process liquid during plant operation.
 7. Through-wall ties that are designed to be entirely removed are not allowed in all walls that will be in contact with process liquid during plant operation. Form release: Nonstaining and shall not prevent bonding of future finishes to concrete surface.
 - a. Nontoxic 30 days after application.
- J. Chairs, Runners, Bolsters, Spacers, and Hangers:
1. Stainless steel, epoxy coated, or plastic coated metal.
 - a. Plastic coated: Rebar support tips in contact with the forms only.
- K. Water Swelling Sealant:
1. Compatible with strip-type waterstop.
 2. Single component, gun applied.
 3. Moisture cured.
 4. Minimum 70% volumetric expansion swelling capability.
- L. Cementitious Concrete Coating:
1. Polymer modified Portland cement based coating for concrete and masonry.
 - a. Waterproof.
 - b. Resistant to both positive and negative hydrostatic pressure.
 - c. Breathable.
 2. Master Builders Solutions "Masterseal 581 Thoroseal".
 - a. Color:
 - 1) Interior surfaces: Standard gray.

- 1 2) Exterior surfaces: Custom color to match concrete surface.
- 2 3) Texture: Fine.
- 3 M. Membrane Curing Compound:
- 4 1. ASTM C309, Type 1D, Class A or B.
- 5 2. Fugitive dye shall dissipate over time and exposure.
- 6 3. Curing compound shall not prevent bonding of any future coverings, coatings or finishes.
- 7 N. Expansion Joint Filler:
- 8 1. In contact with water or sewage:
- 9 a. Closed cell neoprene.
- 10 b. ASTM D1056, Class SC (oil resistant and medium swell) of 2 to 5 PSI compression
- 11 deflection (Grade SCE41).
- 12 2. Exterior driveways, curbs and sidewalks:
- 13 a. Asphalt expansion joint filler.
- 14 b. ASTM D994.
- 15 3. Other use:
- 16 a. Fiber expansion joint filler.
- 17 b. ASTM D1751.

18 2.3 CONCRETE MIXES

19 A. General:

- 20 1. All concrete to be ready mixed concrete conforming to ASTM C94/C94M.
- 21 2. Provide concrete of specified quality capable of being placed without segregation and, when
- 22 cured, of developing all properties required.
- 23 3. All concrete to be normal weight concrete
- 24 4. Provide pozzolan content for all cast-in-place construction.

25 B. Strength:

- 26 1. Provide specified strength and type of concrete for each use in structure(s) as follows:

TYPE	WEIGHT	SPECIFIED STRENGTH*
All other general use concrete	Normal weight	4500PSI

* Minimum 28-day compressive strength.

29 C. Air Entrainment:

- 30 1. Provide air entrainment in all concrete resulting in a total air content percent by volume as
- 31 follows:

MAX AGGREGATE SIZE	TOTAL AIR CONTENT PERCENT
1 IN or 3/4 IN	6 ±1-1/2
<3/4 IN	6-1/2 ±1-1/2

- 34 2. Air content to be measured in accordance with ASTM C231, ASTM C173, or ASTM C138.

35 D. Slump - 4 IN maximum, 1 IN minimum:

- 36 1. Measured at point of discharge of the concrete into the concrete construction member.
- 37 2. 8 IN maximum after addition of superplasticizer (if used).
- 38 3. Concrete of lower than minimum slump may be used provided it can be properly placed and
- 39 consolidated.
- 40 4. Pumped concrete:
- 41 a. Provide additional water at batch plant to allow for slump loss due to pumping.
- 42 b. Provide only enough additional water so that slump of concrete at discharge end of
- 43 pump hose does not exceed maximum slump specified and the maximum specified
- 44 water-cement ratio is not exceeded.

5. Slump may be adjusted in the field through the use of water reducers.
 - a. Coordinate dosage and mixing requirements with concrete supplier.
 6. Determine slump per ASTM C143.
- E. Selection of Proportions:
1. General:
 - a. Proportion ingredients to:
 - 1) Produce proper workability, durability, strength, and other required properties.
 - 2) Prevent segregation and collection of excessive free water on surface.
 2. Minimum cement contents and maximum water cement ratios for concrete to be as follows:

SPECIFIED STRENGTH	MINIMUM CEMENT, MAXIMUM AGGREGATE SIZE			MAXIMUM WATER CEMENT RATIO BY WEIGHT
	1/2 IN	3/4 IN	1 IN	
4500	611	611	--	0.42

3. Fly ash:
 - a. For cast-in-place concrete only, a maximum of 25% by weight of Portland cement content per cubic yard may be replaced with fly ash at rate of 1 LB fly ash for 1 LB of cement.
 - b. When fly ash is used, the water to cementitious materials ratio shall not exceed the maximum value specified herein.
4. Sand cement grout:
 - a. Three parts sand.
 - b. One part Portland cement.
 - c. Entrained air: 6% $\pm$ 1%.
 - d. Sufficient water for required workability.
 - e. Minimum 28-day compressive strength: 3,000 PSI.
5. Concrete mix proportioning methods for normal weight concrete:
 - a. Proportion mixture to provide desired characteristics using one of methods described below:
 - 1) Method 1 (Trial Mix):
 - a) Per ACI 318, Chapter 5, except as modified herein.
 - b) Air content within range specified above.
 - c) Record and report temperature of trial mixes.
 - d) Proportion trial mixes per ACI 211.1.
 - 2) Method 2 (Field Experience):
 - a) Per ACI 318, Chapter 5, except as modified herein:
 - b) Field test records must be acceptable to Engineer to use this method.
 - c) Test records shall represent materials, proportions, and conditions similar to those specified.
6. Required average strength to exceed the specified 28-day compressive strength by the amount determined or calculated in accordance with the requirements of Chapter 5 of ACI 318 using the standard deviation of the proposed concrete production facility.

PART 3 - EXECUTION

3.1 FORMING AND PLACING CONCRETE

- A. Formwork:
1. Contractor is responsible for design and erection of formwork.
 2. Construct formwork so that concrete members and structures are of correct size, shape, alignment, elevation and position.
 - a. Allowable tolerances: As recommended in ACI 347.

- 1 3. Provide slabs and beams of minimum indicated depth when sloping foundation base slabs or
- 2 elevated floor slabs to drains.
- 3 a. For slabs on grade, slope top of subgrade to provide floor slabs of minimum uniform
- 4 indicated depth.
- 5 b. Do not place floor drains through beams.
- 6 4. Openings:
- 7 a. Provide openings in formwork to accommodate work of other trades.
- 8 b. Accurately place and securely support items built into forms.
- 9 5. Chamfer strips: Place 3/4 IN chamfer strips in forms to produce 3/4 IN wide beveled edges
- 10 on permanently exposed corners of members.
- 11 6. Clean and adjust forms prior to concrete placement.
- 12 7. Tighten forms to prevent mortar leakage.
- 13 8. Coat form surfaces with form release agents prior to placing reinforcing bars in forms.
- 14 B. Reinforcement:
- 15 1. Position, support and secure reinforcement against displacement.
- 16 2. Locate and support with chairs, runners, bolsters, spacers and hangers, as required.
- 17 3. Set wire ties so ends do not touch forms and are directed into concrete, not toward exposed
- 18 concrete surfaces.
- 19 4. Lap splice lengths: ACI 318 Class B top bar tension splices unless indicated otherwise on
- 20 the Drawings.
- 21 5. Extend reinforcement to within 2 IN of concrete perimeter edges.
- 22 a. If perimeter edge is earth formed, extend reinforcement to within 3 IN of the edge.
- 23 6. Unless otherwise indicated, provide minimum concrete cover as follows:
- 24 a. Concrete deposited against earth: 3 IN.
- 25 b. Formed surfaces exposed to weather or in contact with earth: 2 IN for reinforcing bars
- 26 #6 or larger; 1-1/2 IN for reinforcing bars less than #6.
- 27 c. Formed surfaces exposed to or located above any liquid: 2 IN.
- 28 7. Do not weld reinforcing bars.
- 29 8. Welded wire reinforcement:
- 30 a. Install welded wire reinforcement in maximum practical sizes.
- 31 b. Splice sides and ends with a splice lap length measured between outermost cross wires
- 32 of each fabric sheet not less than:
- 33 1) One spacing of cross wires plus 2 IN.
- 34 2) 1.5 x development length.
- 35 3) 6 IN.
- 36 c. Development length: ACI 318 basic development length for the specified fabric yield
- 37 strength.
- 38 C. Construction, Expansion, and Contraction Joints:
- 39 1. Locate joints as indicated on Contract Drawings or as shown on approved Shop Drawings.
- 40 a. Where construction joint spacing shown on Drawings exceeds the joint spacing
- 41 indicated in Paragraph below, submit proposed construction joint location in
- 42 conformance with this Specification Section.
- 43 2. Unplanned construction joints will not be allowed.
- 44 3. Locate wall vertical construction joints at 30FT maximum.
- 45 4. Locate construction joints in floor slabs and foundation base slabs so that concrete
- 46 placements are approximately square and do not exceed 2500SQFT.
- 47 5. Locate construction joints in columns and walls:
- 48 a. At the underside of beams, girders, haunches, drop panels, column capitals, and at floor
- 49 panels.
- 50 b. Haunches, drop panels, and column capitals are considered part of the supported floor
- 51 or roof and shall be placed monolithically therewith.
- 52 c. Column based need not be placed monolithically with the floor below.
- 53 6. Install construction joints perpendicular to main reinforcement with all reinforcement
- 54 continued across construction joints.

- 1 7. At least 48HRS shall elapse between placing of adjoining concrete construction.
- 2 8. Thoroughly clean and remove all laitance and loose and foreign particles from construction
- 3 joints.
- 4 9. Before new concrete is placed, dampen concrete surfaces.
- 5 D. Embedments:
- 6 1. Set and build in anchorage devices and other embedded items required for other work that is
- 7 attached to, or supported by concrete.
- 8 2. See Specification Section 03 15 19 - Anchorage to Concrete.
- 9 3. Use setting diagrams, templates and instructions for locating and setting.
- 10 4. Secure waterstops in correct position using hog rings or grommets spaced along the length
- 11 of the waterstop and wire tie to adjacent reinforcing steel.
- 12 E. Waterstops, General:
- 13 1. Lap all types of waterstop to create continuous water tight joints.
- 14 2. Do not mix different types of waterstop materials in the same structure without specific
- 15 approval from the Engineer.
- 16 3. Contractor is responsible for waterstop selection and installation to provide leak-tight joints,
- 17 to the minimum standard shown in the Contract Documents.
- 18 4. Base selection on anticipated differential movement of mating surfaces.
- 19 5. Waterstop manufacturer's representative shall provide on-site training of waterstop
- 20 installation, splicing, welding and inspection procedures prior to construction, and at no
- 21 additional cost.
- 22 F. Waterstops - Preformed StripType:
- 23 1. Install in a bed of swelling sealant on a smooth surface of hardened concrete by use of nails,
- 24 screws or other means as recommended by manufacturer to prevent movement of waterstop
- 25 during placement of new concrete.
- 26 2. Roughened joints shall be specially prepared during concrete placement to provide smooth
- 27 surface for proper waterstop installation.
- 28 3. Unless otherwise noted, use in joints against existing concrete and where indicated on
- 29 Drawings.
- 30 G. Placing Concrete:
- 31 1. Place concrete in compliance with ACI 304R and ACI 304.2R.
- 32 2. Place in a continuous operation within planned joints or sections.
- 33 3. Begin placement when work of other trades affecting concrete is completed.
- 34 4. Place concrete by methods which prevent aggregate segregation.
- 35 5. Do not allow concrete to free fall more than 4 FT.
- 36 6. Where free fall of concrete will exceed 4 FT, place concrete by means of tremie pipe or
- 37 chute.
- 38 H. Consolidation: Consolidate all concrete using mechanical vibrators supplemented with hand
- 39 rodding and tamping, so that concrete is worked around reinforcement and embedded items into
- 40 all parts of forms.
- 41 I. Protection:
- 42 1. Protect concrete from physical damage or reduced strength due to weather extremes.
- 43 2. In cold weather comply with ACI 306.1 except as modified herein.
- 44 a. Do not place concrete on frozen ground or in contact with forms or reinforcing bars
- 45 coated with frost, ice or snow.
- 46 b. Do not place heated concrete that is warmer than 80 DEGF.
- 47 c. If freezing temperatures are expected during curing, maintain the concrete temperature
- 48 at or above 50 DEGF for seven days or 70 DEGF for 3 days.
- 49 d. Do not allow concrete to cool suddenly.
- 50 3. In hot weather comply with ACI 305.1 except as modified herein.
- 51 a. At air temperature of 90 DEGF and above, keep concrete as cool as possible during
- 52 placement and curing.

- 1 b. Do not allow concrete temperature to exceed 90 DEGF at placement.
2 c. Prevent plastic shrinkage cracking due to rapid evaporation of moisture.
3 d. Do not place concrete when the actual or anticipated evaporation rate equals or exceeds
4 0.2 LBS/SF/HR as determined from ACI 305.1, Figure 2.1.5.
- 5 J. Curing:
6 1. Begin curing concrete as soon as free water has disappeared from exposed surfaces.
7 2. Cure concrete by use of moisture retaining cover, burlap kept continuously wet or by
8 membrane curing compound.
9 3. Provide protection as required to prevent damage to concrete and to prevent moisture loss
10 from concrete during curing period.
11 4. Provide curing for minimum of seven days.
12 5. Form materials left in place may be considered as curing materials for surfaces in contact
13 with the form materials except in periods of hot weather.
14 6. In hot weather follow curing procedures outlined in ACI 305.1.
15 7. In cold weather follow curing procedures outlined in ACI 306.1.
16 8. Curing vertical surfaces with a curing compound:
17 a. Cover vertical surfaces with a minimum of two coats of the curing compound.
18 b. Allow the preceding coat to completely dry prior to applying the next coat.
19 c. Apply the first coat of curing compound immediately after form removal.
20 d. Vertical surface at the time of receiving the first coat shall be damp with no free water
21 on the surface.
22 e. A vertical surface is defined as any surface steeper than 1 vertical to 4 horizontal.
- 23 K. Form Removal:
24 1. Remove forms after concrete has hardened sufficiently to resist damage from removal
25 operations or lack of support.
26 2. Where no reshoring is planned, leave forms and shoring used to support concrete until it has
27 reached its specified 28-day compressive strength.

28 3.2 CONCRETE FINISHES

- 29 A. Tolerances:
30 1. Class A: 1/8 IN in 10 FT.
31 2. Class B: 1/4 IN in 10 FT.
- 32 B. Surfaces Exposed to View:
33 1. Provide a smooth finish for exposed concrete surfaces and surfaces that are:
34 a. To be covered with a coating or covering material applied directly to concrete.
35 b. Scheduled for grout cleaned finish.
36 2. Remove fins and projections, and patch voids, air pockets, and honeycomb areas with
37 cement grout.
38 3. Cementitious concrete coating:
39 a. Form facing material shall produce a smooth, hard, uniform texture.
40 1) Use forms specified for surfaces exposed to view.
41 b. Prepare the surface in accordance with manufactures printed installation instructions.
42 c. Brush on coating to entire surface.
43 1) As a mixing liquid for the coating, use bonding agent and water mixture as
44 recommended by the manufacture.
45 2) Apply two (2) coats at 2 LB/SQYD per coat.
46 d. When second coat is set, float to a uniform texture with a sponge coat.
47 e. Provide this finish at the following locations:
48 1) Walls, columns, exposed to view.
- 49 C. Surfaces Not Exposed to View:
50 1. Patch voids, air pockets and honeycomb areas with cement grout.
51 2. Fill tie holes with nonshrink, nonmetallic grout.
- 52 D. Slab Float Finish:

1. After concrete has been placed, consolidated, struck off, and leveled, do no further work until ready for floating.
 2. Do not use water to aid in finishing.
 3. Begin floating when water sheen has disappeared and surface has stiffened sufficiently to permit operation.
 4. During or after first floating, check planeness of entire surface with a 10 FT straightedge applied at not less than two different angles.
 5. Cut down all high spots and fill all low spots during this procedure to produce a surface within Class B tolerance throughout.
 6. Refloat slab immediately to a uniform sandy texture.
- E. Troweled Finish:
1. Float finish surface.
 2. Next power trowel, and finally hand trowel.
 3. Do not use water to aid in finishing.
 4. Produce a smooth surface which is relatively free of defects with first hand troweling.
 5. Perform additional trowelings by hand after surface has hardened sufficiently.
 6. Final trowel when a ringing sound is produced as trowel is moved over surface.
 7. Thoroughly consolidate surface by hand troweling.
 8. Leave finished surface essentially free of trowel marks, uniform in texture and appearance and plane to a Class A tolerance.
 9. On surfaces intended to support floor coverings remove any defects of sufficient magnitude that would show through floor covering by grinding.
- F. Broom Finish: Immediately after concrete has received a float finish as specified, give it a transverse scored texture by drawing a broom across surface.

3.3 GROUT

- A. Preparation:
1. Nonshrinking, nonmetallic grout:
 - a. Clean concrete surface to receive grout.
 - b. Saturate concrete with water for 24 HRS prior to grouting.
 2. Epoxy grout: Apply only to clean, dry, roughened, sound surface.
- B. Application:
1. Nonshrinking, nonmetallic grout:
 - a. Mix in a mechanical mixer.
 - b. Use no more water than necessary to produce flowable grout.
 - c. Place in accordance with manufacturer's instructions.
 - d. Completely fill all spaces and cavities below the bottom of baseplates.
 - e. Provide forms where baseplates and bedplates do not confine grout.
 - f. Where exposed to view, finish grout edges smooth.
 - g. Except where a slope is indicated on Drawings, finish edges flush at the baseplate, bedplate, member, or piece of equipment.
 - h. Protect against rapid moisture loss by covering with wet rags or polyethylene sheets.
 - i. Wet cure grout for seven days, minimum.
 2. Epoxy grout:
 - a. Mix and place in accordance with manufacturer's instructions.
 - b. Completely fill all cavities and spaces around dowels and anchors without voids.
 - c. Obtain manufacturer's field technical assistance as required to ensure proper placement.

3.4 FIELD QUALITY CONTROL

- A. Owner will employ and pay for services of a concrete testing laboratory to perform testing of concrete placed during construction.
1. Contractor to cooperate with Owner in obtaining and testing samples.
- B. Tests During Construction:

1. Strength test:
 - a. For each strength test, mold and cure cylinders from each sample in accordance with ASTM C31.
 - 1) Cylinder size: Per ASTM C31.
 - a) 4 IN cylinders may not be used for concrete mixes with concrete aggregate size larger than 1 IN.
 - 2) Quantity:
 - a) 6 IN DIA by 12 IN high: Four cylinders.
 - b) 4 IN DIA by 8 IN high: Six cylinders.
 - b. Field cure one (1) cylinder for the seven day test.
 - 1) Laboratory cure the remaining.
 - c. Test cylinders in accordance with ASTM C39.
 - 1) 6 IN DIA cylinders:
 - a) Test two cylinders at 28 days for strength test result and the one field cured sample at seven days for information.
 - b) Hold remaining cylinder in reserve.
 - 2) 4 IN DIA cylinders:
 - a) Test three cylinders at 28 days for strength test result and the one field cured cylinder at seven days for information.
 - b) Hold remaining cylinders in reserve.
 - d. Strength test result:
 - 1) Average of strengths of two 6 IN DIA cylinders or three 4 IN DIA cylinders from the same sample tested at 28 days.
 - 2) If one cylinder in a test manifests evidence of improper sampling, molding, handling, curing, or testing, discard and test reserve cylinder(s); average strength of remaining cylinders shall be considered strength test result.
 - 3) Should all cylinders in any test show any of above defects, discard entire test.
 - e. Frequency of tests:
 - a) One strength test to be taken not less than once a day, nor less than once for each 60 CUYD or fraction thereof placed in any one day.
 - b) Once for each 5000 SQFT of slab or wall surface area placed each day.
 - c) If total volume of concrete on Project is such that frequency of testing required in above paragraph will provide less than five strength tests for each concrete mix, tests shall then be made from at least five randomly selected batches or from each batch if fewer than five batches are provided.
 2. Slump test:
 - a. Per ASTM C143.
 - b. Determined for each strength test sample.
 - c. Additional slump tests may be taken.
 3. Air content:
 - a. Per ASTM C231, ASTM C173, and ASTM C138.
 - b. Determined for each strength test sample.
 4. Temperature: Determined for each strength test sample.
- C. Evaluation of Tests:
1. Strength test results:
 - a. Average of 28-day strength of two cylinders from each sample.
 - 1) If one cylinder manifests evidence of improper sampling, molding, handling, curing or testing, strength of remaining cylinder will be test result.
 - 2) If both cylinders show any of above defects, test will be discarded.
- D. Acceptance of Concrete:
1. Strength level of each type of concrete shall be considered satisfactory if both of the following requirements are met:
 - a. Average of all sets of three consecutive strength tests equals or exceeds the required specified 28-day compressive strength.

SECTION 03 15 19
ANCHORAGE TO CONCRETE

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Requirements for all cast-in-place anchor bolts, anchor rods, reinforcing anchorage adhesive, and post-installed concrete anchors required for the Project but not specified elsewhere in the Contract Documents.
2. Design of all concrete anchors not indicated on the Drawings including, but not limited to, installation of anchors into concrete for the following structural and nonstructural components:
 - a. Structural members and accessories.
 - b. Metal, wood, and plastic fabrications.
 - c. Mechanical and electrical equipment and components.
 - d. Plumbing, piping, and HVAC work.
 - e. All other components requiring attachment to concrete.
3. Section 03 00 05 - Concrete

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. American Concrete Institute (ACI):
 - a. 318, Building Code Requirements for Structural Concrete and Commentary.
2. American Concrete Institute/Concrete Reinforcing Steel Institute (ACI-CRSI):
 - a. Adhesive Anchor Installation Certification Program: Adhesive Anchor Installer.
3. American Institute of Steel Construction (AISC):
 - a. 303, Code of Standard Practice for Steel Buildings and Bridges.
 - b. 355.2, Seismic Testing of Post-Installed Concrete and Masonry Anchors in Cracked Concrete.
 - c. 355.4, Qualification of Post-Installed Adhesive Anchors in Concrete.
4. ASTM International (ASTM):
 - a. A36, Standard Specification for Carbon Structural Steel.
 - b. A108, Standard Specification for Steel Bar, Carbon and Alloy, Cold-Finished.
 - c. A123, Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products.
 - d. A153, Standard Specification for Zinc Coating (Hot-Dip) on Iron and Steel Hardware.
 - e. A307, Standard Specification for Carbon Steel Bolts and Studs, 60,000 PSI Tensile Strength.
 - f. A496, Standard Specification for Steel Wire, Deformed, for Concrete Reinforcement.
 - g. A563, Standard Specification for Carbon and Alloy Steel Nuts.
 - h. A780, Standard Practice for Repair of Damaged and Uncoated Areas of Hot-Dip Galvanized Coatings.
 - i. F436, Standard Specification for Hardened Steel Washers.
 - j. F593, Standard Specification for Stainless Steel Bolts, Hex Cap Screws, and Studs.
 - k. F594, Standard Specification for Stainless Steel Nuts.
 - l. F1554, Standard Specification for Anchor Bolts, Steel, 36, 55, and 105-ksi Yield Strength.
 - m. F2329, Standard Specification for Zinc Coating, Hot-Dip, Requirements for Application to Carbon and Alloy Steel Bolts, Screws, Washers, Nuts, and Special Threaded Fasteners
5. ICC Evaluation Service (ICC-ES):
 - a. AC193, Acceptance Criteria for Mechanical Anchors in Concrete Elements.

- 1 b. AC308, Acceptance Criteria for Post-Installed Adhesive Anchors in Concrete
2 Elements.
- 3 B. Qualifications:
- 4 1. Anchor designer for Contractor-designed post-installed anchors and cast in place anchorage
5 shall be a professional civil engineer licensed in the State that the Project is located in.
6 2. Installer for post-installed anchors shall be trained by the manufacturer or certified by a
7 training program approved by the Engineer.
- 8 C. Post-installed anchors and related materials shall be listed by the following agencies:
- 9 1. ICC-ES.
10 2. Engineer approved equivalent.

11 **1.3 DEFINITIONS**

- 12 A. Adhesive Anchors:
- 13 1. Post-installed anchors developing their strength primarily from chemical bond between the
14 concrete and the anchor.
15 2. Includes anchors using acrylics, epoxy and other similar adhesives.
- 16 B. Anchor Bolt: Any cast-in-place anchorage that is made of a headed (i.e. bolt) material.
- 17 C. Anchor Rod: Any cast-in-place or post-installed anchorage made from unheaded, threaded, rod
18 or deformed bar material.
- 19 D. Concrete Anchor: Generic term for either an anchor bolt or an anchor rod.
- 20 E. Galvanizing: Hot-dip galvanizing per ASTM A123, ASTM A153 or ASTM F2329 with
21 minimum coating of 2.0 OZ of zinc per square foot of metal (average of specimens) unless noted
22 otherwise or dictated by standard.
- 23 F. Hardware: As defined in ASTM A153 and ASTM F2329.
- 24 G. Installer or Applicator:
- 25 1. Installer or applicator is the person actually installing or applying the product in the field at
26 the Project site.
27 2. Installer and applicator are synonymous.
- 28 H. MPIO: Manufacturer's printed installation instructions.
- 29 I. Mechanical Anchors:
- 30 1. Post-installed anchors developing their strength from attachment other than thru adhesives
31 or chemical bond to concrete.
32 2. Includes expansion anchors, expansion sleeve, screw anchors, undercut anchors, specialty
33 inserts and other similar types of anchorages.
34 3. Drop-in anchors and other similar non-ICC ES approved anchors are not allowed.
- 35 J. Post-Installed Anchor: Any adhesive or mechanical anchor installed into previously placed and
36 adequately cured concrete.

37 **1.4 SUBMITTALS**

- 38 A. Shop Drawings:
- 39 1. Product technical data including:
- 40 a. Acknowledgement that submitted products meet requirements of referenced standards.
- 41 b. Manufacturer material data sheet for each anchor.
- 42 1) Clearly indicate which products on the data sheet are proposed for use on the
43 Project.
- 44 c. Manufacturer's printed installation instructions.
- 45 d. Current ICC-ES report for each post-installed anchor system indicating the following:
- 46 1) Certification that anchors meet all requirements indicated in this Specification.
- 47 2) Performance data showing that anchor is approved for use in cracked concrete.
- 48 3) Seismic design categories for which anchor system has been approved.

- 1 4) Required installation procedures.
- 2 5) Special inspection requirements for installation.
- 3 e. Anchorage layout drawings and details:
- 4 1) Indicate anchor diameter, embedment, length, anchor type, material and finish.
- 5 2) Drawings showing location, configuration, spacing and edge distance.
- 6 f. Contractor Designed Post-Installed Anchors:
- 7 1) Show diameter and embedment depth of each anchor.
- 8 2) Indicate compliance with ACI 318, Chapter 17
- 9 3) Design tension and shear loads used for anchor design.
- 10 4) Engineering design calculations:
- 11 a) Indicate design load to each anchor.
- 12 b) When the design load is not indicated on Drawings, include calculations to
- 13 develop anchor forces based on Design Criteria listed herein.
- 14 c) Sealed and signed by contractor's professional engineer.
- 15 d) Calculations will be submitted for information purposes only.
- 16 5) Type of post-installed anchor system used.
- 17 a) Provide manufacturer's ICC-ES report for the following:
- 18 (1) Mechanical anchorage per ICC-ES AC193.
- 19 (2) Adhesive anchorage per ICC-ES AC308.
- 20 B. Samples:
- 21 1. Representative samples of concrete anchors may be requested by Engineer. Review will be
- 22 for type and finish only. Compliance with all other requirements is exclusively the
- 23 responsibility of the Contractor.
- 24 C. Informational Submittals:
- 25 1. Certification of qualifications for each installer of post-installed anchors.
- 26 a. Indicate successful completion or certification for each type of approved post-installed
- 27 anchor as required by the Contract Documents.

28 1.5 DELIVERY, STORAGE, AND HANDLING

- 29 A. Deliver products to job site in manufacturer's or distributor's packaging undamaged and
- 30 complete with installation instructions.
- 31 B. Store above ground on skids or other supports to keep items free of dirt and other foreign debris
- 32 and to protect against corrosion.
- 33 C. Protect and handle materials in accordance with manufacturer's recommendations to prevent
- 34 damage or deterioration.

35 PART 2 - PRODUCTS

36 2.1 MATERIALS

- 37 A. Cast-in-place Concrete Anchors:
- 38 1. Building, nonbuilding structures, and equipment, unless otherwise specified:
- 39 a. ASTM F1554, Grade 36 or Grade 55 with weldability supplement S1 for galvanized
- 40 threaded rods.
- 41 b. ASTM A307, Grade A for galvanized headed bolts.
- 42 2. All other cast-in-place concrete anchors:
- 43 a. Stainless steel with matching nut and washer.
- 44 b. Submerged application: ASTM F593, Type 316.
- 45 c. Non-submerged application: ASTM F593, Type 304 or Type 316.
- 46 B. Post-Installed Mechanical and Adhesive Concrete Anchors:
- 47 1. Stainless steel with matching nut and washer.
- 48 2. Submerged application: ASTM F593, Type 316.
- 49 3. Non-submerged application: ASTM F593, Type 304 or Type 316.

- 1 C. Reinforcement: See Section 03 00 05.
- 2 D. Headed Studs: ASTM A108 with a minimum yield strength of 50,000 PSI and a minimum
- 3 tensile strength of 60,000 PSI.
- 4 E. Deformed Bar Anchors: ASTM A496 with minimum yield strength of 70,000 PSI and a
- 5 minimum tensile strength of 80,000 PSI.
- 6 F. Washers:
- 7 1. ASTM F436 unless noted otherwise, finish to match bolt.
- 8 2. If stainless steel anchorage is being used for cast-in-place anchorage, furnish washers of the
- 9 same material and alloy as in the accompanying anchorage.
- 10 3. Follow manufacturer's requirements for all post-installed anchorage.
- 11 G. Nuts:
- 12 1. ASTM A563 for all cast-in-place anchorage.
- 13 2. If stainless steel anchorage is being used for cast-in-place anchorage, nuts shall meet ASTM
- 14 F594 and be the matching material and alloy as in the accompanying anchorage.
- 15 3. Follow manufacturer's requirements if using post-installed anchorage.
- 16 H. Galvanizing Repair Paint:
- 17 1. High zinc dust content paint for re-galvanizing welds and abrasions.
- 18 2. ASTM A780.
- 19 3. Zinc content: Minimum 92% in dry film.
- 20 4. ZRC "ZRC Cold Galvanizing" or Clearco "High Performance Zinc Spray."

21 **2.2 CONTRACTOR DESIGNED ANCHORAGE**

- 22 A. Manufacturers:
- 23 1. Post-installed anchor systems for the listed manufacturers will be considered only if a
- 24 current ICC-ES evaluation report is submitted in accordance with the SUBMITTALS
- 25 Article in PART 1 of this Specification Section and if the anchor system is approved by the
- 26 Engineer.
- 27 a. Hilti.
- 28 b. Dewalt.
- 29 c. Simpson Strong-Tie.
- 30 B. Design the anchorage when any of the following occur:
- 31 1. Design load for concrete anchorage is shown on the Drawings.
- 32 2. When specifically required by the Contract Documents.
- 33 3. When an anchorage is required but not specified in the Drawings.
- 34 4. When anchorage is shown on Drawings other than Structural Drawings.
- 35 C. Anchorage Design Loads:
- 36 1. Determine all the design loads, including wind and seismic loads, per the building code.
- 37 a. Anchorage of equipment and non-structural components: Use the actual dead and
- 38 operating loads provided by the manufacturer.
- 39 D. When Contract Drawings, other than the Structural Drawings, indicate an anchor diameter or
- 40 length, the Contractor design shall incorporate these as "minimums."
- 41 E. Cast-in-Place Concrete Anchors:
- 42 1. Provide the material, nominal diameter, embedment length, spacing, edge distance and
- 43 design capacity to resist the calculated load based on the requirements given in the building
- 44 code including ACI 318, Chapter 17.
- 45 2. Design assuming cracked concrete.
- 46 F. Post-installed Concrete Anchors:
- 47 1. Provide the manufacturer's system name/type, nominal diameter, embedment depth,
- 48 spacing, minimum edge distance, cover, and design capacity to resist the specified or

- 1 calculated load based on requirements given in the building code ACI 318, Chapter 17 and
2 current ICC-ES report, for the anchor to be used.
3 2. Design assuming cracked concrete.

4 **2.3 ENGINEER DESIGNED ANCHORAGE**

- 5 A. When the size, length and details of anchorages are shown on Contract Structural Drawings,
6 Contractor design of anchorage is not required unless otherwise indicated.
- 7 B. Manufacturers:
- 8 1. Additional newer post-installed anchor systems for the listed manufacturers will be
9 considered only if a current evaluation agency report is submitted in accordance with the
10 SUBMITTALS Article in PART 1 of this Specification Section, the anchor system is
11 certified by ICC-ES for cracked concrete conditions, and if approved by the Engineer.
- 12 2. Mechanical Anchors:
- 13 a. Hilti:
- 14 1) Kwik Bolt TZ (ICC-ES ESR-1917).
- 15 b. Dewalt:
- 16 3. Power-Stud+ SD2, Power-Stud+ SD4 Adhesive Concrete Anchors:
- 17 a. Hilti:
- 18 1) HIT RE 500 V3 (ICC ESR-3814).
- 19 b. Dewalt:
- 20 1) PURE110+ (ICC-ES ESR-3298).
- 21 c. Simpson Strong-Tie:
- 22 1) SET-XP (ICC-ES ESR-2508).
- 23 4. Concrete Screw Anchors:
- 24 a. Hilti:
- 25 1) Kwik HUS-EZ Screw (ICC-ES ESR-3027).
- 26 b. Substitution request to indicate the proposed anchor has the at least the same tension
27 and shear strength as the specified anchor installed as indicated in the Contract
28 Drawings.
- 29 c. Calculations to be stamped by a Professional Engineer registered in the state that the
30 Project is located in.

31 **PART 3 - EXECUTION**

32 **3.1 GENERAL**

- 33 A. Cast-in-Place Anchorage:
- 34 1. Use where anchor rods or bolts are indicated on the Drawings unless another anchor type is
35 approved by the Engineer.
- 36 2. Provide concrete anchorage as shown on the Drawings or as required to secure components
37 to concrete.
- 38 B. Adhesive Anchorage:
- 39 1. Use only where specifically indicated on the Drawings or when approved for use by the
40 Engineer.
- 41 2. May be used where subjected to vibration or where buried or submerged.
- 42 3. Do not use in overhead applications or sustained tension loading conditions such as utility
43 hangers.
- 44 4. Contact Engineer for approval when anchors will not be installed in compliance with MPII
- 45 C. Mechanical Anchorage:
- 46 1. Use only where specifically indicated on the Drawings or when approved for use by the
47 Engineer.
- 48 2. Do not use where subjected to vibration.
- 49 3. May be used in overhead applications.

- 1 4. Contact Engineer for clarification when anchors will not be installed in compliance with
2 manufacturer's printed installation requirements.
- 3 D. Do not use powder actuated fasteners and other types of bolts and fasteners not specified herein
4 for structural applications unless approved by the Engineer or specified in Contract Documents.

5 **3.2 PREPARATION**

- 6 A. Provide adequate time to allow for proper installation and inspection prior to placing concrete
7 for cast-in-place concrete anchorage.
- 8 B. Prior to installation, inspect and verify areas and conditions under which concrete anchorage is
9 to be installed.
- 10 1. Notify Engineer of conditions detrimental to proper and timely completion of work.
11 2. Do not proceed with work until unsatisfactory conditions have been corrected in a manner
12 acceptable to the Engineer.
- 13 C. Special Inspection is required in accordance with the building code for all concrete anchorage.
- 14 1. Notify the Special Inspector that an inspection is required prior to concrete placement (or
15 during post-installed anchorage installation).
- 16 2. See the FIELD QUALITY CONTROL Article in PART 3 of this Specification Section for
17 additional requirements.
- 18 D. Post-installed anchor manufacturer's representative shall demonstrate and observe the proper
19 installation procedures for the post-installed anchors at no additional expense to the Owner.
- 20 1. Follow such procedures to assure acceptable installation.
21 2. Adhesive anchors must be installed in concrete aged a minimum of 21 days.

22 **3.3 INSTALLATION**

- 23 A. Tie cast-in-place anchorage in position to embedded reinforcing steel using wire.
- 24 1. Tack welding of anchorage is prohibited.
- 25 2. Chase threads as required and coat the projected portion of carbon steel anchors and nut
26 threads with a heavy coat of clean grease after concrete has cured.
- 27 3. Anchorage location tolerance shall be in accordance with AISC 303.
- 28 4. Provide steel or durable wood templates for all column and equipment anchorage.
- 29 a. Templates to be placed above top of concrete and not impede proper concrete
30 placement and consolidation.
- 31 B. Unless noted or specified otherwise:
- 32 1. Connect aluminum and steel members to concrete and masonry using stainless steel cast-in-
33 place anchorage unless shown otherwise.
- 34 2. Provide washers for all anchorage.
- 35 3. Where exposed, extend threaded anchorage a minimum of 1/2 IN above the top of the fully
36 engaged nut.
- 37 a. If anchorage is cut off to the required maximum height, threads must be dressed to
38 allow nuts to be removed without damage to the nuts.
- 39 C. Do the following after nuts are snug-tightened down:
- 40 1. If using post-installed anchorage, follow MPII.
- 41 2. Upset threads of anchorage to prevent nuts from backing off.
- 42 a. Provide double nut or lock nut in lieu of upset threads for items that may require
43 removal in the future.
- 44 3. For all other cast-in-place anchorage material, tighten nuts down an additional 1/8 turn
45 beyond snug tight to prevent nuts from backing off.
- 46 4. If two nuts are used per concrete anchor above the base plate, tighten the top nut an
47 additional 1/8 turn to "lock" the two nuts together.
- 48 5. If using post-installed anchorage, follow MPII.
- 49 D. Assure that embedded items are protected from damage and are not filled in with concrete.

- 1 E. Secure architectural components such that it will not be aesthetically distorted and fasteners will
2 not be overstressed from expansion, contraction, or installation.
- 3 F. Repair damaged galvanized surfaces in accordance with ASTM A780.
4 1. Prepare damaged surfaces by abrasive blasting or power sanding.
5 2. Apply galvanizing repair paint to minimum 6 mils DFT in accordance with manufacturer's
6 instructions and ASTM A780.
- 7 G. For post-installed anchors, comply with the MPII on the hole diameter and depth required to
8 fully develop the tensile strength of the anchor or reinforcing bar.
9 1. Use hammer drills to create holes.
10 2. Properly clean out the hole per the ICC-ES reports utilizing a non-metallic fiber bristle
11 brush and compressed air or as otherwise required to remove all loose material from the
12 hole prior to installing the anchor in the presence of the Special Inspector.

13 **3.4 FIELD QUALITY CONTROL**

- 14 A. Special Inspection:
15 1. See Section 03 00 05.
- 16 B. Field Inspection and Testing
17 1. Owner reserves the right to inspect, and test completed anchorage at a minimum of 10% (for
18 large quantity) to 25% (smaller quantity) to 100% (very small project quantity).
19 2. Such testing shall conform to requirements of ACI 355.2 and/or ACI 355.4 as applicable.
20 3. Failed anchors shall be satisfactorily replaced at no cost to Owner.

21 **3.5 CLEANING**

- 22 A. After concrete has been placed, remove protection, and clean all anchorage of all concrete, dirt,
23 and other foreign matter.

24 **END OF SECTION**

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DIVISION 31

EARTHWORK

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SECTION 31 10 00
SITE CLEARING

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Site clearing, tree protection, stripping topsoil and demolition.
- B. Related Specification Sections include but are not necessarily limited to:
1. Section 01 57 05 – Temporary Controls.
 2. Section 31 23 10 – Excavation and Backfill.
 3. Section 32 91 13 - Topsoiling and Finished Grading.

PART 2 - PRODUCTS - (NOT USED)

PART 3 - EXECUTION

3.1 PREPARATION

- A. Protect existing trees and other vegetation to remain against damage.
1. Do not smother trees by stockpiling construction materials or excavated materials within drip line.
 2. Avoid foot or vehicular traffic or parking of vehicles within drip line.
 3. Provide temporary protection as required.
- B. Repair or replace trees and vegetation damaged by construction operations.
1. Repair to be performed by a qualified tree surgeon/licensed arborist.
 2. Remove trees which cannot be repaired and restored to full-growth status.
 3. Replace with new trees of minimum 4 IN caliper or as required by local tree ordinance.
- C. Owner will obtain authority for removal and alteration work on adjoining property, as applicable.

3.2 SITE CLEARING

- A. Topsoil Removal:
1. Strip topsoil to depths encountered or as specified within the soils report, 4 IN minimum.
 - a. Remove heavy growths of grass before stripping.
 - b. Stop topsoil stripping sufficient distance from such trees to prevent damage to main root system.
 - c. Separate from underlying subsoil or objectionable material.
 2. Stockpile topsoil where directed by Engineer.
 - a. Construct storage piles to freely drain surface water.
 - b. Seed or cover storage piles to prevent erosion.
 3. Do not strip topsoil in wooded areas where no change in grade occurs.
 4. Borrow topsoil: Reasonably free of subsoil, objects over 2 IN DIA, weeds and roots.
- B. Clearing and Grubbing:
1. Clear from within limits of construction all trees not marked to remain.
 - a. Include shrubs, brush, downed timber, rotten wood, heavy growth of grass and weeds, vines, rubbish, structures and debris.
 2. Grub (remove) from within limits of construction all stumps, roots, root mats, logs and debris encountered.
- C. Disposal of Waste Materials:

1. Do not burn combustible materials on site.
2. Remove all waste materials from site.
3. Do not bury organic matter on site.

END OF SECTION

SECTION 31 22 00
SITE GRADING

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Earthwork - site excavation, grading, compaction, disposal of waste and surplus materials, construction of berms, dewatering and other Earthwork related work.

B. Related Specification Sections include but are not necessarily limited to:

1. Section 01 57 05 - Temporary Controls.
2. Section 31 23 10 - Excavation and Backfill.
3. Section 31 23 19 - Dewatering.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. ASTM International (ASTM):
 - a. C33, Standard Specification for Concrete Aggregates.
 - b. D698, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 FT-LBF/CUFT).
 - c. D1241, Standard Specification for Material for Soil-Aggregate Subbase, Base, and Surface Courses.
 - d. D1557, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 FT-LBF/CUFT (2,700 kN-M/M)).
 - e. D2487, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System).
 - f. D3786, Standard Test Method for Bursting Strength of Textile Fabrics--Diaphragm Bursting Strength Tester Method.
 - g. D4253, Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table.
 - h. D4254, Standard Test Methods for Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density.
 - i. D4632, Standard Test Method for Grab Breaking Load and Elongation of Geotextiles.
2. American Association of State Highway and Transportation Officials (AASHTO)
 - a. M 43, Standard Specification for Sizes of Aggregate for Road and Bridge Construction.
 - b. M 57, Standard Specification for Materials for Embankment and Subgrades.
 - c. M 147, Standard Specification for Materials for Aggregate and Soil-Aggregate Subbase, Base, and Surface Courses.
3. Federal Regulations:
 - a. Occupational Safety and Health Administration (OSHA):
 - 1) 29 CFR Part 1926.650, Occupational Safety and Health Standards, referred to herein as OSHA Standards.

1.3 DEFINITIONS

A. Excavation:

1. Consists of removal of material encountered to subgrade or rough grade elevations required or indicated.
2. Includes excavation of soils; pavements and other obstructions visible on surface; underground structures, utilities, and other items indicated to be demolished and removed; boulders; and rock.

B. Geotechnical Engineer: Independent geotechnical specialist providing field quality control for the project.

- C. Non-Structural Fill/Backfill: Soil materials placed and compacted to achieve finish grade elevations that do NOT support foundations, slabs, paving, or other flatwork.
- D. Finish Grade: The earth or soil layer immediately below the surfacing material of the site.
- E. Rough Grade: The earth or soil layer immediately below the finish grade surface.
- F. Subgrade: The earth or soil layer immediately below foundation bearing elevation, subbase material, fill material, backfill material, or topsoil materials.
- G. Unauthorized Excavation:
 - 1. Consists of removal of materials beyond indicated subgrade elevations or dimensions without specific direction of Engineer.
 - a. Unauthorized excavation, as well as associated remedial work as directed by Engineer or Geotechnical Engineer, shall be at Contractor's expense.
 - 2. Unsuitable Soil Materials: Soil materials encountered at or below subgrade elevation of insufficient strength and stiffness to support construction as determined by the Geotechnical Engineer.

1.4 SUBMITTALS

- A. Product Data:
 - 1. Acknowledgement that products submitted meet requirements of standards referenced.
 - 2. Manufacturer's installation instructions.
 - 3. Certifications.
- B. Samples:
 - 1. Coordinate samples and testing for approval of off-site materials with the Geotechnical Engineer.

1.5 PROJECT CONDITIONS

- A. Salvageable Items: Carefully remove items to be salvaged, and store on Owner's premises unless otherwise directed.
- B. Dispose of waste materials, legally, off site.
 - 1. Burning, as a means of waste disposal, is not permitted.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Fill:
 - 1. Selected on-site material from site excavation or from off-site borrow approved by Geotechnical Engineer.
 - 2. Structural Fill:
 - a. May be low volume change cohesive or granular soil at Contractor's option.
 - b. Free of organic matter, frozen material and debris.
 - c. Low volume change cohesive soil:
 - 1) ASTM D2487 classification: CL-ML or CL.
 - 2) Liquid limit: Less than 45.
 - 3) Maximum plasticity index: 20.
 - d. Granular soil:
 - 1) ASTM D2487 classification: GW, GP, GM, GC, SW, SP, SM or SC.
 - 3. Non-Structural Fill:
 - a. ASTM D2487 classification: GW, GP, GM, GC, SC, SW, SP, SM, CL-ML or CL.
 - b. Liquid limit: Less than 45.
 - c. Maximum plasticity index: 20.
- B. Aggregate Base:
 - 1. Granular Fill Material:

- 1 a. Clean, Granular material.
- 2 b. Less than 5% fines passing the No. 200 sieve.
- 3 c. ASTM C33 gradation size No. 67, ¾ IN to No. 4 or other material acceptable to
- 4 Geotechnical Engineer.
- 5 d. Texas Department of Transportation (TXDOT)
- 6 C. Geotextile Filter Fabric:
- 7 1. Nonwoven type.
- 8 2. Equivalent opening size: 50 - 100 (U.S. Standard Sieve).
- 9 3. Permeability coefficient (cm/second): 0.07 minimum, 0.30 maximum.
- 10 4. Grab strength: 90 LBS minimum in either direction in accordance with ASTM D4632
- 11 requirements.
- 12 5. Mullen burst strength: 125 PSI minimum in accordance with ASTM D3786 requirements.

13 **PART 3 - EXECUTION**

14 **3.1 PROTECTION**

- 15 A. Erosion Control:
- 16 1. See Specification Section 01 57 05.
- 17 2. Clean paved roadways daily of any spillage of dirt, rocks or debris from vehicles and
- 18 equipment entering or leaving site.
- 19 3. Conduct work to minimize erosion of site. Remove eroded material washed off site.
- 20 a. If necessary or requested by Engineer, construct stilling areas to settle and detain
- 21 eroded material.
- 22 B. Protect existing surface and subsurface features on-site and adjacent to site as follows:
- 23 1. Provide barricades, coverings, or other types of protection necessary to prevent damage to
- 24 existing items indicated to remain in place.
- 25 2. Protect and maintain bench marks, monuments or other established reference points and
- 26 property corners.
- 27 a. If disturbed or destroyed, replace at own expense to full satisfaction of Owner and
- 28 controlling agency.
- 29 3. Verify location of utilities.
- 30 a. Omission or inclusion of utility items does not constitute nonexistence or definite
- 31 location.
- 32 b. Secure and examine local utility records for location data.
- 33 c. Take necessary precautions to protect existing utilities from damage due to any
- 34 construction activity.
- 35 1) If utilities are indicated to remain in place, provide adequate means of support and
- 36 protection during earthwork operations.
- 37 2) Do not interrupt existing utilities serving facilities occupied by Owner or others,
- 38 during occupied hours, except when permitted in writing by Owner and then only
- 39 after acceptable temporary utility services have been provided.
- 40 3) Obtain Owner's approval prior to disconnecting any utility service.
- 41 d. Repair damages to utility items at own expense.
- 42 e. In case of damage, notify Engineer at once so required protective measures may be
- 43 taken.
- 44 4. Maintain free of damage, existing sidewalks, structures, and pavement, not indicated to be
- 45 removed.
- 46 a. Protect new and existing structures, utilities, sidewalks, pavements, and other facilities
- 47 from damage caused by settlement, lateral movement, undermining, washout, and other
- 48 hazards created by earthwork operations.
- 49 b. Any item known or unknown or not properly located that is inadvertently damaged
- 50 shall be repaired to original condition.
- 51 c. All repairs to be made and paid for by Contractor.

3.3 USE OF EXPLOSIVES

- A. Blasting with any type of explosive is prohibited.

3.4 COMPACTION DENSITY REQUIREMENTS

- A. Obtain approval from Geotechnical Engineer with regard to suitability of soils and acceptable subgrade prior to subsequent operations.
- B. Remove frozen, loose, wet, or soft material and replace with approved material as directed by Geotechnical Engineer.
- C. Stabilize subgrade with well graded granular materials as directed by Geotechnical Engineer.
- D. Assure by results of testing that compaction densities comply with the following requirements:
1. Sitework:

LOCATION	COMPACTION DENSITY	MOISTURE CONTENT
Subgrade:		
Cohesive soils	95% per ASTM D698	-2 to +3% of optimum
Cohesionless soils	90% per ASTM D698	
Rough Grade:		
Cohesive soils	95% of ASTM D698	-2 to +3% of optimum
Cohesionless soils	90% per ASTM D698	
Finish Grade:		
Cohesive soils	95% of ASTM D698	-2 to +3% of optimum
Cohesionless soils	90% per ASTM D698	

3.5 FIELD QUALITY CONTROL

- A. All excavation, trenching, and related sheeting, bracing, etc. shall comply with the requirements of OSHA standards 29 CFR Part 1926.650 Subpart P, and state requirements. Where conflict between OSHA and state regulations exists, the more stringent requirements shall apply.
- B. Responsibilities of Special Inspector:
1. Review proposed materials for fill and backfill around structures.
 2. All testing, observation and work indicated as being performed by the Geotechnical Engineer in this Specification Section.
 3. Services will include verification and documentation of satisfactory soil materials, subgrade quality, sampling, placement, moisture conditioning, compaction and testing of proposed soil materials, and field testing for quality control.
 4. Moisture density relations, to be established by the Geotechnical Engineer required for all materials to be compacted.
 5. Extent of compaction testing will be as necessary to assure compliance with specifications.
 6. Prepare and submit inspection and test reports to Engineer.
 - a. Coordinate such work with other Special Inspectors.
 7. Test reports to include the following:
 - a. Report and certification of aggregate fill and drainage fill.
 - b. Test reports on borrow material.
 - c. Verification of suitability of each footing subgrade material, in accordance with specified requirements.

- 1 d. Field reports; in-place soil density and moisture tests.
- 2 e. One optimum moisture-maximum density curve for each type of soil encountered.
- 3 f. Report of actual unconfined compressive strength and/or results of bearing tests of each
- 4 strata tested.
- 5 g. Other documentation necessary for Geotechnical Engineer to approve earthwork.
- 6 h. Assist Engineer to determine corrective measures necessary for defective work.
- 7 C. Responsibilities of Testing Agency for Site Excavation and Grading:
- 8 1. All testing, observation and work indicated as being performed by the Geotechnical
- 9 Engineer in other than Article 3.5 of this Specification Section.
- 10 2. Services will include verification and documentation of satisfactory soil materials, subgrade
- 11 quality, sampling, placement, moisture conditioning, compaction and testing of proposed
- 12 soil materials, and field testing for quality control.
- 13 3. Moisture density relations, to be established by the Geotechnical Engineer required for all
- 14 materials to be compacted.
- 15 4. Extent of compaction testing will be as necessary to assure compliance with specifications.

17 **END OF SECTION**

SECTION 31 23 10
EXCAVATION AND BACKFILL

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Earthwork - excavation, backfilling, compaction, disposal of waste and surplus materials, placing structural fill, placing crushed stone, sheeting, bracing, dewatering and other Earthwork related work.

B. Related Specification Sections include but are not necessarily limited to:

1. Section 01 57 05 – Temporary Controls.
2. Section 31 23 33 - Trenching, Backfilling and Compacting for Utilities.
3. Section 31 23 19 - Dewatering.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. ASTM International (ASTM):

- a. C33, Standard Specification for Concrete Aggregates.
- b. D698, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 FT-LBF/CUFT).
- c. D1241, Standard Specification for Material for Soil-Aggregate Subbase, Base, and Surface Courses.
- d. D1557, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 FT-LBF/CUFT(2,700 kN-M/M)).
- e. D2487, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System).
- f. D3786, Standard Test Method for Bursting Strength of Textile Fabrics--Diaphragm Bursting Strength Tester Method.
- g. D4253, Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table.
- h. D4254, Standard Test Methods for Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density.
- i. D4632, Standard Test Method for Grab Breaking Load and Elongation of Geotextiles.

2. American Association of State Highway and Transportation Officials (AASHTO)

- a. M 43, Standard Specification for Sizes of Aggregate for Road and Bridge Construction.
- b. M 57, Standard Specification for Materials for Embankment and Subgrades.
- c. M 147, Standard Specification for Materials for Aggregate and Soil-Aggregate Subbase, Base, and Surface Courses.

B. Federal Regulations:

1. Occupational Safety and Health Administration (OSHA):

- a. 29 CFR Part 1926.650, Occupational Safety and Health Standards, referred to herein as OSHA Standards.

1.3 DEFINITIONS

A. Excavation:

1. Consists of removal of material encountered to subgrade elevations required or indicated.
2. Includes excavation of soils; pavements and other obstructions visible on surface; underground structures, utilities, and other items indicated to be demolished and removed; boulders; and rock.

B. Foundations: Footings, base slabs, foundation walls, mat foundations, grade beams, piers and any other support placed directly on soil or rock.

- C. Geotechnical Engineer: Independent geotechnical specialist providing field quality control for the project.
- D. Non-Structural Fill/Backfill: Soil materials placed and compacted to achieve finish grade elevations that do NOT support foundations, slabs, paving, or other flatwork.
- E. Structure: Buildings, foundations, slabs, tanks, curbs, or other man-made stationary features occurring above or below ground surface.
- F. Subgrade: The earth or soil layer immediately below foundation bearing elevation, subbase material, fill material, backfill material, or topsoil materials.
- G. Unauthorized Excavation:
 - 1. Consists of removal of materials beyond indicated subgrade elevations or dimensions without specific direction of Engineer.
 - a. Unauthorized excavation, as well as associated remedial work as directed by Engineer or Geotechnical Engineer, shall be at Contractor's expense.
 - 2. Unsuitable Soil Materials: Soil materials encountered at or below subgrade elevation of insufficient strength and stiffness to support construction as determined by the Geotechnical Engineer.

1.4 SUBMITTALS

- A. Product Data:
 - 1. Acknowledgement that products submitted meet requirements of standards referenced.
 - 2. Manufacturer's installation instructions.
 - 3. Certifications.
- B. Samples:
 - 1. Coordinate samples and testing for approval of off-site materials with the Geotechnical Engineer.

1.5 PROJECT CONDITIONS

- A. Salvageable Items: Carefully remove items to be salvaged, and store on Owner's premises unless otherwise directed.
- B. Dispose of waste materials, legally, off site.
 - 1. Burning, as a means of waste disposal, is not permitted.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Fill and Backfill:
 - 1. Selected material approved by Geotechnical Engineer from site excavation or from off site borrow.
 - 2. Select Fill:
 - a. May be low volume change cohesive or granular soil at Contractor's option.
 - b. Free of organic matter, frozen material and debris.
 - c. Low volume change cohesive soil:
 - 1) ASTM D2487 classification: CL-ML or CL.
 - 2) Liquid limit: Less than 45.
 - 3) Maximum plasticity index: 20.
 - d. Granular soil:
 - 1) ASTM D2487 classification: GW, GP, GM, GC, SW, SP, SM or SC.
- B. Granular Fill Under Building Floor Slabs-On-Grade, Electrical Equipment Pads, Manholes and Handholes:
 - 1. Clean, granular material.
 - 2. Less than 5% fines passing the No. 200 sieve.

- 1 3. ASTM C33 gradation size No. 57 or 67.
- 2 C. Geotextile Filter Fabric:
- 3 1. Nonwoven type.
- 4 2. Equivalent opening size: 50 - 100 (U.S. Standard Sieve).
- 5 3. Permeability coefficient (cm/second): 0.07 minimum, 0.30 maximum.
- 6 4. Grab strength: 90 LBS minimum in either direction in accordance with ASTM D4632
- 7 requirements.
- 8 5. Mullen burst strength: 125 PSI minimum in accordance with ASTM D3786 requirements.

9 **PART 3 - EXECUTION**

10 **3.1 PROTECTION**

- 11 A. Erosion Control:
- 12 1. See Specification Section 01 57 05.
- 13 2. Clean paved roadways daily of any spillage of dirt, rocks or debris from vehicles and
- 14 equipment entering or leaving site.
- 15 3. Conduct work to minimize erosion of site. Remove eroded material washed off site.
- 16 a. If necessary or requested by Engineer, construct stilling areas to settle and detain
- 17 eroded material.
- 18 B. Protect existing surface and subsurface features on-site and adjacent to site as follows:
- 19 1. Provide barricades, coverings, or other types of protection necessary to prevent damage to
- 20 existing items indicated to remain in place.
- 21 2. Protect and maintain bench marks, monuments or other established reference points and
- 22 property corners.
- 23 a. If disturbed or destroyed, replace at own expense to full satisfaction of Owner and
- 24 controlling agency.
- 25 3. Verify location of utilities.
- 26 a. Omission or inclusion of utility items does not constitute nonexistence or definite
- 27 location.
- 28 b. Secure and examine local utility records for location data.
- 29 c. Take necessary precautions to protect existing utilities from damage due to any
- 30 construction activity.
- 31 1) If utilities are indicated to remain in place, provide adequate means of support and
- 32 protection during earthwork operations.
- 33 2) Do not interrupt existing utilities serving facilities occupied by Owner or others,
- 34 during occupied hours, except when permitted in writing by Owner and then only
- 35 after acceptable temporary utility services have been provided.
- 36 3) Obtain Owner's approval prior to disconnecting any utility service.
- 37 d. Repair damages to utility items at own expense.
- 38 e. In case of damage, notify Engineer at once so required protective measures may be
- 39 taken.
- 40 4. Maintain free of damage, existing sidewalks, structures, and pavement, not indicated to be
- 41 removed.
- 42 a. Protect new and existing structures, utilities, sidewalks, pavements, and other facilities
- 43 from damage caused by settlement, lateral movement, undermining, washout, and other
- 44 hazards created by earthwork operations.
- 45 b. Any item known or unknown or not properly located that is inadvertently damaged
- 46 shall be repaired to original condition.
- 47 c. All repairs to be made and paid for by Contractor.
- 48 5. Provide full access to public and private premises, fire hydrants, street crossings, sidewalks
- 49 and other points as designated by Owner to prevent serious interruption of travel.
- 50 6. Maintain stockpiles and excavations in such a manner to prevent inconvenience or damage
- 51 to structures on-site or on adjoining property.
- 52 7. Avoid surcharge or excavation procedures which can result in heaving, caving, or slides.

3.2 EXCAVATION, FILLING, AND BACKFILLING FOR STRUCTURES

A. General:

1. In general, work includes, but is not necessarily limited to, excavation for structures and retaining walls, removal of underground obstructions and undesirable material, backfilling, filling, and fill, backfill, and subgrade compaction.
2. Obtain fill and backfill material necessary to produce grades required.
 - a. Materials and source to be approved by Geotechnical Engineer.
 - b. Excavated material approved by Geotechnical Engineer may also be used for fill and backfill.
3. In the paragraphs of this Specification Section, the word "soil" also includes any type of rock subgrade that may be present at or below existing subgrade levels.

B. Excavation Requirements for Structures:

1. General:

- a. Do not commence excavation for foundations for structures until Geotechnical Engineer approves:
 - 1) The removal of topsoil and other unsuitable and undesirable material from existing subgrade.
 - 2) Density and moisture content of site area compacted fill material meets requirements of specifications.
 - 3) Site surcharge or mass fill material can be removed from entire construction site or portion thereof.
 - 4) Surcharge or mass fill material has been removed from construction area or portions thereof.
- b. Engineer grants approval to begin excavations.

2. Dimensions:

- a. Excavate to elevations and dimensions indicated or specified.
 - b. Allow additional space as required for construction operations and inspection of foundations.
 - c. Slope sides of excavations to comply with local codes, ordinances, and requirements of agencies having jurisdiction.
 - d. Maintain sides and slopes of excavations in safe condition until completion of backfilling.
3. Removal of obstructions and undesirable materials in excavation includes, but is not necessarily limited to, removal of old foundations, existing construction, unsuitable subgrade soils, expansive type soils, and any other materials which may be concealed beneath present grade, as required to execute work indicated on Contract Drawings.
 - a. If undesirable material and obstructions are encountered during excavation, remove material and replace as directed by Geotechnical Engineer.
 - b. Remove unsuitable subgrade soils located below foundations. The bottom of the overexcavation shall be located outside the exterior limits of foundations around the perimeter of structure the following horizontal distance, whichever is greater:
 - 1) Distance equal to depth of overexcavation below bottom of foundations.
 - 2) 5 FT.
 - 3) As directed by Geotechnical Engineer.
 - c. When excavation has reached required subgrade elevations, notify Geotechnical Engineer, who will make an inspection of conditions.
 - 1) If Geotechnical Engineer determines that bearing materials at required subgrade elevations are unsuitable, provide Subgrade Stabilization as specified herein.

4. Install working surface over approved subgrade.

- a. Minimum thickness: 12 IN.

5. Level off bottoms of excavations to receive foundations, floor slabs, equipment support pads, or compacted fill.

- a. Remove loose materials and bring excavations into approved condition to receive concrete or fill material.

- b. Where compacted fill material must be placed to bring subgrade elevation up to underside of construction, scarify existing subgrade upon which fill material is to be placed to a depth of 6 IN and then compact to density stated in this Specification Section before fill material can be placed thereon.
 - c. Do not carry excavations lower than shown for foundations except as directed by Geotechnical Engineer or Engineer.
 - d. If any part of excavations is carried below required depth without authorization, notify Engineer and correct unauthorized excavation as directed. Corrections may include:
 - 1) Under soil supported footings, foundation bases, or retaining walls, fill unauthorized excavation by extending indicated bottom elevation of footing or base to excavation bottom, without altering required top elevation.
 - a) Concrete fill may be used to bring elevations to proper position.
 - 2) In locations other than those above, including slabs on grade and pile supported foundations, backfill and compact unauthorized excavations as specified for authorized excavations of same classification, unless otherwise directed by Geotechnical Engineer.
 - 3) No extra compensation will be made to Contractor for correcting unauthorized excavations.
6. Make excavations large enough for working space, forms, dampproofing, waterproofing, and inspection.
 7. Notify Geotechnical Engineer and Engineer as soon as excavation is completed in order that subgrades may be inspected.
 - a. Do not commence further construction until subgrade under compacted fill material, under foundations, under floor slabs-on-grade, under equipment support pads, and under retaining wall footings has been inspected and approved by the Geotechnical Engineer as being free of undesirable material, being of compaction density required by this specification, and being capable of supporting the allowable foundation design bearing pressures and superimposed foundation, fill, and building loads to be placed thereon.
 - b. Geotechnical Engineer shall be given the opportunity to inspect subgrade below fill material both prior to and after subgrade compaction.
 - c. Place fill material, foundations, retaining wall footings, floor slabs-on-grade, and equipment support pads as soon as weather conditions permit after excavation is completed, inspected, and approved and after forms and reinforcing are inspected and approved.
 - d. Before concrete or fill material is placed, protect approved subgrade from becoming loose, wet, frozen, or soft due to weather, construction operations, or other reasons.
 8. Subgrade stabilization:
 - a. If subgrade under foundations, fill material, floor slabs-on-grade, or equipment support pads is in a frozen, loose, wet, or soft condition before construction is placed thereon, remove frozen, loose, wet, or soft material and replace with approved compacted material as directed by Geotechnical Engineer.
 - b. Provide compaction density of replacement material as stated in this Specification Section.
 - c. Loose, wet, or soft materials, when approved by Geotechnical Engineer, may be stabilized by a compacted working mat of well graded crushed stone.
 - d. Compact stone mat thoroughly into subgrade to avoid future migration of fines into the stone voids.
 - e. Remove and replace frozen materials as directed by Geotechnical Engineer.
 - f. Method of stabilization shall be performed as directed by Geotechnical Engineer.
 - g. Do not place further construction on the repaired subgrades, until the subgrades have been approved by the Geotechnical Engineer.
 9. Protection of structures:
 - a. Prevent new and existing structures from becoming damaged due to construction operations or other reasons.

- 1 b. Prevent subgrade under new and existing foundations from becoming wet and
2 undermined during construction due to presence of surface or subsurface water or due
3 to construction operations.
- 4 10. Shoring:
- 5 a. Shore, slope, or brace excavations as required to prevent them from collapsing.
- 6 b. Remove shoring as backfilling progresses but only when banks are stable and safe from
7 caving or collapse.
- 8 c. Construct shoring that is required to retain water as part of the dewatering system, using
9 non-permeable details such as interlock sealant for sheet piles.
- 10 11. Drainage:
- 11 a. Control grading around structures so that ground is pitched to prevent water from
12 running into excavated areas or damaging structures.
- 13 b. Maintain excavations where foundations, floor slabs, equipment support pads or fill
14 material are to be placed free of water.
- 15 c. Provide pumping required to keep excavated spaces clear of water during construction.
- 16 d. Should any water be encountered in the excavation, notify Engineer and Geotechnical
17 Engineer.
- 18 e. Provide free discharge of water by trenches, pumps, wells, well points, or other means
19 as necessary and drain to point of disposal that will not damage existing or new
20 construction or interfere with construction operations.
- 21 12. Frost protection:
- 22 a. Do not place foundations, slabs-on-grade, equipment support pads, or fill material on
23 frozen ground.
- 24 b. When freezing temperatures may be expected, do not excavate to full depth indicated,
25 unless foundations, floor slabs, equipment support pads, or fill material can be placed
26 immediately after excavation has been completed and approved.
- 27 c. Protect excavation from frost if placing of concrete or fill is delayed.
- 28 d. Where a concrete slab is a base slab-on-grade located under and within a structure that
29 will not be heated, protect subgrade under the slab from becoming frozen until final
30 acceptance of the Project by the Owner.
- 31 e. Protect subgrade under foundations of a structure from becoming frozen until structure
32 is completed and heated to a temperature of at least 50 DEGF.
- 33 C. Fill and Backfill Inside of Structure and Below Foundations, Base Slabs, Floor Slabs, Equipment
34 Support Pads and Piping:
- 35 1. General:
- 36 a. Subgrade to receive fill or backfill shall be free of undesirable material as determined
37 by Geotechnical Engineer and scarified to a depth of 6 IN and compacted to density
38 specified herein.
- 39 b. Surface may be stepped by at not more than 12 IN per step or may be sloped at not
40 more than 2%.
- 41 c. Do not place any fill or backfill material until subgrade under fill or backfill has been
42 inspected and approved by Geotechnical Engineer as being free of undesirable material
43 and compacted to specified density.
- 44 2. Obtain approval of fill and backfill material and source from Geotechnical Engineer prior to
45 placing the material.
- 46 3. Granular fill under floor slabs-on-grade: Place all floor slabs-on-grade on a minimum of
47 6 IN of granular fill unless otherwise indicated.
- 48 4. Vapor barrier: Install a continuous vapor barrier under floor slabs-on-grade as required and
49 shown on Contract Drawings.
- 50 5. Fill and backfill placement:
- 51 a. Prior to placing fill and backfill material, optimum moisture and maximum density
52 properties for proposed material shall be obtained from Geotechnical Engineer.
- 53 b. Place fill and backfill material in 8 IN lifts.
- 54 c. Compact material by means of equipment of sufficient size and proper type to obtain
55 specified density.

- d. Use hand operated equipment for filling and backfilling within 5 FT of walls and less than 3 FT above pipes.
 - 1) Compaction equipment exceeding 3000 LBS dead weight shall not be used within 5 FT of the wall as a minimum.
 - 2) Contractor is responsible for method of compaction so as not to damage walls or buried commodities.
- e. Use hand operated equipment for filling and backfilling next to walls.
- f. Do not place fill and backfill when the temperature is less than 40 DEGF and when subgrade to receive fill and backfill material is frozen, wet, loose, or soft.
- g. Use vibratory equipment to compact granular material; do not use water.
6. Where fill material is required below foundations, place fill material, conforming to the required density and moisture content as required to fill the specified overexcavation to bottom of foundation.

D. Filling and Backfilling Outside of Structures.

1. This paragraph of this Specification applies to fill and backfill placed outside of structures above bottom level of both foundations and piping but not under paving.
2. Provide material as approved by Geotechnical Engineer for filling and backfilling outside of structures.
3. Fill and backfill placement:
 - a. Prior to placing fill and backfill material, obtain optimum moisture and maximum density properties for proposed material from Geotechnical Engineer.
 - b. Place fill and backfill material to maximum allowable lift thickness indicated in Paragraph 3.2, C, 5, b of this Section.
 - c. Compact material with equipment of proper type and size to obtain density specified.
 - d. Use hand operated equipment for filling and backfilling within 5 FT of walls and less than 3 FT above pipes.
 - 1) Compaction equipment exceeding 3000 LBS dead weight shall not be used within 5 FT of the wall as a minimum.
 - 2) Contractor is responsible for method of compaction so as not to damage walls or buried commodities.
 - e. Use only hand operated equipment for filling and backfilling next to walls and retaining walls.
 - f. Do not place fill or backfill material when temperature is less than 40 DEGF and when subgrade to receive material is frozen, wet, loose, or soft.
 - g. Use vibratory equipment for compacting granular material; do not use water.
4. Backfilling against walls:
 - a. Do not backfill around any part of structures until each part has reached specified 28-day compressive strength and backfill material has been approved.
 - b. Do not start backfilling until concrete forms have been removed, trash removed from excavations, pointing of masonry work, concrete finishing, dampproofing and waterproofing have been completed.
 - c. Do not place fills against walls until floor slabs at top, bottom, and at intermediate levels of walls are in place and have reached 28-day required compressive strength to prevent wall movement.
 - 1) See Contract Drawings for specific exceptions.
 - d. Bring backfill and fill up uniformly around the structures and individual walls, piers, or columns.

E. Backfilling Outside of Structures Under Piping or Paving:

1. When backfilling outside of structures requires placing backfill material under piping or paving, the material shall be placed from bottom of excavation to underside of piping or paving at the density required for fill under piping or paving as indicated in this Specification Section.

2. This compacted material shall extend transversely to the centerline of piping or paving a horizontal distance each side of the exterior edges of piping or paving equal to the depth of backfill measured from bottom of excavation to underside of piping or paving.
3. Provide special compacted bedding or compacted subgrade material under piping or paving as required by other Specification Sections for the Project.

3.3 USE OF EXPLOSIVES

- A. Blasting with any type of explosive is prohibited.

3.4 COMPACTION DENSITY REQUIREMENTS

- A. Obtain approval from Geotechnical Engineer with regard to suitability of soils and acceptable subgrade prior to subsequent operations.
- B. Provide dewatering system necessary to successfully complete compaction and construction requirements.
- C. Remove frozen, loose, wet, or soft material and replace with approved material as directed by Geotechnical Engineer.
- D. Stabilize subgrade with well graded granular materials as directed by Geotechnical Engineer.
- E. Assure by results of testing that compaction densities comply with the following requirements:
 1. Structures:

LOCATION	COMPACTION DENSITY	MOISTURE CONTENT
Inside of structures under foundations, under equipment support pads, under slabs-on-grade and scarified existing subgrade under fill material	98% per ASTM D698	-2 to +3% of optimum
Outside structures next to walls, piers, columns and any other structure exterior member	92% per ASTM D698	-2 to +3% of optimum

2. Specific areas:

LOCATION	COMPACTION DENSITY	MOISTURE CONTENT
Outside structures under equipment support foundations	98% per ASTM D698	-2 to +3% of optimum
Under void	85% per ASTM D1557	-2 to +3% of optimum

3.5 FIELD QUALITY CONTROL

- A. All excavation, trenching, and related sheeting, bracing, etc. shall comply with the requirements of OSHA standards 29 CFR Part 1926.650 Subpart P, and state requirements. Where conflict between OSHA and state regulations exists, the more stringent requirements shall apply.
- B. Responsibilities of Special Inspector:
 1. Review proposed materials for fill and backfill around structures.
 2. All testing, observation and work indicated as being performed by the Geotechnical Engineer in this Specification Section.
 3. Services will include verification and documentation of satisfactory soil materials, subgrade quality, sampling, placement, moisture conditioning, compaction and testing of proposed soil materials, and field testing for quality control.
 4. Moisture density relations, to be established by the Geotechnical Engineer required for all materials to be compacted.
 5. Extent of compaction testing will be as necessary to assure compliance with specifications.

- 1 6. Prepare and submit inspection and test reports to Engineer.
2 a. Coordinate such work with other Special Inspectors.
3 7. Test reports to include the following:
4 a. Report and certification of aggregate fill and drainage fill.
5 b. Test reports on borrow material.
6 c. Verification of suitability of each footing subgrade material, in accordance with
7 specified requirements.
8 d. Field reports; in-place soil density and moisture tests.
9 e. One optimum moisture-maximum density curve for each type of soil encountered.
10 f. Report of actual unconfined compressive strength and/or results of bearing tests of each
11 strata tested.
12 g. Other documentation necessary for Geotechnical Engineer to approve earthwork.
13 h. Assist Engineer to determine corrective measures necessary for defective work.
- 14 C. Responsibilities of Testing Agency for Excavation and Backfilling:
15 1. All testing, observation and work indicated as being performed by the Geotechnical
16 Engineer in other than Article 3.5 of this Specification Section.
17 2. Services will include verification and documentation of satisfactory soil materials, subgrade
18 quality, sampling, placement, moisture conditioning, compaction and testing of proposed
19 soil materials, and field testing for quality control.
20 3. Moisture density relations, to be established by the Geotechnical Engineer required for all
21 materials to be compacted.
22 4. Extent of compaction testing will be as necessary to assure compliance with specifications.

24 **END OF SECTION**

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SECTION 31 23 19
DEWATERING

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Dewatering system.
2. Surface water control system.
3. Monitoring wells.
4. System operation and maintenance.
5. Water disposal.

B. Related Specification Sections include but are not necessarily limited to:

1. Section 01 57 05 – Temporary Controls.
2. Section 31 22 00 - Site Grading.
3. Section 31 23 10 - Excavation and Backfill.
4. Section 31 23 33 - Trenching, Backfilling, and Compacting for Utilities.

1.2 QUALITY ASSURANCE

1.3 DEFINITIONS

A. Dewatering:

1. Lowering of groundwater table and intercepting horizontal water seepage to prevent groundwater from entering excavations, trenches and shafts.
2. Disposing of removed water.

B. Surface Water Control:

1. Removal of surface water within open excavations.

C. Foundations:

1. Footings, base slabs, foundation walls, mat foundations, grade beams, piers and any other support placed directly on soil or rock.

1.4 SUBMITTALS

A. Shop Drawings:

1. Dewatering plan design data and Drawings including the following:
 - a. Proposed type of dewatering system with complete description of equipment and instrumentation to be used.
 - b. Arrangement, locations, and depths of system components.
 - c. Pipe sizes and capacities.
 - d. Filter types and sizes.
 - e. Water disposal method and location.
 - f. Surface water control devices.
 - g. System operation, monitoring, and maintenance procedures.
 - h. Method of monitoring water quality.
 - i. Signed and sealed by professional engineer.
2. Product technical data including:
 - a. Dewatering pump data including the following:
 - 1) Size, capacity, and means of operation.
 - b. Pumping equipment for control of surface water within excavation.

1 **PART 2 - PRODUCTS**

2 **2.1 DEWATERING EQUIPMENT**

- 3 A. Select dewatering equipment to meet specified performance requirements.

4 **PART 3 - EXECUTION**

5 **3.1 PROTECTION**

- 6 A. Erosion Control:
- 7 1. See Specification Section 01 57 05.
- 8 2. Clean paved roadways daily of any spillage of dirt, rocks or debris from vehicles and
- 9 equipment entering or leaving site.
- 10 3. Conduct work to minimize erosion of site. Remove eroded material washed off site.
- 11 a. If necessary or requested by Engineer, construct stilling areas to settle and detain
- 12 eroded material.
- 13 B. Protect existing surface and subsurface features on-site and adjacent to site as follows:
- 14 1. Provide barricades, coverings, or other types of protection necessary to prevent damage to
- 15 existing items indicated to remain in place.
- 16 2. Protect and maintain bench marks, monuments or other established reference points and
- 17 property corners.
- 18 a. If disturbed or destroyed, replace at own expense to full satisfaction of Owner and
- 19 controlling agency.
- 20 3. Verify location of utilities.
- 21 a. Omission or inclusion of utility items does not constitute nonexistence or definite
- 22 location.
- 23 b. Obtain and examine local utility records for location data.
- 24 c. Take necessary precautions to protect existing utilities from damage due to any
- 25 construction activity.
- 26 1) If utilities are indicated to remain in place, provide adequate means of support and
- 27 protection during earthwork operations.
- 28 2) Do not interrupt existing utilities serving facilities occupied by Owner or others,
- 29 during occupied hours, except when permitted in writing by Owner and then only
- 30 after acceptable temporary utility services have been provided.
- 31 3) Obtain Owner's approval prior to disconnecting any utility service.
- 32 d. Repair damages to utility items at own expense.
- 33 e. In case of damage, notify Engineer at once so required protective measures may be
- 34 taken.
- 35 4. Maintain free of damage, existing sidewalks, structures, and pavement, not indicated to be
- 36 removed.
- 37 a. Protect new and existing structures, utilities, sidewalks, pavements, and other facilities
- 38 from damage caused by settlement, lateral movement, undermining, washout, and other
- 39 hazards created by earthwork operations.
- 40 b. Any item known or unknown or not properly located that is inadvertently damaged
- 41 shall be repaired to original condition.
- 42 c. All repairs to be made and paid for by Contractor.
- 43 5. Provide full access to public and private premises, fire hydrants, street crossings, sidewalks
- 44 and other points as designated by Owner to prevent serious interruption of travel.

45 **3.2 DEWATERING**

- 46 A. Review existing subsurface data before beginning excavation and determine where groundwater
- 47 is likely to be encountered during excavation.
- 48 B. Where groundwater is or is expected to be encountered during excavation, install a dewatering
- 49 system to prevent softening and disturbance of subgrade below foundations and fill material, to

- 1 allow foundations and fill material to be placed in the dry, and to maintain a stable excavation
2 side slope.
- 3 1. Employ dewatering specialist for selecting and operating dewatering system.
4 2. Groundwater shall be maintained at least 2 FT below the bottom of any excavation.
5 3. Install groundwater monitoring wells as necessary.
6 4. Keep dewatering system in operation until dead load of structure exceeds possible buoyant
7 uplift force on structure.
- 8 C. Dispose of groundwater to an area which will not interfere with construction operations or
9 damage existing construction.
- 10 1. Shut off dewatering system at such a rate to prevent a quick upsurge of water that might
11 weaken the subgrade.
12 2. Discharge water into existing storm sewer system, drainage channels and settling basins.
- 13 **3.3 SURFACE WATER CONTROL SYSTEMS**
- 14 A. Provide ditches, berms, and other devices to divert and drain surface water from excavation area.
- 15 B. Divert surface water and seepage water within excavation areas into sumps and pump water into
16 drainage channels, storm drains and settling basins in accordance with requirements of the
17 agencies having jurisdiction.
- 18 C. Control and remove unanticipated water seepage into excavation.

20 **END OF SECTION**

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SECTION 31 23 33

TRENCHING, BACKFILLING, AND COMPACTING FOR UTILITIES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Excavation, trenching, backfilling and compacting for all underground utilities.

B. Related Specification Sections include but are not necessarily limited to:

1. Section 31 23 10 – Excavation and Backfill.

1.2 QUALITY ASSURANCE

A. Referenced Standards:

1. ASTM International (ASTM):

- a. D698, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 FT-LBF/FT³ (600 kN-M/M³)).
- b. D4253, Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table.
- c. D4254, Standard Test Methods for Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density.

B. Qualifications: Hire an independent soils laboratory to conduct in-place moisture-density tests for backfilling to assure that all work complies with this Specification Section.

1.3 DEFINITIONS

A. Excavation: All excavation will be defined as unclassified.

1.4 SUBMITTALS

A. Shop Drawings:

1. Product technical data including:

- a. Acknowledgement that products submitted meet requirements of standards referenced.
- b. Manufacturer's installation instructions.

2. Submit respective pipe or conduit manufacturer's data regarding bedding methods of installation and general recommendations.

3. Submit sieve analysis reports on all granular materials.

B. Informational Submittals:

1. Trench shield (trench box) certification if employed:

- a. Specific to Project conditions.
- b. Re-certified if members become distressed.
- c. Certification by registered professional structural engineer, registered in the state where the Project is located.
- d. Engineer is not responsible to, and will not, review and approve.

1.5 SITE CONDITIONS

A. Avoid overloading or surcharge a sufficient distance back from edge of excavation to prevent slides or caving.

1. Maintain and trim excavated materials in such manner to be as little inconvenience as possible to public and adjoining property owners.

B. Provide full access to public and private premises and fire hydrants, at street crossings, sidewalks and other points as designated by Owner to prevent serious interruption of travel.

C. Protect and maintain bench marks, monuments or other established points and reference points and if disturbed or destroyed, replace items to full satisfaction of Owner and controlling agency.

D. Verify location of existing underground utilities

PART 2 - PRODUCTS

2.1 MATERIALS

A. Backfill Material:

1. As approved by Engineer.
 - a. Free of rock cobbles, roots, sod or other organic matter, and frozen material.
 - b. Moisture content at time of placement: $\pm 3\%$ of optimum moisture content as specified in accordance with ASTM D698.
2. Gravel trench backfill materials:
 - a. ASTM C33 gradation size No. 67

B. Bedding Materials:

1. As approved by the Geotechnical Engineer.
2. Granular bedding materials:
 - a. ASTM D2321 Class 1B.
 - 1) Well-graded crushed stone.
 - b. ASTM C33/C33M, gradation 67 (3/4 IN to No. 4 sieve) defined below:

Sieve Size	1 IN	3/4 IN	3/8 IN	No. 4	No. 20
Percent Passing by Weight	100	90-100	20-55	0-10	0

- 1) Well-graded crushed stone.
 - 2) Well graded crushed gravel.
 - 3) Well graded gravel.
 3. Flowable fill:
 - a. Description: Flowable fill shall be a mixture of cement, fly ash, fine sand, water, and air having a consistency which will flow under a very low head.
 - b. Material characteristics:
 - 1) The approximate quantities of each component per cubic yard of mixed material shall be as follows:
 - a) Cement (Type I or II): 50 LBS.
 - b) Fly ash: 200 LBS.
 - c) Fine sand: 2,700 LBS.
 - d) Water: 420 LBS.
 - e) Air content: 10%.
 - 2) Actual quantities shall be adjusted to provide a yield of 1 cubic yard with the materials used.
 - 3) Approximate compressive strength should be 85 to 175 PSI.
 - 4) Fine sand shall be an evenly graded material having not less than 95% passing the No. 4 sieve and not more than 5% passing the No. 200 sieve.

PART 3 - EXECUTION

3.1 GENERAL

- A. Remove and dispose of unsuitable materials as directed by Geotechnical Engineer to site provided by Owner.

3.2 EXCAVATION

- A. Unclassified Excavation: Remove rock excavation, clay, silt, gravel, hard pan, loose shale, and loose stone as directed by Geotechnical Engineer.

- 1 B. Excavation for Appurtenances:
2 1. 12 IN (minimum) clear distance between outer surface and embankment.
3 2. See Specification Section 31 23 10 for applicable requirements.
- 4 C. Groundwater Dewatering:
5 1. Where groundwater is, or is expected to be, encountered during excavation, install a
6 dewatering system to prevent softening and disturbance of subgrade to allow subgrade
7 stabilization, pipe, bedding and backfill material to be placed in the dry, and to maintain a
8 stable trench wall or side slope.
9 2. Groundwater shall be drawn down and maintained at least 3 FT below the bottom of any
10 trench or manhole excavation prior to excavation.
11 3. Review soils investigation before beginning excavation and determine where groundwater is
12 likely to be encountered during excavation.
13 a. Employ dewatering specialist for selecting and operating dewatering system.
14 4. Keep dewatering system in operation until dead load of pipe, structure and backfill exceeds
15 possible buoyant uplift force on pipe or structure.
16 5. Dispose of groundwater to an area which will not interfere with construction operations or
17 damage existing construction.
18 6. Install groundwater monitoring wells as necessary.
19 7. Shut off dewatering system at such a rate to prevent a quick upsurge of water that might
20 weaken the subgrade.
21 8. Cost of groundwater dewatering shall be compensated at the unit price for the Bid Item –for
22 Groundwater Dewatering.
- 23 D. Trench Excavation:
24 1. Excavate trenches by open cut method to depth shown on Drawings and necessary to
25 accommodate work.
26 a. Support existing utility lines and yard piping where proposed work crosses at a lower
27 elevation.
28 1) Stabilize excavation to prevent undermining of existing utility and yard piping.
29 2. Open trench outside buildings, units, and structures:
30 a. No more than the distance between two manholes, structures, units, or 300 LF,
31 whichever is less.
32 b. Field adjust limitations as weather conditions dictate.
33 3. Trenching within buildings, units, or structures:
34 a. No more than 100 LF at any one time.
35 4. Any trench or portion of trench, which is opened and remains idle for seven calendar days,
36 or longer, as determined by the Owner, may be directed to be immediately refilled, without
37 completion of work, at no additional cost to Owner.
38 a. Said trench may not be reopened until Owner is satisfied that work associated with
39 trench will be prosecuted with dispatch.
40 5. Observe following trenching criteria:
41 a. Trench size:
42 1) Excavate width to accommodate free working space.
43 2) Maximum trench width at top of pipe or conduit may not exceed outside diameter
44 of utility service by more than the following dimensions:
45

OVERALL DIAMETER OF UTILITY SERVICE	EXCESS DIMENSION
33 IN and less	18 IN
more than 33 IN	24 IN

- 46
47 3) Cut trench walls vertically from bottom of trench to 1 FT above top of pipe,
48 conduit, or utility service.
49 4) Keep trenches free of surface water runoff.

- 1 a) Include cost in Bid.
2 b) No separate payment for surface water runoff pumping will be made.
- 3 E. Trenching for Electrical Installations:
4 1. Observe the preceding Trench Excavation paragraph in PART 3 of this Specification
5 Section.
6 2. Modify for electrical installations as follows:
7 a. Open no more than 600 LF of trench in exterior locations for trenches more than 12 IN
8 but not more than 30 IN wide.
9 b. Any length of trench may be opened in exterior locations for trenches which are 12 IN
10 wide or less.
11 c. Do not over excavate trench.
12 d. Cut trenches for electrical runs with minimum 30 IN cover, unless otherwise specified
13 or shown on Drawings.
14 e. See Division 26 for additional requirements.
- 15 F. Flowable Fill:
16 1. Flowable fill shall be:
17 a. Discharged from a mixer by any means acceptable to the Engineer into the area to be
18 filled.
19 b. Placed in 4 FT maximum lifts to the elevations indicated.
20 1) Allow 12 HR set-up time before placing next lift or as approved by the Engineer.
21 2) Place flowable fill lifts in such a manner as to prevent flotation of the pipe.
22 2. Flowable fill shall not be placed on frozen ground.
23 3. Subgrade on which flowable fill is placed shall be free of disturbed or softened material and
24 water.
25 4. Conform to appropriate requirements of Specification Section 31 23 10.
26 5. Flowable fill batching, mixing, and placing may be started if weather conditions are
27 favorable, and the air temperature is 34 DEGF and rising.
28 6. At the time of placement, flowable fill must have a temperature of at least 40 DEGF.
29 7. Mixing and placing shall stop when the air temperature is 38 DEGF or less and falling.
30 8. Each filling stage shall be as continuous an operation as is practicable.
31 9. Prevent traffic contact with flowable fill for at least 24 HRS after placement or until
32 flowable fill is hard enough to prevent rutting by construction equipment.
33 10. Flowable fill shall not be placed until water has been controlled or groundwater level has
34 been lowered in conformance with the requirements of the preceding Groundwater
35 Dewatering paragraph in PART 3 of this Specification Section.

3.3 PREPARATION OF FOUNDATION FOR PIPE LAYING

- 37 A. Over-Excavation:
38 1. Backfill and compact to 90% of maximum dry density per ASTM D698.
39 2. Backfill with granular bedding material as option.
- 40 B. Rock Excavation:
41 1. Excavate minimum of 6 IN below bottom exterior surface of the pipe or conduit.
42 2. Backfill to grade with suitable earth or granular material.
43 3. Form bell holes in trench bottom.
- 44 C. Subgrade Stabilization:
45 1. Stabilize the subgrade when directed by the Owner.
46 2. Observe the following requirements when unstable trench bottom materials are encountered.
47 a. Notify Owner when unstable materials are encountered.
48 1) Define by drawing station locations and limits.
49 b. Remove unstable trench bottom caused by Contractor failure to dewater, rainfall, or
50 Contractor operations.
51 1) Replace with subgrade stabilization with no additional compensation.

3.4 BACKFILLING METHODS

- A. Do not backfill until tests to be performed on system show system is in full compliance with specified requirements.
- B. Carefully Compacted Backfill:
 - 1. Furnish where indicated on Drawings, specified for trench embedment conditions and for compacted backfill conditions up to 12 IN above top of pipe or conduit.
 - 2. Comply with the following:
 - a. Place backfill in lifts not exceeding 8 IN (loose thickness).
 - b. Hand place, shovel slice, and pneumatically tamp all carefully compacted backfill.
 - c. Observe specific manufacturer's recommendations regarding backfilling and compaction.
 - d. Compact each lift to specified requirements.
- C. Common Trench Backfill:
 - 1. Perform in accordance with the following:
 - a. Place backfill in lift thicknesses capable of being compacted to densities specified.
 - b. Observe specific manufacturer's recommendations regarding backfilling and compaction.
 - c. Avoid displacing joints and appurtenances or causing any horizontal or vertical misalignment, separation, or distortion.
- D. Water flushing for consolidation is not permitted.
- E. Backfilling for Electrical Installations:
 - 1. Observe the preceding Carefully Compacted Backfill paragraph or Common Trench Backfill paragraph in PART 3 of this Specification Section or when approved by the Engineer.
 - 2. Modify for electrical installation as follows:
 - a. Observe notes and details on electrical drawings for fill in immediate vicinity of direct burial cables.

3.5 COMPACTION

- A. General:
 - 1. Place and assure bedding, backfill, and fill materials achieve an equal or higher degree of compaction than undisturbed materials adjacent to the work.
 - 2. In no case shall degree of compaction below minimum compactions specified be accepted.
- B. Compaction Requirements:
 - 1. Unless noted otherwise on Drawings or more stringently by other Specification Sections, comply with following minimum trench compaction criteria.
 - a. Bedding material:

LOCATION	SOIL TYPE	COMPACTION DENSITY
All locations	Cohesionless soils	75% relative density by ASTM D4253 and ASTM D4254

- b. Carefully compacted backfill:

LOCATION	SOIL TYPE	COMPACTION DENSITY
All applicable areas	Cohesive soils	95% of maximum dry density by ASTM D698
	Cohesionless soils	75% relative density by ASTM D4253 and ASTM D4254

- c. Toe drain bedding and backfill:

LOCATION	SOIL TYPE	COMPACTION DENSITY
All locations	Cohesionless soils	60% relative density by ASTM D4253 and ASTM D4254

d. Common trench backfill:

LOCATION	SOIL TYPE	COMPACTION DENSITY
Under pavements, roadways, surfaces within highway right-of-ways	Cohesive soils	95% of maximum dry density by ASTM D698
	Cohesionless soils	60% of relative density by ASTM D4253 and ASTM D4254
Under turf, sodded, plant seeded, nontraffic areas	Cohesive soils	85% of maximum dry density by ATM D698
	Cohesionless soils	40% of relative density by ASTM D4253 and ASTM D4254

3.6 FIELD QUALITY CONTROL

A. Testing:

1. Perform in-place moisture-density tests as directed by the Owner.
2. Perform tests through recognized testing laboratory approved by Owner.
3. Costs of "Passing" tests paid by Owner.
4. Perform additional tests as directed until compaction meets or exceeds requirements.
5. Cost associated with "Failing" tests shall be paid by Contractor.
6. Reference to Engineer in this Specification Section will imply Geotechnical Engineer when employed by Owner and directed by Engineer to undertake necessary inspections as approvals as necessary.
7. Assure Owner has immediate access for testing of all soils related work.
8. Ensure excavations are safe for testing personnel.

END OF SECTION

SECTION 31 32 19
GEOTEXTILES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Nonwoven geotextile material.
- B. Related Specification Sections include but are not necessarily limited to:
1. Section 31 23 10 – Excavation and Backfill.

1.2 QUALITY ASSURANCE

- A. Referenced Standards:
1. American Association of State Highway Transportation Officials (AASHTO):
 - a. M288, Standard Specification for Geotextile Specification for Highway Applications.
 2. ASTM International (ASTM):
 - a. D3786, Standard Test Method for Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method.
 - b. D4355, Standard Test Method for Deterioration of Geotextiles by Exposure to Light, Moisture and Heat in a Xenon Arc Type Apparatus.
 - c. D4491, Standard Test Methods for Water Permeability of Geotextiles by Permittivity.
 - d. D4533, Standard Test Method for Trapezoid Tearing Strength of Geotextiles.
 - e. D4632, Standard Test Method for Grab Breaking Load and Elongation of Geotextiles.
 - f. D4751, Standard Test Method for Determining Apparent Opening Size of a Geotextile.
 - g. D4759, Standard Practice for Determining the Specification Conformance of Geosynthetics.
 - h. D4833, Standard Test Method for Index Puncture Resistance of Geomembranes and Related Products.
 - i. D4873, Standard Guide for Identification, Storage, and Handling of Geosynthetic Rolls and Samples.
 - j. D5261, Standard Test Method for Measuring Mass per Unit Area of Geotextiles.
- B. Qualifications:
1. Each manufacturing, fabricating firm shall demonstrate five years continuous experience, including a minimum of 10,000,000 SQFT of geotextile installation in the past three years.
 2. Installing firm shall demonstrate that the site Superintendent or Foreman has had responsible charge for installation of a minimum of 1,000,000 SQFT of geotextile.
 3. Installer shall attend pre-installation conference.

1.3 DEFINITIONS

- A. Manufacturer: Manufacturer producing geotextile sheets from resin and additives.
- B. Installer: The Installers are the individuals actually performing the hands-on work in the field.

1.4 SUBMITTALS

- A. Shop Drawings:
1. Manufacturer's documentation that raw materials and roll materials comply with required geotextile physical properties.
 2. Manufacturer and Installer quality control manuals.
 3. Original test results for resins, roll material and factory seam tests at frequency specified in respective quality control manuals.
 - a. Results shall include or bracket the rolls delivered for use in the Work.
 4. Geotextile layout plan with proposed size, number, position and sequencing of geotextile rolls and direction of all field seams.

- 1 5. Proposed details of anchoring and overlapping if different than included in Contract
2 Documents.
- 3 B. Informational Submittals:
- 4 1. Submit written certifications that:
- 5 a. The geotextiles delivered to site meet the requirements of this Specification Section.
- 6 b. The geotextiles were received and accepted in undamaged condition from shipper.
- 7 c. The subgrade has been properly prepared and acceptable for the placement of the
8 geotextiles.
- 9 d. The geotextiles were installed in accordance with this Specification Section and with
10 approved Shop Drawings.
- 11 e. The drainage composite or granular base course on top of the geotextiles was placed
12 properly and carefully.
- 13 f. No alterations, additions, deletions, or exception shall be made to the specified
14 language.
- 15 2. For needle punched geotextiles, the manufacturer shall certify that the geotextile has been
16 continuously inspected using permanent on-line full-width metal detectors and does not
17 contain any needles which could damage other geosynthetic layers.
- 18 3. Qualification documentation specified in the QUALITY ASSURANCE Article in PART 1
19 of this Specification Section.

20 1.5 DELIVERY, STORAGE AND HANDLING

- 21 A. Label, handle, and store geotextiles in accordance with ASTM D4873 and as specified herein.
- 22 B. Wrap each roll in an opaque and waterproof layer of plastic during shipment and storage.
- 23 1. Do not remove the plastic wrapping until deployment.
- 24 C. Label each roll with the manufacturer's name, geotextile type, lot number, roll number, and roll
25 dimensions (length, width, gross weight).
- 26 D. Repair or replace geotextile or plastic wrapping damaged as a result of storage or handling, as
27 directed.
- 28 E. Do not expose geotextile to temperatures in excess of 71 DEGC (160 DEGF) or less than
29 0 DEGC (32 DEGF) unless recommended by the manufacturer.
- 30 F. Do not use hooks, tongs or other sharp instruments for handling geotextile.
- 31 1. Do not lift rolls lifted by use of cables or chains in contact with the geotextile.
- 32 2. Do not drag geotextile along the ground.

33 PART 2 - PRODUCTS

34 2.1 MANUFACTURERS

- 35 A. Subject to compliance with the Contract Documents, the following manufacturers are
36 acceptable:
- 37 1. GSE Lining Technology.
- 38 2. Propex Geosynthetics.
- 39 3. SKAPS Industries.
- 40 4. TenCate Mirafi.
- 41 5. Tenax.
- 42 6. Layfield Group.

43 2.2 MATERIALS AND MANUFACTURE

- 44 A. Geotextile:
- 45 1. Nonwoven pervious sheet of polymeric material.
- 46 2. Geotextile fibers:
- 47 a. Long-chain synthetic polymer composed of at least 85% by weight polyolefins,
48 polyesters, or polyamides.

- b. Filaments resistant to deterioration by ultraviolet light, oxidation, and heat exposure.
- c. Do not as reclaimed or recycled fibers or polymer to the formulation.
3. Form geotextile into a network such that the filaments or yarns retain dimensional stability relative to each other, including the selvages.
4. The geotextile physical properties shall equal or exceed the minimum average roll values listed below.
 - a. Values shown are for the weaker principal direction.
 - b. Acceptance of geotextile shall be in accordance with ASTM D4759.
 - c. Type I Geotextile: AASHTO M288 Class 2, for use in demolition fill.

PROPERTY	TEST METHOD	MINIMUM AVERAGE ROLL VALUE
Mass per Unit Area, OZ/SY	ASTM D5261	=10
AOS, U.S. Standard Sieve	ASTM D4751	70-100
Permittivity, SEC-1	ASTM D4491	=0.5
Puncture, LBS	ASTM D4833	=90
Grab Tensile, LBS	ASTM D4632	=250
Trapezoidal Tear, LBS	ASTM D4533	=90
Burst Strength, PSI	ASTM D3786	=190
Ultraviolet Degradation % retained @ 500 HRS	ASTM D4355	=50
Sewn Seam Strength, LBS	ASTM D4632	=220

- d. Type 2 Geotextile: AASHTO M288 Class 2, for use in drainage composite and other areas shown on the Drawings.

PROPERTY	TEST METHOD	MINIMUM AVERAGE ROLL VALUE
Mass per Unit Area, OZ/SY	ASTM D5261	=8
AOS, U.S. Standard Sieve	ASTM D4751	70-100
Permittivity, SEC-1	ASTM D4491	=0.5
Puncture, LBS	ASTM D4833	=90
Grab Tensile, LBS	ASTM D4632	=250
Trapezoidal Tear, LBS	ASTM D4533	=90
Burst Strength, PSI	ASTM D3786	=190
Ultraviolet Degradation % retained @ 500 HRS	ASTM D4355	=50
Sewn Seam Strength, LBS	ASTM D4632	=220

B. Thread:

1. High-strength polyester, nylon, or other approved thread type.
2. Equivalent chemical compatibility and ultraviolet light stability as the geotextile.
3. Contrasting color with the geotextile.

1 **PART 3 - EXECUTION**

2 **3.1 PREPARATION**

- 3 A. Construct the surface underlying the geotextiles smooth and free of ruts or protrusions which
4 could damage the geotextiles.

5 **3.2 INSTALLATION**

- 6 A. Install geotextiles in accordance with manufacturer's written recommendations.
- 7 B. Hand place geotextile.
- 8 1. No equipment will be permitted to traffic in direct contact with the geotextile.
- 9 C. Lay geotextile smooth so as to be free of tensile stresses, folds, and wrinkles.
- 10 D. Seam Construction:
- 11 1. Sew all Type I geotextile seams.
- 12 2. Broom clean existing geotextile and cut off to provide a clean area for seaming with the new
- 13 geotextile.
- 14 3. Sew seams continuously using an SSA flat seam with one row of a two-thread 401 chain
- 15 stitch unless otherwise recommended by the manufacturer.
- 16 4. Minimum distance from the geotextile edge to the stitch line nearest to that edge: 2 IN
- 17 unless otherwise recommended by the manufacturer.
- 18 5. Test seams at the frequency specified in the FIELD QUALITY CONTROL Article in PART
- 19 3 of this Specification Section.
- 20 6. Tie off thread at the end of each seam to prevent unraveling.
- 21 7. Construct seams on the top side of the geotextile to allow inspection.
- 22 8. Sew skipped stitches or discontinuities with an extra line of stitching with 18 IN of overlap.
- 23 9. Type 2 geotextile seams may be sewn or overlapped.
- 24 a. Construct overlapped seams in accordance with manufacturer's recommendations or as
- 25 shown on Drawings.
- 26 E. Heat tack the geotextile overlaps as shown on the Drawings.
- 27 F. Backfill anchor trenches in accordance with Specification Section 31 23 10.
- 28 G. Place cover soil in accordance with Specification Section 31 23 10.
- 29 H. Protect geotextiles from clogging, tears, and other damage during installation.
- 30 I. Geotextile Repair:
- 31 1. Place a patch of the same type of geotextile which extends a minimum of 12 IN beyond the
- 32 edge of the damage or defect.
- 33 2. Fasten patches continuously using a sewn seam or other approved method.
- 34 3. Align machine direction of the patch with the machine direction of the geotextile being
- 35 repaired.
- 36 4. Replace geotextile which cannot be repaired.
- 37 J. Use adequate ballast (e.g., sand bags) to prevent uplift by wind.
- 38 K. Do not use staples or pins to hold the geotextile in place.
- 39 L. Do not leave geotextile uncovered for more than 14 days.

40 **3.3 FIELD QUALITY CONTROL**

- 41 A. Conduct destructive seam testing at locations identified by Owner.
- 42 1. Minimum testing will be at a frequency of one test per 2,000 linear feet of seam.
- 43 B. Provide as-constructed drawing showing roll number; layout; joint locations; and destructive
- 44 sample repair, and patch locations.

46 **END OF SECTION**



DIVISION 32

EXTERIOR IMPROVEMENTS

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SECTION 32 91 13
TOPSOILING AND FINISHED GRADING

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Topsoiling and finished grading.
- B. Related Specification Sections include but are not necessarily limited to:
 - 1. Section 01 57 05 – Temporary Controls
 - 2. Section 31 10 00 - Site Clearing.
 - 3. Section 31 23 10 – Excavation and Backfill.
- C. Location of Work: All areas within limits of grading and all areas outside limits of grading which are disturbed in the course of the work.

1.2 SUBMITTALS

- A. Shop Drawings:
 - 1. Project Data: Test reports for furnished topsoil.

1.3 SITE CONDITIONS

- A. Verify amount of topsoil stockpiled and determine amount of additional topsoil, if necessary to complete work.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Topsoil:
 - 1. Original surface soil typical of the area.
 - 2. Existing topsoil stockpiled under Specification Section 31 10 00.
 - 3. Friable, loamy soil capable of supporting native plant growth.

2.2 TOLERANCES

- A. Finish Grading Tolerance: ± 0.1 FT from required elevations.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Correct, adjust and/or repair rough graded areas.
 - 1. Cut off mounds and ridges.
 - 2. Fill gullies and depressions.
 - 3. Perform other necessary repairs.
 - 4. Bring all sub-grades to specified contours, even and properly compacted.
- B. Loosen surface to depth of 2 IN, minimum.
- C. Remove all stones and debris over 2 IN in any dimension.

3.2 ROUGH GRADE REVIEW

- A. Reviewed by Engineer in Specification Section 31 10 00.

3.3 PLACING TOPSOIL

- A. Do not place when subgrade is wet or frozen enough to cause clodding.

- 1 B. Spread and lightly compact to a depth of 4 IN for all disturbed earth areas.
- 2 C. If topsoil stockpiled is less than amount required for work, furnish additional topsoil at no cost to
- 3 Owner.
- 4 D. Provide finished surface free of stones, sticks, or other material 1 IN or more in any dimension.
- 5 E. Provide finished surface smooth and true to required grades.
- 6 F. Restore stockpile area to condition of rest of finished work.
- 7 **3.4 ACCEPTANCE**
- 8 A. Upon completion of topsoiling, obtain Engineer's acceptance of grade and surface.
- 9 B. Make test holes where directed to verify proper placement and thickness of topsoil.

11 **END OF SECTION**



DIVISION 33

UTILITIES

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SECTION 33 46 13
LEAK DETECTION SYSTEM

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Replacement of damaged or compromised components of leak detection system.
 2. Engineer to inspect uncovered portions of the system to determine the extent of replacement.
 3. Engineer to identify (in the field) areas to be uncovered by Contractor..
- B. Related Specification Sections include but are not necessarily limited to:
1. Division 00 - Procurement and Contracting Requirements.
 2. Division 01 - General Requirements.
 3. Section 31 23 10 - Excavation and Backfill.
 4. Section 31 23 33 – Trenching, Backfilling and Compacting for Utilities.
 5. Section 31 32 19 – Geotextiles.
 6. Section 33 47 14 – High Density Polyethylene (HDPE) Membrane Liner.

1.2 QUALITY ASSURANCE

- A. Referenced Standards:
1. ASTM International (ASTM):
 - a. D1785, Standard Specification for Poly(Vinyl Chloride) PVC Plastic Pipe, Schedules 40, 80 and 120.
 - b. D2729, Standard Specification for Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings.
 - c. D3212, Standard Specification for Joints for Drain and Sewer Plastic Pipes Using Flexible Elastomeric Seals.
 - d. F480-14, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40, and SCH 80.

1.3 SYSTEM DESCRIPTION

- A. Subsurface Leak Detection System:
1. System which drains by gravity, connects to and drains to well heads as shown on Drawings.
 2. Consisting of the following components:
 - a. Excavation Trench Lined with 8 oz Non-Woven Geotextile.
 - b. Gravel Backfill.
 - c. Six Inch Diameter Slotted PVC Pipe and Fittings.
 - d. Twelve Inch Diameter Solid PVC Pipe and Fittings.
- B. Inspection and Verification:
1. Contractor to verify wall thickness and outside diameter of both 6-Inch and 12-Inch PVC pipe.

1.4 SUBMITTALS

- A. Shop Drawings:
1. See Specification Section 01 33 00 for requirements for the mechanics and administration of the submittal process.
 2. Fabrication and/or layout drawings as applicable.
 3. Product technical data including:
 - a. Acknowledgement that products submitted meet requirements of standards referenced.
 - b. Type, size and manufacturer of drain pipe.

- 1 c. Type, size and gradation of clean gravel backfill.
- 2 d. Type and manufacturer of geotextile fabric.
- 3 4. Certifications.
- 4 5. Test reports.

5 **PART 2 - PRODUCTS**

6 **2.1 ACCEPTABLE MANUFACTURERS**

- 7 A. Subject to compliance with the Contract Documents, the following manufacturers are
- 8 acceptable:
- 9 1. Geotextile fabric:
- 10 a. Refer to Specification Section 31 32 19 Geotextiles.
- 11 2. PVC Pipe:
- 12 a. CertainTeed Corporation.
- 13 b. As approved by Engineer.
- 14 B. Submit request for substitution in accordance with Specification Section 01 25 13.

15 **2.2 PVC DRAIN PIPE**

- 16 A. PVC Drain Pipe:
- 17 1. Nominal diameter: 6 IN.
- 18 2. Outside Diameter: Determined in field.
- 19 3. Class: SDR 17 or Sch. 40 – Match existing, as determined by field inspection.
- 20 4. Slot Width: 0.020 IN (Slotted Pipe Only).
- 21 5. Joints: Solvent Welded Slip Couplings or Threaded.
- 22 6. Provide fittings so that thickness, weight, material and quality correspond to that of the
- 23 drain pipe approved for use.
- 24 B. Trench Gravel Backfill: Clean Gravel In accordance with Specification Section 31 23 33.
- 25 C. Geotextile Fabric: In accordance with Specification Section 31 32 19 Geotextiles.

26 **2.3 WELL HEAD**

- 27 A. PVC Vertical Pipe:
- 28 1. Nominal Diameter: 12 IN.
- 29 2. Outside Diameter: Determined in Field.
- 30 3. Class SDR 17 or Sch 40 - Match Existing, as determined by inspection.
- 31 4. Slot Width: Not Applicable.
- 32 5. Joints: Solvent Welded Slip Couplings or Threaded.
- 33 6. Provide fittings so that thickness, weight, material and quality correspond to that of the well
- 34 head pipe approved for use.
- 35 B. Protective Well Casing
- 36 1. 24 inch Rolled Steel Manhole Model #8034 by CNI Manufacturing or equivalent approved
- 37 by Engineer.
- 38 2. Concrete surround in accordance with Specification Section 03 00 05 – Concrete.
- 39 3. Lifting handle required for casing lid.

40 **PART 3 - EXECUTION**

41 **3.1 DRAIN PIPE INSTALLATION**

- 42 A. Excavate existing gravel backfill and drain pipe:
- 43 1. Only in areas determined to be compromised, as defined by Engineer.
- 44 B. Line trench with geotextile fabric with 12 IN minimum laps at splices.
- 45 1. Spread clean gravel backfill in same direction as fabric overlap.

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SECTION 33 47 14

HIGH-DENSITY POLYETHYLENE (HDPE) MEMBRANE LINER

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Furnishing, installation, quality control, and testing of a 40-mil HDPE geomembrane liner with the Wastewater Storage Basin.

B. Related Specification Sections include but are not necessarily limited to:

1. Division 00 - Procurement and Contracting Requirements.
2. Division 01 - General Requirements.
3. Section 31 23 10 - Excavation and Backfill.

1.2 OTHER SPECIFICATIONS

- A. Geomembrane shall comply with the latest revisions of the Geosynthetic Research Institute's standard specifications GM13 (regarding product testing and warranty) and GM17 (regarding seam strength and testing). Hereinafter, these specifications will be referred to as "GRI-GM13" and GRI-GM17."

1.3 SUBMITTALS

- A. See Specification Section 01 33 00 for requirements for the mechanics and administration of the submittal process.
- B. Resin Data: Submit the following items to the Engineer at least 14 days prior to receiving materials at the site:
1. Statement of production date or dates.
 2. Certification stating that the resin meets the project requirements.
 3. Certification stating that all resin is from the same manufacturer.
 4. Copies of quality control certificates issued by the manufacturer.
 5. Test reports from the manufacturer.
 6. See Specification Section 01 33 00 for requirements for the mechanics and administration of the submittal process.
 7. Submit for Engineer's approval Shop Drawings, including:
 - a. Manufacturer's certification that raw materials and sheet materials comply with required materials, mil thickness, and material properties.
 - 1) Original certificates are required.
 - b. Manufacturer/Fabricator/Installer quality control requirements.
 - c. Qualifications and experience of key personnel involved in installation/inspection of the geosynthetic materials and geosynthetic liner system.
 - d. HDPE Geomembrane layout plan with proposed size, number, position and sequencing of liner panels and showing the location and direction of all field or factory joints.
 - 1) Proposed details for connecting the geosynthetic materials to appurtenances.
 - 2) Proposed methods of welding, seaming or jointing geosynthetic materials.
 - 3) Proposed method and sequencing for placement of drainage layer on top of the HDPE geomembrane liner.
 - 4) Proposed method of testing HDPE geomembrane and other geosynthetic materials, joints and connections at appurtenances for continuity.
 - 5) Location and configuration of haul roads and access points.
 - 6) Proposed details for anchor trench if different than included in Contract Documents.

- C. Geomembrane Roll Data: Submit the following items to the Engineer at least 14 days prior to receiving the materials at the site.
1. Statement of production date or dates.
 2. Laboratory test results and certifications state that the geomembrane meets the project requirements.
 3. Certification stating that all geomembrane rolls are furnished by one supplier, and that all rolls are manufactured from one resin to be obtained from one resin supplier.
 4. Copies of quality control certificates issued by the manufacturer.
 5. Test reports from manufacturer.
 6. Typical results of complete notch constant tensile load test, performed in accordance with Geosynthetic Research Institute test method GM-5, for specified resin and sheet thickness.
 7. Certification stating that no reclaimed polymer is added to the resin.
 8. Statement listing percentages of processing aids, anti-oxidants and other additives other than carbon black add to or in the resin.
 9. Geomembrane delivery, storage and handling instructions.
 10. Sample warranties for review.

1.4 DELIVERY, STORAGE, AND HANDLING

- A. Unused or stockpiled HDPE geomembrane shall be stored in accordance with the manufacturer's recommendations.
- B. Label each roll with the manufacturer's name, type, lot number, roll number, and roll dimensions (length, width, gross weight).
1. HDPE geomembrane or plastic wrapping damaged as a result of storage or handling shall be repaired or replaced, as directed.
 2. HDPE geomembrane shall not be exposed to temperatures in excess of 60 DegC (140 DegF) or less if recommended by the Manufacturer.
- C. No hooks, tongs or other sharp instruments shall be used for handling the HDPE geomembrane.
1. Rolls shall not be lifted by use of cables or chains in contact with the HDPE geomembrane.
 2. HDPE geomembrane shall not be dragged along the ground.

1.5 PROJECT/SITE CONDITIONS

- A. When the weather is of such a nature as to endanger the integrity and quality of the installation whether this is due to rain, high winds, cold temperatures, or other weather elements, the installation shall be halted until the weather conditions are satisfactory.
- B. The Contractor shall ensure that adequate dust control methods are in effect to prevent the unnecessary accumulation of dust and dirt on surfaces which hamper efficient field seaming or performance.
- C. Maintain surface water drainage diversions around the work area and provide for the disposal of water which may collect in the work area directly from precipitation falling within the area or from inadequate diversion structures or practices.
- D. Coordinate the installation of leachate collection lines which shall be in accordance with HDPE geomembrane Manufacturer's recommendation and as specified in the Contract Documents and shown on the Drawings.
- E. Vehicles, other than those specifically approved, will not be allowed on HDPE membrane liner unless at least 18 IN of protective soil cover or 6 IN of gravel plus 1 FT of protective soil cover have been placed over these materials.
1. No vehicle shall access the completed Work unless it can be demonstrated that its weight, movement or activities will not damage the Work.
 2. When damage is suspected uncover area, repair damage if required, and recover area at no cost to City.
 3. Suspect areas may be identified by City or Engineer.

1.6 WARRANTY

- A. Written warranties addressing HDPE geomembrane material and installation workmanship shall be furnished by the Contractor and shall be made to the Owner..
- B. Submit material samples and warranties prior to shipment.
- C. Suitability of geosynthetic liner system shall be subject to Owner approval of warranty.
 - 1. The Manufacturer's warranty shall state that the furnished material meets all requirements of the Contract Drawings and Specifications, and that under exposure to liquids identified in the Contract Documents and local atmospheric conditions the sheet material is warranted for 20 years, prorated.
 - 2. The Installer's warranty shall state that the materials were properly installed, properly (field and factory) welded, seamed and jointed and will not fail within two (2) years of the installation under similar conditions.
 - a. Warranty shall not be prorated.
- D. Warranties shall provide for complete repair/replacement at no additional cost to the Owner for the warranty period.

PART 2 - PRODUCTS

2.1 ACCEPTABLE MANUFACTURERS

- A. Subject to compliance with the Contract Documents, the following manufacturers are acceptable:
 - 1. HDPE Geomembrane liners:
 - a. Solmax, 19103 Gundle Rd., Houston, Texas 77073.
 - b. Skaps Industries, 571 Industrial Pkwy, Commerce GA 30529.
- B. Submit request for substitution in accordance with Specification Section 01 25 00.

2.2 HDPE GEOMEMBRANE RESIN

- A. Resin shall be high density polyethylene (HDPE) resin, new, first quality, compounded, manufactured specifically for producing geomembrane.
- B. Specific gravity of the resin without additives shall be from 0.935 to 0.942 for HDPE measured in accordance with ASTM D-792, method A, or with ASTM D 1505.
- C. Do not mix resin types during manufacturing. Do not use recycled materials or seconds in manufacturing.
- D. HDPE Geomembrane Liner:
 - 1. Consist of unreinforced polyethylene.
 - a. Thickness: 40 mils.
 - b. Manufactured from virgin, first quality resin designed and formulated specifically for liquid containment in hydraulic structures.
 - c. Reclaimed polymer shall not be added to the resin; except use of polymer recycled during the manufacturing process shall be allowed provided that recycled polymer shall be clean and shall not exceed 2 percent by weight.
 - d. No additives or fillers may be added to the resin prior to or during manufacture of the HDPE geomembrane.
 - 2. Manufactured to be free of holes, blisters, undispersed raw materials, or any sign of contamination by foreign matter.
 - a. Any such defects shall be cause for rejection of the material.
 - b. Minor defects may be repaired in accordance with Manufacturer's recommendations if approved by the Engineer.
 - 3. Manufactured as seamless rolls or as prefabricated panels.
 - a. Minimum width: 15 FT as delivered to the site.

- b. All factory seams shall be inspected and tested for strength and continuity prior to delivery to the site.
4. Specifications:
- a. Textured HDPE geomembrane shall possess properties which meet or exceed the following minimum requirements:

2.3 EQUIPMENT AND ACCESSORIES

- A. Welding and Seaming Equipment:
1. Equipped with gages showing temperatures at the nozzle (extrusion welder) or at the wedge (wedge welder).
 2. Maintained in adequate numbers to avoid delaying work.
 3. Supplied by a power source capable of providing constant voltage under a combined-line load.
 4. Electric generator shall not be placed on the HDPE geomembrane.
- B. Field Tensiometer:
1. Provide a tensiometer for on-site shear and peel testing of HDPE geomembrane seams.
 - a. Tensiometer shall be in good working order.
 - b. Built to ASTM specifications.
 - c. Accompanied by evidence of calibration of equipment and gages within the past six (6) months.
 2. Tension meter:
 - a. Motor driven.
 - b. Jaws capable of traveling a measure rate of 2 IN per minute.
 - c. Equipped with a gauge that measures the force in unit pounds exerted between the jaws.
 - d. Digital readout.
- C. Punch Press:
1. Provide a punch press for the onsite preparation of specimens for testing.
 2. Capable of cutting specimens in accordance with ASTM D4437.
- D. Vacuum Box:
1. Provide a vacuum box for onsite testing of HDPE geomembrane seams in accordance with ASTM D5641.
- E. Equipment necessary to perform "Pressurized Air Channel Evaluation of Dual Seamed Geomembranes" in accordance with ASTM D5820.
- F. Gages:
1. Calibrated within past six (6) months.
 2. Specified test values reading near mid-range of the gage scale.

2.4 FABRICATION

- A. Produce geomembrane sheet which complies with this Specification Section.
- B. Provide resin and additive quality control:
1. Test raw resin and additives to ensure compliance with the Manufacturer's specifications and with this Specification Section.
 2. Test sheet material to ensure compliance with Manufacturer's specification and this Specification Section.
 3. Provide certification of the raw materials and finished sheet demonstrating compliance with this Specification Section.
 4. Provide certification of Fabricator's and Installer's training (unless Installer is certified by other acceptable manufacturer list herein), experience and methods for welding, seaming, jointing and inspecting geosynthetic materials installations in compliance with

1 Manufacturer's standards and with Quality Assurance requirements of this Specification
2 Section.

3 C. Fabricated Specials:

- 4 1. Subject to same level of manufacturer's quality control.
5 2. Fabricated from project rolls.
6 a. Provide traceability of resin and roll stock.

7 **PART 3 - EXECUTION**

8 **3.1 GEOSYNTHETIC LINER SYSTEM**

9 A. Geomembrane Subgrade:

- 10 1. Protect subgrade at all times from damage until such time as the placement of HDPE
11 geomembrane liner and other components of the geosynthetic liner system are complete.
12 2. The subgrade shall be prepared in a manner consistent with proper subgrade preparation
13 techniques for the installation of HDPE Geomembrane.
14 a. The subgrade shall be properly compacted so as not to settle and cause excessive strains
15 in the HDPE Geomembrane or other synthetic liner materials.
16 b. Prior to installation, ensure a surface free of debris, roots, or angular stones larger than
17 1/2 IN.
18 c. In addition, ensure that the subgrade has been rolled to provide a uniform surface.
19 d. During installation, ensure that rutting or raveling is not caused by installation
20 equipment or weathering.

21 B. Anchor Trenches:

- 22 1. Geosynthetic materials placed on side slopes shall be anchored into trenches as detailed on
23 the Contract Drawings.
24 2. Excavation, backfill and compaction shall be in accordance with Specification Section 31 23
25 10.

26 C. HDPE Geomembrane:

27 1. General:

- 28 a. Installer of HDPE geomembranes is responsible for handling, fitting, welding, seaming,
29 jointing and testing of geosynthetic materials sheets or blankets in the field.
30 b. These responsibilities include but are not limited to:
31 1) Acceptance (in writing) of the geosynthetic materials sheets or blankets from the
32 transporter.
33 2) Acceptance (in writing) of the soil or geosynthetic clay liner subgrade which will
34 serve as a base for the HDPE geomembrane.
35 a) This acceptance shall precede installation of the HDPE geomembrane.
36 b) Shall state that the Installer has inspected the surface, and reviewed the
37 Specifications for material and placement, and finds all conditions acceptable
38 for placement of HDPE geomembrane liners.
39 c) Shall explicitly state any and all exceptions to acceptance.
40 3) Handling, welding, seaming, jointing, testing and repair of HDPE geomembrane
41 liners and other geosynthetic materials in compliance with this Specification and
42 with written procedures manuals prepared by the Manufacturer or Fabricator.
43 a) Manual shall be submitted to the Engineer together with Shop Drawings
44 showing the layout of HDPE geomembrane within the facility.
45 (1) Do not deviate from the procedures included in the manual.
46 b) HDPE Geomembrane shall not be placed upon frozen foundation, standing
47 water or other conditions which will result in deterioration of the foundation.
48 c) HDPE Geomembrane liner materials shall be laid out according to plans
49 previously approved by the Engineer.

- 1 d) Adjacent rolls of HDPE geomembrane shall overlap a minimum of 3 IN,
2 provided that greater overlap may be required to allow seaming in accordance
3 with the Manufacturer's instructions.
- 4 4) Repair or replacement of defects in the geosynthetic materials as required by the
5 Inspector or the City.
- 6 5) Installer and Manufacturer may be the same firm.
- 7 2. Panel deployment:
- 8 a. Only those panel/sheets that can be seamed in one (1) day shall be deployed.
- 9 b. Place panels with minimal handling.
- 10 1) Orient sheets to eliminate or minimize number of horizontal seams on side slopes.
- 11 2) Protect panels from tear, puncture or abrasion.
- 12 3) No seams will be permitted in the leachate collection trench.
- 13 c. Equipment used to deploy the geomembrane shall not rut the recompacted clay liner, or
14 damage the Geosynthetic Clay Liner.
- 15 1) A rut is defined as a 1/4 IN depression over a 10 FT straight-edged length.
- 16 d. No vehicular traffic is permitted on unprotected HDPE geomembrane.
- 17 e. Minimize foot traffic.
- 18 1) Do not allow personnel access to wet or slippery liners without adequate safety
19 precautions.
- 20 f. Ballast with sandbags to prevent wind uplift as recommended by Manufacturer and
21 Fabricator and based on local climatic conditions.
- 22 1) Remove and replace all wind damaged panels at no additional cost to City.
- 23 2) If wind causes panels to be displaced, displaced panel may not be reused.
- 24 g. Install HDPE geomembrane in stress free, tension free and relaxed condition.
- 25 1) Account for temperature and weather-related impacts when deploying and
26 covering.
- 27 2) Stretching to fit and folding are not permitted.
- 28 h. Do not allow HDPE geomembrane to bubble, fold, or create ripples as a result of
29 deployment of drainage layer or protective soil cover placement.
- 30 1) Except as noted on Contract Drawings no folds in HDPE geomembrane will be
31 allowed.
- 32 i. Any panel exhibiting stretching caused by placement, covering techniques, or wind
33 shall be removed and may not be incorporated in the final construction.
- 34 j. Field seaming:
- 35 1) Field seaming shall be done in accordance with seaming recommendations
36 furnished by the geomembrane Manufacturer and referenced EPA documents.
- 37 2) Each piece of seaming equipment and each operator shall perform demonstration
38 seams at the start of a shift, whenever equipment is switched on or seaming is
39 interrupted for more than ten minutes, and at other times at the discretion of the
40 Installer and Inspector.
- 41 3) Demonstration seams shall use the same seaming materials and methods to be used
42 in the actual construction.
- 43 4) Surfaces to be seamed shall be clean and dry at the time of seaming.
- 44 a) Precipitation and ponding of water on the HDPE geomembrane shall cause
45 termination of seaming operations.
- 46 b) HDPE geomembrane shall not be seamed when ambient temperatures are
47 below 41 DegF or above 104 DegF, without written consent of HDPE
48 geomembrane Manufacturer or Fabricator, and Engineer.
- 49 5) HDPE geomembrane sheets shall be seamed continuously without fishmouths or
50 breaks in the seam.
- 51 a) Where fishmouths are unavoidable, the sheet shall be slit to a point such that
52 the sheet lies flat and with no remaining wrinkle.
- 53 b) The two (2) edges of the slit shall be seamed together provided that the overlap
54 for this seam shall be a minimum of 6 IN.
- 55 c) Areas of the slit which do not achieve an overlap of 6 IN, including the
56 terminus of the slit, shall be provided with a patch as discussed below.

- 6) All HDPE geomembranes shall be seamed by thermal fusion methods as recommended by the HDPE geomembrane Manufacturer.
 - a) HDPE geomembrane seaming shall be double wedge weld unless otherwise approved or prohibited by construction.
 - 7) Manufacturer's or Fabricator's seaming instructions shall specifically address subgrade preparation, seaming materials, temporary and permanent jointing, seaming temperatures including temperatures for seaming materials, seam finishing and curing.
 - 8) A copy of Manufacturer's or Fabricator's seaming instructions shall be available on site at all times and shall not be deviated from without written approval of the Manufacturer and Engineer.
 - 9) All panels/sheets should be overlapped a minimum of 3 IN.
 - a) If horizontal seams are required on side slopes, the upper panel should be lapped over the lower panel.
 - 10) Seaming shall not be conducted in the presence of standing water and/or soft subgrades.
 - a) The seamed area shall be cleaned of dust, dirt and foreign material prior to and during the seaming operation.
 - 11) Seaming shall extend to the outside edge of panels/sheets to be placed in anchor and/or drainage trenches.
 - 12) Tack welds shall conform with manufacturers seaming techniques and shall not damage underlying membrane.
- k. Patching:
- 1) Defects in and damage to HDPE geomembrane sheets shall be repaired by seaming a patch over the defect.
 - a) The patch material shall consist of an undamaged piece of HDPE geomembrane cut to provide a minimum of 6 IN of overlap in all directions from the defect.
 - b) Round corners shall be utilized on all patches.
 - (1) No bead or spot patching will be accepted.
 - c) Torn or permanently twisted HDPE geomembrane shall be replaced at no expense to the City.
 - 2) Test all patch seams using one (1) of the following nondestructive tests: Vacuum tests; spark tests; or ultrasonic tests.
 - a) Test patch seams destructively at a frequency of ten percent or a minimum of one (1) test per seaming personnel per day.
 - b) This destructive testing may be accomplished using demonstration seams performed adjacent to the liner installation.

3.2 FIELD QUALITY CONTROL

- A. Inspector shall not be a part of the installation program and shall not serve as a substitute for performing the duties or certification required of the Fabricator and Installer.
1. Inspectors responsibilities include, but are not limited to:
 - a. Inspection of the material and the handling and field installation of the geomembranes.
 - 1) Inspection of all welds, repairs and quality control test results.
 - b. All exceptions to material or installation shall be documented and furnished to the Engineer in writing within 48 HRS of discovery.
 - c. Inspection and Certification of HDPE geomembrane integrity until completion of placement of protective soil cover.
- B. Trial Seam Testing:
1. Trial seams shall be made each half-day prior to production seaming.
 - a. The location of trial seam shall be in an area proposed for the day's production seaming.
 - b. Equipment, methods and personnel shall be the same as proposed for the day's seaming.
 2. Samples shall be tested in accordance with ASTM D413 and ASTM D882.

- a. To be acceptable, five (5) of five (5) replicate test specimens must meet specified seam strength requirements and failures shall be Film Tear Bond.
- b. If the field tests fail to meet these requirements, the entire operation shall be repeated.
- c. If the additional test seams fail, the seaming apparatus or seamer shall not be accepted or used for seaming until the deficiencies are corrected and two (2) consecutive successful test seams are achieved.

C. Nondestructive Seam Testing:

1. All field seams shall be nondestructively tested over their full length.
 - a. Seam testing shall be performed as the seaming work progresses, not at the completion of field seaming.
 - b. All testing shall be documented.
 - 1) Any seams which fail shall be repaired and documented.
2. Nondestructively test all field seams continuously using one (1) of the following nondestructive seam tests: Vacuum box; ultrasonic tests; spark tests; and pressurized air channel test.

D. Destructive Seam Testing:

1. A minimum of one (1) destructive test sample in each transverse field seam, and as many other samples as Engineer determines appropriate, shall be obtained at locations specified by the Engineer.
 - a. Sample locations shall not be identified prior to seaming.
 - b. The samples shall be a minimum of 12 IN wide by 48 IN long with the seam centered lengthwise.
 - c. Each sample shall be cut into three (3) equal pieces with one (1) piece retained by the Installer, one (1) piece given to an Independent Testing Laboratory, and the remaining piece given to the Engineer for quality assurance testing and/or permanent record.
 - d. Each sample shall be numbered and recorded on the final panel layout record drawing, and cross-referenced to a field log which identifies:
 - 1) Panel/sheet number.
 - 2) Seam number.
 - 3) Top sheet.
 - 4) Date and time cut.
 - 5) Ambient temperature.
 - 6) Seaming unit designation.
 - 7) Name of seamer.
 - 8) Seaming apparatus temperature and pressures (where applicable).
2. A minimum of four (4) 1 IN wide replicate specimens shall be cut from the Installer's sample.
 - a. A minimum of two (2) specimens shall be tested for shear strength and two (2) for peel adhesion using an approved field quantitative tensiometer.
 - 1) Jaw separation speed shall be 2 IN per minute.
 - b. To be acceptable, all replicate test specimens must meet the specified seam strength requirements and fail as Film Tear Bond.
 - c. If the field tests pass, five (5) specimens shall be tested at the Independent Testing Laboratory for shear strength and five (5) for peel adhesion in accordance with ASTM D4437.
 - d. To be acceptable, four (4) out of five (5) replicate test specimens must meet the specified seam strength requirements and fail as Film Tear Bond.
3. The minimum required seam strengths:

MINIMUM MODE	TEST METHOD	VALUE(LBS/IN)
Shear	ASTM D816	120

4. If the field tests pass, five (5) specimens shall be tested at the Independent Testing Laboratory for shear strength and five (5) for peel adhesion in accordance with ASTM D4437.
 - a. To be acceptable, four (4) out of five (5) replicate test specimens must meet the specified seam strength requirements and fail as Film Tear Bond.
 - b. If the field or laboratory tests fail, the seam shall be repaired in accordance with the Manufacturer's Quality Control manual.
 - c. In addition, all destructive seam sample holes shall be repaired the same day as cut.
 - d. Certified test results on all field seams shall be submitted to and approved by the Engineer prior to acceptance of the seam.
5. Ten percent of all repaired areas shall be destructively tested.
 - a. All repaired areas shall be nondestructively tested.
6. Destructive testing shall be performed by an Independent Testing Laboratory employed by the Contractor, not the Installer.
 - a. The Engineer may separately conduct destructive testing for quality assurance.
 - b. If samples tested by Engineer fail, based on above criteria, seam will be classified as failed.
7. A map showing the locations, number and type of all patches shall be prepared and provided to the City.

3.3 GEOSYNTHETIC LINER SYSTEM ACCEPTANCE

- A. Contractor shall retain all ownership and responsibility for the geosynthetic liner system until final acceptance by the City.
 1. City will accept the geosynthetic liner system installation when the installation is finished and all required warranties, test results, and documentation from the Contractor, Manufacturer, Inspector and Installer has been received and approved, and verification of the adequacy of all field seams and repairs, including associated testing, is complete.

3.4 SCHEDULE OF CERTIFICATIONS

- A. The schedule of required certifications and signing parties follows the end of this Specification Section.
- B. The certificates following the end of this Specification Section shall be completed and signed by the required parties, and the original certificates delivered to the Engineer's representative as a part of the completion of that particular phase of the geosynthetic liner system installation.

END OF SECTION

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City Council Meeting

Item Number: 9
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING THE PURCHASE OF OPENGOV BUDGETING, PLANNING, REPORTING AND TRANSPARENCY PLATFORM SOFTWARE FOR THE FINANCE DEPARTMENT FROM VERTOSOFT LLC THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$474,260.00; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution approving the purchase of OpenGov Budgeting, Planning, Reporting and Transparency platform software from Vertosoft LLC through the Texas Department of Information Resources (DIR) contract DIR-TSO-4227 for a total cost of \$474,260.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding of \$116,060.00 for implementation will be appropriated from General Fund unappropriated fund balance. \$358,200.00 will be available and paid from the Technology Fund operating budget as each yearly payment is due.

Discussion:

Staff recommends approving the purchase of OpenGov Budgeting, Planning, Reporting and Transparency platform software from Vertosoft LLC through the Texas Department of Information Resources (DIR) contract DIR-TSO-4227. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services

under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please see the attached memo from Christy Weakland, Director of Finance, for additional information.

Therefore, please consider a resolution approving the purchase of OpenGov Budgeting, Planning, Reporting and Transparency platform software from Vertosoft LLC of Leesburg, Virginia through the Texas Department of Information Resources (DIR) contract DIR-TSO-4227 for a total cost of \$474,260.00

Jina Gang

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
OPENGOV BUDGETING, PLANNING, REPORTING
AND TRANSPARENCY PLATFORM SOFTWARE FOR
THE FINANCE DEPARTMENT FROM VERTOSOFT
LLC THROUGH THE TEXAS DEPARTMENT OF
INFORMATION RESOURCES AT A TOTAL COST OF
\$474,260.00; APPROPRIATING FUNDS; AND
AUTHORIZING PAYMENT**

WHEREAS, the Texas Department of Information Resources (“DIR”) is a cooperative purchasing program in which the City of Midland participates in purchases; and

WHEREAS, Vertosoft LLC (“Seller”) has submitted a total proposed cost to the City of \$474,260.00 for the purchase of OpenGov budget, planning, reporting and transparency software (the “Software”) for the Finance Department through DIR, as shown on the quote attached hereto as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, the City Council finds the price proposed for the Software through DIR to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase the Software through DIR;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the Software from Seller through DIR at a total cost to the City of \$474,260.00. The City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement for said purchase.

SECTION TWO. That the sum of \$116,060.00 shall be appropriated from the General Fund unappropriated fund balance for said purchase.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay for said purchase from funds appropriated in Section Two hereof and from funds in the amount of \$358,200.00 that are available in the Technology Fund operating budget upon

proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



1602 Village Market Blvd SE, Suite 215
Leesburg, VA20175 USA

Cage Code: 7QV38
UEI Number Y7D5MXRU2839
DUNS# 080431574
Federal Tax ID: 81-3911287
Business Size: Small Business

Date: 1/31/2023, 10:10 AM

Phone: 571 707-4130
Fax: 571-291-4119
Email: sales@vertosoft.com

Vertosoft Contact: Carly Moore
Phone: (540) 998-8361
Email: carly.moore@vertosoft.com

OpenGov Quote for City of Midland, TX

Contract: DIR-TSO-4227

Quote #: Q-01585
Expires On: 2/17/2023

Ship To
City of Midland, TX

Quote For:
Name: Christy Weakland
Company:
Email: cweakland@midlandtexas.gov
Phone: (432) 685-7210

PAYMENT TERMS	DELIVERY METHOD	PAYMENT METHOD	VERTOSOFT CUST ID	SUPPLIER REF #
Net 30	Electronic	Check/ACH/Credit Card		

Prorated Year 1

Period of Performance: 03/01/2023 - 09/30/2023

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-1Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	3/1/2023	9/30/2023	1.00	\$64,602.04	\$64,602.04
OPGV-GBCS-B200300M-RR-1Y	Premium Support	3/1/2023	9/30/2023	1.00	\$5,047.96	\$5,047.96

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GHBP-B200300M-NR-0Y	OpenGov Deployment — One Time Fee (Prepaid Hours)	3/1/2023		221.00	\$210.00	\$46,410.00
Prorated Year 1 TOTAL:						\$116,060.00

Year 2

Period of Performance: 10/01/2023 - 09/30/2024

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2023	9/30/2024	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2023	9/30/2024	1.00	\$8,653.65	\$8,653.65
Year 2 TOTAL:						\$119,400.00

Year 3

Period of Performance: 10/01/2024 - 09/30/2025

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2024	9/30/2025	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2024	9/30/2025	1.00	\$8,653.65	\$8,653.65
Year 3 TOTAL:						\$119,400.00

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2025	9/30/2026	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2025	9/30/2026	1.00	\$8,653.65	\$8,653.65
Year 4 TOTAL:						\$119,400.00

Taxes: Sales tax shall be added at the time of an invoice, unless a copy of a valid tax exemption or resale certificate is provided.

Credit Card Orders: Additional fees may apply if paying by credit card.

All Purchase Orders must include: End User Name, Phone Number, Email Address, Purchase Order Number, Government Contract Number or Our Quote Number, Bill-To and Ship-To Address (Cannot ship to a PO Box), Period of Performance (if applicable), and a Signature of a duly Authorized Representative.



INTEROFFICE MEMORANDUM

TO: Council

FROM: Christy Weakland, Director of Finance

SUBJECT: OpenGov Reporting and Transparency Software

DATE: February 28, 2022

Purpose:

Purchase of a Budgeting, Reporting and Transparency platform software from Vertosoft LLC (OpenGov) through the Texas Department of Information Resources (DIR) contract DIR-TSO4227 for a total cost of \$474,260.00.

Recommended Action:

Approve

Fiscal Impact:

The implementation cost of \$116,060 will be appropriated from General Fund unappropriated fund balance. \$119,400 would be due each October for the next three years, which would be funded from the Technology Fund.

Discussion:

The City's current budget book and reporting processes are manual and labor-intensive. The Finance Department spends hundreds of hours each year preparing, formatting, reviewing, re-formatting, and re-working reports and budget documents. OpenGov is a Budget, Reporting and Transparency software that will work in connection with the City's main financial software (Munis). The City's Enterprise Resource Planning system (ERP), Tyler Munis, has basic reporting capabilities. However, the system makes it difficult to track the progressions of the budget, track individual capital projects, and efficiently create budget reporting documents and presentations.

The City of Midland is growing, and with the current economic environment, we need quick access to real-time data for stronger fiscal resilience. City reports are becoming too complex to manage, and it's impossible to create real-time reports with manual tools like Microsoft Excel and Word. Staff recommends approving the purchase of the OpenGov Budgeting & Planning Suite and Reporting & Transparency Platform through the Texas DIR Contract Number DIR-TSO-4227. Chapter 271.102 Subchapter F(c) of the Local Government Code authorizes local governments to participate in a cooperative purchasing program with another local government or local cooperative organization.

City staff thoroughly evaluated the market and researched several potential solutions to address the current inefficiencies and shortcomings. When reviewing different options, the main product priorities were as follows:

- A transparent product, allowing for citizens to view (in real-time) the City's financial performance and other information shared by City staff and departments.
- The ability of the product to integrate with our current ERP system, Tyler Munis.
- Flexible reporting capabilities to provide Council and Leadership with real-time data for decision-making.
- An end-to-end solution that will streamline the development of the budget book in alignment with GFOA guidelines.
- A native publication tool to produce engaging and interactive content like capital project stories, an online budget book, department publications, and City accomplishments.
- Cloud-based in lieu of server-based.
- No limit on the number of users, usage, or amount of data.
- The vendor's government experience, customer base in Texas, and support local to Texas.

After thorough evaluations of market options and demonstrations of all the other products, City staff has determined that OpenGov offers all the above-noted priorities and best meets the City's current and future needs. OpenGov provides the most robust technology solution that will act as the best foundation for the City of Midland, and with the unlimited model, this solution can grow with the City.

AGREEMENT
23002495

THIS AGREEMENT is made and effective the 15 day of February 2023, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Vertosoft LLC (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

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

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$474,260.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from February 15, 2023 until February 14, 2027, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information and other data ("*Instruments of Service*") given to, prepared or assembled by COMPANY under this Agreement, and any other related document or item shall become the sole and exclusive property of CITY. The Instruments of Service shall be promptly delivered, without restriction, to CITY and such other persons or entities as CITY may designate; provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of CITY. COMPANY shall have exclusive control of and the exclusive right to control the details of the Services and all persons performing the same. COMPANY shall

be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The Parties acknowledge and agree that the doctrine of *respondeat superior* shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing the Services shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended nor shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" that would give rise to vicarious liability. COMPANY is an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor. CITY does not have the power to direct the order in which the services are performed. CITY shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for performing the Services, and is entirely free to perform the Services in its own way.

ARTICLE IX. INSURANCE

During the term of this Agreement, COMPANY shall maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

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

The Business Automobile Liability policy shall cover any vehicle for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-

ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the Services. This policy shall name CITY as an additional insured and waive subrogation in favor of CITY.

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and that name the City of Midland as an additional insured on a claims-occurred basis (except Workers' Compensation).

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

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law and this Agreement is the sole and exclusive responsibility of COMPANY.

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

CITY's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of the

Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

If to COMPANY: Vertosoft LLC
 1602 Village Market Blvd SE, Suite 320
 Leesburg, VA 20175

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit

for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim. COMPANY's failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such notice.

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

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

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

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

- COMPANY does not boycott Israel and will not boycott Israel during the term of

this Agreement;

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

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

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

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

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

Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.

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

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

ARTICLE XV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON

ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION XV SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

EXHIBIT "A"



1602 Village Market Blvd SE, Suite 215
Leesburg, VA20175 USA

Cage Code: 7QV38
UEI Number Y7D5MXRU2839
DUNS# 080431574
Federal Tax ID: 81-3911287
Business Size: Small Business

Date: 1/31/2023, 10:10 AM

Phone: 571 707-4130
Fax: 571-291-4119
Email: sales@vertosoft.com

Vertosoft Contact: Carly Moore
Phone: (540) 998-8361
Email: carly.moore@vertosoft.com

OpenGov Quote for City of Midland, TX

Contract: DIR-TSO-4227

Quote #: Q-01585
Expires On: 2/17/2023

Ship To
City of Midland, TX

Quote For:
Name: Christy Weakland
Company:
Email: cweakland@midlandtexas.gov
Phone: (432) 685-7210

PAYMENT TERMS	DELIVERY METHOD	PAYMENT METHOD	VERTOSOFT CUST ID	SUPPLIER REF #
Net 30	Electronic	Check/ACH/Credit Card		

Prorated Year 1

Period of Performance: 03/01/2023 - 09/30/2023

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-1Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	3/1/2023	9/30/2023	1.00	\$64,602.04	\$64,602.04
OPGV-GBCS-B200300M-RR-1Y	Premium Support	3/1/2023	9/30/2023	1.00	\$5,047.96	\$5,047.96

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GHBP-B200300M-NR-0Y	OpenGov Deployment — One Time Fee (Prepaid Hours)	3/1/2023		221.00	\$210.00	\$46,410.00
Prorated Year 1 TOTAL:						\$116,060.00

Year 2

Period of Performance: 10/01/2023 - 09/30/2024

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2023	9/30/2024	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2023	9/30/2024	1.00	\$8,653.65	\$8,653.65
Year 2 TOTAL:						\$119,400.00

Year 3

Period of Performance: 10/01/2024 - 09/30/2025

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2024	9/30/2025	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2024	9/30/2025	1.00	\$8,653.65	\$8,653.65
Year 3 TOTAL:						\$119,400.00

PART #	DESCRIPTION	START DATE	END DATE	QTY	UNIT PRICE	EXTENDED
OPGV-GABS-B200300M-RR-3Y	Budgeting & Planning - Operating Budget, Capital Improvement, Workforce Planning, Online Budget Book Reporting & Transparency Platform Tyler Munis Integration	10/1/2025	9/30/2026	1.00	\$110,746.35	\$110,746.35
OPGV-GBCS-B200300M-RR-3Y	Premium Support	10/1/2025	9/30/2026	1.00	\$8,653.65	\$8,653.65
Year 4 TOTAL:						\$119,400.00

Taxes: Sales tax shall be added at the time of an invoice, unless a copy of a valid tax exemption or resale certificate is provided.

Credit Card Orders: Additional fees may apply if paying by credit card.

All Purchase Orders must include: End User Name, Phone Number, Email Address, Purchase Order Number, Government Contract Number or Our Quote Number, Bill-To and Ship-To Address (Cannot ship to a PO Box), Period of Performance (if applicable), and a Signature of a duly Authorized Representative.



Statement of Work

City of Midland

Creation Date: 1/26/2023
Document Number: DD-03042
Version Number: 1
Created by: Mark Welch

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1. Overview and Approach

1.1. Agreement

This Statement of Work ("SOW") identifies services that OpenGov, Inc. ("OpenGov" or "we") will perform for City of Midland ("Customer" or "you") pursuant to that order for Professional Services entered into between OpenGov and the Customer ("Order Form") which references the Software Services Agreement or other applicable agreement entered into by the parties (the "Agreement").

- Customer acknowledges and agrees that this Statement of Work is subject to the confidentiality obligations set forth in the Software Services Agreement between OpenGov and City of Midland.
- The Deliverables listed in Appendix B are the single source of the truth of the deliverables to be provided.
- Customer's use of the Professional Services is governed by the Agreement and not this SOW.
- Upon execution of the Order Form or other documentation referencing the SOW, this SOW shall be incorporated by reference into the Agreement.
- In the event of any inconsistency or conflict between the terms and conditions of this SOW and the Agreement, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Unless otherwise defined herein, capitalized terms used in this SOW shall have the meaning defined in the Agreement.
- This SOW may not be modified or amended except in a written agreement signed by a duly authorized representative of each party.
- OpenGov will be deployed as is, Customer has access to all functionality available in the current release.

2. Statement of Work

This SOW is limited to the Implementation of the OpenGov Budget and Planning as defined in the OpenGov Responsibilities section of this document ([Section 2.4](#)). Any additional services or support will be considered out of scope.

2.1. Project Scope

Under this project, OpenGov will deliver cloud based Budget and Planning solutions to help the City of Midland power a more effective and accountable government. OpenGov's estimated charges and schedule are based on performance of the activities listed in the "OpenGov Responsibilities" section below. Deviations that arise during the project will be managed through the procedure described in Appendix A-2: Project Change Control Procedure, and may result in adjustments to the Project Scope, Estimated Schedule, Charges and other terms. These adjustments may include charges on a time-and-materials or fixed-fee basis using OpenGov's standard rates in effect from time to time for any resulting additional work or waiting time.

2.2. Facilities and Hours of Coverage

OpenGov will:

- A. Perform the work under this SOW remotely, except for any project-related activity which OpenGov determines would be best performed at your facility in Midland Texas in order to complete its responsibilities under this SOW.
- B. Provide the Services under this SOW during normal business hours, 8:30am to 6:00pm local time, Monday through Friday, except holidays.

2.3. Key Assumptions

The SOW and OpenGov estimates are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the Project Change Control Procedure (see Appendix A-2), and may result in adjustments to the Project Scope, Estimated Schedule, Charges, and other terms.

Per

- A. The OpenGov Suites are not customized beyond current capacities based on the latest release of the software.
- B. Individual software modules are configured based on discussions between OpenGov and Customer.
- C. Budgeting and Planning Suite
 - i. Customer will provide Budget and Actuals data within two (2) weeks immediately following the kick-off meeting.
 - ii. Customer's Integration is unidirectional from Tyler Munis into OpenGov. The integrated data will be linked to the Customer's OpenGov Chart Of Accounts.
 - iii. OpenGov Online Budget Book (OBB) configuration will include:
 1. Six (6) Standard OBB templates; up to one-hundred (100) department stories pages and up to two hundred (200) project pages from the templates; and up to two (2) reports with report views to use in the OBB.

2.4. Exclusions

OpenGov is assuming that the City of Midland is on the latest version of Tyler Munis. The latest version of Munis allows for General Ledger and Project Ledger to be in dataset. If it is uncovered that the dataset is not combined, an additional integration will be required for Project Ledger data.

2.5. OpenGov Responsibilities

2.5.1. Activity 1 – Project Management

OpenGov will provide project management for the OpenGov responsibilities in this SOW. The purpose of this activity is to provide direction to the OpenGov project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

Planning

OpenGov will:

- A. review the SOW, contract and project plan with Customer's Project Manager and key stakeholders to ensure alignment and agreed upon timelines;
- B. maintain project communications through your Project Manager;
- C. establish documentation and procedural standards for deliverable Materials; and
- D. assist your Project Manager to prepare and maintain the project plan for the performance of this SOW which will include the activities, tasks, assignments, and project milestones.

Project Tracking and Reporting

OpenGov will:

- A. review project tasks, schedules, and resources and make changes or additions, as appropriate. Measure and evaluate progress against the project plan with your Project Manager;
- B. work with your Project Manager to address and resolve deviations from the project plan;
- C. conduct regularly scheduled project status meetings; and
- D. administer the Project Change Control Procedure with your Project Manager.

Completion Criteria:

This is an on-going activity which will be considered complete at the end of the Services

Deliverable Materials:

- Weekly status reports
- Project plan
- Project Charter
- Risk, Action, Issues and Decisions Register (RAID)

2.5.2. Activity 2 – Initialization

OpenGov will provide the following:

- A. Customer Entity configuration
- B. System Administrators creation
- C. Solution Blueprint creation
- D. Data Validation strategy confirmation

Completion Criteria:

This activity will be considered complete when:

- Customer Entity is created
- System Administrators have access to Customer Entity
- Solution Blueprint is presented to Customer

Deliverable Materials:

- Solution Blueprint
- Sign-off of Initial Draft Solution Blueprint

2.5.3. Activity 3 – OpenGov Use Cases

OpenGov will provide the following:

Budget & Planning Use Cases

- A. Interactive Online Budget Books
- B. Performance Management
- C. Internal Transparency and Data Access
- D. Financial and Performance Narrative Reporting

Completion Criteria:

This activity will be considered complete when:

Budget & Planning Use Cases

- Chart of Accounts is configured
- Online Budget Book templates are configured
- Financial integration is configured
- Budget reports are configured

Deliverable Materials:

- Formal sign off document

2.5.4. Activity 4 – Training

Training will be provided in instructor-led virtual sessions or through OpenGov University Training courses. For any instructor-led virtual sessions, the class size is recommended to be 10, for class sizes larger than 10 it may be necessary to have more than one instructor.

Completion Criteria:

- Administrator training is provided
- Training on system functionality is provided
- End User training is provided

Deliverable Materials:

- Formal sign off document

2.6. Your Responsibilities

The completion of the proposed scope of work depends on the full commitment and participation of your management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and are to be provided at no charge to OpenGov. OpenGov's performance is predicated upon the following responsibilities being managed and fulfilled by you. Delays in performance of these responsibilities may result in delay of the completion of the project and will be handled in accordance with Appendix A-1: Project Change Control Procedure.

2.6.1. Your Project Manager

Prior to the start of this project, you will designate a person called your Project Manager who will be the focal point for OpenGov communications relative to this project and will have the authority to act on behalf of you in all matters regarding this project.

Your Project Manager's responsibilities include the following:

- A. manage your personnel and responsibilities for this project (for example: ensure personnel complete any self-paced training sessions, configuration, validation or user acceptance testing);
- B. serve as the interface between OpenGov and all your departments participating in the project;
- C. administer the Project Change Control Procedure with the Project Manager;
- D. participate in project status meetings;
- E. obtain and provide information, data, and decisions within five (5) business days of OpenGov's request unless you and OpenGov agree in writing to a different response time;
- F. resolve deviations from the estimated schedule, which may be caused by you;
- G. help resolve project issues and escalate issues within your organization, as necessary; and
- H. create, with OpenGov's assistance, the project plan for the performance of this SOW which will include the activities, tasks, assignments, milestones and estimates.

2.7. Completion Criteria

OpenGov will have fulfilled its obligations under this SOW when any of the following first occurs:

- A. OpenGov accomplishes the activities set forth in "OpenGov responsibilities" section and delivers the Materials listed, if any; or
- B. The End date is reached

2.8. Estimated Schedule

OpenGov will schedule resources for this project upon signature of the order form. Unless specifically noted, the OpenGov assigned project manager will work with Customer Project Manager to develop the project schedule for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and/or Customer resources, and the timeliness of deliverables provided by the Customer.

The Services are currently estimated to start within two (2) weeks but no later than four (4) weeks from signatures and have an estimated end date of **July 2023** ("End Date") or on other dates mutually agreed to between you and OpenGov.

2.9. Illustrative Project Timelines

The typical project timelines are for illustrative purposes only and may not reflect your use cases.

Budgeting & Planning Suite Illustrative Timeline		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9
Financial Integration										
Budget and Planning Suite	Chart of Accounts									
	Operating Budget									
	Workforce Planning									
	Capital Budget									
	Online Budget Book									
	Budget End User Training									
GoLive Support	Hypercare									
Customer is responsible for attending the kick off of each phase, providing any necessary data for each phase, participating in working sessions during active phases, and signing off on deliverables at the end of each phase.										

2.10. Charges

The Services will be conducted on a Fixed Price basis. This fixed price is exclusive of any travel and living expenses and other reasonable expenses incurred in connection with the Services. All charges are exclusive of any applicable taxes.

2.11. Offer Expiration Date

This offer will expire on 4/26/2023 unless extended by OpenGov in writing.

Appendix A: Engagement Charter

A-1: Communication and Escalation Procedure

Active engagement throughout the implementation process is the foundation of a successful deployment. To help assess progress, address questions, and minimize risk during the course of deployment both parties agree to the following:

- **Regular communication** aligned to the agreed upon project plan and timing.
 - OpenGov expects our customers to raise questions or concerns as soon as they arise. OpenGov will do the same, in order to be able to address items when known.
- **Executive involvement**
 - Executives may be called upon to clarify expectations and/or resolve confusion.
 - Executives may be needed to steer strategic items to maximize the value through the deployment.
- **Escalation Process:**
 - OpenGov and Customer agree to raise concerns and follow the escalation process, resource responsibility, and documentation in the event an escalation is needed to support issues raised
 - Identification of an issue impeding deployment progress, outcome or capturing the value proposition, that is not acceptable.
 - Customer or OpenGov Project Manager summarizes the problem statement and impasse.
 - Customer and OpenGov Project Managers jointly will outline solution, acceptance or schedule Executive review.
 - Resolution will be documented and signed off following Executive review.
- **Phase Sign-Off**
 - OpenGov requests sign-offs at various stages during the implementation of the project. Once the Customer has signed-off, any additional changes requested by Customer on that stage will require a paid change order for additional hours for OpenGov to complete the requested changes.

A-2: Change Order Process

This SOW and related efforts are based on the information provided and gathered by OpenGov. Customers acknowledge that changes to the scope may require additional effort or time, resulting in additional cost. Any change to scope must be agreed to in writing or email, by both Customer and OpenGov, and documented as such via a:

- **Change Order** - Work that is added to or deleted from the original scope of this SOW. Depending on the magnitude of the change, it may or may not alter the original contract amount or completion date and be paid for by Customer. Changes might include:
 - Timeline for completion
 - Sign off process
 - Cost of change and Invoice timing
 - Amending the SOW to correct an error.

- o Extension of work as the complexity identified exceeds what was expected by Customer or OpenGov.
- o Change in type of OpenGov resources to support the SOW.

A-3: Deliverable Materials Acceptance Procedure

Deliverable Materials as defined herein will be reviewed and accepted in accordance with the following procedure:

- The deliverable Material will be submitted to your Project Manager.
- Your Project Manager will have decision authority to approve/reject all project Criteria, Phase Acceptance and Engagement Acceptance.
- Within five (5) business days of receipt, your Project Manager will either accept the deliverable Material or provide OpenGov's Project Manager a written list of requested revisions. If OpenGov receives no response from your Project Manager within five (5) business days, then the deliverable Material will be deemed accepted. The process will repeat for the requested revisions until acceptance.
- All acceptance milestones and associated review periods will be tracked on the project plan.
- Both OpenGov and Customer recognize that failure to complete tasks and respond to open issues may have a negative impact on the project.
- For any tasks not yet complete, OpenGov and/or Customer will provide sufficient resources to expedite completion of tasks to prevent negatively impacting the project.
- Any conflict arising from the deliverable Materials Acceptance Procedure will be addressed as specified in the Escalation Procedure set forth in Appendix A-1. As set forth in Section 6.1(e) of the Agreement, if there are extended delays (greater than 10 business days) in Customer's response for requested information or deliverable; OpenGov may opt to put the project on an "On Hold" status. After the Customer has fulfilled its obligations, Professional Services can be resumed and the project will be taken off the "On-Hold" status.
- Putting a project "on Hold" may have several ramifications including, but not restricted, to the following:
 - o Professional Services to the customer could be stopped;
 - o Delay to any agreed timelines; or
 - o Not having the same Professional Services team assigned.

Appendix B: Implementation Activities

B-2: OpenGov Budgeting & Planning Suite

Instance Creation

Budgeting & Planning Suite		
Description	OpenGov Responsibilities	Customer Responsibilities
Provisioning Reporting & Transparency Platform	OpenGov will: • OpenGov will provision Customer's OpenGov entity and verify Customer has access to all purchased modules.	Customer will: • Confirm access to entity and modules.

Technical Project Review

Description	OpenGov Responsibilities	Customer Responsibilities
Technical Project Review	OpenGov will: • Provide up to one (1) one-hour working sessions at the beginning of the project to: - o Review deliverables - o Review technical requirements - o Provide documentation on requirements and processes OpenGov Assumptions: • Customer will provide relevant data within two (2) weeks immediately following the kick-off meeting.	Customer will: • Identify relevant participants for attendance. • Confirm deliverables. • Gather and provide relevant data for the project.

Chart of Accounts Configuration

Description	OpenGov Responsibilities	Customer Responsibilities
Chart of Accounts (COA)	OpenGov will:	Customer will:

	● Build Customer's COA in OpenGov in accordance with OpenGov technical requirements. ● Review configured COA and uploaded data and provide training to Customer on how to: ○ Manage new codes ○ Edit COA ○ Create Masks	● Provide current COA and transactional data. ● Validate and provide sign off on COA. ● Maintain the COA following configuration.
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Integration Configuration

Description	OpenGov Responsibilities	Customer Responsibilities
Financial Integration	OpenGov will: ● Installation of Agent and Database View Deployment or Set up a SFTP and Sample File Format. ● Integrate the following functionalities: ○ Actuals and Budget (Revenue and Expenses) ● Extract, transform (when required) and load the data ● Build Reports for the required functionalities ○ Report Name ● Validate the historical data and current year data based on the Customer provided summary report. ● Schedule the current year data load ● Monitor the data load OpenGov assumptions: ● Integration is unidirectional from the Customer's Tyler Munis into OpenGov. ● The data will be linked to the Customer's COA.	Customer will: ● Provide an IT resource to assist the project team in the initial set-up. ● Provide assistance to understand source system specific customizations and configurations when building the data extract. ● If OpenGov is unable to access the data per requirements, provide .csv data files via OpenGov SFTP Location. ● Broker OpenGov's access to Customer's source accounting data if hosted by any third vendor. ● Provide a summary export data to validate against. ● Validate and provide sign off on the integrated data and reports.

Online Budget Book Configuration

Description	OpenGov Responsibilities	Customer Responsibilities
Online Budget Book (OBB)	OpenGov will: - Based on best practices, build out the look and feel of six (6) Standard OBB Templates: - Home Page - Generic (multi-use) - Operating - Department - Capital - Capital Project - Create up to two (2) OBB Reports using OpenGov Budget data and Report Views to use in Department and Project OBB Story Shells. - Create Department and Project OBB Story Shells from OBB Templates for up to one-hundred (100) Departments and up to two-hundred (200) Projects and add OpenGov Report Views to Department and Project Story Shells. - Provide up to ten (10) one-hour working sessions to answer Customer questions on OBB Configuration.	Customer will: - Provide logo and branding colors to OpenGov. - Sign off on OBB Templates prior to OBB Story Shell Configuration. - Validate and sign off on OBB Department and Project Story Shells. - Complete Department and Project Story Shells by adding Customer content including: - Narrative - Images - External Data - Create remaining OBB Stories from OBB Templates for each section of the Table of Contents and add Customer content including: - Narrative - Images - External Data - Create any additional Reports and Report Views needed to add to OBB. - Attend working sessions to get answers on OBB questions. - Make Stories public and Publish OBB.

Working Sessions and Trainings

Description	OpenGov Responsibilities	Customer Responsibilities
Budgeting & Planning Working Sessions	OpenGov will: Per the agreed upon Project Plan, schedule working sessions with Customer's System Administrators to:	Customer will: - Per the agreed upon Project Plan, attend working sessions to: - Understand

	○ Review configurations; ○ Provide training on system functionality; ○ Gain feedback; and ○ Answer questions regarding configured system functionality.	○ configurations; ○ Gain training on system functionality; ○ Give feedback; and ○ Ask questions regarding configured system functionality
OpenGov University	OpenGov will: ● provide access to OpenGov University online training courses intended to teach users on the basics of OpenGov.	Customer will: ● Review training courses
Reporting & Transparency Administrator Training	OpenGov will: ● Provide training to Customer System Administrators on how to: ○ Maintain the Chart of Accounts ○ Upload and manage data for reporting ○ Create and share Reports, Dashboards, Stories, and Topics.	Customer will: ● Identify relevant participants and attend scheduled trainings.
Online Budget Book	OpenGov will: ● Provide one (1) 60- Minute System Training designed for OBB Administrators on how to: ○ Use and copy OBB Templates ○ Add Reports Views to Stories ○ Add Customer content including: narrative, images, and external data to Stories ○ Publish Stories ○ Update and maintain Stories.	Customer will: ● Identify relevant participants and attend scheduled trainings.
Virtual Budget End-User Training	OpenGov will: ● Provide two (2), 60-Minute training session(s) to Customer's Navigate Opengov Budgets and Reports	Customer will: ● Identify relevant participants and attend scheduled trainings.

Appendix C: Technical Requirements

C-1: OpenGov Budgeting & Planning Suite

Budgeting & Planning Suite	
Description	Technical Requirements
Chart of Accounts	• Flat file • .csv, .xls, .xlsx with headers • Active Accounts and Accounts with activity in the years of data being loaded into OpenGov.
Financial Data Files (Transactional Export)	• Flat file • .csv, .xls, .xlsx with headers • 3-5 Years of Data
Financial Data Files (Summary Revenue and Expense Export)	• PDF export
Current Budget	• Flat file • .csv, .xls, .xlsx with headers • Operating Budget • Capital Budget
Non-Financial Data Files	• Flat file • .csv, .xls, .xlsx with headers
Logo Image	• .jpg or .png format • Transparent
Branding guidelines	• Hex codes

OpenGov + City of Midland, TX

Project Plan Letter & Partnership Summary

Andrew Stout

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astout@opengov.com



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Executive Summary

OpenGov is proposing **Budgeting & Planning and the Reporting & Transparency platform** for consideration.

OpenGov Budgeting and Planning is a modern, full-featured cloud budgeting solution designed to meet the unique needs of public sector planning and analysis. Trusted by hundreds of forward-thinking governments, Budgeting and Planning is the industry's most collaborative experience for budget process automation, managerial reporting, and public transparency -- driving more effective planning and strengthening public trust.

On average, Budgeting and Planning customers see a 50% reduction in budget development time, achieve 80% time savings on reporting, and have re-allocated up to 1% of their budgets for more strategic outcomes.

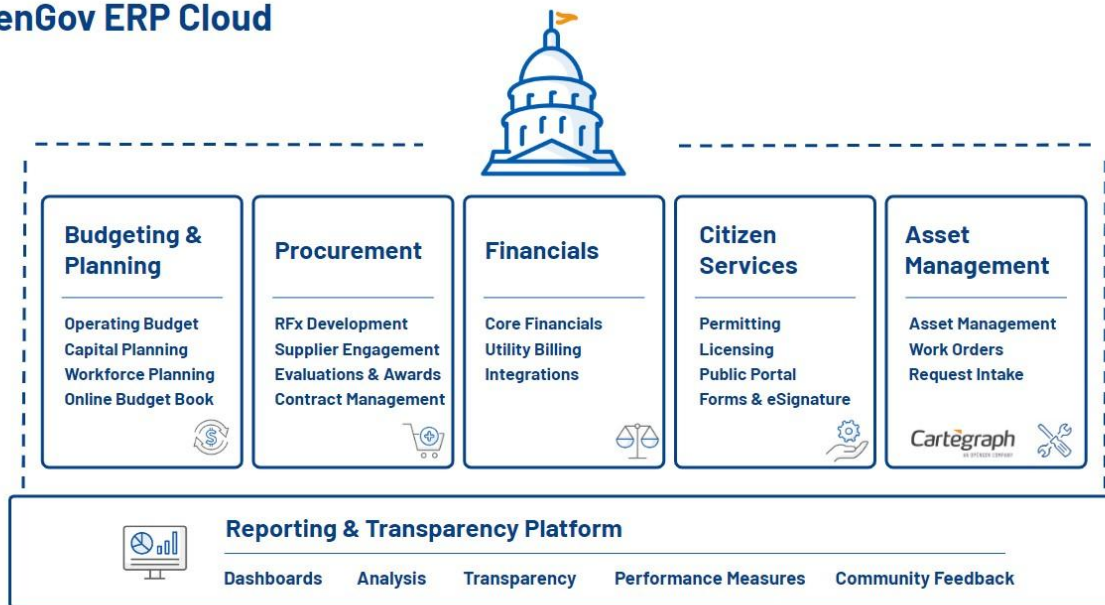
Budgeting & Planning is the only solution that provides:

- Full-featured cloud budgeting for your entire planning cycle
- Breakthrough collaboration between offices and departments
- Best-in-class reporting and analysis right out-of-the-box
- Seamless transparency and civic engagement to strengthen public trust
- Modern cloud technology to enable distributed planning

The Reporting & Transparency Platform: Build trust by simplifying and streamlining the collection, analysis, and communication of complex information with the OpenGov Reporting and Transparency platform. Our platform's solutions reduce manual reporting, data scrubbing, and formatting by providing on-demand access to dynamic, interactive reports and dashboards. Simple, self-service tools empower anyone with access to the platform to perform analysis without burdening technical teams, making it easier to discover trends, provide historical context, and quickly identify anomalies.

OpenGov is a customer-driven software company backed by over 300 years of employee experience in the public sector. With OpenGov, your investment in efficient operations, better decision-making, and a more engaged community will sustain for the long-haul.

OpenGov ERP Cloud



We look forward to demonstrating how these solutions will meet and exceed your needs and expectations.

Why OpenGov?

The only modern cloud designed specifically for local government.

OpenGov offers transformative solutions for budgeting, financial management, and civic services with the market-leading reporting and transparency platform -- allowing customers to re-allocate up to 1% of their budgets for more strategic outcomes and save thousands of hours on manual and paper-based processes.

A trusted partner.

More than 1,100 governments nationwide partner with OpenGov to drive more effective and accountable operations through cloud financial solutions. Built exclusively for state and local government, OpenGov's software, services, and expertise are backed by over 300 years of employee experience in the public sector.

A platform built to grow with you.

Modern cloud architecture ensures all of your users have access to the latest features and upgrades while reducing your IT burden, minimizing your cost footprint, and breaking down system and data silos. Thanks to world-class professional services and a roadmap driven by customer feedback, you future-proof your investment for the next generation.

OpenGov Budgeting & Planning Suite

Modernize your budget and align spend to strategic outcomes.

Manage an Accurate, Outcome-Focused Budget Process

Streamline and unify your end-to-end budgeting process, seamlessly tie budget dollars to key organizational initiatives, and draw actionable insights that maximize performance outcomes. Then, through Reporting and Transparency, add context to your results and share internally and externally for better collaboration.

Budgeting & Planning Suite



Collaborate More Effectively

Collaborate across departments by sending and receiving budget proposals, tracking performance on strategic objectives, commenting on key reports, and sharing your outcomes with colleagues.



Improve Decision-Making

Glean the context you need for budget decisions and the information you need to manage performance. You can visualize trends and model the impact of proposed budget changes while you transform complex financial



Save Time

Through a simple and intuitive user interface, you can see your budget, receive commentary from your team, and get your plans approved. Easily seed the budget by importing last year's actuals, then adjust, add, or compare proposal line items in real time.

and performance data into actionable insights.

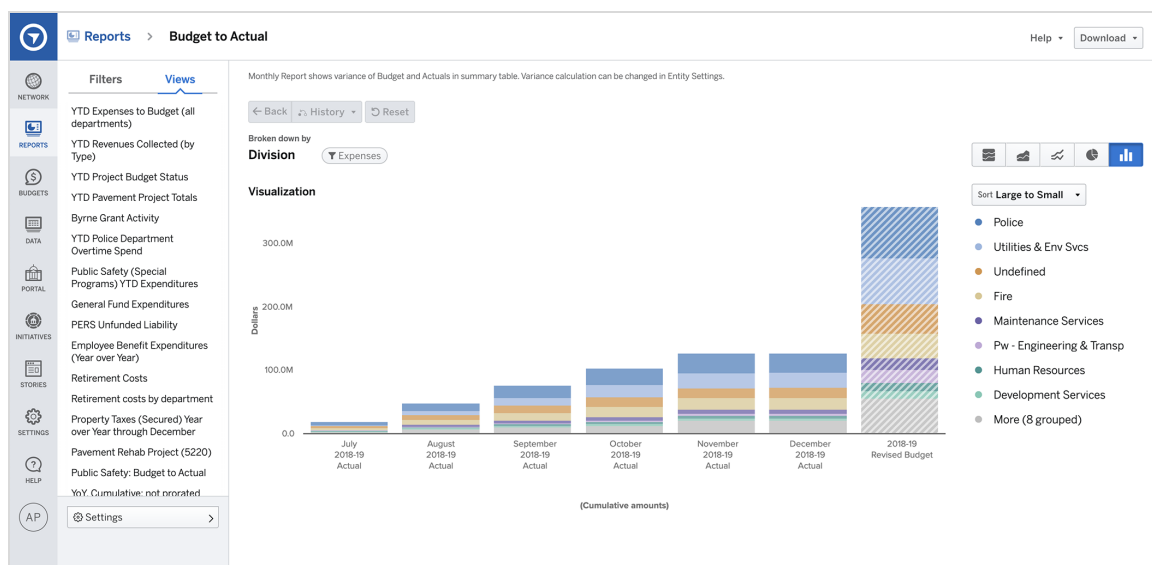
Budgeting & Planning Use Cases

- Collaborative budgeting
- Capital planning
- Online budget book publication
- Workforce calculation
- Budgetary reporting
- Financial projections
- Operating budgets
- What-if scenario analysis
- Strategic initiative tagging

Full-Featured Public Sector Budgeting

Enable maximum effectiveness for your budget and planning cycle from end-to-end, from near-term forecast adjustments to long-range capital initiatives.

- **Centralized, Automated Budgeting:** Liberate your budgeting from disparate spreadsheets with a unified process that seamlessly ties spending to desired outcomes
- **Workforce Planning:** Simplify planning for your most complex and important cost with scenario analysis, advanced calculations, and integrated budget requests
- **Capital Initiatives:** Forecast long-term capital expenditures, manage proposals, track performance, and easily keep the public informed of progress
- **Online Budget Book:** Publish a fully interactive, easily digestible budget book that makes future publications vastly more repeatable



Government's Most Collaborative Budgeting & Planning Solution

OpenGov drives efficiency through heightened collaboration by centralizing your planning in an intuitive online solution, delivering breakthrough communication between offices and departments.

- Achieve **unprecedented alignment** around strategic priorities that comes from a real-time, singular source of truth
- Give your budget collaborators an **easy-to-use** system that reduces the back-and-forth of traditional processes
- **Controlled collaboration** is made simple through configurable administrative settings for user access and editing ability

Industry-Leading Reporting and Analysis

OpenGov Budgeting & Planning is built with a data-first foundation that provides out-of-the-box reporting & analysis capabilities for dashboards, managerial reporting, KPI tracking, scenario modeling, and data consolidation and sharing.

- Present **complex information that the public, elected officials, departments, and administration can understand** with at-a-glance insights and interactive dashboards
- **Reduce reporting bottlenecks** by freeing up your IT, finance, and other staff with centralized, self-serve reporting
- **Sharpen your focus on outcomes** by establishing and tracking relevant KPIs to keep stakeholders updated on spending, initiatives, and operations

Strengthen Public Trust with the Leading Transparency Platform

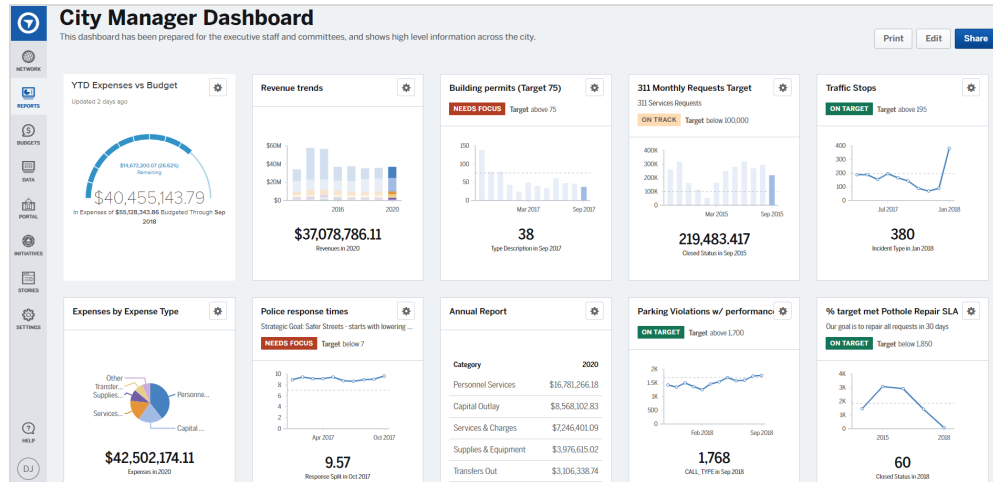
Build trust in your community by communicating initiatives and progress clearly while fostering better engagement through integrated tools to collect feedback and sentiment.

- **Publish interactive budget books online** to provide taxpayers with a better understanding of how dollars are impacting the community
- **Communicate initiatives effortlessly** with a simple drag-and-drop web-page builder and customizable themes that make it easy for citizens to digest key narratives
- **Run public meetings** and budget simulations with our Virtual Town Hall -- complete with robust forms, surveys, and other tools for a compliant feedback process.
- **Deliver up-to-date financial and operational data with context** to keep the public informed of progress and fiscal health.

Key Features

Precisely calculate personnel costs through workforce planning.

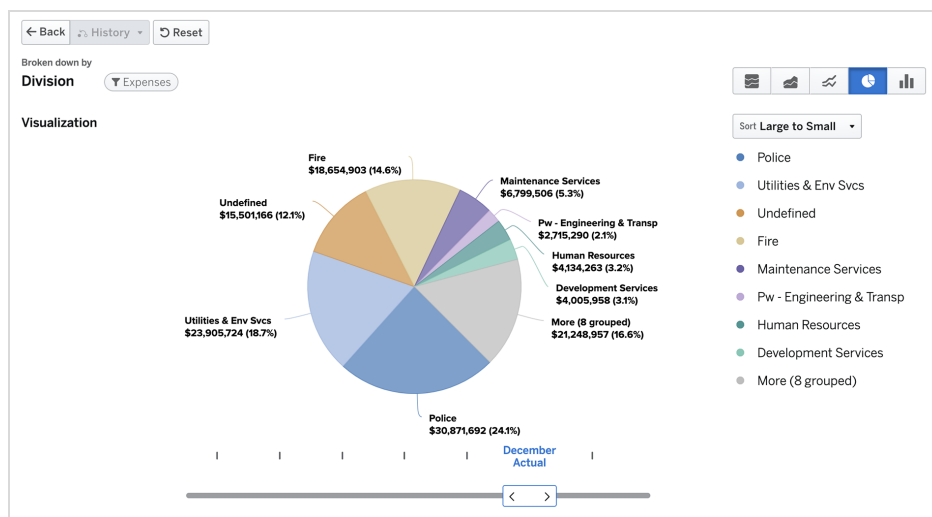
Drive better salary projections, increase visibility into cost drivers, and reduce broad assumptions. You can calculate the fully burdened labor costs of an individual or overall workforce, perform scenario analysis to inform negotiations and budget decisions, run vacancy reporting, compare actual positions to budgeted positions, and request new positions using accurate, updated costs.



Empower stakeholders with financial and performance data.

Forecast long term expenditures for capital planning initiatives.

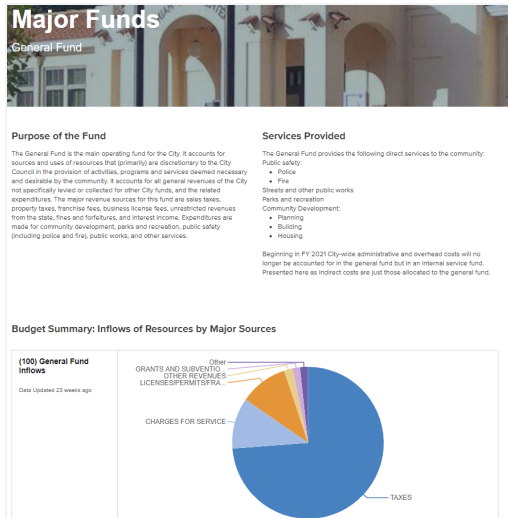
Seamlessly harness the information your team needs to make educated decisions while providing a working blueprint for sustaining and improving your community's infrastructures. You can send and receive capital planning proposals, adjust proposal line items, track performance on projects, and comment on key reports. Then, easily create printable dashboards to streamline capital meetings.



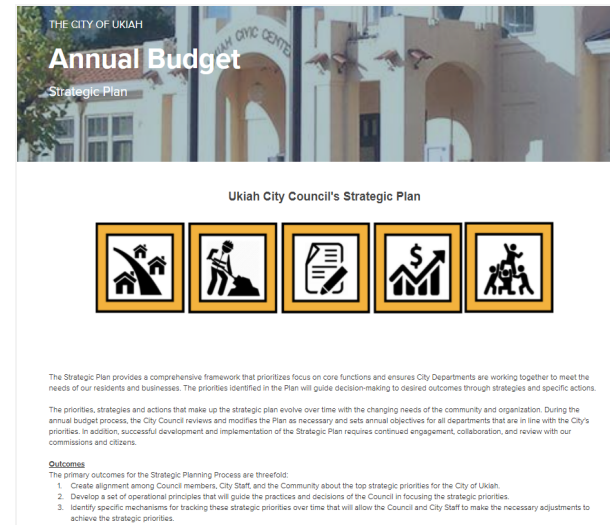
Show how budget dollars drive key initiatives.

Simplify online budget book publication.

Establish a framework for building your online budget book faster and more accurately, making the process repeatable and scalable for future cycles.



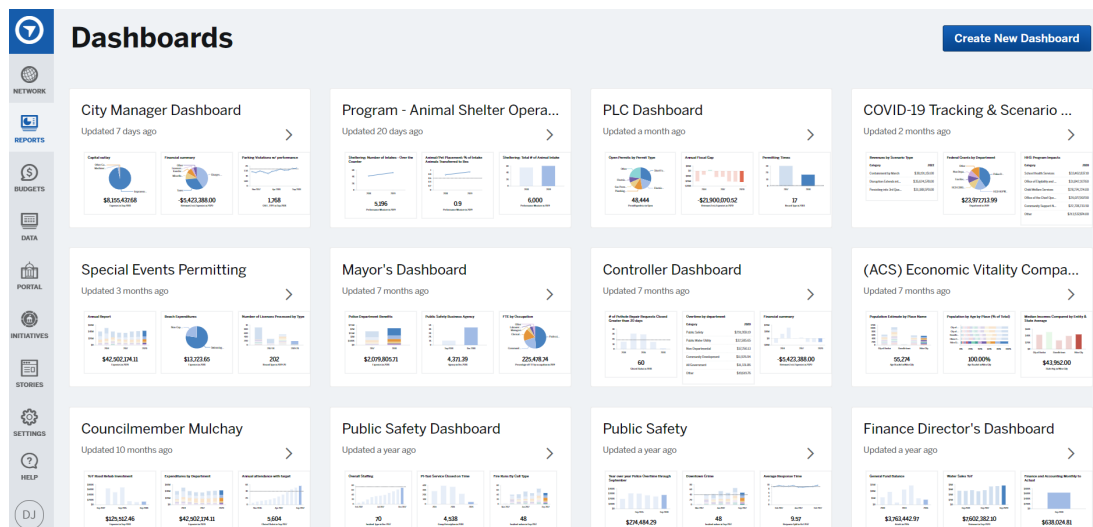
Publish an interactive, easily digestible online budget book



City of Ukiah's Strategic Plan Using Online Budget Book

Centralize dashboards onto a single Reporting & Transparency platform.

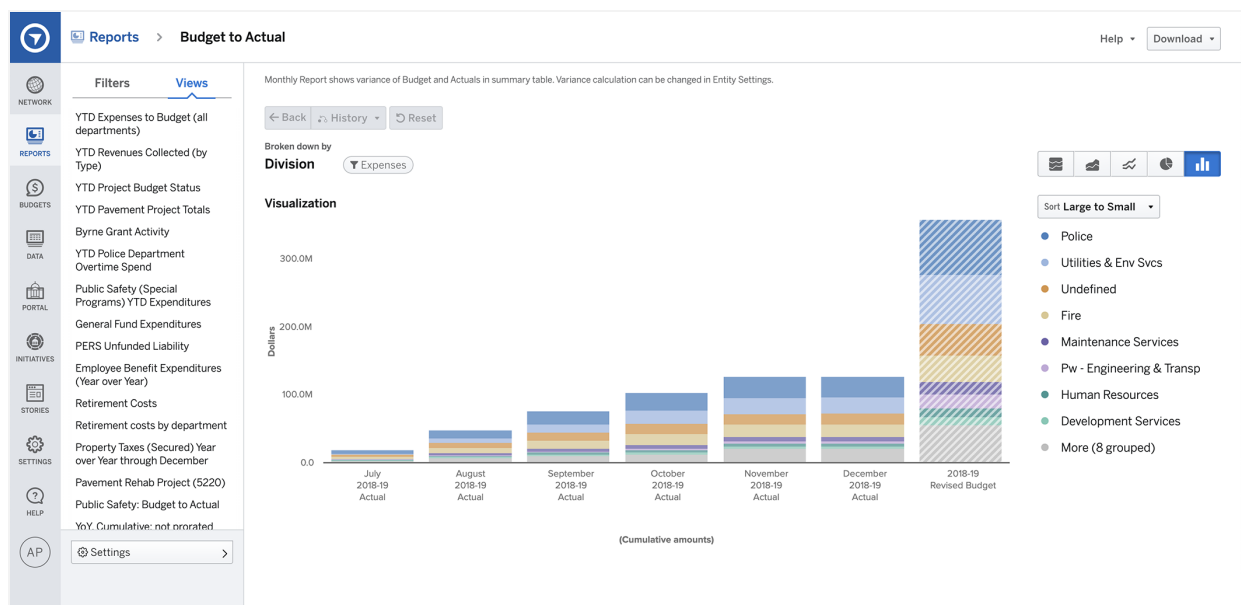
Powering OpenGov Budgeting & Planning is the Reporting and Transparency platform. Integrate and synchronize your financial and non-financial data with other data sources. When any data point changes, all reports automatically update. You can go beyond seeing your outcomes and truly understand the reasoning behind performance with OpenGov's reporting platform. Then, add context to your outcomes and insights and share internally and externally.



Reporting & Transparency Platform

Centralize reporting, align data with context with internal and external stories, and listen

The OpenGov Budgeting & Planning suite is powered by our robust **Reporting & Transparency platform**. The platform's solutions allow users to build trust and transparency with internal and external stakeholders on the topics that matter by presenting complex financial information in a simple way with appropriate context to inform your constituents. Promote collaboration and efficiency internally with centralized reporting and workflows to increase understanding across your organization through interactive dashboards that turn data into insights.



Present complex information that all parties can understand.

Keep internal and external stakeholders updated on performance and aligned around high-level strategic goals. Gain at-a-glance insights with interactive dashboards, take action with customized alerts, or dive into the granular details for deeper analysis.



Broaden citizen engagement.

Supplement public hearings with virtual town halls, budget simulations, and online surveys that are easy and convenient. You can gather broader feedback from residents by reducing the barriers of involvement.

Reduce reporting bottlenecks across your organization.

Free up your IT and Business Intelligence professionals with centralized reporting and immediate access to necessary day-to-day data for every department.

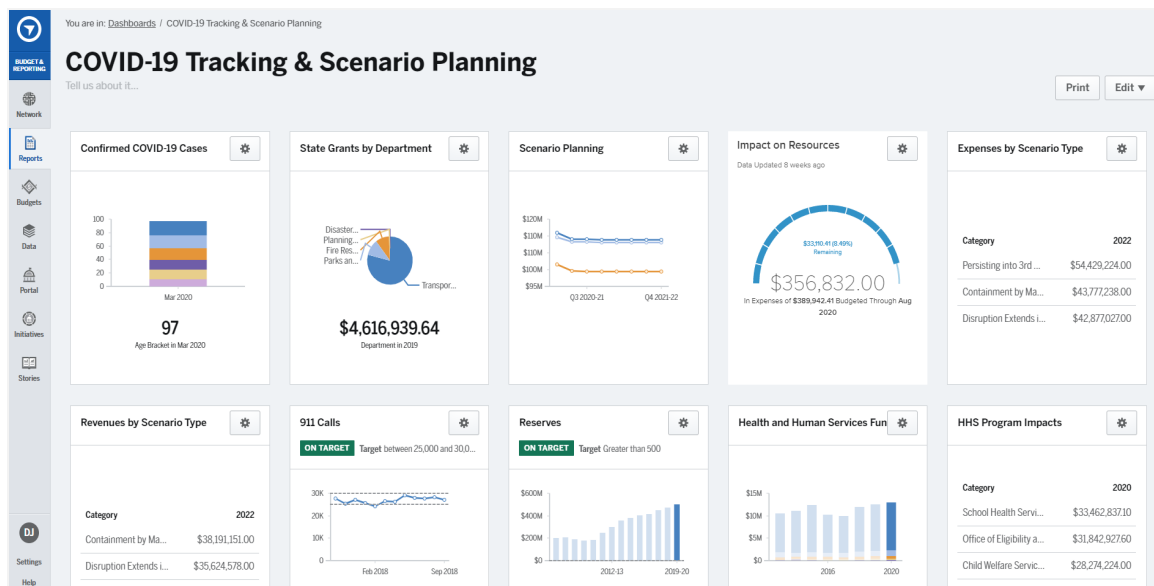


Achieve your communications objectives.

Put your operating and strategic plans online in a way that your constituents can easily understand and even interact with. Tell the stories behind your data by quickly creating, editing, and publishing content in real-time, while easily incorporating feedback. Then, identify and analyze engagement by seeing the number of views, unique visitors, and social sharing metrics.

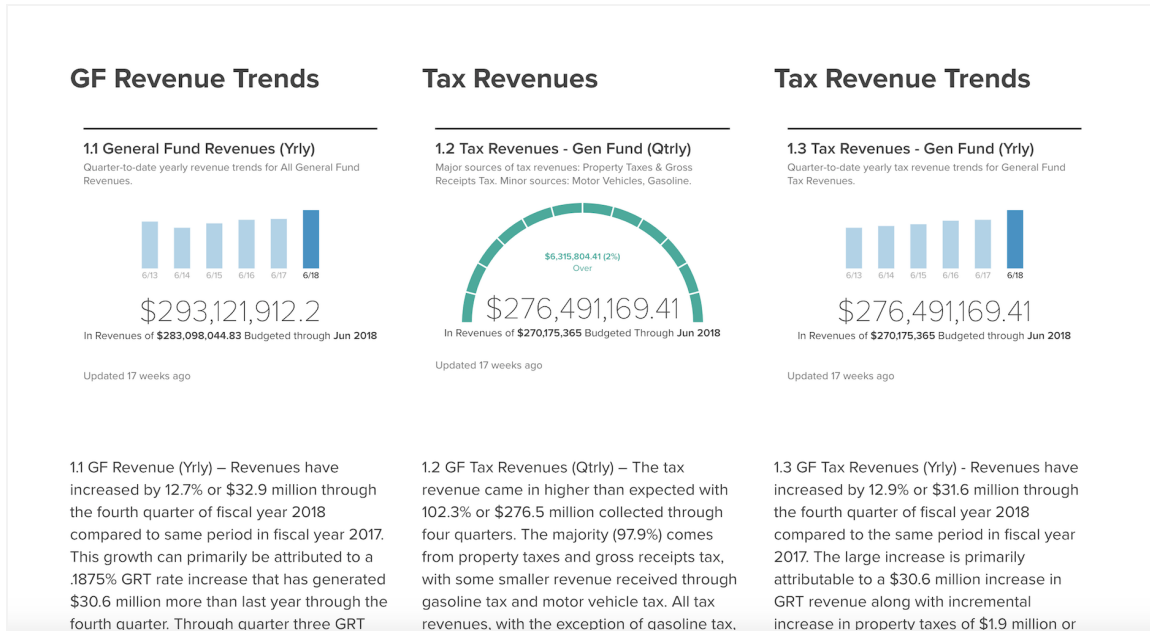
Reporting & Transparency Use Cases

- Interactive budget summary
- Satisfactory survey
- Participants budgeting
- Performance reporting
- Citizen ideas/feedback portal
- Internal project coordination
- Emergency communication
- Strategic planning
- Stakeholder engagement



Focus on outcomes with dynamic reporting functionality.

Establish goals for departments, programs, or initiatives, then track relevant KPIs to keep external stakeholders updated on spending, performance, and progress.



Infuse complex data with meaningful narratives everyone can understand

Communicate clearly and increase transparency with stakeholders.

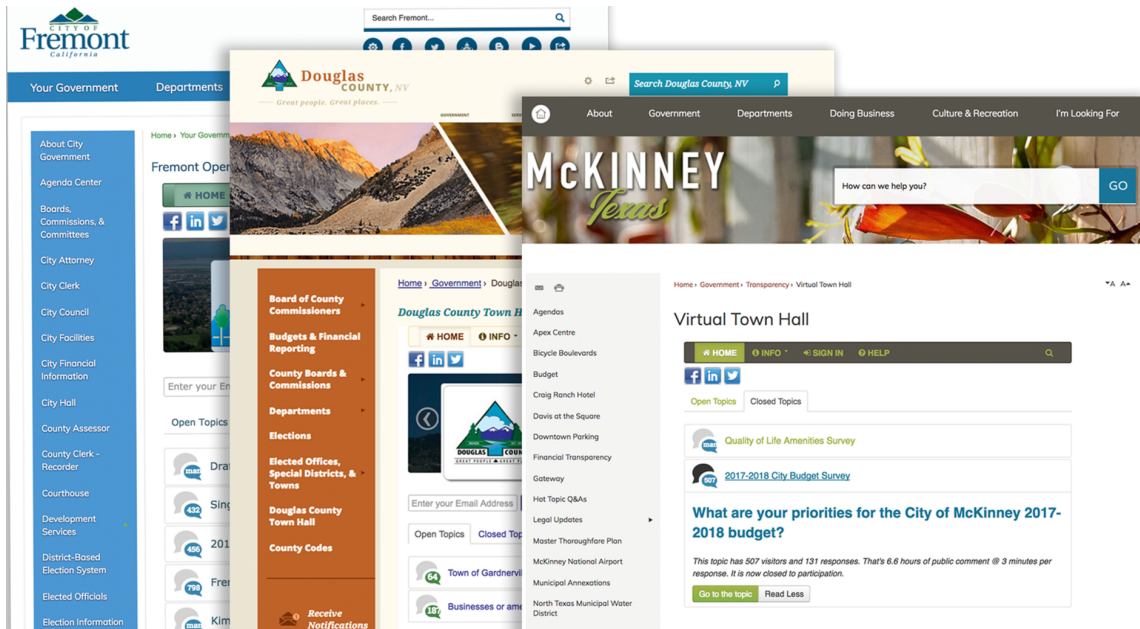
Create and share content easily and quickly. Use a simple, drag-and-drop page builder to combine your data with images, dashboards, maps, and narrative context. Present complex information in a way that's easy for anyone to understand. Share via email, social media, or through your agency's website.



Use Stories to communicate strategic plans and decision packages

Capture feedback online, at meetings, or on-the-go.

Record feedback from residents, colleagues, and other stakeholders at any moment through online surveys, virtual town halls, mobile forms, or budget simulations.



Agency-branded surveys and online forums.

Additional Features

- **Share the data behind the news.** Visually dynamic tiles reveal the yearly, monthly or weekly breakdowns of your underlying report through pie charts, stacked bars, and summary tables.
- **Better project planning.** Fulfill public input requirements for grant applications and collect the public response you need to for planning large-scale projects.
- **Social media impact.** Share your published pages on Facebook, Twitter, Nextdoor, or LinkedIn and track your story's analytics in OpenGov.

Company Qualifications

After witnessing the City of Palo Alto spend over \$10 million on an ERP system that was delivered on 20 discs and had green screens, OpenGov's founders learned that governments across the country were similarly hamstrung by outdated technology. The public sector has been underserved by its vendors for decades, while the digital era has transformed consumer experiences and private sector organizations.

State and local governments deserve access to modern cloud software suited for their increasingly complex needs. Citizens deserve to know that their tax dollars are being spent by effective and accountable organizations. Our public sector leaders deserve to be supported by companies who act as true partners. In order to address these needs, OpenGov was born.

Today we have over 1,000 government customers using our cloud-based suites that are designed specifically for local governments. Below are the stories of just a few of our customers who have adopted our solutions. For more customer stories on how OpenGov's solutions are driving success in communities around the country, please visit: <https://opengov.com/customers/>

City of Tampa, Florida

Transforming Tomorrow with OpenGov

- [3-minute video of Mayor Castor](#)
- [Performance Metrics](#)
- [Online Budget Book](#)



Lubbock, Texas

A 'Get it Done' City Transforms

Local Government Budgeting with OpenGov

- [2-minute video with Lubbock CFO Blu Kostelich](#)



Mono County, California

Reallocating Over \$2M

with OpenGov Budgeting

- [How \\$80M government saved over \\$2M with OpenGov](#)



Dallas County, Texas
Modernizing Budgeting & Planning
with OpenGov

- [3-minute video on bringing Dallas County into the future](#)



City of Minneapolis, Minnesota
Preparing for the Future
with Strategic Budgeting

- [2-minute video on leveraging OpenGov to prepare for the future](#)



Pasco County, Florida
Building an Award-Winning
Online Budget Book

- [1-minute video](#):

["It was the fastest we had ever gotten the budget submission done."](#)



For more customer stories visit opengov.com/customers/

Key Differentiators

OpenGov is the leader in modern cloud software for our nation's cities, counties, and state agencies. On a mission to power more effective and accountable government, OpenGov serves more than 1,000 agencies across the U.S. Built exclusively for the unique budgeting, financial management, and citizen services needs of the public sector, the OpenGov Cloud makes organizations more collaborative, digitizes mission-critical processes, and enables best-in-class communication with stakeholders.

Here are a few reasons why OpenGov Budgeting & Planning is unique:

Full-Featured Public Sector Budgeting: Enable maximum effectiveness for your entire budget and planning cycle, from real-time forecast adjustments to long-range initiatives across your Operating Budget, Workforce Planning, Capital Planning, and Online Budget Book.

- **Operating Budget:** Liberate your budgeting from disparate spreadsheets with a unified process that seamlessly ties spending to desired outcomes
- **Workforce Planning:** Simplify planning for your most complex and important asset - your people - with scenario analysis, advanced position allocations, and integrated budget requests
- **Capital Planning:** Forecast long-term capital expenditures, manage proposals, track performance, and keep the public informed of progress
- **Online Budget Book:** Publish a fully interactive GFOA award-winning budget book directly from your budgeting system and not third-party software

Breakthrough Collaboration Between Offices and Departments: OpenGov drives efficiency through unprecedented collaboration by centralizing your planning in an intuitive online solution, delivering breakthrough communication between offices and departments without sacrificing administrative control.

- **Achieve unprecedented alignment** around strategic priorities that comes from a real-time, centralized source of truth
- **Give your budget collaborators an easy-to-use system** that reduces the onerous back-and-forth of traditional processes
- **Controlled collaboration** through configurable administrative settings for broad user access with layered editing and centralized approval capabilities

Best-in-class Reporting and Analysis: OpenGov Budgeting & Planning is built with a data-first foundation that provides out-of-the-box reporting and analysis capabilities for dashboards, managerial reporting, KPI tracking, scenario modeling, and data consolidation and sharing.

- **Present complex information that the public, elected officials, departments, and administration can understand** with at-a-glance insights and interactive dashboards
- **Reduce reporting bottlenecks** by freeing up your IT, finance, and other staff with self-serve reporting supported by centralized administrative controls
- **Sharpen your focus on outcomes** by establishing and tracking relevant KPIs to keep stakeholders updated on spending, initiatives, and operations

Seamless Transparency and Civic Engagement to Strengthen Public Trust: Build trust with constituents by communicating initiatives and progress clearly while fostering better engagement through integrated tools to collect feedback and sentiment.

- **Publish a GFOA award-winning interactive budget book online** to provide taxpayers with a better understanding of how dollars are impacting the community
- **Communicate and track strategic initiatives effortlessly** with a simple drag-and-drop web-page builder and customizable themes that make it easy for board members and residents to digest key narratives
- **Run public meetings, virtual council chambers, and budget simulations** using robust forms, surveys, reports, and tools for curated feedback and compliant voting
- **Deliver up-to-date financial and operational data with context** to keep the public informed of progress and fiscal health

Modern Cloud Technology to Enable Distributed Planning: Look to the modern cloud technology trusted by over 1,000 governments like yours to connect your offices and departments from anywhere, on any device.

- **Finalizing your budget in the most extreme climates** with device-agnostic software that frees your staff to collaborate virtually in a remote work environment
- **Be prepared for the unexpected** with online reporting, analysis, and scenario planning tools that promote rapid response to unbudgeted external risks
- **Attract new generations of talent** to replenish a retiring workforce by providing the modern cloud tools they expect
- **Backstop risks to your institutional knowledge** through enhanced continuity from hassle-free updates, multi-site backups, and robust disaster recovery plans

OpenGov Support Overview

OpenGov's team of professionals is dead-focused on ensuring that the governments we serve and their users are set up for success when adopting the OpenGov platform. Our training and support strategy is multi-layered with many offerings that will provide end users with the proper guidance and resources necessary to receive the most value from OpenGov's solutions. Training is managed and produced by our Customer Success Team made up of government finance experts. During Deployment, your OpenGov Customer Manager and Implementation Analyst will provide your team with individualized training to get your platform up and running and to ensure your organization has a top-notch engagement and adoption plan for your users.

Throughout deployment and post-deployment our customers are provided with training resources on our resource center and through our learning management system. Monthly webinars are also offered to train customers about a new and engaging topic. Additionally, our Customer Support team is available to troubleshoot issues and ensure that our customers have a great experience with OpenGov. All of our customers have a dedicated Project Manager and Customer Manager who work with the customer teams every step of the way. We pride ourselves on our ability to partner with customers and complete successful projects, and we provide a flexible and comprehensive set of channels for customers to gain service from us.

We have three main components to our philosophy for ensuring successful and happy customers.

1. **Access to our team of Government Solution Experts:** This team, comprised of former government finance directors, chief information officers, budget and performance analysts, and others, provides insight and expertise, leading best practices, and context to the people that build, sell and ultimately use OpenGov, driving efficiency and outcomes for your agency.
2. **Customer Success:** Our Customer Success team supports you from deployment through adoption and beyond. You will get up and running quickly and receive the training and support you need to maximize the value of your investment in the OpenGov Smart Government Cloud.
3. **Customer Support:** Our team of highly trained support analysts are available to solve any issues you have with any part of your solution within OpenGov's solutions. We're committed to resolving your issues as quickly as possible.

Resources and Support

As an OpenGov customer, you are supported by our Customer Success team from deployment through adoption and beyond. When you contact OpenGov, your first point of contact will be a real, live person. OpenGov provides best-in-class standard support resources such as telephone, email, and an online portal as well as additional support channels like webinars, user groups, a resource center, and a thriving community of tips and best practices provided by your peers.

- **Technical Support:** Our team of highly trained support analysts are available to solve any issues you have with any part of your solution within the OpenGov Cloud.
- **OpenGov Community:** OpenGov has a safe and secure online community for government professionals to connect with their peers, share their experiences, and learn best practices.
- **User Groups:** Our subject matter experts host regular user groups online and in-person. Learn from the pros and your peers!
- **Resource Center:** We provide you with articles and videos to enhance your learning and education of OpenGov.
- **Free Webinars:** As a customer, you can look forward to engaging and informative webinars. Get a crash course in performance management or learn about the latest features of your OpenGov software.
- **Live Chat:** Contact support seamlessly while using the product through our live chat feature staffed by the Customer Success team.

Premium Services

Furthermore, OpenGov offers Premium Services to help organizations on their journey to successfully adopting OpenGov's solution suites. Customers can use Premium Services hours for hands-on configuration, trainings, and consultations to provide the additional structure, support, and guidance needed to use the OpenGov software most effectively. Premium Services also fast-tracks Support team responses, ensuring white glove treatment and speedy resolutions. The table below outlines the various support offerings that we provide our customers.

Offering	Standard	Premium
Unlimited Number of Support Cases per Year*	✓	✓
Unlimited Access to OpenGov Resource Center	✓	✓
Unlimited Online access to the Support Request Portal	✓	✓
Access to Phone/Chat Support 4:00 AM PT to 7:00 PM PT Monday through Friday, excluding OpenGov holidays	✓	✓
Designated OpenGov Contact	-	✓
Increased Response Times	-	✓
Response Times by Service Levels**		First Response Times
Urgent	One (1) Business Hour	One (1) Calendar Hour
High	One (1) Business Day	Two (2) Business Hours
Normal	Four (4) Business Days	Eight (8) Business Hours
Low	Eight (8) Business Days	Two (2) Business Days

* Support Cases are defined as issues related to the OpenGov Software Services.

**Assignment of Severity Levels: OpenGov will determine the Severity Level assigned to each support issue in its reasonable discretion, but taking into consideration the Severity Level input by Customer.

OpenGov's Support Philosophy is simple: You invest in us. We invest in you. We are driven by customer success. If you ever need help or have questions about your system, we want to make sure you get well-informed, proactive support from the OpenGov team. Our goal is 100% satisfaction.

Critical High-Value Adds

Ongoing Product Updates, At No Additional Cost. OpenGov develops its own cloud-hosted, SaaS products that are available 24/7 through the use of any web browser, on any computer. While traditional software is installed on-premise and places a heavy burden on every customer to maintain and update, OpenGov's SaaS model guarantees that every customer is always using the latest features and enhancements to our software. This means that you would no longer need to pay for expensive customizations and teams of programmers to maintain a complex, unsustainable, and unreliable solution. Instead, you will receive a product that incorporates feedback from all governments in OpenGov's network, with updates occurring automatically every two weeks and ongoing support, giving your team a solution that is scalable, sustainable, easy-to-use, and affordable.

Our updates are applied frequently and effortlessly to the customers. Because the software is centrally housed, new releases do not require an installation. With OpenGov, you will have access to a platform that updates immediately, without a formal upgrade process and effort.

Unlimited Usage Model. OpenGov's software was created to be useful, usable, and used by our customers, not to be sequestered to a small group of users with licenses. For this reason, our design enables non-technical users to quickly become proficient at using our software effectively and we refuse to issue licenses so that our software can be used as widely as possible across the organization. We view ourselves as more successful when our customers are able to leverage our software for as much value as possible without encountering artificial boundaries to its usage.

OpenGov provides an unlimited usage model. OpenGov does not charge our customers based on how many datasets they post to our platform. As the project scales, we also do not charge extra based on number of users nor per server nor per dataset. Rather, we charge a flat, annually recurring fee to encourage our customers to post as many datasets and to add users as they deem fit. OpenGov wants our customers to use the site as much as possible without usage constraints. Additionally, this provides our customers with the ability to easily budget for the cost of the software without fear of mid-year increases.

As mentioned above, with OpenGov's SaaS model, our customers will gain access to rapid, continual, and significant capabilities consisting of two-week product releases that will be available to our customers at no extra cost. These product releases are dictated by feedback from customers and their ever-evolving priorities. OpenGov is continually innovating and constantly improving our platform to supply software that is made for Government by Government.

Customer Manager (CM) Support Model. OpenGov customers benefit from a support model that relies upon dedicated CM's who will be your main point of contact post-deployment. Our team of highly experienced CM's will collaborate with the project leaders to ensure that your overarching goals are incorporated and managed during and after deployment. With our highly configurable software, our CM's work closely with you to deliver the most value to your organization so your needs are met.

Partnership Investment Summary

OpenGov's pricing model consists of a flat, annual subscription for the associated software and professional services components. Our professional services include everything needed to ensure a successful launch: Design, Configuration, Implementation, and Training. **OpenGov offers a non-restrictive, unlimited pricing model, meaning customers are not limited to number of users, logins, dashboards, reports or datasets.** Rather, we charge a flat, annually recurring subscription fee to encourage our customers to utilize the platform, increase adoption throughout their organization, get valuable unlimited usage, and have a predictable annual cost.

Budgeting & Planning Suite

Texas DIR Pricing Summary Contract DIR-TSO-4227

Software	Description	List Price	DIR Price	Midland's Price	Payment Schedule
Budgeting & Planning Suite, with Premium Support	• Operating Budget • Capital Improvement • Workforce Planning • Online Budget Book • Reporting & Transparency Platform • Tyler Munis Integration • Premium Support	\$249,254	\$154,659	\$119,400	Annual Unlimited Users
Deployment Fee					
Professional Services	• Reporting & Transparency • Online Budget Book • Tyler Munis Integration	\$63,869	\$51,096	\$46,410	One-Time
Total*					
March 2023	\$116,060 (Prorated annual subscription + one-time)				
Oct 2023	\$119,400				
Oct 2024	\$119,400				
Oct 2025	\$119,400				



City Council Meeting

Item Number: 10
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Mark Widmann, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF THE SEVENTH AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT ADJUSTING THE ANNUAL FEE TO \$719,135.58 AND PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (ADMINISTRATIVE SERVICES)

Purpose:

To extend the current interlocal Management Services Agreement between the City of Midland and Midland Memorial Hospital with a three-percent (3%) fee increase.

Recommended City Council Action:

Approve

Fiscal Impact:

The annual fee for the Health & Wellness Center (Clinic) will remain at the current cost of \$719,135.58. Payment from funds available in the Group Health Fund.

Discussion:

This amendment will provide continued quality healthcare at the Health & Wellness Center located at 709 W Louisiana Avenue to our plan members. The services provided include:

- Walk-in services or Appointment basis.
- Episodic Care: Assessment and treatment of medical conditions that are episodic in nature and short duration.

- Management of chronic conditions.
- Routine annual exams and screenings.
- Lab Draws.
- Biometric screenings.
- Flu shot clinics
- Health Maintenance and Disease Prevention Chronic Condition Coaching

Jina Gang

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
THE SEVENTH AMENDMENT TO THE INTERLOCAL
MANAGEMENT SERVICES AGREEMENT BETWEEN
THE CITY OF MIDLAND, TEXAS AND MIDLAND
COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS
MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN
MEDICAL AND WELL-BEING SERVICES; SAID
AMENDMENT ADJUSTING THE ANNUAL FEE TO
\$719,135.58 AND PROVIDING FOR THE HOSTING OF
INFLUENZA CLINICS; AND AUTHORIZING PAYMENT**

WHEREAS, the City Council, by Resolution No. 2015-385, authorized the execution of an interlocal management services agreement with Midland County Hospital District, doing business as Midland Memorial Hospital, to provide certain medical and well-being services (the “Agreement”); and

WHEREAS, the City Council, by Resolution No. 2017-057, authorized the execution of the first amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2018-287, authorized the execution of the second amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2019-089, authorized the execution of the third amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2020-063, authorized the execution of the fourth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2021-023, authorized the execution of the fifth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2022-020, authorized the execution of the sixth amendment to the Agreement; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a seventh amendment (the “Amendment”) to the Agreement to adjust the annual fee to \$719,135.58 and to provide for the hosting of influenza clinics;

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 execute, on behalf of the City of Midland, the Amendment to the Agreement with Midland County Hospital District, doing business as Midland Memorial Hospital. Said Amendment shall be in a form substantially similar to that attached hereto and incorporated herein as Exhibit "A".

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Midland County Hospital District, doing business as Midland Memorial Hospital, pursuant to the terms of the Agreement, as amended, from funds available in the Group Health Fund upon receipt of proper invoices or statements approved by the Administrative Services Director.

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., 2023, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Mark Widmann, Administrative Services
Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

SEVENTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS SEVENTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT ("Amendment") is made and entered into as of April 1, 2023 for and in consideration of the covenants and agreements contained herein, and in order to obtain the mutual benefits provided herein, this Amendment is made and entered by and between the City of Midland (hereafter referred to as the "City") and Midland County Hospital District dba Midland Memorial Hospital ("Hospital"), a political subdivision of the State of Texas.

Recitals:

WHEREAS, the City and Hospital entered into that certain Management Services Agreement on the 16th day of December 2015 ("Agreement") wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City's qualified health plan; and

WHEREAS, the City and Hospital, amended the Agreement, the First Amendment with an Effective Date of February 1, 2017 and the Second Amendment with an Effective Date of April 1, 2018; the Third Amendment with an Effective Date of April 1, 2019, the Fourth Amendment effective Date of April 1, 2020, the fifth Amendment effective Date of April 1, 2021; and the sixth Amendment effective Date of April 1, 2022; and

WHEREAS, the City and Hospital desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the City and Hospital hereby agree to amend the Agreement as follows:

Amendments:

1. **Amendment to Section 2.01.** Section 2.01 "Monthly Fee" of the Agreement is amended to incorporate rate increases as permitted under Section 2.03, "Rate Increases" and shall be replaced in its entirety with the following:

"2.01 **Monthly Fee.** An annual fee of \$719,135.58 will be billed in twelve (12) equal monthly installments of \$59,927.97. Within thirty (30) days of receipt of the Hospital monthly invoices, City shall pay to Hospital the amount invoiced. Hospital will notify the City immediately in writing if the City fails to pay Hospital as required herein. Failure to pay Hospital will result in loss of Health & Wellness Center access commencing sixty (60) days after the nonpayment from the date of the outstanding invoice. Hospital shall deduct \$2,083.34 per month from April 1, 2023 to March 31, 2024 for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital's employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred

by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

2. **Amendment to Exhibit A – "Scope of Services"**. Exhibit A "Scope of Services" of the Agreement is amended to include the addition of influenza clinics to the listing of primary care services. The following shall be added to the section titled "Primary care" in Exhibit A following the "Travel Medicine" subsection to read as follows:

“ • Influenza Clinics

° Midland Health will conduct two influenza clinics in locations as directed by the City of Midland. The cost of the influenza injections and accompanying costs of conducting clinics are included in the monthly costs shown in Section 2.01.”

3. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of the Amendment by facsimile or electronic transmission will be deemed to be an original counterpart of the Amendment so transmitted.

4. **Headings**. The headings contained in this SEVENTH Amendment have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions thereof or hereof. Terms used but not defined herein shall have the meanings assigned to them in the Agreement.

5. **Effect of SEVENTH Amendment**. The Agreement shall be modified only by the express provisions of this SEVENTH Amendment and the Agreement as amended hereby shall otherwise remain in full force and effect.

6. **Entire Agreement**. This SEVENTH Amendment together with the Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, and this SEVENTH Amendment constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

[Remainder of page intentionally left blank. Signature pages follow.]

SIGNATURE PAGE OF

SEVENTH Amendment to Management Services Agreement

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day
and year first written above.

City of Midland

By: _____
Name: Robert Patrick
Title: City Manager

**Midland County Hospital District dba
Midland Memorial Hospital**

By: 
Name: Stephen Bowerman
Title: President & COO

SEVENTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS SEVENTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT (“Amendment”) is made and entered into as of April 1, 2023 for and in consideration of the covenants and agreements contained herein, and in order to obtain the mutual benefits provided herein, this Amendment is made and entered by and between the City of Midland (hereafter referred to as the “City”) and Midland County Hospital District dba Midland Memorial Hospital (“Hospital”), a political subdivision of the State of Texas.

Recitals:

WHEREAS, the City and Hospital entered into that certain Management Services Agreement on the 16th day of December 2015 (“Agreement”) wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City’s qualified health plan;

WHEREAS, the City and Hospital, amended the Agreement, the First Amendment with an Effective Date of February 1, 2017 and the Second Amendment with an Effective Date of April 1, 2018; the Third Amendment with an Effective Date of April 1, 2019, the Fourth Amendment effective Date of April 1, 2020, the fifth Amendment effective Date of April 1, 2021; and the sixth Amendment effective Date of April 1, 2022.

WHEREAS, the City and Hospital desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the City and Hospital hereby agree to amend the Agreement as follows:

Amendments:

1. **Amendment to Section 2.01.** Section 2.01 “Monthly Fee” of the Agreement is amended to incorporate rate increases as permitted under Section 2.03, “Rate Increases” and shall be replaced in its entirety with the following:

“2.01 Monthly Fee. An annual fee of \$719,135.58 will be billed in twelve (12) equal monthly installments of \$59,927.97. Within thirty (30) days of receipt of the Hospital monthly invoices, City shall pay to Hospital the amount invoiced. Hospital will notify the City immediately in writing if the City fails to pay Hospital as required herein. Failure to pay Hospital will result in loss of Health & Wellness Center access commencing sixty (60) days after the nonpayment from the date of the outstanding invoice. Hospital shall deduct \$2,083.34 per month from April 1, 2023 to March 31, 2024 for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital’s employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred

by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

2. **Amendment to Exhibit A – "Scope of Services"**. Exhibit A "Scope of Services" of the Agreement is amended to include the addition of influenza clinics to the listing of primary care services. The following shall be added to the section titled "Primary care" in Exhibit A following the "Travel Medicine" subsection to read as follows:

“ • Influenza Clinics

° Midland Health will conduct two influenza clinics in locations as directed by the City of Midland. The cost of the influenza injections and accompanying costs of conducting clinics are included in the monthly costs shown in Section 2.01.”

3. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of the Amendment by facsimile or electronic transmission will be deemed to be an original counterpart of the Amendment so transmitted.

4. **Headings**. The headings contained in this SEVENTH Amendment have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions thereof or hereof. Terms used but not defined herein shall have the meanings assigned to them in the Agreement.

5. **Effect of SEVENTH Amendment**. The Agreement shall be modified only by the express provisions of this SEVENTH Amendment and the Agreement as amended hereby shall otherwise remain in full force and effect.

6. **Entire Agreement**. This SEVENTH Amendment together with the Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, and this SEVENTH Amendment constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

[Remainder of page intentionally left blank. Signature pages follow.]

SIGNATURE PAGE OF

SEVENTH Amendment to Management Services Agreement

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day
and year first written above.

City of Midland

By: _____
Name: _____
Title: _____

**Midland County Hospital District dba
Midland Memorial Hospital**

By:  _____
Name: Stephen Bowerman
Title: President & COO



City Council Meeting

Item Number: 11
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Cristina O. Burns, Director of Community Services
Subject: Motion authorizing the execution of sports agreements with the following organizations: Boys and Girls Club of the Permian Basin; Greater Midland Football League; Midland Junior Baseball Association, Inc.; Midland Soccer Association, Inc.; Midland Softball Association, Inc.; Midland United Girls Softball Association, Inc.; Texas Cricket Club; Under the Lights Flag Football League; West Texas BMX; and the YMCA of Midland; said agreements providing for the organizations' administration of recreational programs, special events, and other related services through the use of City-owned property and facilities. (DISTRICT: ALL) (COMMUNITY SERVICES)

Purpose:

Consider a motion authorizing the execution of sports agreements with the following organizations: Boys and Girls Club of the Permian Basin; Greater Midland Football League; Midland Junior Baseball Association, Inc.; Midland Soccer Association, Inc.; Midland Softball Association, Inc.; Midland United Girls Softball Association, Inc.; Texas Cricket Club; Under the Lights Flag Football League; West Texas BMX; and the YMCA of Midland; said agreements providing for the organizations' administration of recreational programs, special events, and other related services through the use of City-owned property and facilities.

Recommended City Council Action:

Approve

Fiscal Impact:

Maintenance of athletic facilities is in the current operating budget of the Parks Division. The City, if funds are available, can match an association's funds for capital improvement projects over \$5,000 through the budget process.

Discussion:

Through these annual sports agreements, the listed sports associations agree to provide sport activities and programs to the citizens of Midland. The associations handle advertisement, sign-ups, and scheduling of seasonal competition and tournaments. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This year, there was a condition added to the agreements for several associations that currently use City owned concession facilities. This condition provides the associations the exclusive access and use of the concession facilities during their scheduled events; however, the City may rent the facilities to other groups when not in use by the associations.

These sports agreements will again require the sports associations to have a \$1 million liability insurance naming the City of Midland as an additional insured.

Attachments:

Sports Agreements



City Manager's Office

BOYS AND GIRLS CLUB OF THE PERMIAN BASIN
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (City), and Boys and Girls Club of the Permian Basin (Association).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to flag football and soccer activities for youth and adult participants at Taylor Park. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football/soccer events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.

Director of Community Services - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled flag games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of the activities contemplated by this Agreement, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the ACity Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, mowers, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by

The Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.
- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or

practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY

INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon a non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the

term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject

matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
P.O. Box 1152
Midland, Texas 79702
Attention: City Manager

with copies to: City Attorney and
Director of Community Services and
Recreation Manager
at the same address

If to Boys and Girls Club of the Permian Basin
Association: Taylor Park Facility
1321 S. Goode St.
Midland, Texas 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City’s approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of

damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

[Signature Page Follows]

BOYS AND GIRLS CLUB
OF THE PERMIAN BASIN

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

,

22

PACKET

11.24

February 14, 2023

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Boys and Girls Club of the Permian Basin.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

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GREATER MIDLAND FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Greater Midland Football League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to football activities for youth ages eight (8) to twelve (12) at the Scharbauer Sports Complex. Association shall have the right to collect fees and income generated by Association’s football activities for youth ages eight (8) to twelve (12). This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE 1 - DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.

- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 - 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.

- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played

during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to prepare playing fields; and
 - 4. Preparing playing fields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a

written request on or before the 31st day of March during the term of this Agreement, and

(ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost.

Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with City's Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the ACity Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.

- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.

- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association 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 Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all 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 Association's work. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be

in an amount not less than \$1,000,000.00 combined single limit, per project aggregate and on an occurrence basis. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per project aggregate and on an occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION 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, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF

ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a

post office or official depository under the care and custody of the United States

Postal Service addressed as follows:

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Recreation Manager at the same address
If to Association:	Greater Midland Football League 2510 Regency Oaks Midland, Texas 79705

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing,

dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION 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.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES

Before the Association may file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the

time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

GREATER MIDLAND FOOTBALL LEAGUE

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

'

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Greater Midland Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

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MIDLAND JUNIOR BASEBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Junior Baseball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to baseball activities for young men ages Nineteen (19) and younger at Beal Park, Butler Park, CJ Kelly Park, Hogan Park, Reyes/Mashburn/Nelms Park, and Windlands Park. Association shall have the right to collect fees and income generated by Association’s baseball activities for young men ages Nineteen (19) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field(s)** - nine (9) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association's championship games or tournaments, comprised of Little League Fields #1 and #2 at Beal Park, Little League Fields #1 and #2 at Butler Park, Little League Field #1 at C.J. Kelly Park, Little League Fields #1 and #2 at Reyes/Mashburn/Nelms Park, and Little League Fields #1 and #2 at Windlands Park.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the nine (9) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;

2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of

the City Manager constitutes grounds for immediate termination of this Agreement.

- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 - 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.

- L. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted

as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole

and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director, who shall be responsible for all communications with the Parks and Recreation Division about facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS

to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of the City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other

person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, Apremises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION 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, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF

ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

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

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

with copies to: City Attorney and
Director of Community Services and
Recreation Manager
at the same address

If to Association: Midland Junior Baseball Association, Inc.
P.O. Box 52101
Midland, Texas 79710

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or

permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property pursuant to the terms of this Agreement during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE

AGAINST CITY REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION 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.

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas

Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

MIDLAND JUNIOR BASEBALL ASSOCIATION,
INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

,

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Junior Baseball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

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MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Soccer Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to soccer for adults and youth at Beal Park, Butler Park, Hogan Park, Reyes/Mashburn/Nelms Park, and Windlands Park. Association shall have the right to collect fees and income generated by Association’s soccer activities for adults and youth. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland, Texas, and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Provide general field maintenance which will include:
 - 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 - 5. Making major repairs to City-owned equipment and fixtures.
- E. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- F. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- G. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- H. Respond to emergency maintenance requests on a priority basis as determined by City.

- I. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- J. Coordinate with Association regarding provision and permitting/licensing of vendors.
- K. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.
- L. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for

Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association

acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to the City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.

- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare fields "unplayable" for games and practice due to wet or adverse weather.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an

outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection

with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.

- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. The Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION 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, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual

orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The decision regarding whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party=s electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and

enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to Association: Midland Soccer Association, Inc.
 3500 N. A Street
 Suite 1600
 Midland, TX 79705

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and

this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated after the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

City=s approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months

immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association=s notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

MIDLAND SOCCER ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

 '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Soccer Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

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MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball activities for persons ages fifteen (15) and older at the Bill Williams Softball Complex at Hogan Park. Association shall have the right to collect fees and income generated by Association’s softball activities for persons ages fifteen (15) and older. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - six (6) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association’s championship games or

tournaments, comprised of the six (6) adult softball fields within the Bill Williams Softball Complex at Hogan Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the six (6) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;

3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
 5. Dragging infields prior to tournaments;
 6. Making major repairs to City-owned equipment and fixtures; and
 7. Picking up fencing after tournaments.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, game officials, and custodial staff needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields and set pitching mounds, foul lines or batter boxes if applicable; and
 - 4. Setting pitching mounds for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the field "unplayable" for games or practice due to wet and adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use

of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association 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 Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association.

No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by

City, including but not limited to all park property, and personal property owned by Association which is located on City property.

- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and

the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The decision regarding whether or not to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate,

this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of

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

If to Midland Softball Association, Inc.
Association: 4487 Hackberry Ct.
Midland, Texas 79707

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not

have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE

CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION 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.

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

[Signature Page Follows]

MIDLAND SOFTBALL ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

 '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

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MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland United Girls Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball for young women ages eighteen (18) and younger at MUGS Softball Complex at Ulmer Park. Association shall have the right to collect fees and income generated by Association’s activities for young women ages eighteen (18) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - eleven (11) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association’s championship games or

tournaments, comprised of the nine (9) fields within the Freddie Ezell Complex at Ulmer Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the eleven (11) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;

3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
 4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
 5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
 6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
 7. Association shall abide by all conditions and requirements as set out in this Agreement; and
 8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;

2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event.

The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:

1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.

- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields “unplayable” for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this

Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association 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 Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an

independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any

and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten

(10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, Apremises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT

ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association

shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

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

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the

Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to Midland United Girls Softball Association, Inc.
Association: P.O. Box 10574
 Midland, Texas 79702

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION 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.

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and

addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association'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. Association agrees that the requirements of this entire Agreement are reasonable.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

[Signature Page Follows]

MIDLAND UNITED GIRLS SOFTBALL
ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland United Girls Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of _____, 2023.

Notary Public, State of Texas

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TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Texas Cricket Club (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to cricket at Beal Park. Association shall have the right to collect fees and income generated by Association’s cricket activities. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one playing field, as agreed by Association and the City Manager, reserved for Association’s championship games or tournaments, comprised of one (1) cricket field at Beal Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions. In addition, at the discretion of the City Manager and with advice from the Recreation Manager, Association may be allowed to designate one (1) Playing Field as a AChampionship Field.' Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;

3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;
4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.

- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director,' who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the ACity Liaison.'

- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- A. Abide by all requirements and obligations as set out in this Agreement.
- B. City reserves the right to declare the fields "unplayable" for games and practice due to wet and adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said

fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.

- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of

the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to

this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, Apremises' shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR,

ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

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

B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to
Association: Texas Cricket Club
5200 Sunshine Parkway
Midland, TX 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION,

INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

[Signature Page Follows]

TEXAS CRICKET CLUB

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

 '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Texas Cricket Club.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

L:\Contracts\Community Services\Agreements\2023\Texas Cricket Club.docx

UNDER THE LIGHTS FLAG FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Under the Lights Flag Football League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to flag football activities for youth and adult participants at CJ Kelly Park and the Scharbauer Sports Complex. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I- DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of flag football events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary markers; and
 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 4. Preparing playing field for all flag football events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or

apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association 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 Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its

employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's

obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A

PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police

departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has

received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject

matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
P.O. Box 1152
Midland, Texas 79702
Attention: City Manager

with copies to: City Attorney and
Director of Community Services and
Recreation Manager
at the same address

If to Under the Lights Flag Football
Association: 6007 Oak Creek Drive
Midland, TX 79707

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

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

RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City’s approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing

addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

UNDER THE LIGHTS
FLAG FOOTBALL LEAGUE

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

 '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Under the Lights Flag Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

L:\Contracts\Community Services\Agreements\2023\Under the Lights Flag Football.docx

WEST TEXAS BMX
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and West Texas BMX (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to BMX riding and racing at Reyes/Mashburn/Nelms Park. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national BMX events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Racetrack** - any single area of Park Property, located at Reyes/Mashburn/Nelms Park, which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one racetrack, as agreed by Association and the City Manager, reserved for Association’s championship BMX events or tournaments.
- D. **City Manager** - the City Manager of the City of Midland, Texas.

- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting BMX events and practice sessions. In addition, at the discretion of the City Manager and with advice from the Recreation Manager, Association may be allowed to designate one (1) racetrack as a Championship Field. Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
 - 3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;

4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager at his sole discretion;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of Racetrack area once a week during the growing season, adjustments may be made for BMX events;
2. Fertilizing in April and September with a third application if feasible as determined by City;

3. Filling significant holes in track areas;
 4. Cutting necessary field lines prior to each Association season and prior to national events if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled BMX events, and electricity for scheduled practices.
- H. Provide all maintenance for trees and shrubs surrounding Racetrack as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled BMX events and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of BMX events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all BMX events and practices to occur during the season, including all races and special BMX events. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City

two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the BMX events.
- E. Prepare racetracks prior to BMX events, including:
 - 1. Marking or cutting any and all necessary lines on racetracks;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare BMX facility; and
 - 4. Preparing racing surface for all BMX events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost.

Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).

- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

V. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by

City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.

- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and

the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion,

allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of

each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to West Texas BMX
Association: PO Box 9602
 Midland, TX 79708

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or

locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled BMX events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO

THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred twenty (120) days after the same

has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

WEST TEXAS BMX

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

,

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the West Texas BMX.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

YMCA OF MIDLAND SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2023, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and YMCA of Midland (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to flag football, kickball, and soccer activities for youth and adult participants at Hogan Park. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of youth sporting events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare for youth sporting activities; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by The Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use

of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2023, through February 22, 2024. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association 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 Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association.

No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which

names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined-single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not

deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association 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. Association shall not use an unapproved certificate of insurance or insert

inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR

PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to

people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under

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

If to Association: YMCA of Midland
800 N. Big Spring Street
Midland, Texas 79701

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity,

illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other

Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS

AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

City's approval of this Agreement does not create a third-party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

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NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION 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 ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred twenty (120) days after the same

has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association 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 Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Cristina Burns, Community Services Director

[Signature Page Follows]

YMCA OF MIDLAND

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

 '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the YMCA of Midland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

L:\Contracts\Community Services\Agreements\2023\YMCA of Midland.docx



City Council Meeting

Item Number: 12
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Ron Jenkins, Oil and Gas Coordinator
Subject: RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO MCM OPERATING, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE AND 1,550 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permit to MCM Operating, LLC ("Operator") for the drilling of the oil and gas well MB-7H; said well being generally located 485 feet south of Mockingbird Lane and 1,550 feet east of Holiday Hill Road. The required 30-day public comment has passed, and the Council may consider this request. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval. MCM Operating will be using 24 ft. tall sound walls on all sides of the well pad during drilling and fracing operations. Additionally, per sound survey will be utilizing portable 20 ft. tall

sound walls installed on north and south sides for the frac pumps during fracing operations to further minimize concerns with sound. Tank battery located in the county on the west side of Holiday Hill Road. Previously received permits for additional wells on this site on July 27, 2021 and January 11, 2022. MCM Operating does have a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, MCM Operating is requesting the following variances:

1. Requesting a variance to the hours of operation for fracture stimulations and to allow for frac operations to occur during a 24-hour period which will include the use a workover rig during the completion process following the fracing operations on the subject wells.
2. Requesting a variance to the landscaping plan, the proposed fencing plan provides adequate screening from adjacent roads and parcels. Additionally, MCM Operating, LLC will work with the surface owner/developer Los Conchos Ventures, LLC on future screening and landscaping.
3. Requesting a variance to have perimeter fence around entire pad site instead of the individual wellheads.

Attachments: Applications, Location maps, Exhibit - Drill site maps, Exhibit – Flow Line Location



City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO MCM OPERATING, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE AND 1,550 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on January 10, 2023; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas well:

MB-7H

located in Section 6, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 14, 2023, considered the application of MCM Operating, LLC ("Operator") dated November 1, 2022, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MB-7H oil and gas well shall be 1,550 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 14, 2023 through February 14, 2024, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND’S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND’S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.
2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of February 2023.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2023.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 14, 2023, considered the application of MCM Operating, LLC (“Operator”) dated November 1, 2022, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, “Oil and Gas Well Permits Issued On or After January 1, 2010” (Ordinance 8769), to drill an oil and gas well as requested in Operator’s application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator’s MB-7H oil and gas well shall be 1,550 feet from the west line and 485 feet from the north line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator’s application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, “Oil and Gas Well Permits Issued On or After January 1, 2010” (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 14, 2023 through February 14, 2024, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, “Oil and Gas Well Permits Issued On or After January 1, 2010” (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND’S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND’S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.
2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of February 2023.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

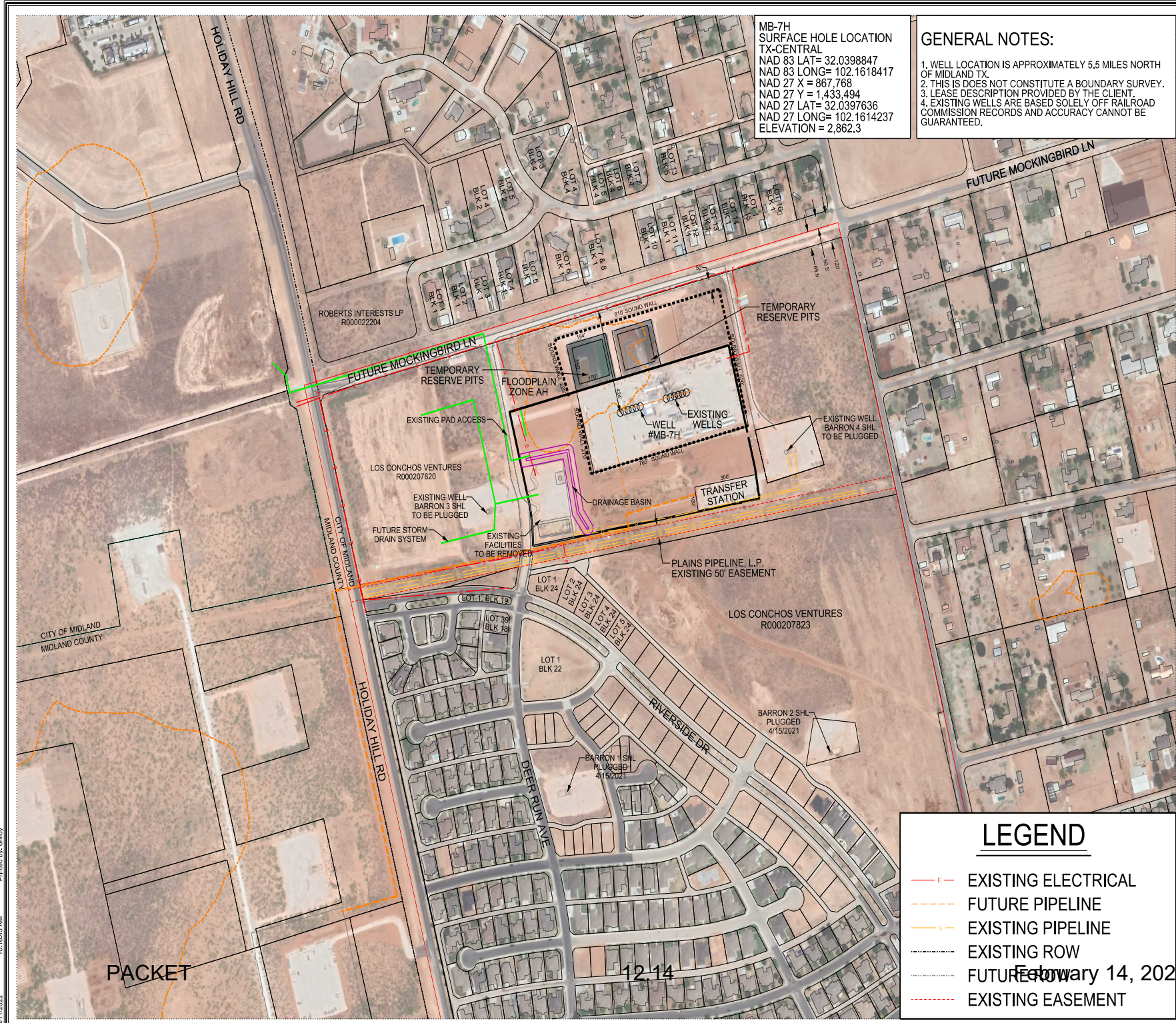
UNDERSTOOD AND AGREE THIS _____ day of February 2023.

MCM Operating, LLC

By: _____

Matthew Chitwood

Vice President of Land



MB-7H
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.0398847
NAD 83 LONG= 102.1618417
NAD 27 X = 867,768
NAD 27 Y = 1,433,494
NAD 27 LAT= 32.0397636
NAD 27 LONG= 102.1614237
ELEVATION = 2,862.3

- GENERAL NOTES:**
- 1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
 - 2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
 - 3. LEASE DESCRIPTION PROVIDED BY THE CLIENT.
 - 4. EXISTING WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.

MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:


MCM ENERGY PARTNERS

MCM OPERATING, LLC
223 W. WALL ST., SUITE 400
MIDLAND, TX 79701
PHONE: (432) 685-1790

SITE PLAN PREPARED BY:


PELTON
LAND SOLUTIONS

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 1017700

WELLS AND PADS STAKED BY:


LNV
an LNC Energy Company

LNV
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10126500

PROJECT NO: MCM2001
FILE PATH: Planning\Exhibits\MB 7H
DRAWN BY: AW
REVIEWED BY: CH
DATE: 10/10/2022
REV:


NORTH


GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'G' - 1
DRILL SITE, GATHERING LINES,
ACCESS ROAD, ELECTRIC

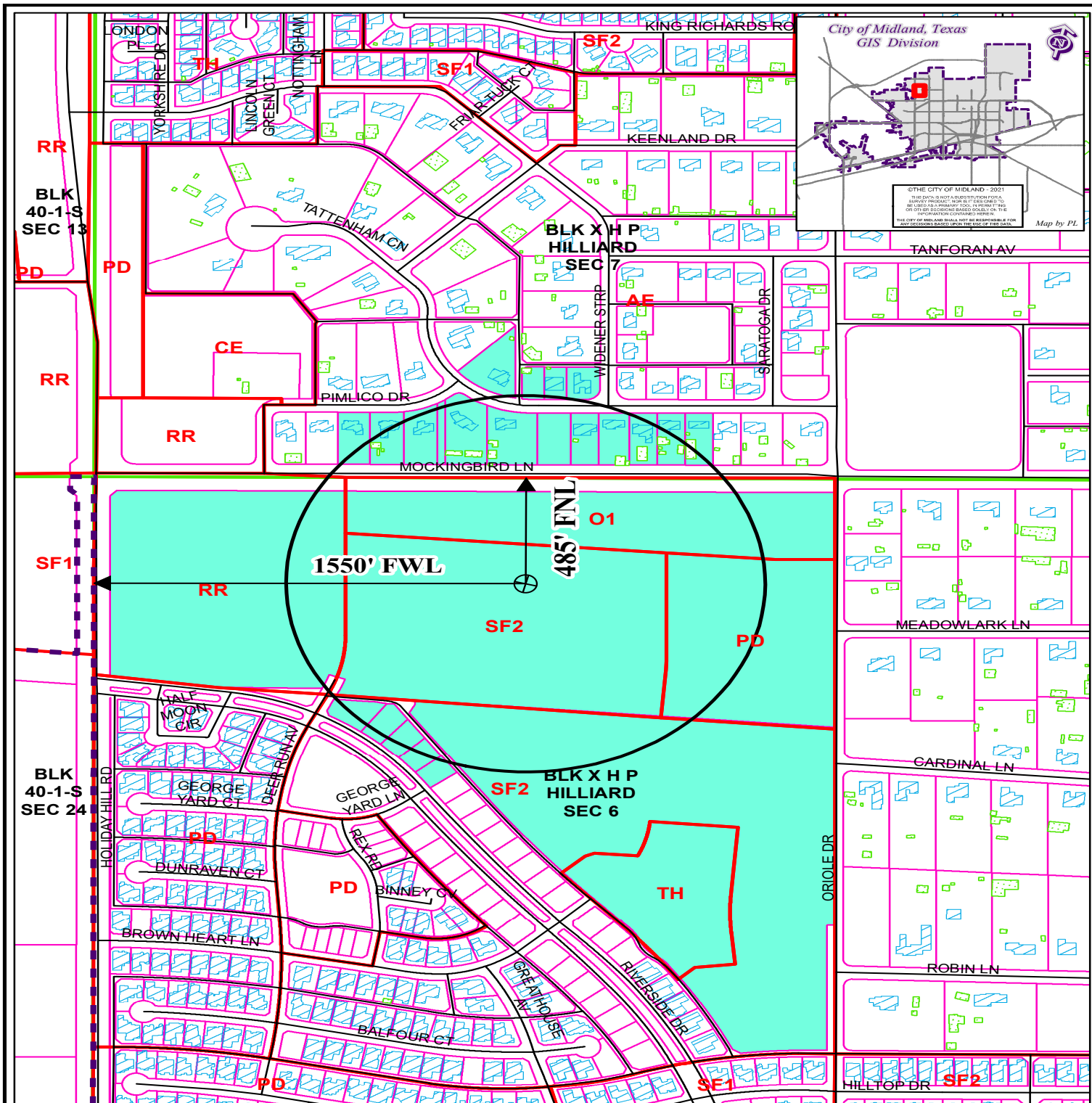
**MOCKINGBIRD
MB-7H**

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

LEGEND

- E — EXISTING ELECTRICAL
- - - FUTURE PIPELINE
- - - EXISTING PIPELINE
- - - EXISTING ROW
- - - FUTURE ROW
- - - EXISTING EASEMENT

February 14, 2023



LOCATION AND ZONING MAP

Oil-047801-2022

Scale: 1" = 500'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,550' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane and 1,550 feet east of Holiday Hill Road.

PACKET

MB-7H

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
12.16	COUNTRY ESTATE	CI, C2, C3	COMMERCIAL
MH	ONE-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
TH	MOBILE HOME DWELLING	LI	LIGHT INDUSTRY
2F	TOWNHOUSE DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	TWO-FAMILY DWELLING		
	MULTIPLE FAMILY DWELLING		

February 14, 2023



City Council Meeting

Item Number: 13
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Ron Jenkins, Oil and Gas Coordinator
Subject: RESOLUTION APPROVING AMENDMENTS TO THE PERMITS ISSUED TO MCM OPERATING, LLC ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); SAID AMENDMENTS (1) AUTHORIZING PORTABLE SOUND WALLS TO BE INSTALLED ON THE NORTH AND SOUTH SIDES OF THE FRAC PUMPS, (2) REQUIRING FRAC SAND TO BE DELIVERED AND OFFLOADED USING BELLY DUMP TRUCKS, AND (3) REQUIRING UTILIZATION OF A MONOLINE / ZIPPER MANIFOLD (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving amendments to the permits issued to MCM Operating, LLC ("Operator") to drill five oil and gas wells located in Section 1, Block X, H.P. Hilliard Survey, City of Midland, Midland County, Texas (Generally located 485 feet south of Mockingbird Lane Extension and between 1,450 feet and 1,530 feet east of Holiday Hill Road); said amendments authorizing the use of portable sound walls around frac pumps during fracing operations. Council approved the proposed drill sites on January 11, 2022; however, the applicant is requesting consideration of amended drilling conditions. Permits were authorized by the City Council by Resolution Nos. 2022-010.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The amending condition proposed by MCM Operating, Inc, is to amend the permit to allow the use of 20-foot portable sound walls around frac pumps during fracing operations in place of using a Quiet Frac Crew. MCM Operating included sound level survey and comparison study for this additional sound walls including the 24 ft. sound walls around the pad site. In addition, frac sand will be delivered and offloaded using belly dump trucks which are quieter than using pneumatic sand trucks. Fracing operations will utilize a monoline/zipper manifold to reduce additional noise. MCM's intent is to meet the original permit conditions and will function as a Quiet frac system.

Attachments: Amending Letter of request, TruHorizon Sound Level Study, location map,



City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENTS TO THE PERMITS ISSUED TO MCM OPERATING, LLC (“OPERATOR”) TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 485 FEET SOUTH OF MOCKINGBIRD LANE EXTENSION AND BETWEEN 1,450 FEET AND 1,530 FEET EAST OF HOLIDAY HILL ROAD); SAID AMENDMENTS (1) AUTHORIZING PORTABLE SOUND WALLS TO BE INSTALLED ON THE NORTH AND SOUTH SIDES OF THE FRAC PUMPS, (2) REQUIRING FRAC SAND TO BE DELIVERED AND OFFLOADED USING BELLY DUMP TRUCKS, AND (3) REQUIRING UTILIZATION OF A MONOLINE / ZIPPER MANIFOLD

WHEREAS, the City Council previously approved the issuance of the permits referenced in the caption hereof to Operator to drill the following oil and gas wells within the City limits: MB-8H; MB-9H; MB-10H; MB-11H; and MB-12H; and

WHEREAS, the City Council finds it to be in the public interest to approve amendments to said permits;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a document amending said permits. Said amendment document shall be in a form substantially similar to that attached hereto as Exhibit “A”, which is incorporated herein for all legal purposes.

SECTION TWO. That all other terms and conditions of said permits shall remain in full force and effect.

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., 2023, by the following vote:

Council members voting “AYE”:

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

OIL AND GAS WELL PERMIT AMENDMENT

THIS AMENDMENT is made and effective February 14, 2023, by and between the City of Midland, Texas, a home-rule municipal corporation (the "City"), and MCM Operating, LLC ("Operator").

WHEREAS, the City previously issued those certain Oil and Gas Well Permits dated January 11, 2022 (collectively, the "Permits") to Operator to drill the following oil and gas wells within the city limits: MB-8H; MB-9H; MB-10H; MB-11H; and MB-12H; and

WHEREAS, the Permits were authorized by the City Council by Resolution No. 2022-10; and

WHEREAS, the Permits have been in full force and effect since their effective dates and have not been allowed to lapse; and

WHEREAS, Operator has requested that the City approve certain amendments to the Permits;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

ARTICLE I.

Each of the Permits is hereby amended by inserting the following paragraph:

The Midland City Council, in granting this permit, also allows the use of a 20-foot-tall source mitigation portable sound walls to be installed on the North and South sides of the frac pumps during frac operations. Frac sand shall be delivered and offloaded using belly dump trucks. Frac operations shall utilize a monoline/zipper manifold.

ARTICLE II.

The Permits, inclusive of this Amendment, shall in all respects remain in full force and effect in accordance with their provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

By: _____
Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

MCM OPERATING, LLC.

By: _____
Matthew Chitwood,
Vice President of Land

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this _____ day of _____, 20____, by Matt Chitwood, Vice President of Land of MCM Operating, LLC, on behalf of MCM Operating, LLC.

Notary Public – State of Texas



December 12, 2022

City of Midland
Attention: Ron Jenkins
Oil and Gas Coordinator
300 N. Loraine
Midland, Texas 78701

Re: Permit Application for an Amendment of the MB 8H – MB 12H
Original Permits issued January 11, 2022 (Reference No. 202-010)

Dear Mr. Jenkins:

MCM Operating, LLC respectfully requests an amendment to the conditions of the original permits issued on January 11, 2022, for the MB-8H – MB-12H.

In place of using a Quiet Frac Crew, as noted in the original permit applications dated October 19, 2021, MCM Operating will utilize the following methods to mitigate sound during operations.

- **Installation of Sound Walls Around Exterior of Pad Site** – During drilling and fracing operations, 24' tall (3 - 8' foot sections) sound walls would be utilized around the exterior of the pad site.
- **Installation of Portable Sound Walls Around Frac Pumps** – Approximate 20' tall source mitigation portable sound walls will be installed on the north and south sides of the frac pumps during fracing operations.
- **Utilizing Belly Dump Sand Trucks** – Frac sand will be delivered and offloaded using belly dump trucks, which are significantly quieter than pneumatic sand trucks.
- **Utilizing a Monoline/Zipper Manifold** – This system greatly reduces connections that need to be changed during the day, reducing hammering on equipment.

MCM Operating, LLC contracted with TruHorizon to prepare a baseline sound level survey and comparison study during the fracing operations of the MB-1H – MB-6H. The initial and comparison studies were completed in August 2022. As noted in the comparison study, after installing the temporary sound wall around the frac pumps, the South Onsite meter (100' from frac pumps inside the exterior sound walls) went from 84 dBA to 79 dBA. Due to the logarithmic nature of dBA levels, a reduction from 84 to 79 dB (-5 dBA) can be compared to reducing the sound level by approximately 50%. Outside the exterior sound walls, the South Offsite meter (350 from the exterior sound walls) went from 62 to 58 dBA. The North Offsite meter (closer to the exterior walls, went from 74 dBA to 70dBA (or less).

The implementation of the items above will meet the intent of the original permit conditions and will function as a quiet frac system. There are no other requested amendments to the permit's conditions. All of the original variances granted, including an allowance for 24-hour fracing operations, would remain in place.

Copies of the baseline sound level survey and comparison study are attached for reference.

Thank you and your staff for the time you have spent on these permit applications. Please contact me if you have any questions or if I can provide you with any additional information.

Respectfully,



Matt Chitwood
Vice President of Land
MCM Operating, LLC
223 W. Wall Street, Ste. 400
Midland, TX 79701
Office: 432-685-1790

Enclosures



PBEX Mockingbird Baseline Sound Level Survey

August 26, 2022

PBEX, LLC (PBEX) contracted Principal Environmental, LLC (TruHorizon) to perform a baseline sound level survey for existing operations at the Mockingbird site, located in Midland County, Texas. The following document provides the results and measurements conducted during the baseline sound level survey.

Executive Summary

From Friday, August 19, to Friday, August 26, 2022, TruHorizon conducted sound monitoring at four locations: northern on-site approximately 350 feet north from the center of the pad, northern off-site approximately 450 feet north from the center of the pad, southern on-site approximately 250 feet south from the center of the pad, and southern off-site approximately 550 feet south from the center of the pad. Table 1 shows the overall A-weighted and C-weighted averages produced by the study:

Table 1. Overall Study Averages

Description	LAeq (dBA)	LCeq (dBC)
North On-site MP	67.7	82.1
North Off-site MP	58.5	78.0
South On-site MP	77.8	89.1
South Off-site MP	57.9	75.1

Based on the study averages at the offsite locations, the sound levels produced by fracking operations on the Mockingbird are just below that of conversational speech and are below a common nuisance level. Based on the study averages at the on-site locations, the sound levels produced by fracking operations are more than that of conversational speech and are above a common nuisance level. **Mitigation (sound walls) separate the on and off-site locations.** The average wind speed during the study was 0.7 miles per hour, and the average precipitation was 0.2 inches. Predictive modeling is available through TruHorizon upon request to determine the proposed operations sound impact at nearby structures.

Ordinance Summary

There is currently no known sound level ordinance pertaining to Oil & Gas operations for Midland County, TX.



Site Information

The Mockingbird site is located to the south of Mockingbird Lane. From Friday, August 19, to Friday, August 26, 2022, TruHorizon conducted approximately 168 hours of monitoring at each monitoring location. The provided coordinates for the pad are 32° 2'24.06"N, 102° 9'41.42"W.

Table 2. GPS Coordinates and Distance from Center of Pad

Description	Longitude	Latitude	Distance (ft.)
North On-site MP	32° 2'27.23"N	102° 9'42.72"W	350
North Off-site MP	32° 2'28.24"N	102° 9'43.52"W	450
South On-site MP	32° 2'21.86"N	102° 9'42.40"W	250
South Off-site MP	32° 2'18.55"N	102° 9'40.52"W	550

Figure 1 below shows the monitoring points; photographs of the location are provided in Attachment 1.



Figure 1. Aerial view of Mockingbird with site shown in blue

The meter was set at a location agreed upon by both a PBEX and TruHorizon representative. There was no extraneous noise observed while on location that could contribute or skew sound levels.

PBEX Mockingbird Baseline Sound Level Survey



The closest neighborhood, Green Hill Terrace, is approximately 0.2 miles due north of the site. The closest road to the monitoring point, Mockingbird Lane is a moderately trafficked road and with primarily residential traffic.

Sound Level Meter Specifications

A Brüel & Kjær Type 2250, Type/Class 1, hand-held analyzer in conjunction with the Brüel & Kjær Type 4952 outdoor microphone were used to measure sound levels at the specified monitoring locations. The sound level meter and associate microphone were current on annual accredited calibration per the manufacturer's recommended best practices. The instrumentation used for this survey and the most recent accredited calibration date is listed below in Table 2.

The software modules installed on the 2250 allow for real-time frequency analysis, analysis of time histories for broadband parameters and spectra, and documentation of measurements through recoding of measured sound. The 2250 sound level meter continuous sampled sound levels, logging the specified data every minute. Attachment 2 lists the manufacturer's specifications and approvals for this meter.

Prior to beginning the monitoring, the 2250 sound level meter was field calibrated using a Brüel & Kjær Type 4231 acoustical calibrator. The calibrator emits a reference sound pressure level of 94 dB at 1 kHz. The calibrator was placed on the sound meter to verify the meter was accurately measuring the reference sound level and to correct the measurement for ambient barometric pressure. Full accredited calibration documentation for the instruments used for this survey, listed below in Table 2, is available upon request.

Table 2. Instrumentation Accredited NIST Calibration Table

Equipment	Model Number	Serial Number
Sound Level Meter	2250	3003388
Sound Level Meter	2250	3004354
Sound Level Meter	2250	3010744
Sound Level Meter	2250	3010873
Acoustic Calibrator	4231	3006470

After monitoring the data collected by the 2250 sound level meter was downloaded to a computer using Brüel & Kjær BZ-5503 Measurement Partner Suite Utility Software for Hand-held Analyzers Version 4.7.7.2. TruHorizon used the manufacturer's software, coupled with Excel spreadsheets, to summarize the data for analysis and reporting.

Acoustics Overview

Sound pressure level measurements are commonly weighted in relation to their frequency components in order to provide a consistent basis for comparison to other measurements of the same type. By applying a weighting to the sound measurement, it is possible to get a more accurate



representation of the human perception on a given sound source and level. The two most common weighting curves, A-Weighting (dBA) and C-Weighting (dBC), are plotted together for reference and shown in Figure 2.

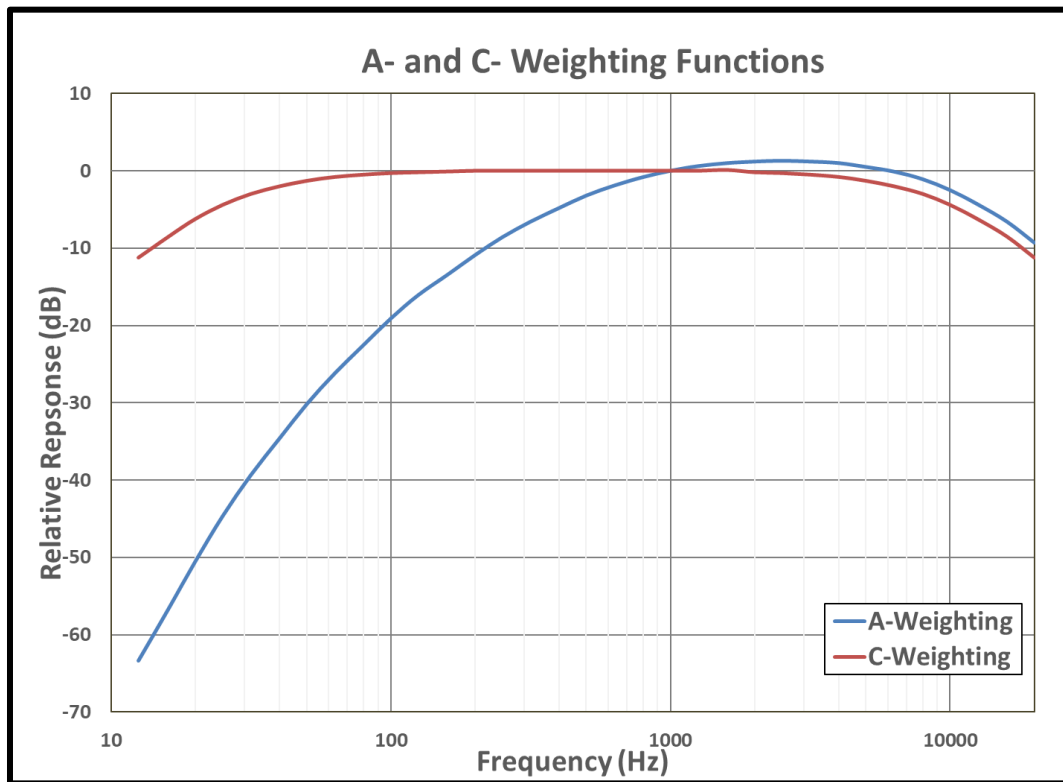


Figure 2. Common sound weighting curves as a function of frequency.

The study utilized both A-weighted and C-weighted filters which are standard parameters for environmental noise assessments. An A-weighted filter corresponds to the human ear's response at low to medium sound levels. The A-weighted filter with slow time weighting is most common for environmental noise measurement. The C-weighted filter is typically used for very high sound level measurements and does not filter out low or high frequency sounds. C-weighting approximates the human ear at higher sound levels and is typically used for measurement aircraft, machinery, and other loud sound sources.

Decibels (dB) are a measure of sound pressure level based on logarithmic scale. A sound level of 60 dB contains 10 times more sound energy relative to a sound level of 50 dB, and a sound level of 70 dB contains 100 times more sound energy relative to a sound of 50 dB.

In addition to acoustic weightings being applied, sound measurements are often averaged over the measurement interval. The logarithmic average of a sound measurement is known as the equivalent continuous sound level, or Leq. As the definition implies, the Leq represents the value that contains



the same acoustic energy over the measurement period. The Leq is easily computed using an integrating sound level meter, such as the Brüel & Kjær 2250, and can incorporate the selected acoustic weightings. Leq values are represented in dB, with a designation of the acoustic weighting applied, if any. Below is a detailed description of the equivalent metric reported below.

- LAeq (dBA) – The equivalent continuous sound level over a specified period of time that represents the same energy as the actual time varying sound signal. The ‘A’ in the above variables denotes that the A-weighting has been included.
- LCeq (dBC) – The equivalent continuous sound level over a specified period of time with C-weighting applied.

For comparison, Figure 3 lists, a summary of typical A-weighted decibel levels for multiple types of sounds.

140 dB		Jet Take-Off
125 dB		Firecrackers
110 dB		Rock Group
95 dB		Noisy Workplace
80 dB		Street Traffic
65 dB		Business Office
60 dB		Conversational Speech
40 dB		Living Room
35 dB		Library
20 dB		Bedroom
15 dB		Woods
10 dB		Breathing
0 dB		Weakest Sound

Figure 3. Typical sound levels (dBA) for common noise sources.



Baseline Monitoring Data and Results

TruHorizon conducted the baseline sound level survey from approximately 12:00 AM on Friday, August 19, 2022, to 12:00 AM on Friday, August 26, 2022. Tables 3-6 summarize the logarithmic averages of the study.

Table 3. North On-Site Study Sound Level Averages for all Monitoring Locations

Description	LAeq (dBA)	LCeq (dBC)
Friday, August 19, 2022	71.3	85.5
Saturday, August 20, 2022	68.1	82.6
Sunday, August 21, 2022	66.5	81.1
Monday, August 22, 2022	48.4	66.4
Tuesday, August 23, 2022	45.6	62.7
Wednesday, August 24, 2022	66.0	84.1
Thursday, August 25, 2022	63.8	81.1
Averages	67.7	82.1

Table 4. North Off-Site Study Sound Level Averages for all Monitoring Locations

Description	LAeq (dBA)	LCeq (dBC)
Friday, August 19, 2022	62.4	82.4
Saturday, August 20, 2022	60.6	79.4
Sunday, August 21, 2022	59.5	78.2
Monday, August 22, 2022	52.7	66.0
Tuesday, August 23, 2022	54.2	72.5
Wednesday, August 24, 2022	58.1	79.8
Thursday, August 25, 2022	58.6	77.9
Averages	58.5	78.0



Table 5. South On-Site Study Sound Level Averages for all Monitoring Locations

Description	LAeq (dBA)	LCeq (dBC)
Friday, August 19, 2022	82.4	93.0
Saturday, August 20, 2022	77.7	89.3
Sunday, August 21, 2022	77.9	89.0
Monday, August 22, 2022	68.9	78.0
Tuesday, August 23, 2022	70.6	82.6
Wednesday, August 24, 2022	78.5	90.4
Thursday, August 25, 2022	75.2	88.1
Averages	77.8	89.1

Table 6. South Off-Site Study Sound Level Averages for all Monitoring Locations

Description	LAeq (dBA)	LCeq (dBC)
Friday, August 19, 2022	59.3	78.2
Saturday, August 20, 2022	57.9	75.3
Sunday, August 21, 2022	60.3	75.7
Monday, August 22, 2022	47.6	66.0
Tuesday, August 23, 2022	50.9	69.6
Wednesday, August 24, 2022	59.9	76.5
Thursday, August 25, 2022	58.0	75.3
Averages	57.9	75.1



The table below shows the comparison between sound levels prior to additional sound wall mitigation installed on site. Data was collected for approx. **35 hours** at the southern off-site monitoring point outside the wall, prior to installation of additional sound mitigation.

Table 4. Study Averages Comparison at Outside Monitoring Points

Dates	Location	LAeq (dBA)	LCeq (dBC)
8/17 – 8/18 Before Additional Mitigation	South Outside Wall	60.7	78.3
8/19 – 8/26 After Additional Mitigation	North Outside Wall	58.5	78.0



Attachment 3 contains the hourly average summary table and charts obtained from the baseline study.

The overall study averages at offsite monitoring locations are comparable to sound levels between a typical living room and a business office. During the study, skies were partly cloudy with average wind speeds between 0.8 mph and 1.7 mph and gusts of up to 14.0 mph. The temperature was approximately 77 °F. There were two rain events during the monitoring period. Weather information for this location was referenced from weather station KTXMIDLA210 located near the site.

The maximum study LAeq was 88.4 dB and occurred on August 19, 2022, at approximately 3:06 p.m. at the South On-site monitoring location. The sound level meter recorded all LAeq signals greater than or equal to 65 dB for all locations. From the recordings, the source of the maximum LAeq was fracking operations. All sound clips are identified to the best of TruHorizon's personnel's ability.

The services provided for this project were performed in accordance with industry best practices for environmental noise measurements using the most accurate, Type/Class 1 acoustic instrumentation. No warranty, expressed or implied, is made or intended by rendition of these consulting services or by furnishing oral or written reports of the findings made. This report has been prepared by Principal Environmental, LLC for the exclusive use by PBEX, LLC.



TruHorizon

PBEX, LLC
223 W Wall Steet
Midland, TX 79701

ATTACHMENT 1

PHOTO LOG

PBEX Mockingbird Baseline Sound Level Survey



TruHorizon

PBEX, LLC
223 W Wall Steet
Midland, TX 79701

View of North On-site Monitoring Point.



View of North Off-site Monitoring Point.



PBEX Mockingbird Baseline Sound Level Survey



TruHorizon

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View of South On-site Monitoring Point.



View of South Off-site Monitoring Point.



PBEX Mockingbird Baseline Sound Level Survey



TruHorizon

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ATTACHMENT 2

MANUFACTURER'S SPECIFICATIONS

PBEX Mockingbird Baseline Sound Level Survey



PRODUCT DATA

Hand-held Analyzer Types 2250 and 2270 for Types 2250-S, 2250-S-C, 2270-S and 2270-S-C

Types 2250 and 2270 are innovative, hand-held analyzers from Brüel & Kjær. The analyzers' easy, safe and clever design philosophy is based on extensive research. Type 2250 has won several awards for its excellent ergonomics and design.

Both analyzers can host a number of applications including frequency analysis, logging, FFT, building acoustics and signal recording. Additionally, Type 2270 can simultaneously measure with two microphones, two accelerometers or one of each. All application modules can be ordered as part of a fully preconfigured instrument or separately at any time, as the need arises.

The combination of application modules and innovative hardware makes these analyzers dedicated solutions for performing high-precision measurement tasks in environmental, occupational and industrial application areas. Together with Measurement Partner Field App, MP Cloud support and Measurement Partner Suite for post-processing, they provide a total solution for your measurement needs.



Uses and Features

Uses

- Class 1 sound measurements to latest international standards
- Environmental noise assessment and tone assessment (1/3-octave and FFT)
- Loudness and noise rating measurements
- Occupational noise evaluation
- Reverberation time measurements (see BP 2190)
- Building acoustics (see BP 2190)
- Product quality control (see BP 2183)
- Noise source identification using sound intensity (see BP 2341)*
- Audiometer calibration
- Real-time analysis in 1/1- and 1/3-octave bands
- Analysis of logging profiles for broadband parameters and spectra
- Vibration criteria measurements
- Low-frequency building vibration according to ISO 8041:05 and DIN 45669 – 1:2010 – 09
- Whole-body and hand-arm human vibration measurements (RMS, MTVV and Crest Factor)
- Infrasound (G-weighting) measurements according to ISO 7196:1995 and ANSI S1.42 – 2001 (R2011)

* Type 2270 only.

Features

- Hardware:
 - 2-channel measurement capability with any combination of microphones and accelerometers
 - Large, high-resolution, touch-sensitive colour screen
 - Communication via USB, LAN and options for Wi-Fi or 4G communication
 - Integral digital camera for documentation and reference*
 - Automatic detection of and correction for windscreen
 - Robust and environmentally protected (IP44)
- Software:
 - Dynamic range in excess of 123 dB(A)
 - 0.5 Hz – 20 kHz broadband linear range
 - Personalized measurement, display and job setup
 - 'Smiley' quality indicators with hints and warnings
 - Timers for automatic start of measurement
 - Measurement Partner Cloud (MP Cloud)
 - Measurement Partner Field App
 - Measurement Partner Suite for comprehensive post-processing
 - GPS coordinates stored with measurement data
 - Simultaneous noise and weather data acquisition
 - 24- or 16-bit recording during all or parts of measurement

Brüel & Kjær

PBEX Mockingbird Baseline Sound Level Survey



TruHorizon

PBEX, LLC
223 W Wall Steet
Midland, TX 79701

ATTACHMENT 3

**MONITORING LOCATION
STUDY SUMMARY DATA AND CHARTS**

PBEX Mockingbird Baseline Sound Level Survey



Table 7. First Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/19/22 12:00 AM	71.1	-	84.1	58.9
8/19/22 1:00 AM	72.9	-	84.2	60.1
8/19/22 2:00 AM	73.2	-	84.7	60.2
8/19/22 3:00 AM	68.0	-	78.3	56.1
8/19/22 4:00 AM	73.7	-	84.1	59.4
8/19/22 5:00 AM	72.7	-	82.9	58.5
8/19/22 6:00 AM	73.3	-	82.7	59.3
8/19/22 7:00 AM	73.8	-	83.2	59.2
8/19/22 8:00 AM	69.9	-	81.9	58.0
8/19/22 9:00 AM	72.9	-	84.3	59.6
8/19/22 10:00 AM	72.1	-	84.1	58.8
8/19/22 11:00 AM	73.0	-	84.8	61.2
8/19/22 12:00 PM	69.6	-	82.9	59.1
8/19/22 1:00 PM	70.2	-	84.0	61.6
8/19/22 2:00 PM	71.4	62.9	85.5	62.2
8/19/22 3:00 PM	64.2	59.7	80.1	58.3
8/19/22 4:00 PM	70.7	60.5	83.1	62.3
8/19/22 5:00 PM	73.0	66.8	78.4	58.1
8/19/22 6:00 PM	61.5	61.4	70.0	56.1
8/19/22 7:00 PM	68.8	62.4	78.9	59.0
8/19/22 8:00 PM	70.1	64.0	78.1	57.1
8/19/22 9:00 PM	66.5	59.2	76.5	55.3
8/19/22 10:00 PM	70.7	62.5	78.9	58.3
8/19/22 11:00 PM	67.8	57.3	76.2	56.7



Table 8. First Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/19/22 12:00 AM	84.3	-	93.7	77.5
8/19/22 1:00 AM	86.6	-	94.7	79.0
8/19/22 2:00 AM	86.5	-	94.8	79.1
8/19/22 3:00 AM	84.2	-	91.1	77.9
8/19/22 4:00 AM	86.4	-	94.5	78.5
8/19/22 5:00 AM	85.5	-	93.2	77.4
8/19/22 6:00 AM	87.4	-	93.6	78.8
8/19/22 7:00 AM	87.3	-	93.8	78.5
8/19/22 8:00 AM	85.3	-	92.5	77.9
8/19/22 9:00 AM	87.0	-	94.3	79.1
8/19/22 10:00 AM	86.2	-	93.7	78.3
8/19/22 11:00 AM	86.8	-	94.8	79.7
8/19/22 12:00 PM	84.1	-	92.9	78.1
8/19/22 1:00 PM	85.2	-	94.6	79.5
8/19/22 2:00 PM	85.6	82.5	95.7	79.7
8/19/22 3:00 PM	81.5	78.6	90.8	76.1
8/19/22 4:00 PM	87.4	84.0	94.1	80.0
8/19/22 5:00 PM	88.2	87.5	91.5	79.8
8/19/22 6:00 PM	78.7	79.4	82.7	74.4
8/19/22 7:00 PM	84.3	81.3	90.5	77.1
8/19/22 8:00 PM	84.3	81.2	90.9	75.7
8/19/22 9:00 PM	82.4	79.3	89.0	75.6
8/19/22 10:00 PM	84.4	81.4	91.2	77.1
8/19/22 11:00 PM	82.4	79.5	90.2	75.9



Table 9. Second Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/20/22 12:00 AM	67.8	57.5	76.5	57.6
8/20/22 1:00 AM	71.0	64.1	78.5	58.2
8/20/22 2:00 AM	67.7	57.3	76.7	56.4
8/20/22 3:00 AM	71.0	61.1	78.3	59.2
8/20/22 4:00 AM	69.4	61.4	77.0	56.5
8/20/22 5:00 AM	68.9	58.6	77.6	58.6
8/20/22 6:00 AM	68.5	60.3	77.5	57.5
8/20/22 7:00 AM	61.9	58.4	70.5	51.4
8/20/22 8:00 AM	70.1	59.7	77.3	55.8
8/20/22 9:00 AM	70.7	63.7	79.3	56.1
8/20/22 10:00 AM	68.3	63.1	78.3	55.0
8/20/22 11:00 AM	71.1	61.5	78.6	56.6
8/20/22 12:00 PM	67.9	63.7	75.9	55.2
8/20/22 1:00 PM	70.9	62.9	79.3	58.6
8/20/22 2:00 PM	68.9	58.7	78.8	56.1
8/20/22 3:00 PM	68.2	61.3	78.1	57.1
8/20/22 4:00 PM	66.9	60.9	82.1	62.3
8/20/22 5:00 PM	59.5	53.5	74.8	58.7
8/20/22 6:00 PM	58.5	59.5	70.2	56.8
8/20/22 7:00 PM	53.9	61.2	72.9	56.5
8/20/22 8:00 PM	66.0	59.4	79.7	61.4
8/20/22 9:00 PM	68.1	57.9	80.6	61.5
8/20/22 10:00 PM	52.8	49.8	72.0	56.0
8/20/22 11:00 PM	53.9	54.5	72.3	57.0



Table 10. Second Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/20/22 12:00 AM	83.1	79.5	89.8	76.8
8/20/22 1:00 AM	84.7	81.2	90.5	76.3
8/20/22 2:00 AM	82.6	79.2	88.8	75.2
8/20/22 3:00 AM	84.5	81.6	90.6	76.9
8/20/22 4:00 AM	83.0	80.1	89.7	74.9
8/20/22 5:00 AM	83.7	80.5	90.7	76.5
8/20/22 6:00 AM	82.8	80.1	89.4	74.9
8/20/22 7:00 AM	76.1	74.2	83.2	70.5
8/20/22 8:00 AM	84.2	80.7	90.1	74.7
8/20/22 9:00 AM	84.2	80.3	90.4	74.7
8/20/22 10:00 AM	83.5	80.1	90.6	74.1
8/20/22 11:00 AM	84.6	80.6	90.5	73.9
8/20/22 12:00 PM	82.7	80.1	89.2	73.9
8/20/22 1:00 PM	84.6	81.2	90.6	76.3
8/20/22 2:00 PM	82.4	79.2	89.8	75.2
8/20/22 3:00 PM	84.0	80.4	90.5	76.1
8/20/22 4:00 PM	83.2	79.5	91.7	77.4
8/20/22 5:00 PM	77.3	75.6	85.5	75.4
8/20/22 6:00 PM	75.9	76.8	82.7	75.2
8/20/22 7:00 PM	74.8	73.7	83.6	72.9
8/20/22 8:00 PM	82.9	79.8	89.9	76.8
8/20/22 9:00 PM	83.2	79.9	90.5	77.2
8/20/22 10:00 PM	74.0	72.2	83.2	72.1
8/20/22 11:00 PM	74.7	73.4	83.6	72.5



Table 11. Third Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/21/22 12:00 AM	66.7	59.4	78.1	60.5
8/21/22 1:00 AM	69.2	57.4	81.9	64.1
8/21/22 2:00 AM	65.0	54.0	76.7	57.9
8/21/22 3:00 AM	63.7	53.6	75.3	56.4
8/21/22 4:00 AM	54.5	50.4	73.5	53.4
8/21/22 5:00 AM	66.8	56.3	77.6	58.7
8/21/22 6:00 AM	68.2	57.6	80.4	62.0
8/21/22 7:00 AM	64.4	56.9	76.7	59.8
8/21/22 8:00 AM	67.8	60.0	78.7	61.3
8/21/22 9:00 AM	68.8	59.2	79.9	62.2
8/21/22 10:00 AM	67.2	56.1	77.6	60.1
8/21/22 11:00 AM	70.2	62.0	78.6	61.8
8/21/22 12:00 PM	66.5	59.2	75.4	59.4
8/21/22 1:00 PM	69.0	63.4	77.8	60.4
8/21/22 2:00 PM	70.8	64.3	80.6	61.4
8/21/22 3:00 PM	64.5	58.5	75.9	59.2
8/21/22 4:00 PM	69.8	61.8	80.7	63.7
8/21/22 5:00 PM	68.1	59.8	80.5	61.4
8/21/22 6:00 PM	54.8	57.7	72.9	57.3
8/21/22 7:00 PM	52.7	57.1	72.4	55.2
8/21/22 8:00 PM	59.6	61.6	75.4	56.0
8/21/22 9:00 PM	58.3	62.0	77.7	58.6
8/21/22 10:00 PM	58.4	57.5	73.4	62.5
8/21/22 11:00 PM	47.7	56.9	71.8	53.5



Table 12. Third Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/21/22 12:00 AM	82.0	78.4	91.0	76.6
8/21/22 1:00 AM	83.0	79.6	92.5	77.8
8/21/22 2:00 AM	80.2	77.1	88.6	73.6
8/21/22 3:00 AM	80.0	76.9	87.7	73.8
8/21/22 4:00 AM	75.5	73.4	84.2	69.8
8/21/22 5:00 AM	82.2	79.6	89.2	75.1
8/21/22 6:00 AM	83.8	81.2	91.3	77.2
8/21/22 7:00 AM	80.1	77.5	87.8	74.4
8/21/22 8:00 AM	83.3	80.0	90.1	77.1
8/21/22 9:00 AM	83.2	79.6	90.5	77.1
8/21/22 10:00 AM	82.4	78.7	89.6	76.4
8/21/22 11:00 AM	83.8	81.7	90.5	77.4
8/21/22 12:00 PM	80.5	77.8	87.6	74.1
8/21/22 1:00 PM	83.1	80.0	89.7	77.1
8/21/22 2:00 PM	83.2	80.3	91.2	77.5
8/21/22 3:00 PM	78.9	76.3	87.5	76.4
8/21/22 4:00 PM	82.9	79.4	90.6	78.7
8/21/22 5:00 PM	81.8	77.9	90.1	76.4
8/21/22 6:00 PM	73.5	72.1	84.7	72.8
8/21/22 7:00 PM	72.9	71.8	84.1	71.3
8/21/22 8:00 PM	79.1	76.9	87.2	73.5
8/21/22 9:00 PM	77.9	76.6	87.3	74.5
8/21/22 10:00 PM	70.5	68.6	84.4	74.1
8/21/22 11:00 PM	64.1	66.3	80.9	68.1



Table 13. Fourth Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/22/22 12:00 AM	47.5	56.7	72.2	53.3
8/22/22 1:00 AM	47.6	56.4	74.9	52.7
8/22/22 2:00 AM	47.6	59.8	70.0	50.3
8/22/22 3:00 AM	46.0	37.9	73.5	44.5
8/22/22 4:00 AM	44.3	58.6	73.4	44.3
8/22/22 5:00 AM	44.7	38.4	68.6	44.0
8/22/22 6:00 AM	53.8	53.6	68.7	50.7
8/22/22 7:00 AM	52.0	52.6	70.4	52.1
8/22/22 8:00 AM	44.7	43.0	67.2	45.7
8/22/22 9:00 AM	49.3	48.9	66.0	46.2
8/22/22 10:00 AM	51.9	48.5	65.2	46.3
8/22/22 11:00 AM	50.1	50.1	63.5	46.7
8/22/22 12:00 PM	48.4	52.5	65.4	44.5
8/22/22 1:00 PM	46.3	42.7	61.6	45.0
8/22/22 2:00 PM	50.3	47.0	59.7	46.0
8/22/22 3:00 PM	46.5	43.6	66.3	43.4
8/22/22 4:00 PM	47.9	51.9	61.0	45.6
8/22/22 5:00 PM	45.9	48.5	62.5	45.3
8/22/22 6:00 PM	49.4	46.4	70.9	47.5
8/22/22 7:00 PM	47.1	57.7	65.6	47.3
8/22/22 8:00 PM	46.0	44.7	71.3	43.0
8/22/22 9:00 PM	43.7	41.6	57.6	41.2
8/22/22 10:00 PM	44.5	44.9	61.5	42.7
8/22/22 11:00 PM	43.3	40.0	55.4	37.6



Table 14. Fourth Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/22/22 12:00 AM	64.3	67.1	80.2	68.2
8/22/22 1:00 AM	64.3	66.3	81.9	67.9
8/22/22 2:00 AM	63.8	67.2	79.7	65.7
8/22/22 3:00 AM	63.2	62.7	82.9	62.7
8/22/22 4:00 AM	62.6	66.1	80.5	62.0
8/22/22 5:00 AM	65.3	62.7	76.8	62.3
8/22/22 6:00 AM	74.9	72.5	82.9	72.0
8/22/22 7:00 AM	73.7	70.7	82.1	71.1
8/22/22 8:00 AM	64.4	62.5	75.5	62.5
8/22/22 9:00 AM	62.5	63.3	72.7	60.3
8/22/22 10:00 AM	63.4	62.4	74.2	61.3
8/22/22 11:00 AM	64.8	63.9	74.4	61.7
8/22/22 12:00 PM	62.4	64.5	75.6	63.6
8/22/22 1:00 PM	61.7	63.5	72.6	65.8
8/22/22 2:00 PM	64.9	65.7	71.4	67.1
8/22/22 3:00 PM	64.3	66.0	74.4	67.0
8/22/22 4:00 PM	63.6	65.4	71.9	67.1
8/22/22 5:00 PM	62.8	65.2	72.1	66.4
8/22/22 6:00 PM	64.3	66.5	77.9	67.5
8/22/22 7:00 PM	63.3	67.5	74.8	65.2
8/22/22 8:00 PM	63.5	62.2	78.9	61.4
8/22/22 9:00 PM	61.8	60.5	69.3	60.0
8/22/22 10:00 PM	62.0	61.5	71.4	61.7
8/22/22 11:00 PM	62.1	60.5	68.9	59.3



Table 15. Fifth Day Hourly **A-weighted** Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/23/22 12:00 AM	44.6	43.1	56.2	40.1
8/23/22 1:00 AM	44.1	36.8	55.2	37.2
8/23/22 2:00 AM	47.4	44.5	65.6	39.9
8/23/22 3:00 AM	45.7	40.8	66.1	40.6
8/23/22 4:00 AM	-	37.5	66.1	39.7
8/23/22 5:00 AM	-	49.8	60.7	40.0
8/23/22 6:00 AM	-	57.9	65.4	45.8
8/23/22 7:00 AM	-	55.3	65.1	45.5
8/23/22 8:00 AM	-	47.3	61.9	45.4
8/23/22 9:00 AM	-	45.8	66.0	42.5
8/23/22 10:00 AM	-	46.5	59.8	42.1
8/23/22 11:00 AM	54.7	49.2	70.9	47.5
8/23/22 12:00 PM	53.6	54.4	68.7	48.1
8/23/22 1:00 PM	53.1	54.5	74.9	47.8
8/23/22 2:00 PM	48.6	48.1	61.6	45.3
8/23/22 3:00 PM	49.4	46.4	67.2	46.8
8/23/22 4:00 PM	51.0	47.0	69.4	47.3
8/23/22 5:00 PM	-	49.9	70.2	51.9
8/23/22 6:00 PM	-	51.1	71.1	52.1
8/23/22 7:00 PM	-	63.3	75.0	55.3
8/23/22 8:00 PM	-	55.1	67.9	52.5
8/23/22 9:00 PM	-	59.7	67.3	54.4
8/23/22 10:00 PM	-	56.2	78.7	59.3
8/23/22 11:00 PM	-	53.0	76.0	57.0



Table 16. Fifth Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/23/22 12:00 AM	62.5	60.9	69.5	59.4
8/23/22 1:00 AM	62.9	60.9	71.0	60.2
8/23/22 2:00 AM	62.8	61.9	74.0	60.0
8/23/22 3:00 AM	62.7	61.9	72.5	60.0
8/23/22 4:00 AM	-	61.7	73.7	60.4
8/23/22 5:00 AM	-	62.6	73.8	60.9
8/23/22 6:00 AM	-	67.7	73.6	62.5
8/23/22 7:00 AM	-	65.9	73.3	63.6
8/23/22 8:00 AM	-	62.2	71.3	61.5
8/23/22 9:00 AM	-	61.6	72.8	60.1
8/23/22 10:00 AM	-	61.8	70.9	60.1
8/23/22 11:00 AM	79.0	75.1	84.9	71.5
8/23/22 12:00 PM	74.8	73.6	83.2	70.6
8/23/22 1:00 PM	73.6	72.2	82.5	68.9
8/23/22 2:00 PM	71.6	68.8	77.9	64.7
8/23/22 3:00 PM	72.1	70.6	80.0	66.4
8/23/22 4:00 PM	73.5	72.0	81.1	68.8
8/23/22 5:00 PM	-	74.8	84.0	71.5
8/23/22 6:00 PM	-	75.0	84.5	71.5
8/23/22 7:00 PM	-	77.5	87.0	73.7
8/23/22 8:00 PM	-	72.2	81.8	69.6
8/23/22 9:00 PM	-	74.0	83.1	72.7
8/23/22 10:00 PM	-	79.4	90.7	76.9
8/23/22 11:00 PM	-	76.8	87.8	74.5



Table 17. Sixth Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/24/22 12:00 AM	-	56.4	78.9	60.7
8/24/22 1:00 AM	-	57.6	78.4	58.8
8/24/22 2:00 AM	-	58.5	72.5	54.6
8/24/22 3:00 AM	-	54.4	75.6	57.3
8/24/22 4:00 AM	-	58.1	80.4	60.4
8/24/22 5:00 AM	-	58.2	76.2	58.8
8/24/22 6:00 AM	-	62.0	77.8	60.6
8/24/22 7:00 AM	-	59.1	79.9	62.4
8/24/22 8:00 AM	-	55.8	76.2	55.8
8/24/22 9:00 AM	68.4	55.7	78.2	58.9
8/24/22 10:00 AM	67.8	58.3	80.4	61.3
8/24/22 11:00 AM	60.9	54.6	74.9	55.8
8/24/22 12:00 PM	66.1	57.0	81.9	63.1
8/24/22 1:00 PM	67.4	58.1	82.1	63.1
8/24/22 2:00 PM	66.1	56.5	79.1	61.5
8/24/22 3:00 PM	68.2	60.1	81.1	62.9
8/24/22 4:00 PM	63.5	56.3	77.3	61.4
8/24/22 5:00 PM	54.3	55.0	69.7	53.6
8/24/22 6:00 PM	64.9	57.2	78.4	60.2
8/24/22 7:00 PM	-	57.9	79.6	59.6
8/24/22 8:00 PM	-	53.8	73.9	55.3
8/24/22 9:00 PM	-	57.6	76.6	58.1
8/24/22 10:00 PM	-	63.3	79.2	58.9
8/24/22 11:00 PM	-	57.6	77.1	57.5



Table 18. Sixth Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/24/22 12:00 AM	-	79.5	91.0	78.0
8/24/22 1:00 AM	-	79.0	90.8	76.3
8/24/22 2:00 AM	-	74.5	84.5	72.4
8/24/22 3:00 AM	-	77.7	88.4	75.3
8/24/22 4:00 AM	-	79.5	91.3	76.8
8/24/22 5:00 AM	-	77.1	88.4	74.6
8/24/22 6:00 AM	-	79.1	89.5	77.1
8/24/22 7:00 AM	-	79.0	90.8	77.6
8/24/22 8:00 AM	-	75.2	85.8	72.7
8/24/22 9:00 AM	83.0	78.8	89.8	76.5
8/24/22 10:00 AM	82.7	79.6	91.2	76.8
8/24/22 11:00 AM	78.3	75.9	86.1	72.2
8/24/22 12:00 PM	84.5	81.7	94.2	79.3
8/24/22 1:00 PM	85.9	83.3	93.4	79.2
8/24/22 2:00 PM	85.4	81.8	91.9	78.4
8/24/22 3:00 PM	88.0	85.6	92.8	77.9
8/24/22 4:00 PM	83.6	81.0	89.0	76.1
8/24/22 5:00 PM	74.0	72.3	82.5	71.9
8/24/22 6:00 PM	83.3	80.5	91.9	77.9
8/24/22 7:00 PM	-	80.2	91.1	76.6
8/24/22 8:00 PM	-	75.5	85.9	72.8
8/24/22 9:00 PM	-	78.8	89.5	76.7
8/24/22 10:00 PM	-	80.0	91.0	76.3
8/24/22 11:00 PM	-	78.8	89.7	76.1



Table 19. Seventh Day Hourly A-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBA)	North Off-site MP (dBA)	South On-site MP (dBA)	South Off-site MP (dBA)
8/25/22 12:00 AM	-	62.4	77.9	60.7
8/25/22 1:00 AM	-	54.8	75.4	58.3
8/25/22 2:00 AM	-	55.7	75.3	59.9
8/25/22 3:00 AM	-	57.5	77.3	60.0
8/25/22 4:00 AM	-	54.0	73.8	58.0
8/25/22 5:00 AM	-	57.2	77.1	61.2
8/25/22 6:00 AM	-	55.5	77.2	60.1
8/25/22 7:00 AM	-	56.2	69.2	55.6
8/25/22 8:00 AM	-	52.0	69.2	50.7
8/25/22 9:00 AM	-	49.3	66.3	49.4
8/25/22 10:00 AM	64.1	54.6	72.3	54.6
8/25/22 11:00 AM	65.5	57.3	76.7	58.8
8/25/22 12:00 PM	62.5	59.4	73.8	56.0
8/25/22 1:00 PM	57.7	53.7	67.7	52.7
8/25/22 2:00 PM	59.0	53.5	71.3	54.8
8/25/22 3:00 PM	65.7	56.4	78.4	61.0
8/25/22 4:00 PM	64.2	59.2	75.5	58.9
8/25/22 5:00 PM	65.7	57.6	75.9	59.5
8/25/22 6:00 PM	65.5	58.2	77.2	59.4
8/25/22 7:00 PM	60.3	60.3	71.1	53.0
8/25/22 8:00 PM	-	63.8	74.4	56.8
8/25/22 9:00 PM	-	65.8	78.4	59.4
8/25/22 10:00 PM	-	55.8	73.6	54.1
8/25/22 11:00 PM	-	56.4	73.8	55.0



Table 20. Seventh Day Hourly C-weighted Sound Level Averages for all Monitoring Locations

Timestamp	North On-site MP (dBC)	North Off-site MP (dBC)	South On-site MP (dBC)	South Off-site MP (dBC)
8/25/22 12:00 AM	-	79.8	90.1	77.9
8/25/22 1:00 AM	-	77.5	87.7	75.3
8/25/22 2:00 AM	-	78.8	89.3	77.6
8/25/22 3:00 AM	-	78.7	89.8	76.5
8/25/22 4:00 AM	-	75.9	86.7	74.2
8/25/22 5:00 AM	-	79.4	89.9	78.1
8/25/22 6:00 AM	-	78.6	89.7	76.5
8/25/22 7:00 AM	-	73.2	82.3	72.3
8/25/22 8:00 AM	-	71.9	81.1	69.8
8/25/22 9:00 AM	-	72.7	80.2	69.4
8/25/22 10:00 AM	82.5	77.4	86.9	73.9
8/25/22 11:00 AM	81.7	78.4	89.2	75.4
8/25/22 12:00 PM	79.5	76.5	86.6	73.1
8/25/22 1:00 PM	76.1	73.6	81.9	71.0
8/25/22 2:00 PM	79.2	75.6	85.9	73.9
8/25/22 3:00 PM	82.8	79.4	90.4	76.9
8/25/22 4:00 PM	81.5	78.2	88.2	75.3
8/25/22 5:00 PM	82.9	79.6	89.5	77.1
8/25/22 6:00 PM	82.3	79.4	90.1	76.4
8/25/22 7:00 PM	77.4	75.6	84.3	71.5
8/25/22 8:00 PM	-	79.5	88.7	76.3
8/25/22 9:00 PM	-	80.8	90.8	76.9
8/25/22 10:00 PM	-	76.2	86.4	72.3
8/25/22 11:00 PM	-	78.7	87.9	75.0

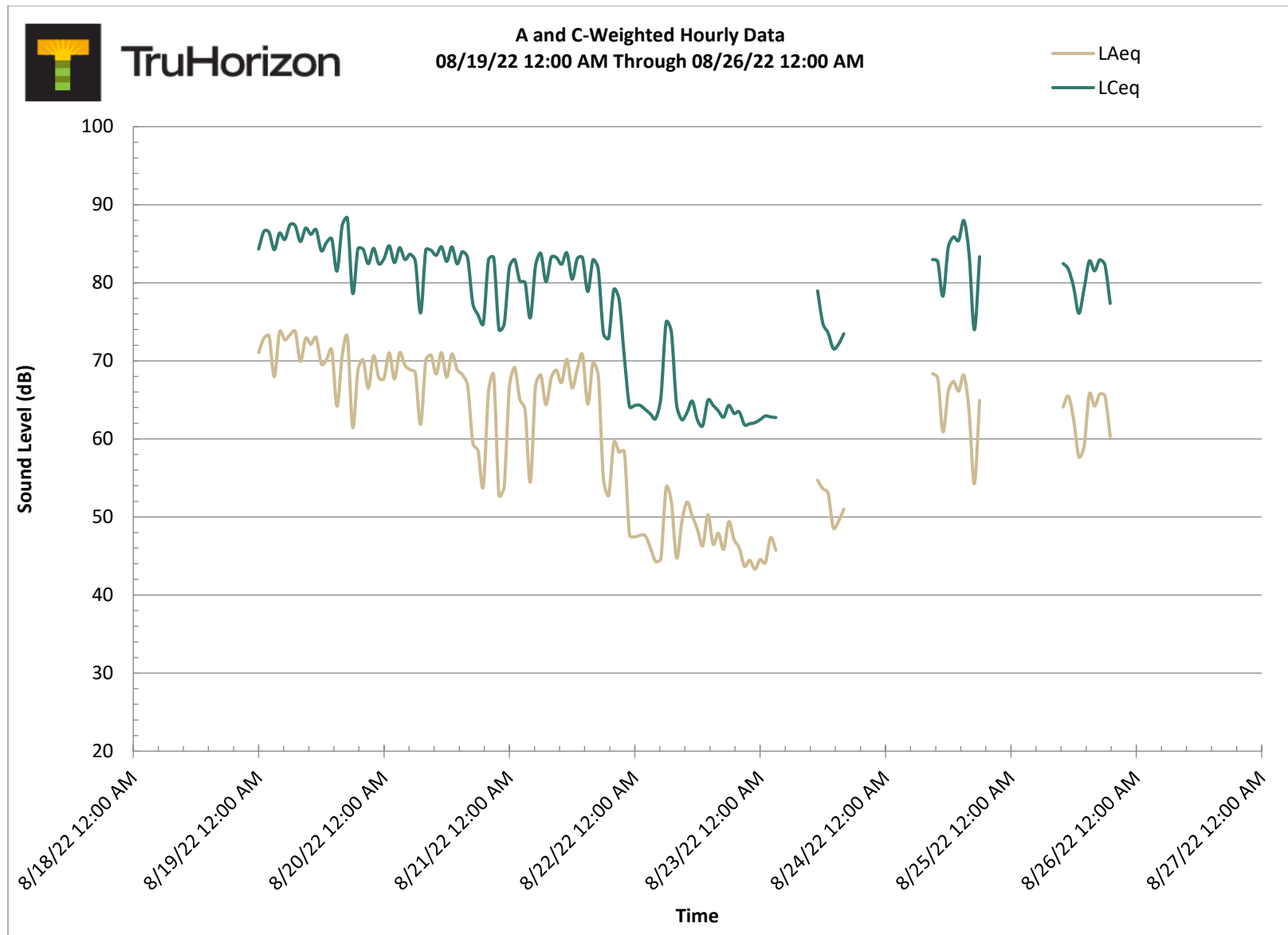


Figure 4. A & C-Weighted sound levels with hour resolution North On-site MP.

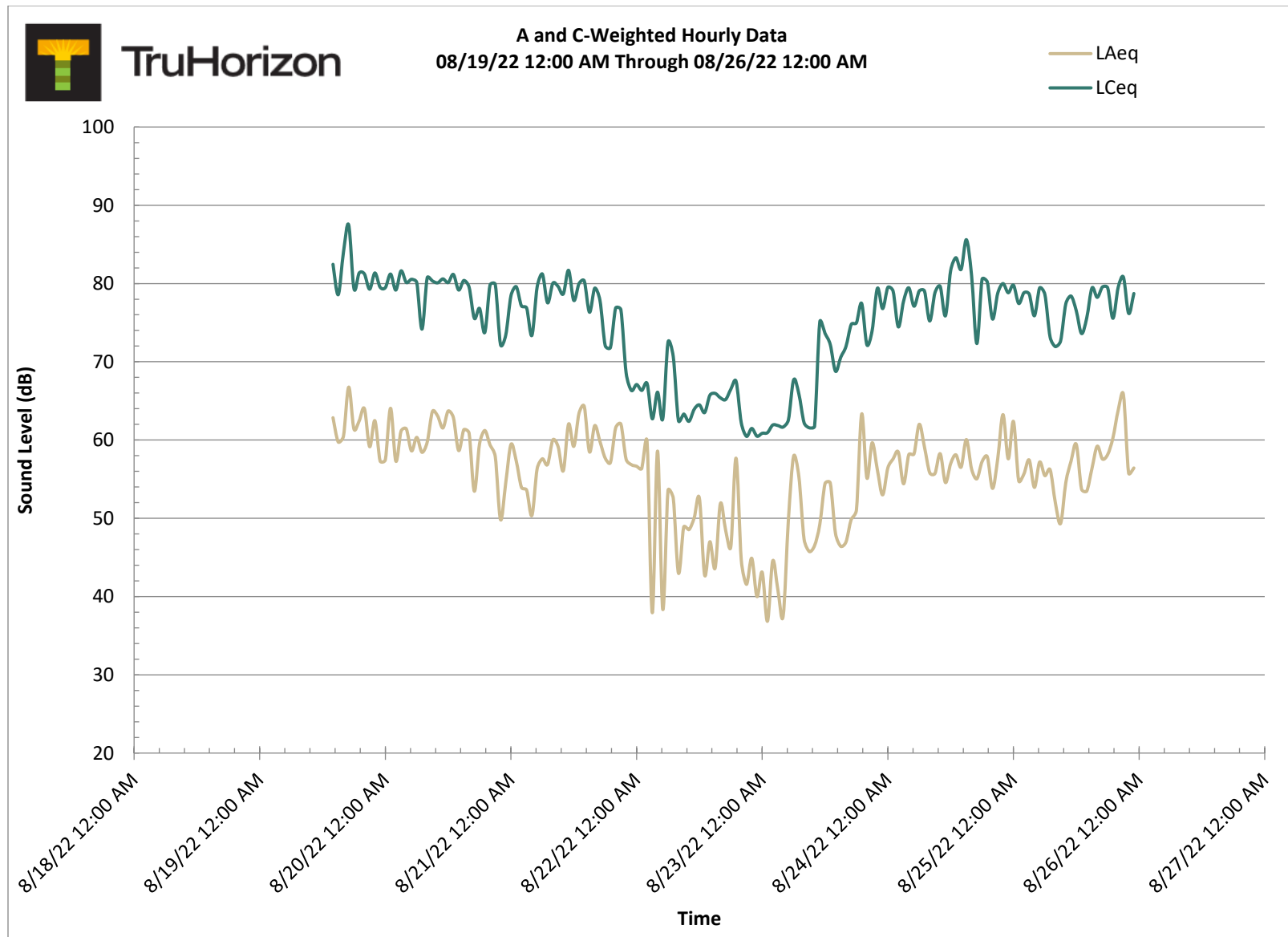


Figure 5. A & C-Weighted sound levels with hour resolution North Off-site MP.

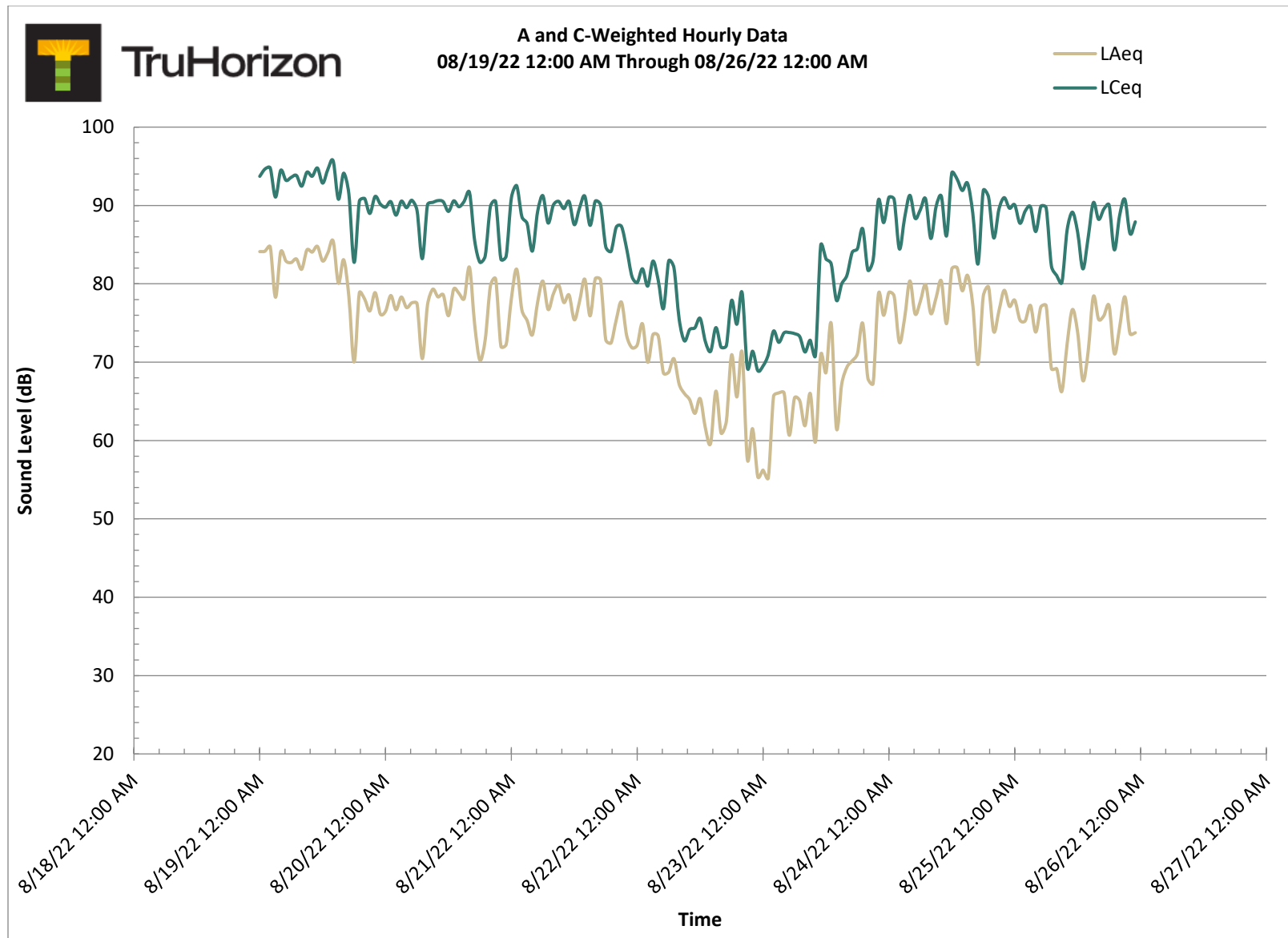


Figure 6. A & C-Weighted sound levels with hour resolution South On-site MP.

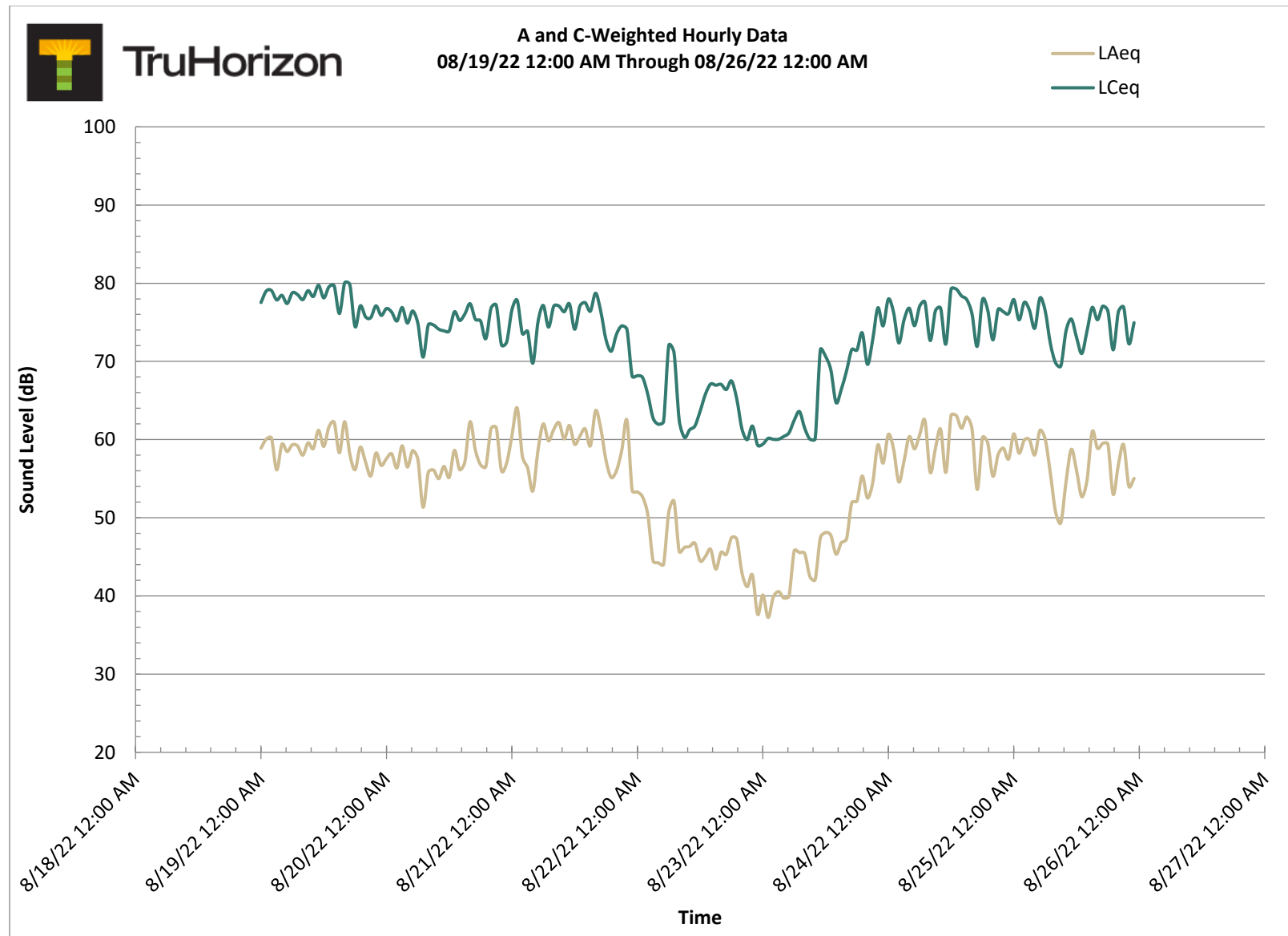


Figure 7. A & C-Weighted sound levels with hour resolution South Off-site MP.

OIL AND GAS WELL PERMIT AMENDMENT

THIS AMENDMENT is made and effective February 14, 2023, by and between the City of Midland, Texas, a home-rule municipal corporation (the “City”), and MCM Operating, LLC (“Operator”).

WHEREAS, the City previously issued those certain Oil and Gas Well Permits dated January 11, 2022 (collectively, the “Permits”) to Operator to drill the following oil and gas wells within the city limits: MB-8H; MB-9H; MB-10H; MB-11H; and MB-12H; and

WHEREAS, the Permits were authorized by the City Council by Resolution No. 2022-10; and

WHEREAS, the Permits have been in full force and effect since their effective dates and have not been allowed to lapse; and

WHEREAS, Operator has requested that the City approve certain amendments to the Permits;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

ARTICLE I.

Each of the Permits is hereby amended by inserting the following paragraph:

The Midland City Council, in granting this permit, also allows the use of a 20-foot-tall source mitigation portable sound walls to be installed on the North and South sides of the frac pumps during frac operations. Frac sand shall be delivered and offloaded using belly dump trucks. Frac operations shall utilize a monoline/zipper manifold.

ARTICLE II.

The Permits, inclusive of this Amendment, shall in all respects remain in full force and effect in accordance with their provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

By: _____
Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

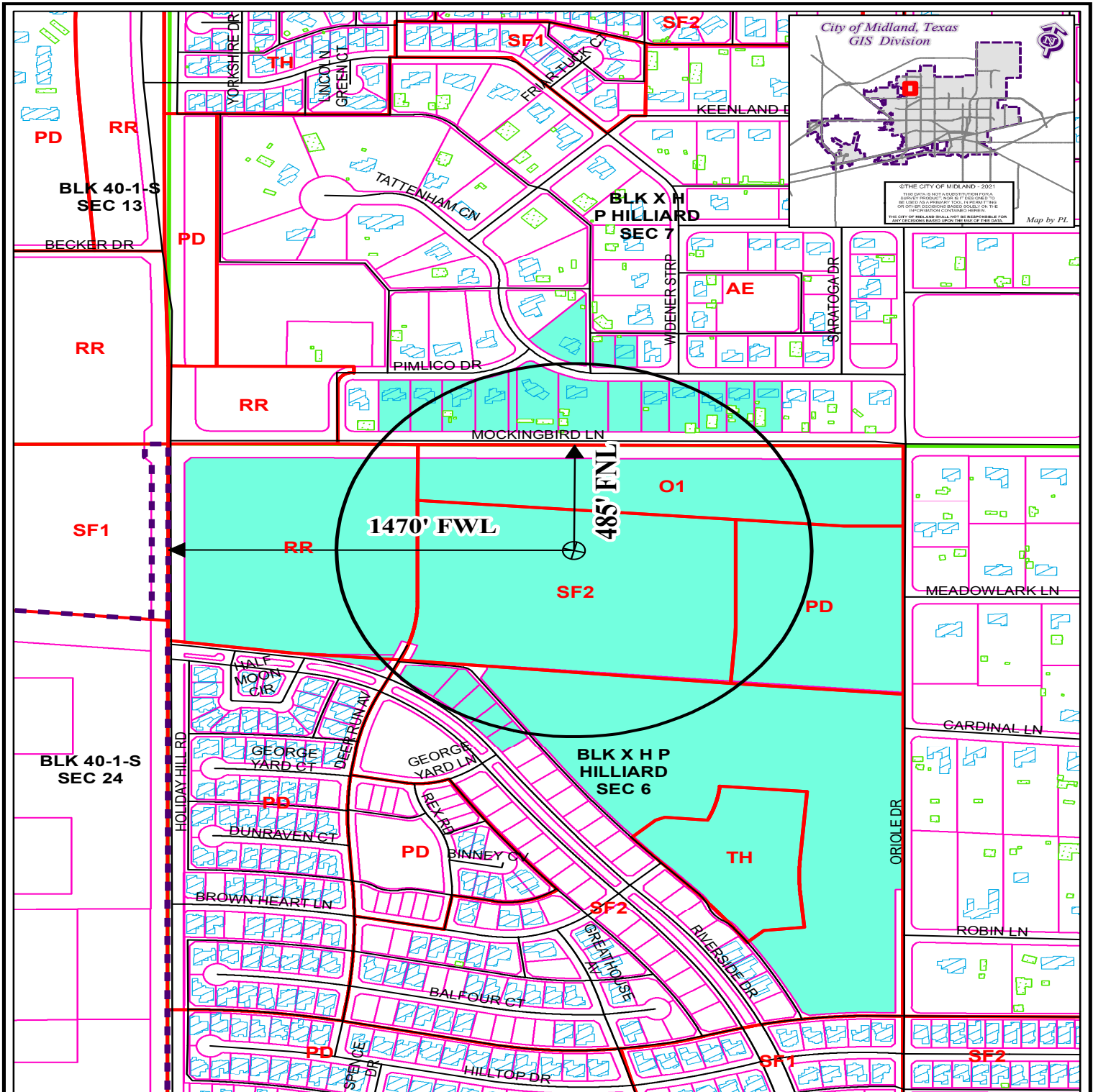
MCM OPERATING, LLC.

By: _____
Matthew Chitwood,
Vice President of Land

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this _____ day of _____, 20____, by Matt Chitwood, Vice President of Land of MCM Operating, LLC, on behalf of MCM Operating, LLC.

Notary Public – State of Texas



LOCATION AND ZONING MAP

Oil-037780-2021

Scale: 1" = 500'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,470' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane extension and 1,470 feet east of Holiday Hill Road.

PACKET

MB-9H

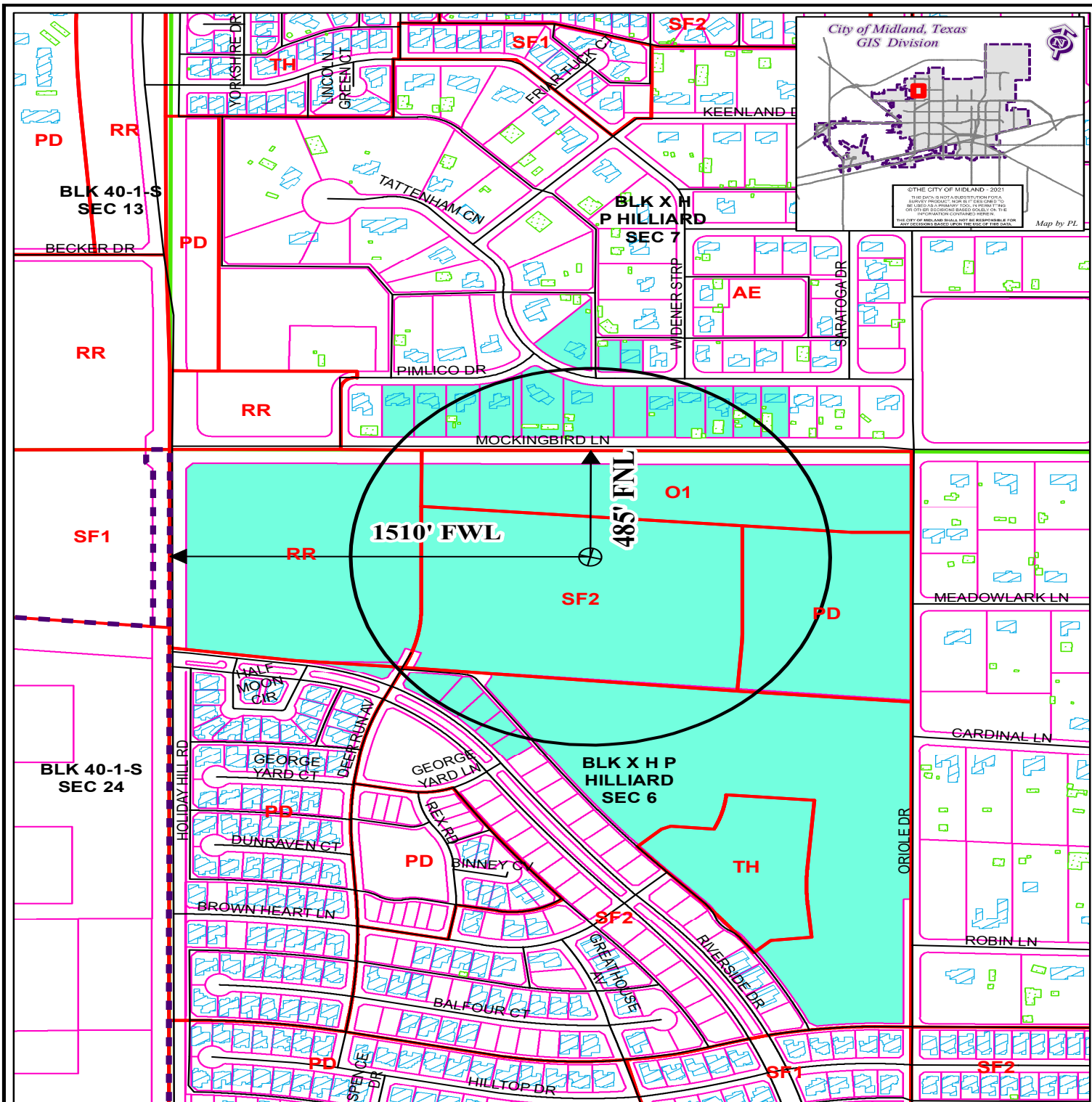
LEGEND

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
13.45	COUNTRY ESTATE	CI, C2, C3	COMMERCIAL
MF1, MF2	ONE-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
	MOBILE HOME DWELLING	LI	LIGHT INDUSTRY
	TOWNHOUSE DWELLING	HI	HEAVY INDUSTRY
	TWO-FAMILY DWELLING		
	MULTIPLE FAMILY DWELLING		

February 14, 2023



LOCATION AND ZONING MAP

Oil-037782-2021

Scale: 1" = 500'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 485' FNL and 1,510' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 485 feet south of Mockingbird Lane extension and 1,510 feet east of Holiday Hill Road.

PACKET

MB-11H

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
13.47	COUNTRY ESTATE	CI, C2, C3	COMMERCIAL
1F3	ONE-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MH	MOBILE HOME DWELLING	LI	LIGHT INDUSTRY
TH	TOWNHOUSE DWELLING	HI	HEAVY INDUSTRY
2F	TWO-FAMILY DWELLING		
MF1, MF2	MULTIPLE FAMILY DWELLING		

February 14, 2023



City Council Meeting

Item Number: 14
Meeting Date: February 14, 2023
To: City Council / City Manager
From: James Reber, Planner
Subject: Motion approving with staff's recommended conditions a proposed Preliminary Plat of Southwest Crossing, Section 20, being a plat of a 60.008-acre tract of land out of Section 14, Block 40, T-2-S, T&P RR Co. Survey, County of Midland, Texas. (Generally located 500-feet west of the intersection of South County Road 1239 and West County Road 122) (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Watson Professional Group Inc., is requesting to plat a 60.008-acre tract of land out of Section 14, Block 40, T-2-S, T & P. R.R. Co. Survey, Midland County, Texas, for ownership purposes.

Recommended City Council Action:

Approve

Current Zoning:

ETJ, Extraterritorial Jurisdiction.

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

ETJ, no jurisdiction

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved)

IMPACT FEES: Property is outside of designated service areas. Remove impact fee language. [For applicant's information only.]

ROW: okay as is. [For the Applicant's information only.]

PAVING: No frontage along Public ROW. [For the Applicant's information only.]

WATER: No frontage along Public ROW. [For the Applicant's information only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For the Applicant's information only.]

PRO RATA: None. [For the Applicant's information only.]

SEWER: No frontage along Public ROW. [For the Applicant's information only.]

DRAINAGE: Drainage report approved for platting purposes. Revise the FEMA Firm Data on the plat face, the property is not partially within Zone A. [For the Applicant's information only.]

EASEMENTS: Show existing and proposed. [For the Applicant's information only.]

SIDEWALKS: No frontage along Public ROW. [For the Applicant's information only.]

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved)

No objections to plat. [For the Applicant's information only.]

FIRE: (Approved)

No comments

CODE COMPLIANCE: (Approved)

Not in the City limits- no oil or gas jurisdiction.

GIS: (Approved)

No comments.

COUNTY: (Approved with Conditions)

They still have not added Section 1.17 about private roads.

PLANNING: (Approved with Conditions)

“Suddenlink Communications” is now known as “Optimum.” Please reflect this change on the plat face. [For the Applicant’s information only.]

Update all dates to 2023. [For the Applicant’s information only.]

The Midland Central Appraisal District shows only Huseman Land & Cattle as owner, yet the plat states Ty Shepard is the owner. Please verify the proper owner and put on the face of the plat for the preliminary plat phase. [For the Applicant’s information only.]

Double check metes and bounds. [Midland City Code 11-2-3(D)4.]

This item was to appear at the Planning and Zoning Commission meeting on January 17, 2023, but was moved due to the commission not meeting quorum. This request was made by the applicant.

The Planning and Zoning Commission recommended approval of the Preliminary Plat on the February 6, 2023 meeting.

Staff recommends approval with staff’s recommended conditions of the Preliminary Plat of Southwest Crossing, Section 20, subject to condition A:

Conditions:

- A. Approval of this preliminary plat is subject to the plat including a drawing of the boundary description which has been prepared by a registered surveyor and shall bear his seal, signature and date on each sheet and a statement that the boundary description shown thereon accurately describes the survey of the tract boundary conducted by said surveyor. Midland City Code 11-2-3(D)4.**

Attachments:

Proposed Preliminary Plat (Exhibit A)
Maps
Application

Morris Williams Jr.

City Manager's Office



Preliminary Plat Application

Project Number: SUB-22-0539
Case Number: _____

Proposed Subdivision Plat Name: SOUTHWEST CROSSING, SECTION 20

Legal Description (attached sealed Metes and Bounds): Being a plat of a 60.008-acre tract of land out of the Section 14, Block 40, T-2-S, T & P. R.R. Co. Survey, County of Midland, Texas.

Property Owner Printed Name: <u>Ty Shepard</u>		Phone (719) 240-4979 Email <u>tyshepard@gmail.com</u>	
Address <u>455 Mackenzie Ave</u>	City <u>Canon City</u>	State <u>CO</u>	Zip <u>81212</u>

Developer (if different than Owner) Printed Name: _____		Phone () _____ Email _____	
Address _____	City _____	State _____	Zip _____

Representative (if acting as Agent, see affidavit on page 2) Firm: <u>Watson Professional Group Inc.</u> Printed Name: <u>Dana Canul</u>		Phone (432) 520-9200 Email <u>dcanul@wpg-us.com</u>	
Address <u>PO BOX DRAWER 11186</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79702</u>

Current Zoning: _____

Reason for Platting: Ownership

Plat Information	Total Acreage: <u>60.008</u>
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ☒ Commercial ☒ Extraterritorial Jurisdiction (ETJ)	
Number of Lots: <u>12</u>	Number of Multi-family Dwelling Units: _____

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No
If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved***, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature (by property owner only – authorized agent must sign affidavit below)

Property Owner (signature):

Date: 1/17/23

Property Owner (printed): Ty Shepard

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Dara Canul who, being by me duly sworn, upon oath says: That (s)he is the owner of Ty Shepard or is authorized by Ty Shepard 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.

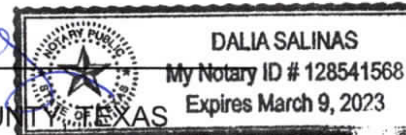
Dara Canul
Authorized Agent (signature)

Subscribed and sworn to before me, this 23rd day of Jan, 20 23, to certify which witness my hand and seal of office.



BY:

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 # 11252

Received By:

Date:

****Application will not be considered for scheduling until reviewed by a planner.****

Preliminary Plat Application

2

Revised 07/01/19

PACKET

14.6

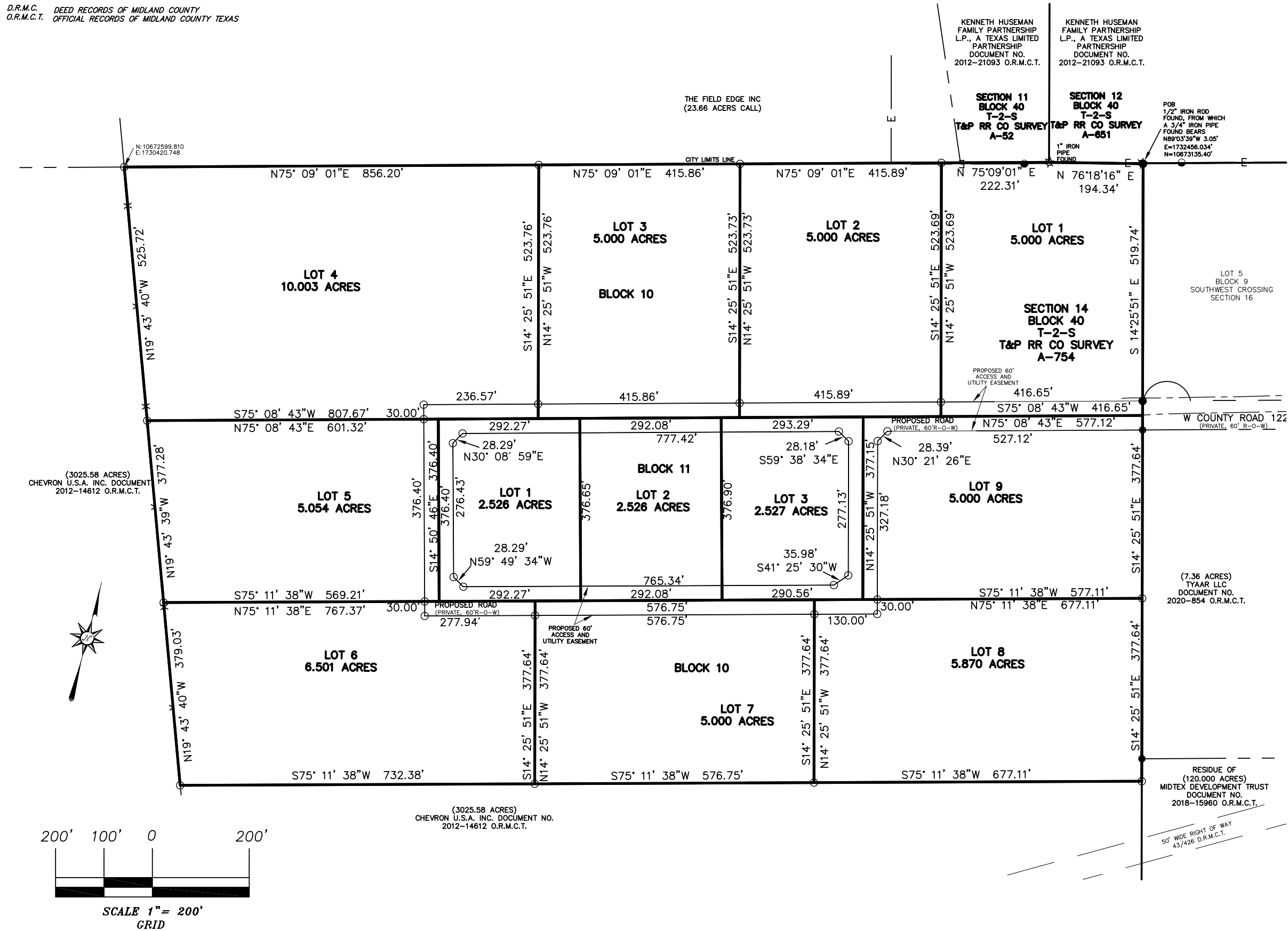
February 14, 2023

SOUTHWEST CROSSING, SECTION 20

Being a plat of a 60.008-acre tract of land out of the
Section 14, Block 40, T-2-S, T & P. R.R. Co. Survey, County of Midland, Texas.

LEGEND
☆ IRON PIPE FOUND
○ IRON ROD W/ CAP SET
● POWER POLE
● IRON ROD FOUND
--- DENOTES PROPOSED SUBDIVISION LINE
--- DENOTES ADJACENT PROPERTIES
--- DENOTES EXISTING ROAD
--- DENOTES EXISTING EASEMENT
--- DENOTES EXISTING FENCE
--- DENOTES OVERHEAD ELECT. LINE
D.R.M.C. DEED RECORDS OF MIDLAND COUNTY
O.R.M.C.T. OFFICIAL RECORDS OF MIDLAND COUNTY TEXAS

OWNER: MIDTEX DEVELOPMENT TRUST
TY SHEPARD
BILL PHILLIPS
455 MACKENZIE AVE
CANON CITY, CO 81212



ACKNOWLEDGEMENT
STATE OF TEXAS }
COUNTY OF MIDLAND }

Before me, the undersigned authority, on this day personally
appeared TY SHEPARD, known to me to be the person whose name
is subscribed to the foregoing instrument and acknowledged to me
that he executed the same for the purposes and considerations
therein expressed.

Given under my hand and seal of office this the ____ day of
_____, 2022, A.D.

Notary Public in and for the State of Texas

Printed name of Notary _____
My commission expires: _____

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

Whereas, MIDTEX DEVELOPMENT TRUST is the record owner of a 60.008 acre tract of land, being
out of Section 14, Block 40, T-2-S, T & P R.R. Co. Survey, Midland County, Texas.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT WE, MIDTEX DEVELOPMENT TRUST do hereby adopt this plat designating the herein above
described property as "SOUTHWEST CROSSING, SECTION 20", an addition to the City of Midland, Midland
County, Texas, and do hereby dedicate to the public use forever the streets, alleys and easements
shown hereon, for the purpose and consideration herein expressed, and an easement of ingress and
egress for trash location, and location and maintenance of trash containers, and condition said
easement that no construction shall commence on said lot or lots until the exact location of said
containers therewith have been selected and approved by the Director of Utilities.

TY SHEPARD _____ Date _____

BILL PHILLIPS _____ Date _____

CERTIFICATE OF APPROVAL
STATE OF TEXAS }
COUNTY OF MIDLAND }

This is to certify that the above and foregoing plat of "SOUTHWEST CROSSING,
SECTION 20" was approved by proper action of the City Planning and Zoning
Commission of the City of Midland, Texas on this the ____ day of
_____, 2022, A.D.

LUCY SISNIEGA, CHAIRMAN

ELIZABETH SHAUGHNESSY, SECRETARY

PRELIMINARY

THIS DOCUMENT SHALL NOT BE
RECORDED FOR ANY PURPOSE AND
SHALL NOT BE USED OR VIEWED
OR RELIED UPON AS A FINAL
SURVEY DOCUMENT.

NOTE:

1. BEARINGS, DISTANCES AND ACREAGE SHOWN HEREON ARE NAD83, LAMBERT GRID COORDINATES
AND CONFORM TO THE TEXAS COORDINATE SYSTEM, "TEXAS CENTRAL ZONE"
2. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY
ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING
PERMITS.
3. ACCORDING TO FEMA MIDLAND COUNTY IS A "MAPPED" COUNTY, BUT ONLY CERTAIN FEDERAL
FLOOD INSURANCE RATE MAP PANELS ARE AVAILABLE; THE SUBJECT TRACT DESCRIBED HEREON IS
LOCATED IN PART IN ZONE A AND IS WITHIN A 100-YEAR FLOOD HAZARD AREA OF WHICH A
BASE FLOOD ELEVATION OF 2832 FEET HAS BEEN DETERMINED AND IN ZONE X AND IS NOT WITHIN
A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL INSURANCE ADMINISTRATION
FLOOD BOUNDARY MAP, PANEL NO. 48329C0200F WITH A REVISED DATE OF SEPTEMBER 16, 2005.
4. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION
AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS.
ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT
UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.
5. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THESE LOT(S)
MAY BE DEVELOPED AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.



P.O. DRAWER 11186
MIDLAND, TEXAS 79702
(432) 520-9200
FAX (432) 520-9212
FIRM#1014690

CONSULTING ENGINEERS, LAND SURVEYORS & PLANNERS

JOB NO.: 22-0043-00 DRAFT AJ REV. 0

FILE: S: MIDLAND/15 ACRE SUB/ SW CROSSING.DWG

UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

ATMOS ENERGY
BY: _____

AT&T
BY: _____

SUDDENLINK COMMUNICATION
BY: _____

GRANDE COMMUNICATION
BY: _____

ONCOR ELECTRIC DELIVERY
BY: _____

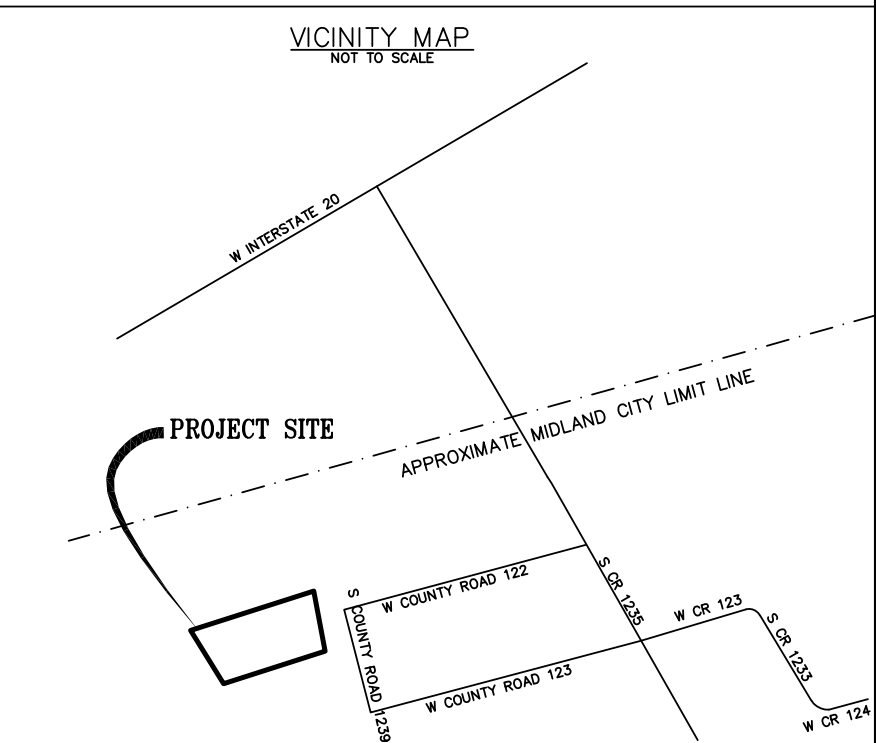
PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

SURVEYOR'S CERTIFICATE

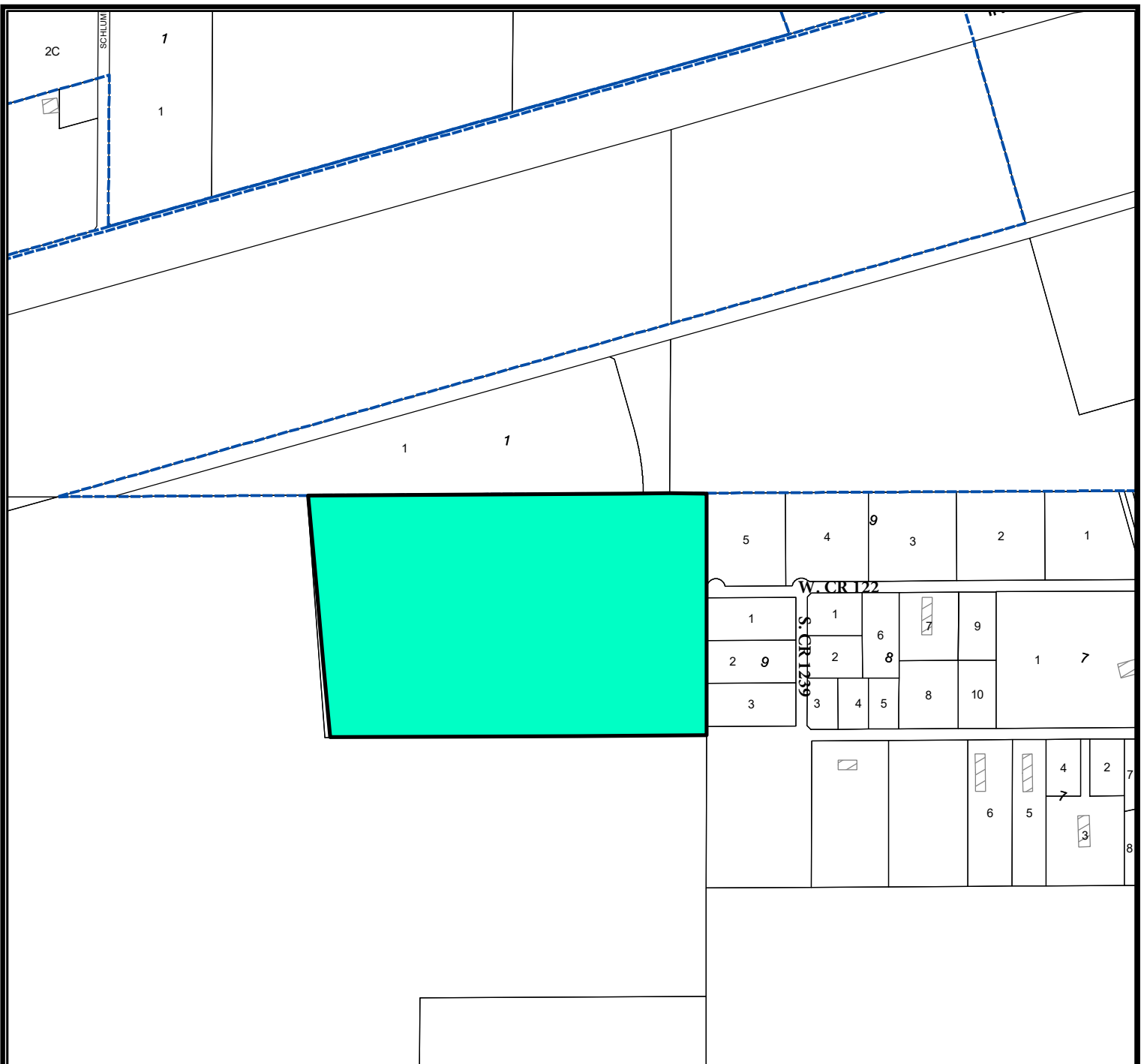
THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS PLAT WAS PREPARED
FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE
CORNER MONUMENTS SHOWN THEREON WERE PROPERLY LOCATED UNDER
THE LICENSED SURVEYOR'S PERSONAL SUPERVISION, IN ACCORDANCE WITH
THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

DATED: , 2022

ALBERT E. FULLER
REGISTERED PROFESSIONAL LAND SURVEYOR
#4842



SOUTHWEST CROSSING, SECTION 20



LOCATION MAP

P-22-1494

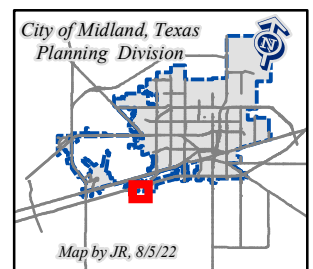
Scale: 1" = 200'

Consider a proposed Preliminary Plat of Southwest Crossing, Section 20, being a plat of a 60.008-acre tract of land out of Section 14, Block 40, T-2-S, T&P RR Co. Survey, County of Midland, Texas.

Generally located 500-feet west of the intersection of South County Road 1239 and West County Road 122 - Extraterritorial Jurisdiction

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR FOR ANY OTHER 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.

February 14, 2023

PACKET

14.8



City Council Meeting

Item Number: 15
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development
Subject: Motion authorizing the intent of the Community Development Department to establish the schedule for Program Year 2023 CDBG application. (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

Motion authorizing the intent of the Community Development Department to establish the schedule for Program Year 2023 CDBG Grant application.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal Impact

Discussion:

I have prepared the attached schedule for your consideration and guidance regarding the operations of the CDBG office.

City Manager's Office

Schedule for PY2022 CDBG Application Cycle, 2022-2023 Action Plan

DESCRIPTION OF EVENT	DATE
Inform public of schedule	February 15
Application training to prospective applicants	As needed
Community meetings –TBD	March 2023
Community Development Week	March 26 – April 1
Project applications / Proposals due date	April 3-April 21
Public Hearing #1 (City Hall) – Review past performance; present CDBG proposals.	May 09, 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 9, 10:00 a.m.
Publish Draft Action Plan; allow 30-Days for public review and comment	June 12 to July 12
Final Approval (City Hall) – Council considers approval of Action Plan.	July 11
Submit Action Plan to HUD.	By August 15
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, 2023

Prepared 04/13/21



City Council Meeting

Item Number: 16
Meeting Date: February 14, 2023 (January 24, 2023)
To: City Council / City Manager
From: James Reber, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 5 THROUGH 8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BLOCK 17, KELVIEW HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LR, LOCAL RETAIL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF LOMA DRIVE AND SCHARBAUER DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting a Zone Change from LR, Local Retail District, to RR, Regional Retail District, for the future development of a convenience store located at 2301 N Big Spring Street.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

LR, Local Retail District in part, and RR, Regional Retail in part.

Surrounding Zoning and Land Use:

The properties to the north are zoned LR, Local Retail District. Properties to the east are zoned RR, Regional Retail District. Properties to the south are zoned PD, Planned Development District. Properties to the west are zoned MF-16, Multi-Family Dwelling District.

Discussion:

The property is located at 2301 N big Spring Street and is currently the location of retail/office in part, and parking in part. The current zoning is LR, Local Retail District in part, and RR, Regional Retail in part. The applicant is requesting this zone change to redevelop the property into a convenience store. Although both current zoning allows for the proposed land use, rezoning to one benefit future development. Additionally, they are in the process of replating the property into one lot and vacating the alley.

The applicant will be required to adhere to the site plan review standards outlined within the City of Midland Zoning Ordinance Section 5.05: - Nonresidential Zoning District Dimensional Regulations Chart as well as Chapter 9, Landscape Regulations for future landscaping.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections to zone change request

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Our staff has examined the FEMA flood map and it appears that this property lies almost entirely within Zone AE, which is a Special Flood Hazard Area subject to inundation by the 1% annual chance flood.

An elevation certificate based off of construction drawings will be required to get a building

permit to show compliance to the 1 foot of freeboard above the base flood elevation for residential structures. An elevation certificate based off of finish construction will be required for the Certificate of Occupancy. [For Applicant's Information Only.]

Code: (Approved)

No Oil and Gas Issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning (Approved):

The City of Midland Planning Department supports this rezone because of the existing surrounding uses. The property is located along Big Spring Street and Scharbauer Drive. Most of the surrounding uses along this corridor are businesses, retail stores, convenience stores and restaurants. Additionally, the Tall City Tomorrow suggests directing higher intensity commercial uses along major streets. Thus, 2301 N Big Spring Street to RR, Regional Retail District, would fit the intended land use appropriately.

This request was recommended for approval by the Planning and Zoning Commission on January 3, 2023.

Staff recommends approval of this zone change from LR, Local Retail District, to RR, Regional Retail District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.**

Letters of Objection:

Staff has not received any letters of objection as of January 11, 2023.

Attachments:

Application

Metes and Bounds (Exhibit A)
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 5 THROUGH 8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BLOCK 17, KELVIEW HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LR, LOCAL RETAIL DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF LOMA DRIVE AND SCHARBAUER DRIVE) ; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 5 through 8, the south 38 feet of Lot 9, and a 0.067-acre portion of alley right-of-way, Block 17, Kelview Heights Addition, City and County of Midland, Texas (the “Property”), said Property being more specifically described by metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein, 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 LR, Local Retail District to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are

used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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"

MAVERICK

ENGINEERING - SURVEY - WATER RESOURCES

1909 West Wall Street, Suite K - Midland, TX 79701

Tel: 432.262.0999 - Fax: 432.262.0989 - maverick-eng.com

ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514



FIELD NOTE DESCRIPTION OF A 1.102 ACRE TRACT OF LAND BEING FULLY DESCRIBED AS LOTS 5-8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067 ACRE PORTION OF PUBLIC ALLEY RIGHT OF WAY, BLOCK 17, KELVIEW HEIGHTS, AN ADDITION TO THE CITY OF MIDLAND, ACCORDING TO THE MAP OR PLAT THEREOF FILED IN CABINET A, PAGE 47, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, ALSO BEING THE CALLED LOT 15, BLOCK 17 OF THE PROPOSED KELVIEW HEIGHTS ADDITION, SECTION 13, AN UNRECORDED SUBDIVISION OF MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED BY METES & BOUNDS FOR REFERENCE AS FOLLOWS:

BEGINNING AT N.(y): 10,702,673.48, E.(x): 1,754,702.51, A PK NAIL WITH WASHER STAMPED "CEI ENG ASSOC" (CEI) FOUND FOR A POINT INTERIOR TO SAID RECORD LOT 7, SITUATED ON THE APPARENT NORTH RIGHT OF WAY LINE OF WEST SCHARBAUER AVENUE, AND FOR THE SOUTH-SOUTHWEST CORNER HEREOF, SAME BEING A POINT OF CONVEX CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, A CHORD BEARING OF N.51°18'58"W., AND A CHORD DISTANCE OF 35.96 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 38.56 FEET TO A "CEI" FOUND IN THE EAST RIGHT OF WAY LINE OF LOMA DRIVE, A POINT IN THE WEST LINE OF SAID LOT 7, AND THE WEST-SOUTHWEST CORNER HEREOF;

THENCE N.14°23'32"W., ALONG THE EAST LINE OF LOMA DRIVE, 175.09 FEET TO A POINT SET IN THE WEST LINE OF SAID LOT 9, FOR THE WEST-NORTHWEST CORNER HEREOF;

THENCE N.75°36'31"E., SEVERING SAID LOT 9, 140.05 FEET TO AN "RPC" SET IN THE WEST LINE OF A RECORD 20 FOOT WIDE NORTH-SOUTH ALLEY RIGHT OF WAY, SAME BLOCK, FOR AN INTERIOR CORNER HEREOF;

THENCE N.75°35'17"W., SEVERING SAID 20 FOOT ALLEY, 20.00 FEET, TO AN "RPC" SET IN THE WEST LINE OF SAID LOT 5, FOR AN INTERIOR CORNER HEREOF;

THENCE N.14°24'43"W., ALONG THE WEST LINE OF SAID LOT 5, 22.00 FEET TO A SPIKE NAIL WITH WASHER FOUND AND ACCEPTED FOR THE SOUTHWEST CORNER OF LOT 4, BLOCK 17, SAME SUBDIVISION, THE NORTHWEST CORNER OF SAID LOT 5, AND THE NORTH-NORTHWEST CORNER HEREOF;

THENCE N.75°35'39"E., ALONG THE SOUTH LINE OF SAID LOT 4, 140.03 FEET TO A SPIKE NAIL WITH WASHER FOUND FOR THE COMMON EAST CORNER OF SAID LOTS 4 AND 5, A POINT IN THE WEST RIGHT OF WAY LINE OF NORTH BIG SPRING STREET (TX HWY 349), AND FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°20'27"E., ALONG THE WEST LINE OF NORTH BIG SPRING STREET RIGHT OF WAY, 103.11 FEET TO A "CEI" FOUND AT A POINT IN THE EAST LINE OF THE RECORD LOT 6, AND FOR THE EAST-SOUTHEAST CORNER HEREOF, SAME BEING A POINT OF CONVEX CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, A CHORD BEARING OF S.24°39'07"W., AND A CHORD DISTANCE OF 37.75 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 40.83 FEET TO A SPIKE NAIL WITH WASHER FOUND FOR A POINT INTERIOR TO SAID LOT 6, SITUATED ON THE NORTH RIGHT OF WAY LINE OF WEST SCHARBAUER DRIVE, AND FOR THE SOUTH-SOUTHEAST CORNER HEREOF, SAME BEING A POINT OF CONCAVE REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 949.45 FEET, A CHORD BEARING OF N.55°27'39"E., AND A CHORD DISTANCE OF 271.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE, AT 120.57 FEET PASSING A SPIKE NAIL WITH WASHER FOUND, AND AT 141.88 FEET PASSING A "CEI" FOUND, IN ALL 272.10 FEET TO THE **POINT OF BEGINNING**, CONTAINING 1.102 ACRES, OR 48,020 SQUARE FEET OF LAND.

Gregory W. Shoults
www.maverick-eng.com

Texas RPLS - No. 5356

Maverick Engineering (FIRM - No. 10194514)

November 29,
2022





**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-22-0316
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>STAGG INVESTMENT GROUP - GARY GLASSCOCK</u>		Phone () Email	
Address <u>203 W. WALL STREET, STE. 1200</u>	City <u>MIDLAND</u>	State <u>TX</u>	Zip <u>79701</u>

Property Owner Printed Name: <u>SEE APPLICANT</u>		Phone () Email	
Address	City	State	Zip

Representative (if different from Applicant or Property Owner) Firm: <u>MAVERICK ENGINEERING</u> Printed Name: <u>ANDREW L. MELLEN, P.E.</u>		Phone (<u>432-</u>) <u>262-0999</u> Email <u>phuckaba@maverick-eng.com</u>	
Address <u>1909 W. WALL ST. STE. K</u>	City <u>MIDLAND</u>	State <u>TX</u>	Zip <u>79701</u>

Street Address: <u>2301 N. BIG SPRING STREET</u>			
Legal Description <u>SEE INCLUDED METES & BOUNDS</u>			
Lot: <u>5-9</u>	Block: <u>17</u>	Subdivision: <u>KELVIEW HEIGHTS ADDITION</u>	

Current Zoning: <u>LR & RR</u>	Proposed Zone: <u>RR</u> (List by tracts if more than one district is requested)
---	--

Reason for Zone Change Request: <u>ADVANCE THE DEVELOPMENT AS PROPOSED</u>

Present Use of Property: <u>RETAIL/OFFICES IN PART. PARKING IN PART</u>
--

Proposed Use of Property: <u>RETAIL</u>
--

How would this zone change affect the public health, safety and welfare? <u>NO ADVERSE AFFECT</u>
--

Describe how conditions affecting the property have changed since present zoning designation: <u>NO CHANGES</u>
--

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)	 BY: <u>JR</u>
--	-------------------

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature):

Date:

Applicant (printed):

Property Owner (signature):

Date:

Property Owner (printed): GARY GLASSCOCK - STAGG INVESTMENT GROUP

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

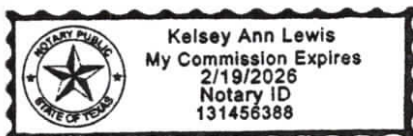
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared ANDREW L. MELLEN who, being by me duly sworn, upon oath says: That (s)he is authorized by STAGG INVESTMENT GROUP, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this 10th day of DECEMBER, 20 22, 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 # 3952

Received By:

Date: 12/1/22

PACKET

16.10

February 14, 2023

Application will not be considered for scheduling until reviewed by a planner.



FIELD NOTE DESCRIPTION OF A 1.102 ACRE TRACT OF LAND BEING FULLY DESCRIBED AS LOTS 5-8, THE SOUTH 38 FEET OF LOT 9, AND A 0.067 ACRE PORTION OF PUBLIC ALLEY RIGHT OF WAY, BLOCK 17, KELVIEW HEIGHTS, AN ADDITION TO THE CITY OF MIDLAND, ACCORDING TO THE MAP OR PLAT THEREOF FILED IN CABINET A, PAGE 47, PLAT RECORDS OF MIDLAND COUNTY, TEXAS, ALSO BEING THE CALLED LOT 15, BLOCK 17 OF THE PROPOSED KELVIEW HEIGHTS ADDITION, SECTION 13, AN UNRECORDED SUBDIVISION OF MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED BY METES & BOUNDS FOR REFERENCE AS FOLLOWS;

BEGINNING AT N.(y): 10,702,673.48, E.(x): 1,754,702.51, A PK NAIL WITH WASHER STAMPED "CEI ENG ASSOC" (CEI) FOUND FOR A POINT INTERIOR TO SAID RECORD LOT 7, SITUATED ON THE APPARENT NORTH RIGHT OF WAY LINE OF WEST SCHARBAUER AVENUE, AND FOR THE SOUTH-SOUTHWEST CORNER HEREOF, SAME BEING A POINT OF CONVEX CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, A CHORD BEARING OF N.51°18'58"W., AND A CHORD DISTANCE OF 35.96 FEET;

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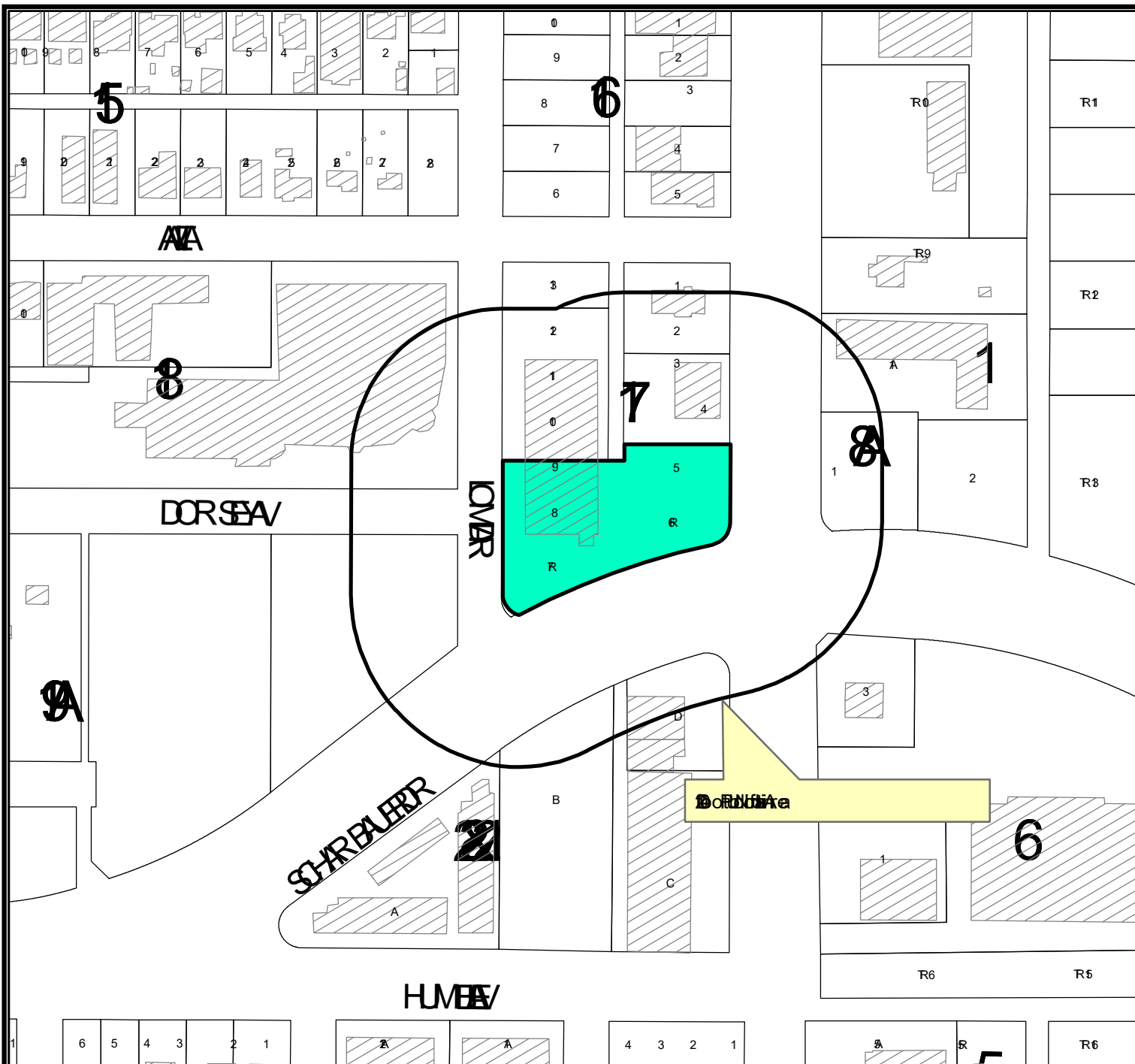
Gregory W. Shoults
www.maverick-eng.com

Texas RPLS - No. 5356

Maverick Engineering (FIRM - No. 10194514)

November 29,
2022





LOCATION MAP

Z-22-0316

Scale: 1" = 200'

Consider a request by Maverick Engineering for a zone change from LR, Local Retail District, to RR, Regional Retail District, on Lots 5-8, the South 38 feet of Lot 9, and a 0.067 acre portion of public alley right of way, Block 17, Kelview Heights, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of ~~Pracker~~ **Pracker** Drive and Scharbauer Drive, 16.12 (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

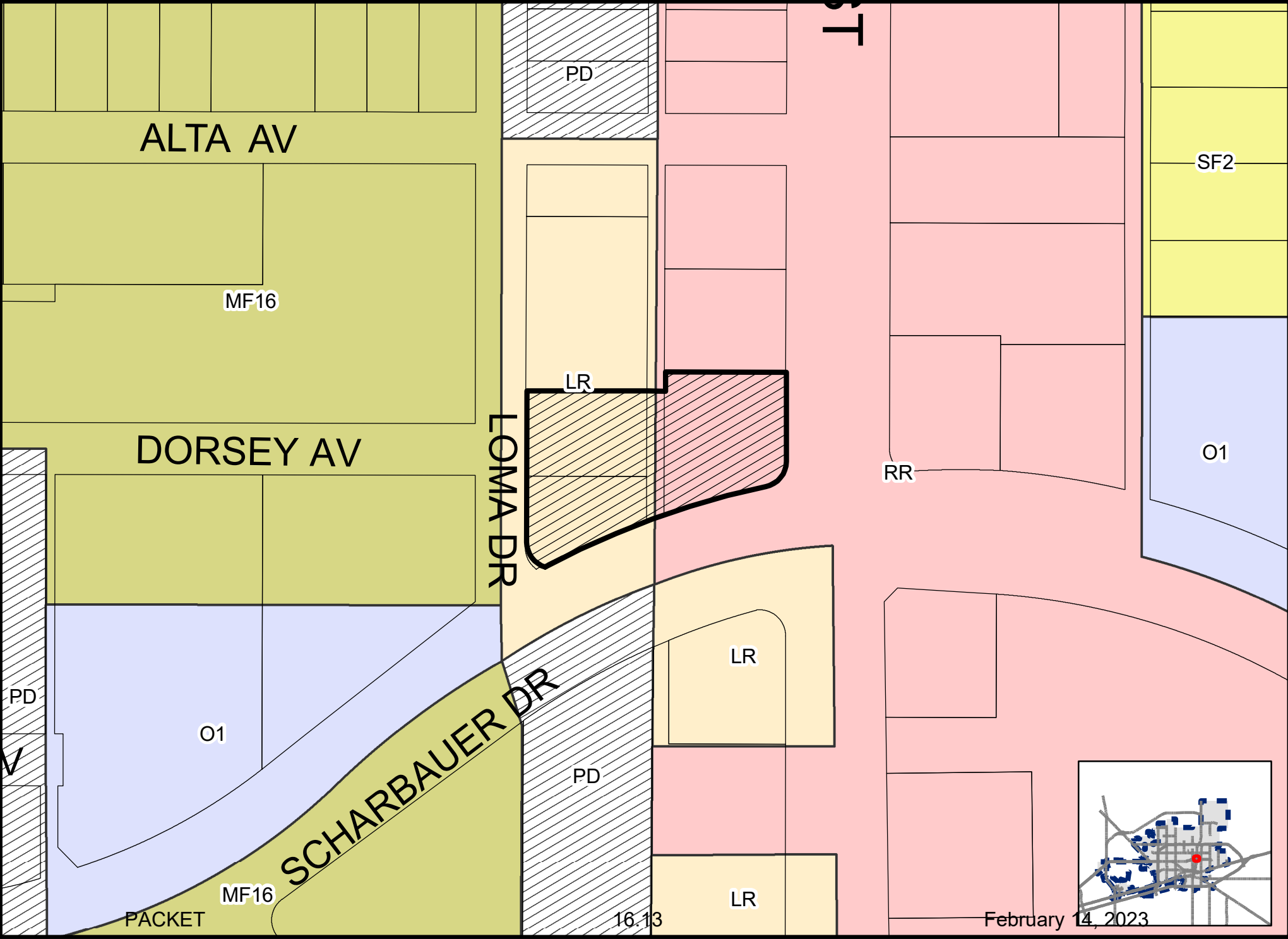


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR FOR THE USE OF THIS DATA IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 14, 2023













City Council Meeting

Item Number: 17
Meeting Date: February 14, 2023 (January 24, 2023)
To: City Council / City Manager
From: Alexandra Walling, Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 4, BERKSHIRE PLACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SINCLAIR AVENUE AND NORTH N STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Austin Butler, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback for the property located at 2201 Sinclair Avenue.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 2201 Sinclair Avenue and is the location of a single-family house. The applicant is requesting a special exception to the minimum side yard setback for a corner (exterior) lot. The property is zoned SF1, Single-Family Dwelling District.

As mentioned previously the property is zoned SF1, Single-Family Dwelling District and does not meet the minimum side yard setback for a corner (exterior) lot. Per our City of Midland Zoning Ordinance, *Section 5.04 –Residential Zoning District Dimensional Regulations Chart*:

SF1, Single-Family Dwelling District

Yard Setback Dimensions

Minimum Side Yard Setback

Corner Lot – Exterior (Street) Yard: 10 (ten) ft.

Many of the surrounding lots do not comply with the current minimum side yard setbacks for SF1, Single-Family Dwelling District. Three properties to the northeast have received a special exception from the City of Midland zoning ordinance for side yard setbacks.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Planning Analysis:

While this request represents a deviation from the existing Zoning Ordinance, due to the unique circumstances surrounding the lot in question, staff is recommending approval of this application for a Special Exception to the City of Midland Zoning Ordinance, *Section 5.04 - Residential Zoning District Dimensional Regulations Chart*. This tract of land has been zoned in a way that prohibits further development. The city has inadvertently restricted this property and others around it to modify existing developments under the current zoning ordinance.

Due to these factors, staff is recommending approval of this special exception subject to condition A and B.

Condition:

- A. That the minimum side yard setback on the east side of the lot shall be five feet 4.75 inches (5'4.75").**
- B. That the locations of all structures shall significantly conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated herein.**

Letters of Objection:

As of January 11, 2023, staff has not received any letters of objection.

Attachments:

Application
Survey (Exhibit A)
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 4, BERKSHIRE PLACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SINCLAIR AVENUE AND NORTH N STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 (“Section 11-1-7”) of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 4, Berkshire Place, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the east side of the lot.

SECTION TWO. Said special exception is subject to the following special conditions:

- A. That the minimum side yard setback on the east side of the lot shall be five feet 4.75 inches (5' 4.75").
- B. That the locations of all structures shall significantly conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated 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 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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

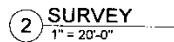
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

[illegible]

RESCHECK
1/4" = 1'-0"

DAVENPORT RESIDENCE
2201 SINCLAIR AVENUE
MIDLAND, TEXAS

DATE _____
DRAWN BY _____ Author
CHECKED BY _____ Checker
SHEET NO. _____
SD-100

1102 West Texas Avenue
Midland, Texas 79701
432.682.1252
432.682.1257 fax



rwa
rotenberry
wellen
architects



Special Exception Application

Project Number: E-22-0091
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: Austin Butler		Phone (325) 386-5635 Email austin@butlerco.build	
Address 1273 Canterbury Dr	City Abilene	State TX	Zip 79602

Property Owner Printed Name: Adams Davenport		Phone (432) 553-5049 Email adavenport@btaoil.com	
Address 104 South Pecos	City Midland	State TX	Zip 79701

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () Email	
Address	City	State	Zip

Street Address: 2201 Sinclair Ave, Midland, TX 79701

Legal Description
Lot: 1 Block: 4 Subdivision: Berkshire Place

Current Zoning:
This property qualifies as an exception to the City Code because: ☐ It is an expansion of a nonconforming use. ☐ There are existing nonconforming structures in the area. ☒ The addition of architectural or other projections of a minor extent.
Reason for Request: <u>Requesting exception for side yard setback as survey shows 10' setback for this lot. See attached site plan and survey plan on SD100.</u>

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: 12.16.2022
Applicant (printed): Austin Butler	
Property Owner (signature):	Date:
Property Owner (printed): Adams Davenport	
<i>The Special Exception shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

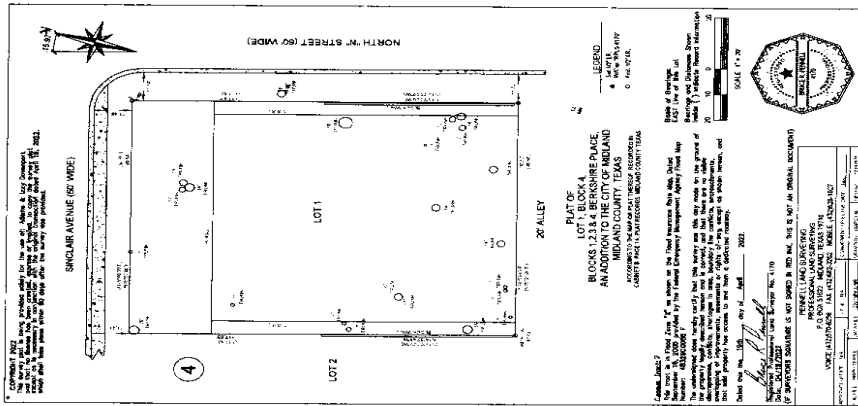
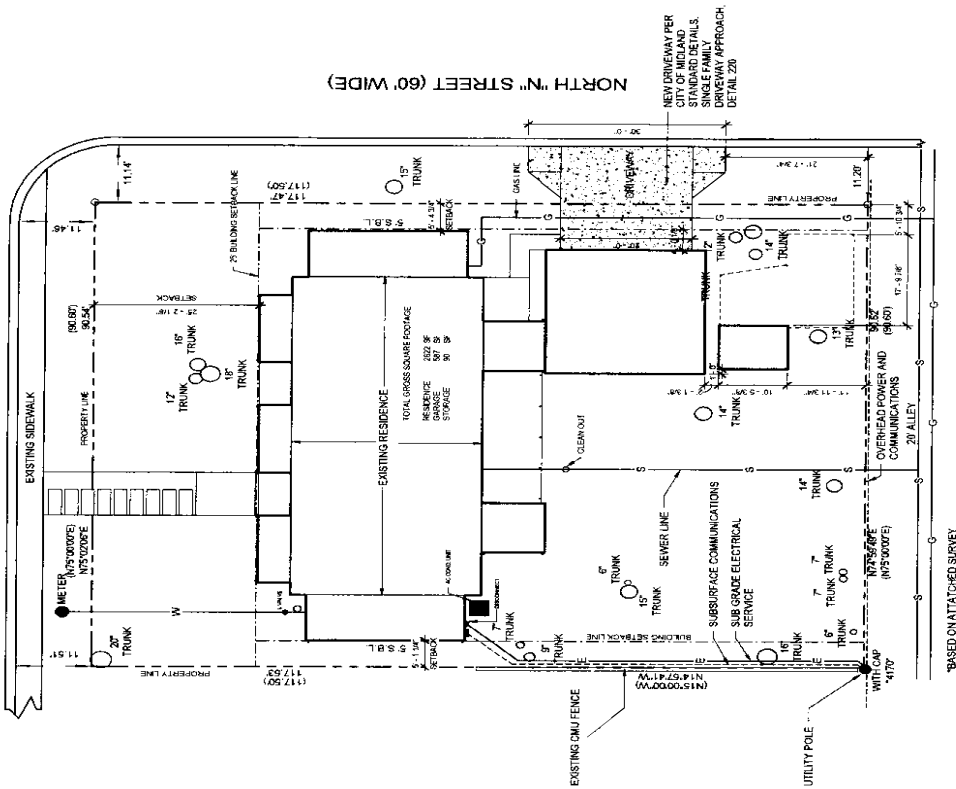
Authorized Agent (signature)

Subscribed and sworn to before me, this ____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization ☐ Application Fee Check # _____	☐ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By:	Date:

2201 SINCLAIR AVENUE (60' WIDE)



Envelope Assemblies	R-Value		U-Value		Air Infiltration		Sound Transmission		Fire Rating	
	ASHRAE 90.1-2005	ASHRAE 90.1-2010	ASHRAE 90.1-2005	ASHRAE 90.1-2010	ACH50	ACH50	STC	STC	Fire Rating	Fire Rating
Per ASHRAE 90.1-2005 Table 5.6.1 and ASHRAE 90.1-2010 Table 5.6.1										
Single Glazed Ceiling	1.9	2.0	0.531	0.500	23	25				
Single Glazed Roof	1.9	2.0	0.531	0.500	23	25				
Double Glazed Ceiling	1.9	2.0	0.531	0.500	23	25				
Double Glazed Roof	1.9	2.0	0.531	0.500	23	25				
Single Glazed Wall	1.9	2.0	0.531	0.500	23	25				
Double Glazed Wall	1.9	2.0	0.531	0.500	23	25				
Single Glazed Floor	1.9	2.0	0.531	0.500	23	25				
Double Glazed Floor	1.9	2.0	0.531	0.500	23	25				
Single Glazed Window	1.9	2.0	0.531	0.500	23	25				
Double Glazed Window	1.9	2.0	0.531	0.500	23	25				
Single Glazed Door	1.9	2.0	0.531	0.500	23	25				
Double Glazed Door	1.9	2.0	0.531	0.500	23	25				
Single Glazed Partition	1.9	2.0	0.531	0.500	23	25				
Double Glazed Partition	1.9	2.0	0.531	0.500	23	25				
Single Glazed Staircase	1.9	2.0	0.531	0.500	23	25				
Double Glazed Staircase	1.9	2.0	0.531	0.500	23	25				
Single Glazed Balcony	1.9	2.0	0.531	0.500	23	25				
Double Glazed Balcony	1.9	2.0	0.531	0.500	23	25				
Single Glazed Terrace	1.9	2.0	0.531	0.500	23	25				
Double Glazed Terrace	1.9	2.0	0.531	0.500	23	25				
Single Glazed Parking	1.9	2.0	0.531	0.500	23	25				
Double Glazed Parking	1.9	2.0	0.531	0.500	23	25				
Single Glazed Entrance	1.9	2.0	0.531	0.500	23	25				
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Double Glazed Terrace	1.9	2.0	0.531	0.500	23	25				
Single Glazed Parking	1.9	2.0	0.5							

Generated by REScheck-Web Software
Compliance Certificate

Project	2201 Sinclair Avenue	2013 MCC	Owner/Agent:
Energy Code		Midland, Texas	
Location		Simplex-Issley	
Construction Type		Addition	
Project Type			
Orientation		Building North	
Climate Zone		3 (2270 MDS)	
Permit Date			
Permit Number			
Construction Start			
2201 Sinclair Avenue			
Midland, Texas 79705			

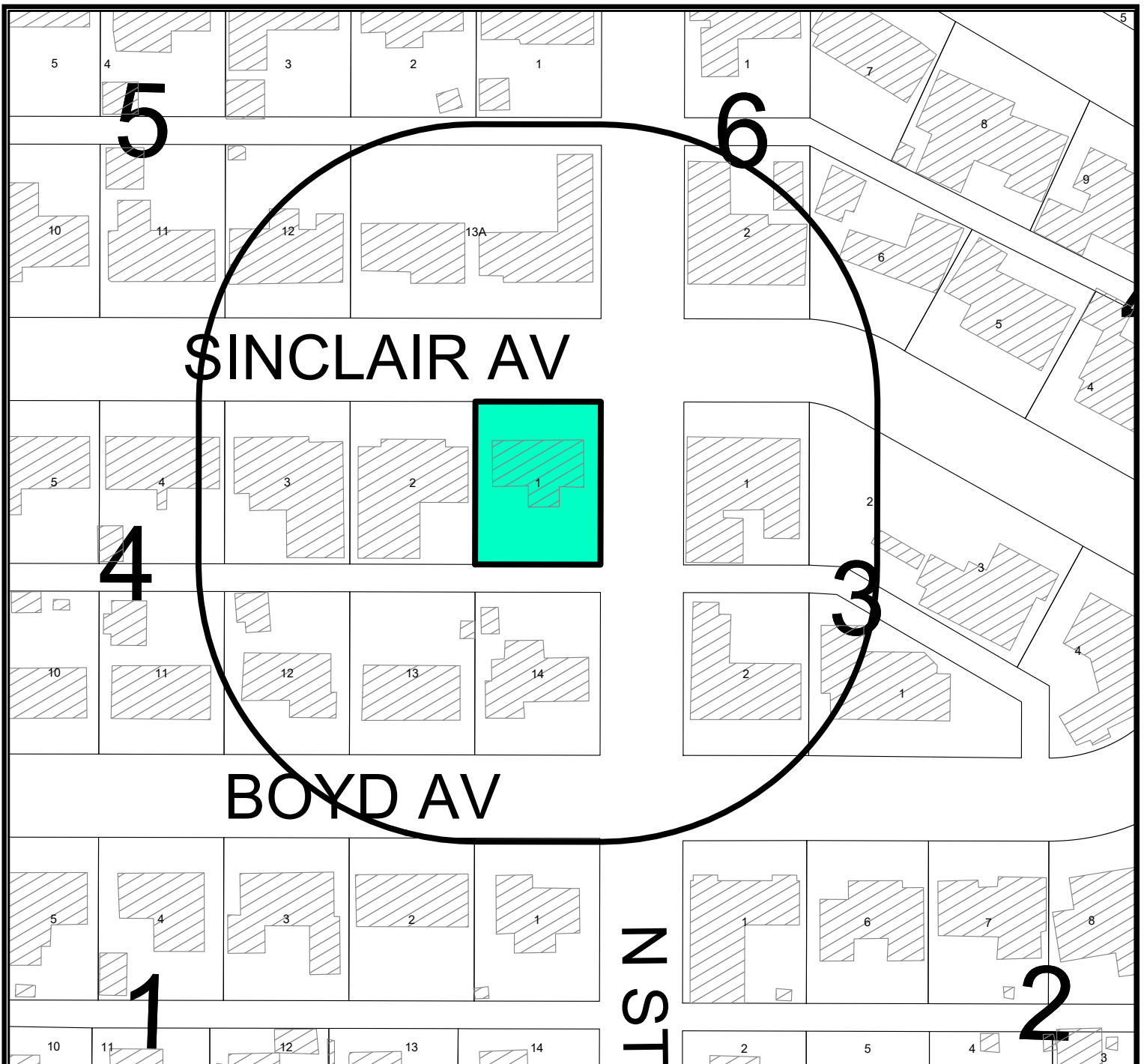
Designer/Contractor:
Prestonberry Wilson Architects
1102 West Texas Avenue
Midland, Texas 79701
817/682-1242

[illegible]

Envelope Assemblies

[illegible]

NAME: T. WILLEN 12.9.22
 NAME - TITLE _____
 SIGNATURE _____



LOCATION MAP

E-22-0091

Scale: 1" = 200'

Consider a request by Austin Butler for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback on Lot 1, Block 4, Berkshire Place, City and County of Midland, Texas.

Generally located on the southwest corner of the intersection of Sinclair Avenue and North "N" Street.
 – (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 14, 2023

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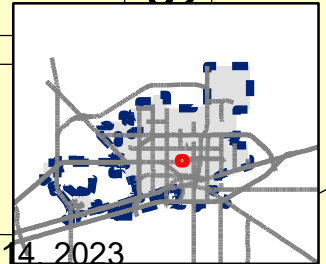
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17.13

February 14, 2023













City Council Meeting

Item Number: 18
Meeting Date: February 14, 2023
To: City Council / City Manager
From: James Reber, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 155, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH LORAIN STREET, APPROXIMATELY 143 FEET SOUTH OF WEST PENNSYLVANIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jorge Chavez, is requesting a Zone Change from RR, Regional Retail District, to SF-3, Single-Family Dwelling District, for a future development of a house located at 704 South Loraine.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north, east, and south, are zoned RR, Regional Retail District, and are the location of residential properties. Properties to the west are zoned C, Commercial District, and are the location of commercial properties.

Analysis:

The property is located at 704 S. Loraine and is currently vacant. The applicant is requesting this zone change for the purposes of constructing a single-family residence on the property. The current zoning is RR, Regional Retail District. Per the previous zoning ordinance, single-family detached dwellings were allowed within this zoning district. As of July 1, 2019, the new zoning ordinance does not allow the use of single-family detached dwellings within the RR, Regional Retail District. The property meets the minimum lot size requirements for the SF-3, Single Family Dwelling District.

The applicant will be required to adhere to the site plan review standards outline within the City of Midland Zoning Ordinance Section 5.04: - Residential Zoning District Dimensional Regulations Chart.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Code: (Approved)

No Oil and Gas Issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning (Approved):

The City of Midland Planning Department supports this rezone because of the existing surrounding uses. The surrounding use is comprised of single-family and multi-family residences. According to the Tall City Tomorrow Comprehensive Plan, Urban Residential-Medium (UR-M) land use intends to blend a mix of housing types, especially in older neighborhoods. Potential zoning for UR-M land use includes Single-Family Dwelling District, however, does not list RR, Regional Retail District. Therefore, changing 704 S Loraine Street to SF-3, Single Family Dwelling District would fit in the intended land use appropriately.

The zone change was approved at the Planning and Zoning commission meeting of December 19, 2022.

Staff recommends approval of this zone change from RR, Regional Retail District, to SF-3, Single-Family Dwelling District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of January 5, 2022.

Attachments:

Application
Maps
Aerial Map



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 155, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH LORAIN STREET, APPROXIMATELY 143 FEET SOUTH OF WEST PENNSYLVANIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 3, Block 155, Southern Addition, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-22-0315
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Jorge Chavez</u>		Phone (432) 889-7005 Email: <u>ferre-chavez@gmail.com</u>	
Address: <u>714 N. Calhoun St.</u>	City: <u>Midland</u>	State: <u>TX</u>	Zip: <u>79701</u>

Property Owner Printed Name: <u>Jorge Chavez</u>		Phone (432) 889-7005 Email: <u>ferre-chavez@gmail.com</u>	
Address: _____	City: <u>Midland</u>	State: <u>TX</u>	Zip: <u>79701</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email: _____	
Address: _____	City: _____	State: _____	Zip: _____

Street Address: <u>704 S. Lorraine St.</u>		
Legal Description Lot: <u>3</u> Block: <u>155</u> Subdivision: <u>of Southern addition</u>		

Current Zoning: <u>RR</u>	Proposed Zone: <u>SF 3</u> (List by tracts if more than one district is requested)
----------------------------------	--

Reason for Zone Change Request: New house

Present Use of Property: Vacant

Proposed Use of Property: Vacant New house

How would this zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature): <u>George Chavez</u>	Date: <u>11-21-2022</u>
Applicant (printed): <u>George Chavez</u>	
Property Owner (signature): <u>George Chavez</u>	Date: <u>11-21-2022</u>
Property Owner (printed): _____	
<i>The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

STATE OF TEXAS
COUNTY OF MIDLAND

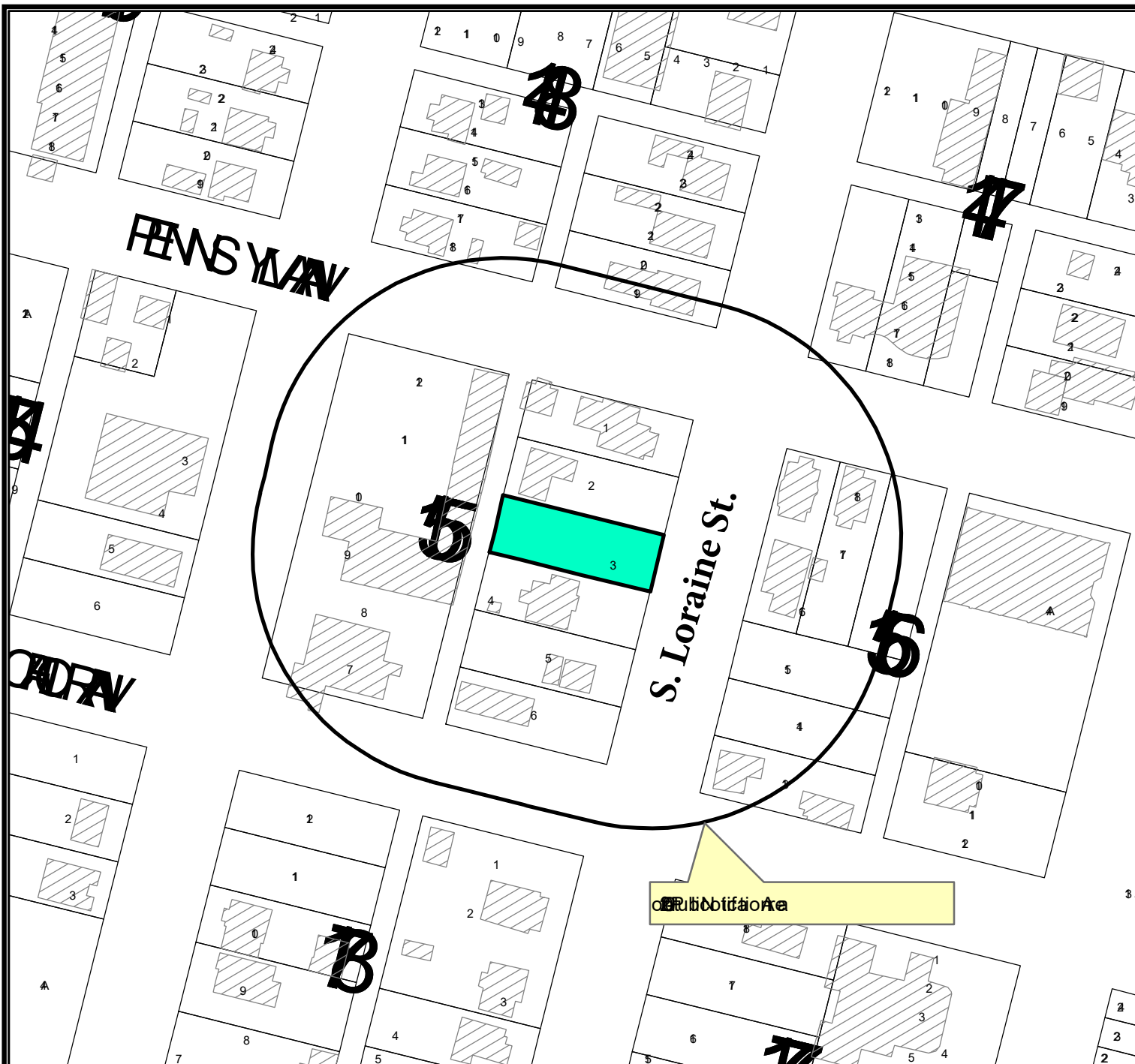
Before me, the undersigned authority, on this day personally appear _____ who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, 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 ☐ Application Fee Check # _____	☐ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By: _____	Date: _____



LOCATION MAP

Z-22-0315

Scale: 1" = 200'

Consider a request by Jorge Chavez for a zone change from RR, Regional Retail District, to SF-3, Single-Family Dwelling District, on Lot 3, Block 155, Southern Addition, City and County of Midland, Texas.

Generally located on the west side of S. Loraine St., approximately 143 feet south of W. Pennsylvania Ave. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



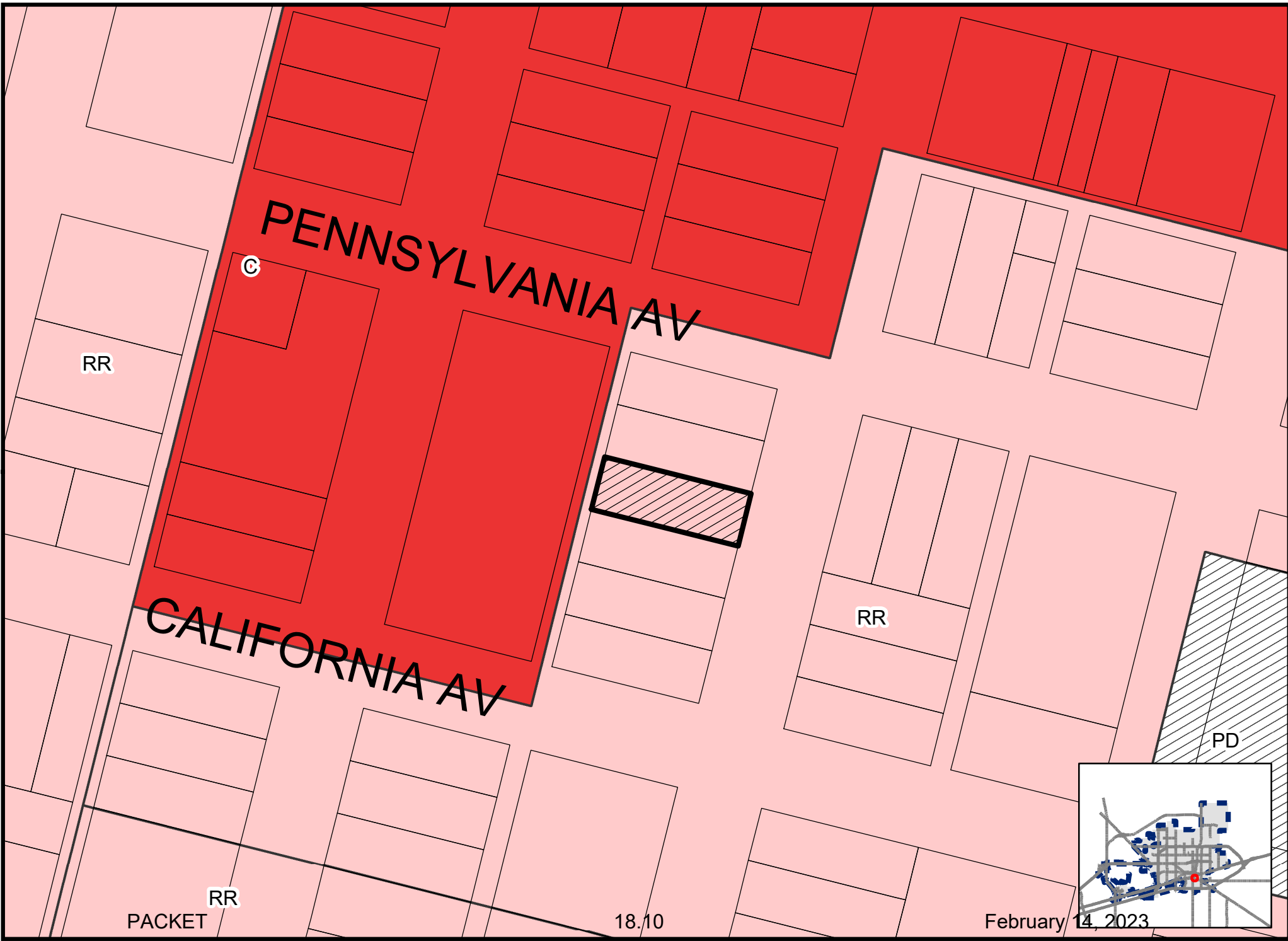
©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 14, 2023

18.9















City Council Meeting

Item Number: 19
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Landon Ochoa, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 4, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 550 FEET SOUTH OF WEST LOOP 250), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Karen Hopkins, is requesting a Specific Use Designation (SUD) for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant named Rosa's, located at 4301 North Midland Drive.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

The applicant is requesting a Specific Use Designation for Rosa's Cafe located at 4301 North Midland Drive, to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned RR, Regional Retail District, which permits the sale of all alcoholic beverages for on-premises consumption, in a restaurant with the approval of a Specific Use Designation with Term.

The restaurant currently has an alcohol SUD with term under the ordinance 8454. However, they are amending their SUD since their site plan has changed due to making modifications to their building and changing the square footage.

The restaurant is currently in operation and has a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as "Exhibit A" illustrates that the establishment, will have a total square footage of 6,530 square feet, with an alcohol serviceable area of 3,710 square feet. The site currently has adequate parking, access, and internal circulation.

The restaurant has the following hours of operation:

Sunday through Thursday from 6:30 a.m. to 10 p.m.

The restaurant is proposing the following hours of alcohol service:

Sunday through Thursday 10 a.m. to 11 p.m.

Friday and Saturday from 10 a.m. to 11 p.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Transportation: (Approved)

No objection. [For the Applicant's information only.]

Building Code: (Approved)

The SUD for Rosa's is acceptable. The property must adhere to the maximum occupant load of 247 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

This request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) Rosa's Cafe is an establishment that will provide Midland residents with a unique social gathering experience.

The Planning and Zoning Commission recommended approval of this request at the February 6, 2023, meeting.

Staff recommends approval of this Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to conditions A through F.

Conditions:

- A. That the serviceable area of the restaurant shall be limited to approximately 3,710 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 Thursday 10 a.m. to 11 p.m.**
 - Friday and Saturday from 10 a.m. to 11 p.m.**
- C. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**
- D. That the establishment shall meet all requirements of the Fire Department and Code Administration.**

- E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

Letters of Objection:

As of February 10, 2023, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Ordinance (8454)
Maps



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 4, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 550 FEET SOUTH OF WEST LOOP 250), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for Lot 4, Block 44, Fairmont Park Addition, Section 18, City and County of Midland, Texas (the “Property”), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the “Establishment”) for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

- A. That the serviceable area of the Establishment shall be limited to approximately 3,710 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Sunday through Saturday from 10:00 a.m. to 11:00 p.m.
- D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.
- F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Amy M. Turner, City Secretary

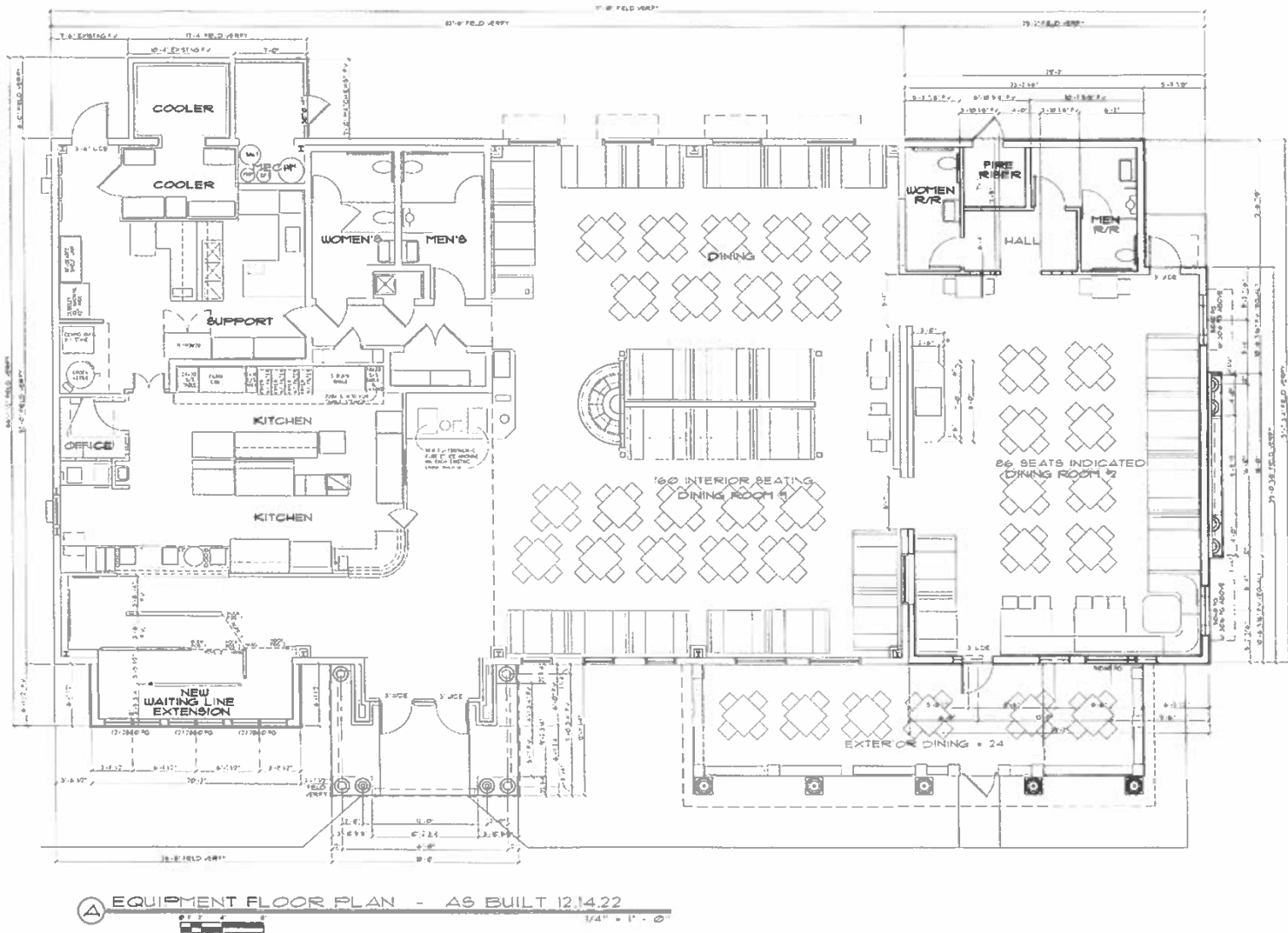
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



EXISTING ENCLOSED BUILDING = 4,355 SF.
(AFTER EXISTING PATIO ENCLOSURE DEMOLITION)
CURRENT PROJECT INDICATED = 1,693 SF.
(DINING ROOM EXTEN, NEW R/R'S & FIRE RISER ROOM)
(WAITING LINE EXTEN, COOLER & MECH. EXTENSION)
TOTAL ENCLOSED BUILDING = 6,048 SF.
REMODELED COVERED PATIO = 482 SF.
GROSS = 6,530 SF.

ALCOHOL CONSUMPTION SERVICE AREA = 3,710 SF.

PROJECT: AS BUILT - 12.14.22
ROSA'S CAFE # 10
TORTILLA FACTORY
4301 N. MIDLAND DRIVE, MIDLAND, TEXAS 79707

SHEET: AB-EFP1
OF:
NO. 10.
DATE: 12.14.22



Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption

Project Number: BUD-22-0147
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Karen Hopkins</u>		Phone (<u>432</u>) <u>563-5233</u> Email: <u>khopkins@bobbycor.com</u>	
Address: <u>PO Box 60423</u>	City: <u>Midland</u>	State: <u>TX</u>	Zip: <u>79701</u>
Property Owner Printed Name: <u>Bobby Cox</u>		Phone (<u>817</u>) <u>377-6243</u> Email: <u>wkj@bobbycor.com</u>	
Address: <u>5000 Overton Plaza #300</u>	City: <u>Ft. Worth</u>	State: <u>TX</u>	Zip: <u>76109</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email: _____	
Address: _____	City: _____	State: _____	Zip: _____

Street Address: <u>4301 N. Midland Dr</u>	
Business Name: <u>Rosa's Cafe & Tortilla Factory</u>	
Legal Description Lot: <u>004</u> Block: <u>044</u> Subdivision: <u>Fairmont Park Section 18</u>	
Current Zoning: <u>Commercial - LR2 PD</u>	
Reason for Request: <u>Remodel CO</u>	

Type of Business (restaurant, bar, lounge, nightclub, etc.): <u>restaurant</u>	
Proposed/Current Days and Hours of Operation: <u>Sun-Thurs 6:30AM-10pm Fri/Sat 6:30AM-11pm</u>	
Proposed Days and Hours of Alcohol Service: <u>Sun-Thurs 10AM-10pm Fri/Sat 10AM-11pm</u>	
Total Square Footage of Business: <u>6530</u>	
Square Footage of Alcohol Serviceable Area: <u>3710</u>	
Restroom Fixtures:	Toilets/Urinals: <u>3 / 2</u> Bathroom Sinks: <u>2</u>
Men	
Women	Toilets: <u>3</u> Bathroom Sinks: <u>2</u>

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 • Dimensioned Site Plan showing: • Parking	• Kitchen (if applicable) • Total Square Footage • Serviceable Square Footage • Business Footprint

PACKET 19.10 February 14, 2023

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☒ Property Owner Authorization ☒ Application Fee \$300 ☒ Check # <u>Card payment</u>	☒ Dimensioned Floor Plan ☒ Site Plan ☒ Plans in Digital Format (PDF/JPEG)
Received By: <u>Matt Walling</u> Date: <u>DEC 14 2022</u>	

BY: W

RECEIVED

All docs on USB

STATE OF TEXAS
COUNTY 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.

Before me, the undersigned authority, on this day personally appeared Karen Hopkins who, being by me duly sworn, upon oath says: That (s)he is authorized by Bobby Cox, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this 14th day of December, 2022, to certify which witness my hand and seal of office.

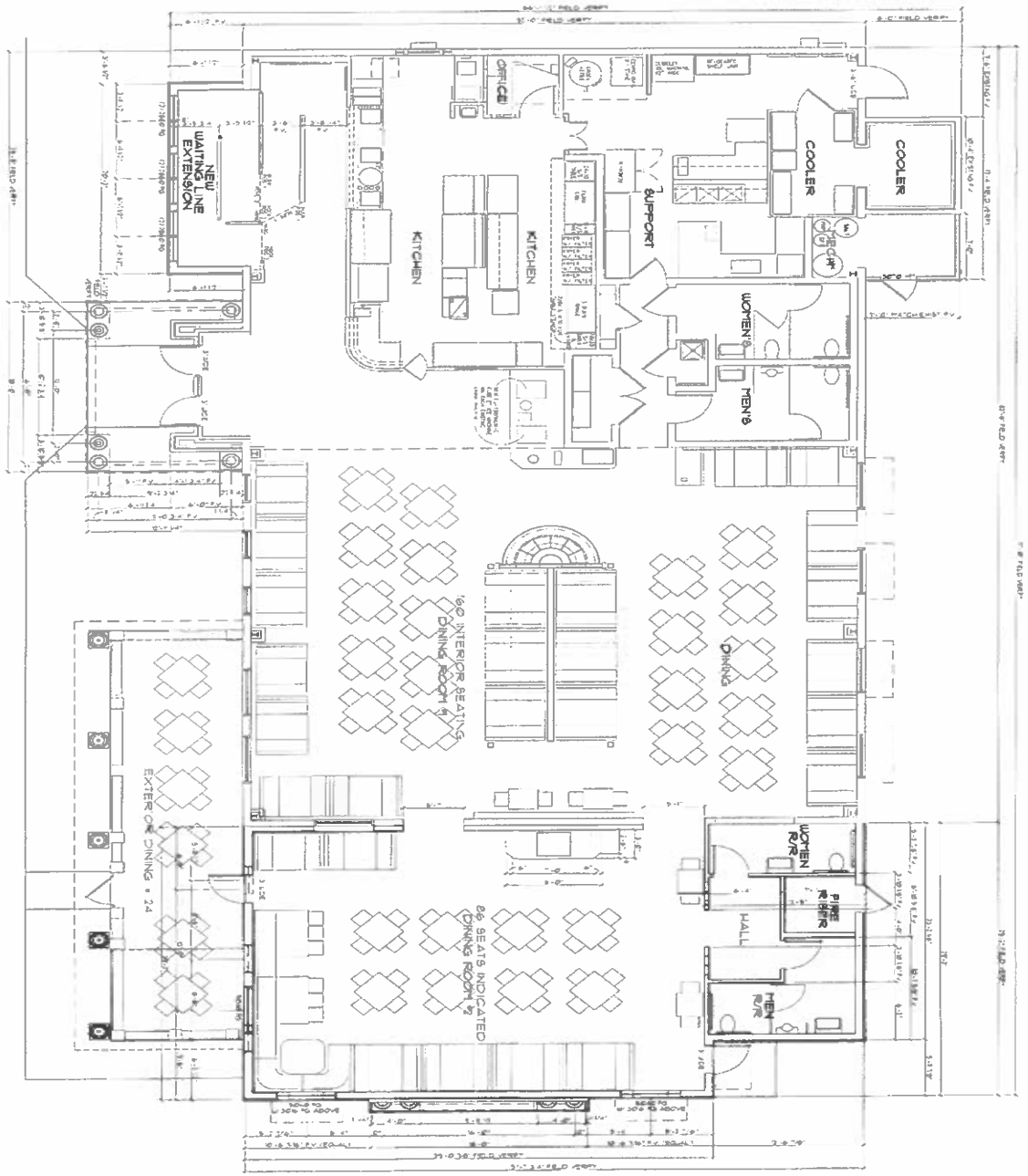
Authorized Agent (signature) Karen Hopkins

NOTARY PUBLIC, MIDLAND COUNTY, TEXA



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.	
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.	
Applicant (signature): <u>Karen Hopkins</u> Applicant (printed): <u>Karen Hopkins</u>	Property Owner (signature): <u>Bobby Cox</u> Property Owner (printed): <u>Bobby Cox</u>
Date: <u>12-14-2022</u>	Date: <u>12-14-2022</u>

PACKET 19.11 February 14, 2023



A EQUIPMENT FLOOR PLAN - AS BUILT 12.14.22
 1/4" = 1' - 0"

EXISTING ENCLOSED BUILDING = 4355 SF.
 AFTER EXISTING PATIO ENCLOSURE DETENTION
 CURRENT PROJECT INDICATED = 1693 SF.
 (DINING ROOM EXTEN. NEW S/R'S & FIRE SIGNS ROOM)
 (WAITING LINE EXTEN. COOLER & TECH. EXTENSION)

ALCOHOL CONSUMPTION SERVICE AREA = 3710 SF.

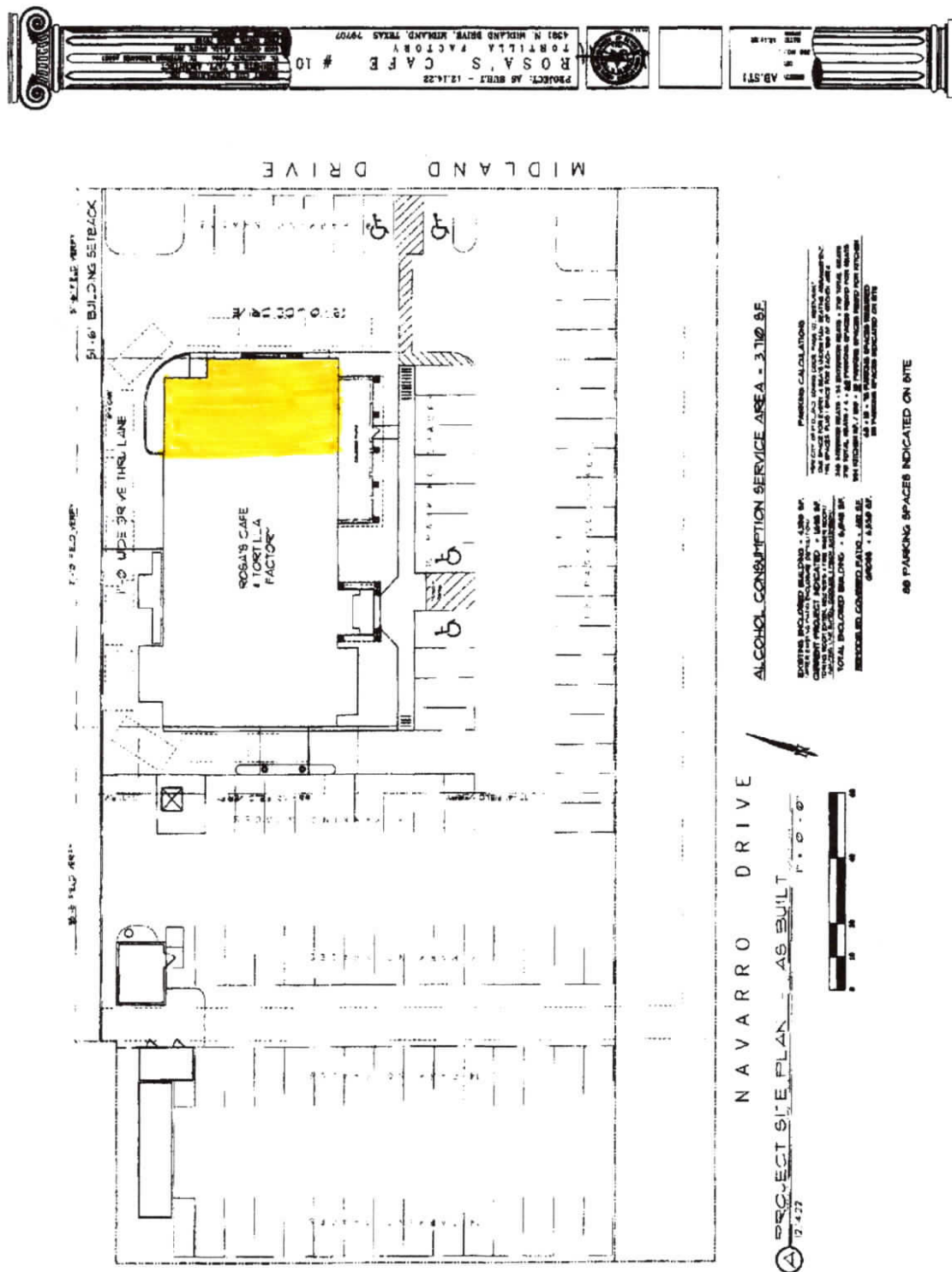
TOTAL ENCLOSED BUILDING = 6048 SF.

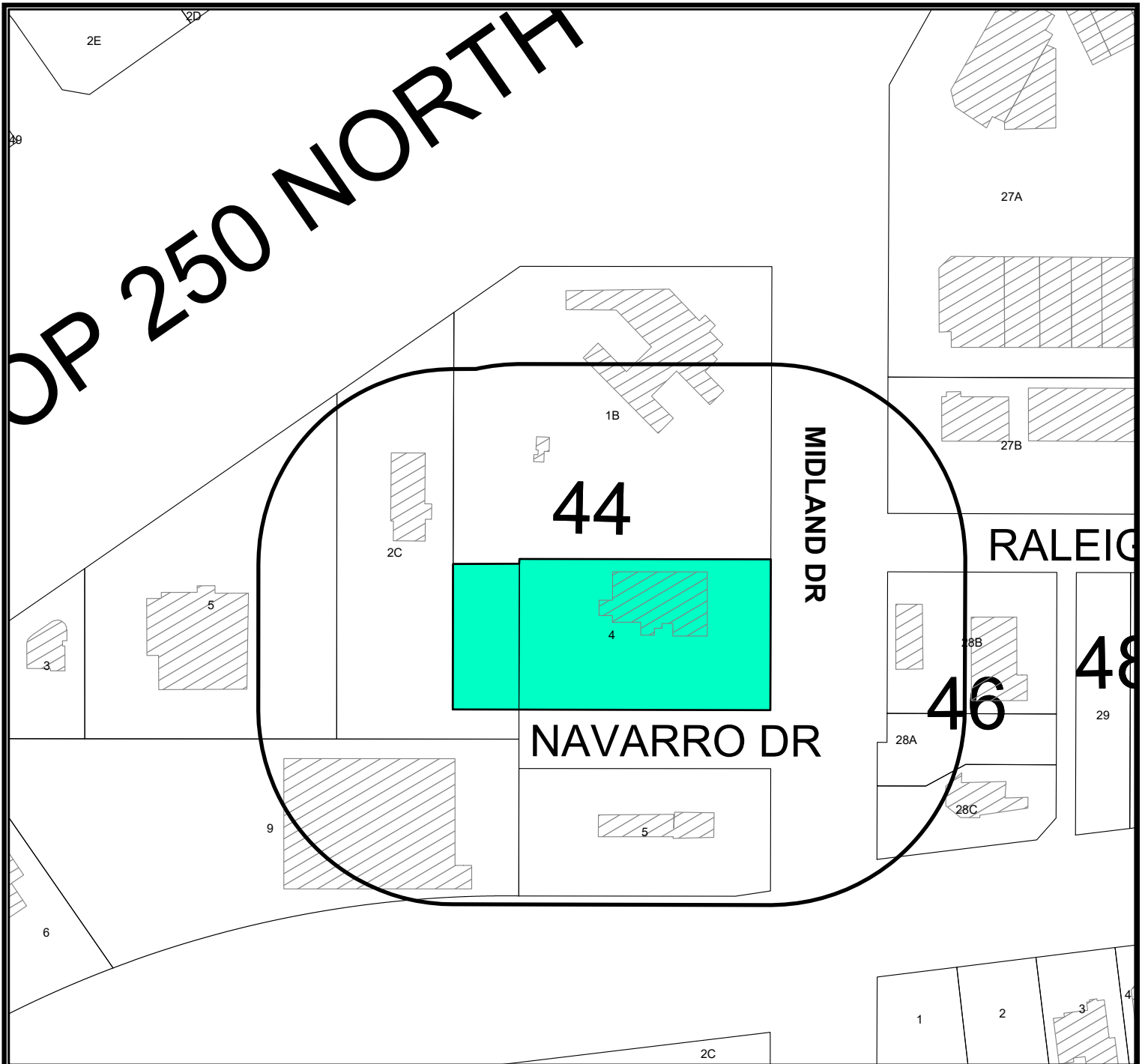
REMODELED COVERED PATIO = 482 SF.
 GROSS = 6,530 SF.

SHEET: AB.EFP1
 JOB NO.:
 DATE: 12.14.22

PROJECT: AS BUILT - 12.14.22
ROSA'S CAFE # 10
 TORTILLA FACTORY
 4301 N. MIDLAND DRIVE, MIDLAND, TEXAS 79707

BOBBY COX COMPANIES, INC.
 KENNETH R. TAFT, ARCHITECT
 TX ARCHITECT #7964 TX INTERIOR DESIGNER #0097
 1606 OVERTON PLAZA, SUITE 200
 FORT WORTH, TEXAS 76104
 PHONE: 817-335-3231
 FAX: 817-335-3232





LOCATION MAP

SUD-22-0147

Scale: 1" = 200'

Consider a request by Karen Hopkins for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages, for on premises consumption in a restaurant on Lot 4, Block 44, Fairmont Park, Section 18, City and County of Midland, Texas.

Generally located on the west side of North Midland Drive approximately 550 feet south of West Loop 250. (Council District 1)

LEGEND

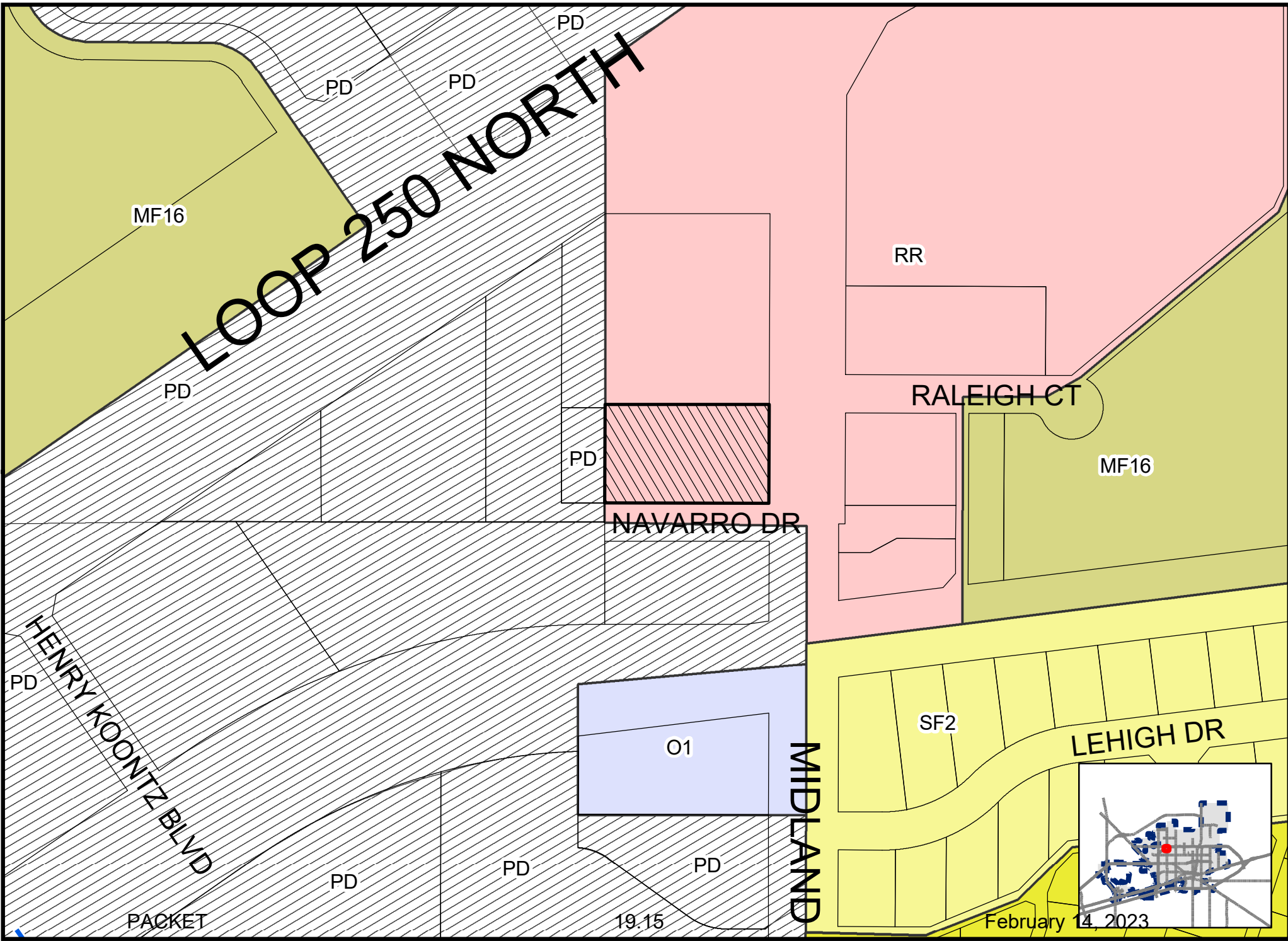
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 14, 2023

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FOR
TA.











ORDINANCE NO. 8454

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF CERTAIN PROPERTY DESCRIBED AS LOT 4, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, AND PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-2, Local Retail District, and PD, Planned District for a Shopping Center, to wit:

Lot 4, Block 44, Fairmont Park Addition, Section 18, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a Restaurant, together

Case Number: 5-06-011

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

Applicant: ROSAS CAFE & TORTILLA FACTORY
Address: 4301 N. MIDLAND DRIVE 432-520-0489
Street Address Phone
MIDLAND TEXAS 79707
City State Zip Code

Property Owner: ROSAS CAFE & TORTILLA FACTORY
Address: 4055 INTERNATIONAL PLAZA #400 817-377-6200
Street Address (Phone)
FORT WORTH TX 76109
City State Zip Code

Operator: _____
(Individual who will operate or manage the facility if different from applicant or owner)

Address: _____
Street Address (Phone)
City State Zip Code

Type of Business: RESTAURANT
(Type of operation, i.e. Bar, Lounge, Nightclub, Restaurant, etc.)

Street address and Legal Description of property on which Specific Use Permit with Term is desired (complete Lot, Block, and Land Subdivision Name description, or, if not in a recorded plat, attach a Metes and Bounds description.)

4301 N. MIDLAND DRIVE
LOT 4, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 18

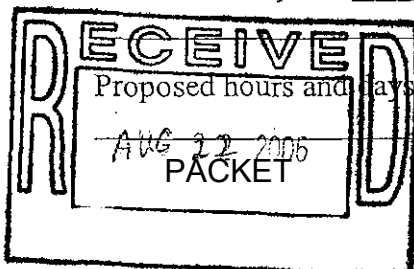
Site plan or location drawing shall be attached when applicable (16 copies) and a CD in .pdf and .jpg format shall be submitted containing the site plan or location drawing.

Present Zoning Classification: LR2

Maximum Floor Area: 5,673
6,004 SF

Maximum Seating Capacity: 244

Reason for request: RESTAURANT SELLING ALCOHOLIC BEVERAGES



Proposed hours and days of alcoholic beverage sales: MON - SAT: 10:30 AM - 12:00 MIDNIGHT
SUN: 12:00 NOON - 12:00 MIDNIGHT

19.21

February 14, 2023

Check the types of alcoholic beverage sales desired:

☒ Beer ☐ Wine ☒ Mixed Beverages

Reasons in applicant's opinion why the requested Specific Use will not adversely affect the public safety, health, morals, general welfare, and convenience:

NOTE: If property owner is to be represented by an authorized agent, the agent should indicate the property owner's name and his own on the lines provided above and complete the affidavit below.

A \$300.00 fee must accompany all requests. If no public hearing is called, then 80% of this fee will be refunded.

Applicant's Signature: _____ Date: _____

Property Owner's Signature: _____ Date: _____

By Authorized Agent: Karen Hopkins Date: 8-21-06

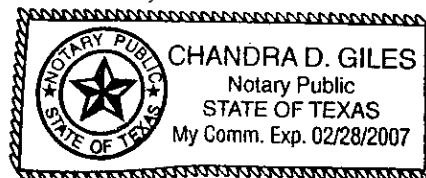
Before me, the undersigned authority, on this day personally appeared Karen Hopkins who, being by me duly sworn, upon oath says: That she is authorized by Rosa's Cafe, the owner of the above described property, to fully represent him in this application and that he had the legal right, power and authority to sign said owner's name hereto as his attorney in fact.

Karen Hopkins
(Signature of Affiant)

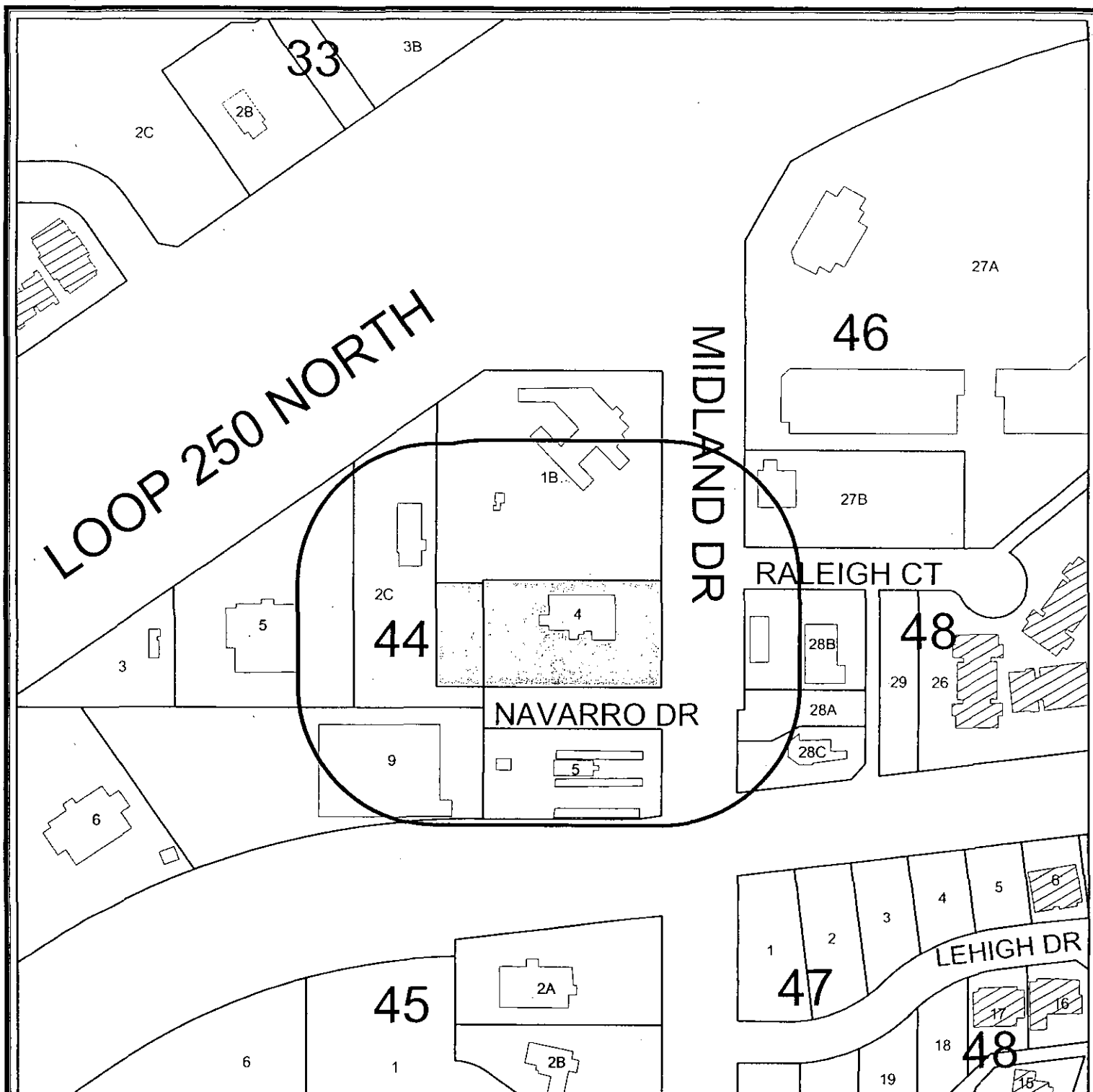
Subscribed and sworn to before me, by the said _____, this 21 day of August, 2006, to certify which witness my hand and seal of office.

Chandra D Giles
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MA</u>	Date: <u>8-22-06</u>
Assigned: <u>DC</u>	
For: <u>P+Z</u>	On: <u>9/18/06</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

P - 06 - 011

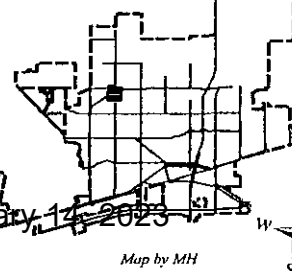
Scale: 1" = 200'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 4, Block 44, Fairmont Park Addition, Section 18, ~~PAVKE~~ ~~PAVKE~~ County of Midland, Texas.

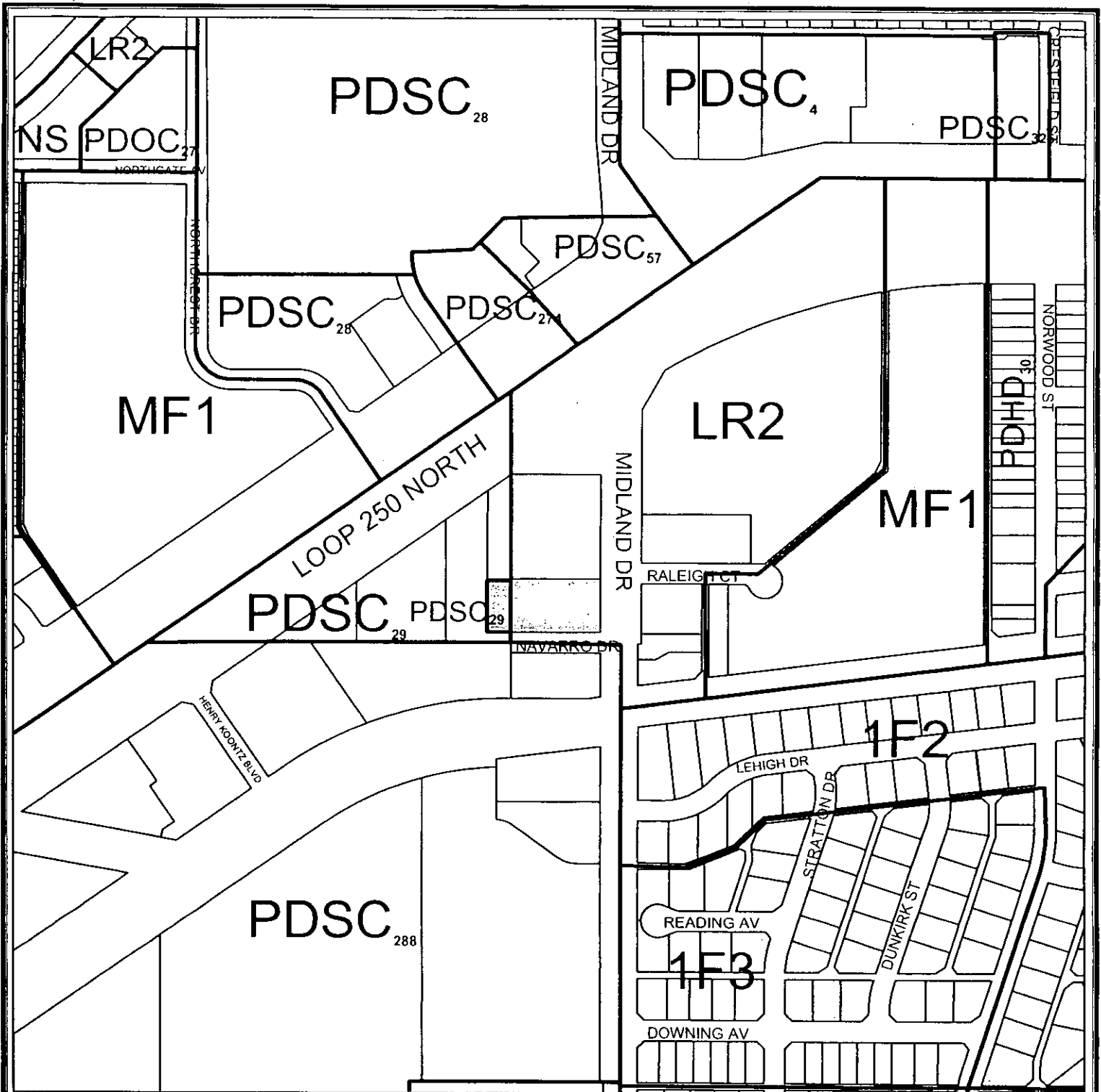
LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS

City of Midland, Texas
Planning Division



February 14, 2023



ZONING MAP

S - 06 - 011

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 4, Block 44, Fairmont Park Addition, Section 18, City and County of Midland, Texas.

PACKET

ZONING

SPECIFIC USE PERMITS

LEGEND

PARCELS

CITY LIMITS

PUBLIC BLDGS

ZONING DISTRICTS:

FD FUTURE DEVELOPMENT
PD PLANNED DISTRICT
AE AGRICULTURE ESTATE
CE COUNTRY ESTATE
1F1, 1F2, 1F3 ONE-FAMILY DWELLING
1F1 MOBILE HOME DWELLING
1F1 TOWNHOUSE DWELLING
2F TWO-FAMILY DWELLING
MF1, MF2 MULTIPLE FAMILY DWELLING

BP BUSINESS PARK
P PARKING
01, 02 OFFICE
NS NEIGHBORHOOD SERVICE
LR1, LR2, LR3 LOCAL RETAIL
1F1, 1F2, 1F3 COMMERCIAL
LI INDUSTRIAL PARK
LI LIGHT INDUSTRY
HI HEAVY INDUSTRY

BP BUSINESS PARK
P PARKING
01, 02 OFFICE
NS NEIGHBORHOOD SERVICE
LR1, LR2, LR3 LOCAL RETAIL
1F1, 1F2, 1F3 COMMERCIAL
LI INDUSTRIAL PARK
LI LIGHT INDUSTRY
HI HEAVY INDUSTRY



19/24

February 14, 2028

with the uses permitted in the present LR-2, Local Retail District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

1. That the use and development of this property as a restaurant selling alcoholic beverages shall conform to the site plan, attached hereto as Exhibit "A", and incorporated herein for all purposes.
2. That the restaurant shall not exceed 5,673 contiguous square feet in area.
3. That the maximum seating capacity shall not exceed 240 persons.
4. That the time of alcoholic beverage sales shall be limited to Monday through Saturday from 10:30 a.m. to 12:00 midnight, and Sunday from 12:00 noon to 12:00 midnight.
5. That the use and operation of this restaurant shall conform with all the laws of the State of Texas and the regulations pertaining to the sale and consumption of alcoholic beverages specified in the Midland City Code.

SECTION THREE. That Ordinance No. 7357, adopted August 23, 1994, is hereby expressly repealed for all purposes.

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 10th day of October, A.D., 2006; and passed to second reading on motion of Council member Perry, seconded by Council member Morgan, by the following vote:

Council members voting "AYE": Perry, Morgan, Dingus,
Canon and Hailey

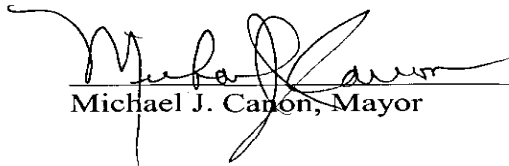
Council members voting "NAY": Simpson

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 Hailey, on the 24th day of October, A.D., 2006, at a regular meeting of the City Council:

Council members voting "AYE": Morgan, Hailey, Perry,
Dingus, Canon and
Dufford

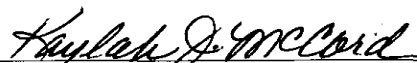
Council members voting "NAY": Simpson

PASSED AND APPROVED THIS 24th day of October, A.D., 2006.



Michael J. Canon, Mayor

ATTEST:



Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:



Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
MJohnston
 City Manager's Office

MEETING DATE: October 10, 2006

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: S-06-011; SUP - Rosa's Cafe

Purpose:

'Hold a public hearing at 11:03 a.m. and consider an ordinance on a request by Rosa's and Tortilla Factory for a Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Rosa's Café on Midland Drive has been operating with a specific use permit for the sale of alcoholic beverages in a restaurant since 1994. The owner would like to expand the indoor seating and increase the hours of operation.

The restaurant has 4,335 sq ft on the interior and 1,637 sq ft on the patio, with an occupancy of 180. The owners wish to reduce the size of the outdoor patio and add 64 seats on the interior, which would bring the occupancy to 244. Parking requirements will continue to be met and no change is proposed to the existing drive-thru lane.

Regarding hours of operation, the current SUP allows alcoholic beverage sales from 11:00 a.m. to 12:00 midnight on Monday - Saturday, and from 12:00 noon to 12:00 midnight on Sunday. The request is to allow such sales to commence at 10:30 a.m. on all days except for Sunday, which would remain at 12:00 noon as required by State law.

Attachments: Exhibit A - Site Plan

CDS

PACKET

19.29

February 14, 2023

Planning and Zoning Commission Meeting
Minutes from September 18, 2006

S-06-011 - Hold a public hearing and consider a request by **Rosa's Café & Tortilla Factory** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 4, Block 44, Fairmont Park Addition, Section 18, City and County of Midland, Texas.

The applicant deferred comments to the staff. Ms. Cervantes presented the staff report. She stated the request is to amend the current Specific Use Permit to include an expansion in seating and increase in the hours of operation. With this change, 64 seats were added inside to bring the current occupancy to 244. The proposed days and hours of operation are Monday through Saturday, from 10:30 a.m. to 12:00 midnight and Sunday from 12:00 noon to 12:00 midnight. The Staff recommends approval of the request as submitted subject to Conditions A – F, with Item C being amended to read 244 persons.

Chairman Barlow asked if anyone in the audience wished to speak in favor or in opposition of the request. There being none, the public hearing was closed.

Chairman Barlow called for a motion. Mr. Davis made a motion to approve the request as submitted subject to Conditions A – F, with C being modified to read 244 persons. Ms. Moritz seconded the motion, and the motion passed unanimously.

PLANNING AND ZONING COMMISSION

September 18, 2006

CASE: S-06-011

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premise consumption in a Restaurant.

APPLICANT/OWNER: Rosa's Café & Tortilla Factory.

LEGAL DESCRIPTION: Lot 4, Block 44, Fairmont Park Addition, Section 18, City and County of Midland, Texas.

LOCATION: Generally located on the west side of N. Midland Drive, approximately 300 feet south of W. Loop 250 North.

CURRENT ZONING: LR-2, Local Retail District and PD, Planned District for a Shopping Center.

DETAILS OF REQUEST:

1. The Rosa's Café on Midland Drive has been operating with a specific use permit for the sale of alcoholic beverages in a restaurant since 1994. They are proposing to expand their seating and increasing their hours of operation, therefore an amendment to the current SUP is required. The proposed days and hours of alcoholic beverage sales are Monday through Saturday, from 10:30 a.m. to 12:00 midnight and Sunday from 12:00 noon to 12:00 midnight.

SITE PLAN:

2. This location consists of the main restaurant, an "enclosed" patio and a "fenced" patio. When it first opened, the restaurant had 4,335 square feet on the interior and 1,637 square feet on the patio, with a total occupancy of 180. Over time, the owners concluded that the open patio was too large, as most patrons preferred to dine inside. By reducing the outdoor patio to 697 square feet, the interior space was increased to 4,976 square feet. With this change, 64 seats were added inside bringing the current occupancy to 244. Even with the increased seating capacity, the parking requirements continue to be met – a minimum of 21 parking spaces are required and 81 are provided. No change is proposed to the existing drive-thru lane.

PLANNING AND ZONING COMMISSION

September 18, 2006

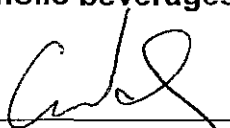
S-06-011

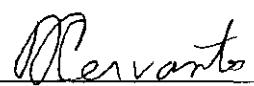
3. The current SUP allows alcoholic beverage sales between the hours of 11:00 a.m. to 12:00 midnight on Monday through Saturday, and from 12:00 noon to 12:00 midnight on Sunday. The request is to allow such sales to commence at 10:30 a.m. on all days except for Sunday, which would remain at 12:00 noon as required by State law. We believe the proposal to allow an increased occupancy and slightly increased time for serving alcoholic beverages is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request for a specific use permit with term, for on-premise consumption of all alcoholic beverages in a restaurant, subject to the following conditions:

- A. That the use and development of this property as a restaurant selling alcoholic beverages shall conform to the attached site plan;**
- B. That the restaurant shall not exceed 5,673 square feet in area;**
- C. That the maximum seating capacity shall not exceed 180 persons;**
- D. That the days of alcoholic beverage sales shall be limited to Monday through Saturday from 10:30 a.m. to 12:00 midnight, and Sunday from 12:00 noon to 12:00 midnight;**
- E. That the existing Specific Use Permit with Term for the sale and on-premise consumption of all alcoholic beverages in a restaurant, issued by Ordinance 7357, shall be repealed;**
- F. That the use and operation of this restaurant shall conform with all of the laws of the State of Texas and the regulations pertaining to the sale and consumption of alcoholic beverages specified in the Midland City Code.**


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Donna Cervantes, Planner
Department of Development Services

Attachments:

Application
Maps
Site Plan



City Council Meeting

Item Number: 20
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Landon Ochoa, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE AN 8.823-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 1, ORTLOFF ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO MF-22, MULTIPLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WESTCLIFF DRIVE, APPROXIMATELY 335 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 (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Brad Schwab, is requesting a zone change from LI, Light Industrial District to MF-22, Multiple-Family Dwelling District to permit senior, multi-family housing.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Surrounding Zoning and Land Use:

The properties to the north are zoned LI and are the location of businesses. The properties to the east are zoned PD, Planned District for an Office Center and SF-1, Single-Family Dwelling District and is the location of homes and a government entity. The property to the south is zoned 2F, Two-Family Dwelling (Duplex) District and is the location of churches and homes. The

properties to the west are zoned C, Commercial, MF-22, Multiple-Family Dwelling District, and LR, Local Retail, and is the location of businesses, a government entity, and a church.

Analysis:

The applicant, Brad Schwab, is requesting approval of a change zoning from LI, Light Industrial District to MF-22, Multiple-Family Dwelling District to permit a senior, multi-family housing development.

The site plan, attached hereto as Exhibit B, shows a proposed subdivision that will have a continuous building of 69,620.48 square footage, with a maximum height of 45 feet. This building has been designed to have up to 200 units for Seniors (Age and Income Restricted). There will be 89 one-bedroom units and 111 two-bedroom units. The site has a total density of 22.67 units per acre. There are (2) semi-open concept common areas and a Dog Park. They will provide the required 357 parking spaces.

The applicant will be required to adhere to the site plan review standards outline within the City of Midland Zoning Ordinance Section 5.04; Residential Zoning District Dimensional Regulation Chart as well as Chapter 9, Landscape Regulations for future landscaping. In addition to conforming to the parking regulations set forth in Title XI, Chapter 11 of the City Code.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections to zone change request.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zoning. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

This request is not in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, "Future Land Use Map" as it designates this area for General Industrial, a classification which calls for all types of industrial: manufacturing, warehousing, distribution, and office/industrial flex space. However, as mentioned, the property has single-family housing to the south and east as well as an MF-22, zoning to the southwest. Therefore, this request is consistent with the development surrounding it. Additionally, Principle 4 of Chapter 3 of the Tall City Tomorrow Plan seeks to increase the diversity of the housing stock in Midland. This development works both for and against creating a sense of more community housing.

This item was to appear at the Planning and Zoning Commission meeting on January 17, 2023, but was moved due to the commission not having a quorum. This request was made by the applicant.

The Planning & Zoning Commission approved this request February 6, 2023.

Staff recommends approval of this zone change from LI, Light Industrial District to MF-22, Multiple-Family Dwelling District subject to conditions A through E.

Conditions:

- A. That this property shall significantly conform to the site plan, attached hereto and incorporated herein, as Exhibit B.**
- B. That the use and development of the property shall conform to the regulations of the MF-22, Multiple-Family Dwelling District.**
- C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**
- D. That all signage shall conform to the City of Midland Sign Code.**
- E. That the parking shall conform to the regulations set forth in Title XI, Chapter 11 of the City Code.**

Letters of Objection:

As of February 8, 2023, staff has received eight letters of objection.

Attachments:

Application
Metes and Bounds (Exhibit A
Site Plan (Exhibit B)
Maps
Meeting Date Display

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE AN 8.823-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 1, ORTLOFF ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO MF-22, MULTIPLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WESTCLIFF DRIVE, APPROXIMATELY 335 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 an 8.823-acre tract of land out of Lot 1, Block 1, Ortloff Addition, Section 2, 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 MF-22, Multiple-Family Dwelling District 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 LI, Light Industrial District to MF-22, Multiple-Family Dwelling District.

SECTION TWO. That a site plan, which is attached hereto as Exhibit “B” and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

That the use and development of the Property shall conform to the regulations of the MF-22, Multiple-Family Dwelling District and the conditions shown on Exhibit "B".

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 _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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"

MAVERICK

ENGINEERING - SURVEY - WATER RESOURCES

1909 West Wall Street, Suite K - Midland, TX 79701

Tel: 432.262.0999 - Fax: 432.262.0989 - maverick-eng.com

ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514



FIELD NOTE DESCRIPTION OF A 8.823 ACRE TRACT OF LAND, SITUATED IN SECTION 30, BLOCK 39, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT CALLED LOT 1, BLOCK 1, ORTLOFF ADDITION, SECTION 2, AS RECORDED IN DOCUMENT NUMBER 12374, IN CABINET D ON PAGE 61 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY AND BEING A PORTION OF THE TRACT CONVEYED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 5161 IN VOLUME 1452 ON PAGE 665 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED FOR A ZONING DESCRIPTION ONLY AS FOLLOWS;

BEGINNING AT N.(y): 10694925.39, E.(x): 1734544.87, A ONE HALF INCH IRON ROD WITH CAP MARKED "PSC RPLS 6453," FOUND AND ACCEPTED AS THE SOUTHEAST CORNER OF LOT 3-A, BLOCK 1, ORTLOFF ADDITION, SECTION 7 AS FILED IN CABINET "M", PAGE 33, OF SAID PLAT RECORDS, AND AN INTERIOR CORNER HEREOF;

THENCE N.14°22'51"W., ALONG THE EAST LINE OF SAID LOT 3-A, AT A RECORD 165.10 FEET PASSING THE EAST NORTHEAST CORNER THEREOF AND A POINT AT WHICH WESTCLIFF DRIVE RIGHT-OF-WAY COMMENCES, IN ALL, 181.26 FEET TO A FIVE EIGHTHS INCH IRON ROD (BENT) FOUND AT A POINT OF DEFLECTION AND CURVATURE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF N.19°41'56"W., 74.01 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT 83.32 FEET TO A FIVE EIGHTHS INCH IRON ROD WITH AN ILLEGIBLE YELLOW CAP AT A POINT OF DEFLECTION AND THE END OF CURVE;

THENCE N.14°22'51"W., ALONG THE EAST RIGHT-OF-WAY LINE OF SAID WESTCLIFF DRIVE, 89.99 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET ON THE SOUTH LINE OF A 20 FOOT ALLEY BEING THE SOUTH LINE OF ORTLOFF ADDITION SECTION 3, RECORDED AS DOCUMENT NUMBER 3790 IN CABINET G ON PAGE 31 OF SAID PLAT RECORDS FOR THE NORTH NORTHWEST CORNER HEREOF;

THENCE N.75°39'44"E., ALONG SAID ALLEY, 492.30 FEET TO AN "RPC" SET IN THE WEST RIGHT-OF-WAY LINE OF WOODCREST DRIVE AT THE SOUTHEAST CORNER OF SAID ORTLOFF ADDITION SECTION 3, FOR THE NORTHEAST CORNER HEREOF;

THENCE THE FOLLOWING 3 COURSES AND DISTANCES ALONG SAID WEST RIGHT-OF-WAY;

1. S.14°22'32"E., 122.25 FEET TO AN "RPC" SET;

2. N.75°37'28"E., 5.00 FEET TO AND "RPC" SET;

3. S.14°22'32"E., 450.00 FEET TO AN "RPC" SET AT THE SOUTHEAST CORNER OF SAID ORTLOFF ADDITION SECTION 2 AT THE INTERSECTION OF SAID WEST RIGHT-OF-WAY AND THE NORTH RIGHT-OF-WAY OF DOUGLAS AVENUE, FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°38'31"W., ALONG SAID RIGHT-OF-WAY, 167.67 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 538.54 FEET AND A CHORD BEARING AND DISTANCE OF S.61°29'12"W., 263.37 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT 266.06 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 478.54 FEET AND A CHORD BEARING AND DISTANCE OF S.59°13'15"W., 197.08 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONVEX TO THIS TRACT, 198.50 FEET TO A ONE HALF INCH IRON ROD FOUND AT A POINT OF DEFLECTION BEING THE POINT OF CURVATURE FOR A CUL-DE-SAC CONCAVE TO THIS TRACT HAVING A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF N.85°51'43"W., 87.00 FEET;

THENCE AROUND THE ARC OF SAID CUL-DE-SAC, 105.52 FEET TO A POINT OF DEFLECTION TO THE RIGHT AND THE END OF CURVE FOR A SOUTHERLY CORNER HEREOF;

THENCE THE FOLLOWING 4 COURSES AND DISTANCES INTERIOR TO SAID LOT 1;

1. S.86°40'47"W., 93.18 FEET TO A POINT;
2. N.14°43'02"W., 187.89 FEET TO A POINT;
3. N.75°37'28"E., 20.03 FEET TO A POINT;
4. N.14°22'32"W., 114.34 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 3-A;

THENCE N.75°39'22"E., ALONG SAID SOUTH LINE OF LOT 3-A, 276.75 FEET TO THE **POINT OF BEGINNING**, CONTAINING 8.823 ACRE OF LAND.



December 19, 2022

Gregory W. Shoults

www.maverick-eng.com

Texas RPLS - No. 5356

Maverick Engineering (FIRM – No. 10194514)



	DENOTES FOUND BENCHMARK AS NOTED
	DENOTES FOUND MONUMENT AS NOTED
	DENOTES SAW CUT "X"
	DENOTES EXISTING GAS RISER
	DENOTES EXISTING MANHOLE
	DENOTES EXISTING POWER POLE
	DENOTES EXISTING GUY ANCHOR
	DENOTES EXISTING FIRE HYDRANT
	DENOTES EXISTING SEWER VALVE
	DENOTES EXISTING UTILITY MARKER
	DENOTES EXISTING SIGN
	DENOTES EXISTING FLAG
	DENOTES EXISTING CLEAN OUT
	DENOTES EXISTING WATER METER
	DENOTES EXISTING GAS METER
	DENOTES EXISTING WATER VALVE
	DENOTES BOUNDARY LINE
	DENOTES EXISTING LOTS
	DENOTES EXISTING EASEMENT LINE
	DENOTES EDGE OF ASPHALT
	DENOTES EXISTING CHAIN LINK FENCE
	DENOTES EXISTING OVERHEAD ELECTRIC LINE
	DENOTES EXISTING UNDERGROUND ELECTRIC LINE
	DENOTES EXISTING BURIED CABLE LINE
	DENOTES EXISTING GAS LINE
	DENOTES EXISTING 6" WATER LINE
	DENOTES EXISTING 8" WATER LINE
	DENOTES EXISTING 6" WASTE WATER LINE
	DENOTES EXISTING 8" WASTE WATER LINE
	DENOTES PROPOSED MANHOLE
	DENOTES PROPOSED CLEAN OUT
	DENOTES PROPOSED PDC (FIRE DEPARTMENT CONNECTION)
	DENOTES PROPOSED FIRE HYDRANT
	DENOTES PROPOSED POST INDICATOR VALVE
	DENOTES PROPOSED IRRIGATION METER
	DENOTES PROPOSED WATER METER
	DENOTES PROPOSED WATER VALVE
	DENOTES PROPOSED 1" WATER LINE
	DENOTES PROPOSED 3" WATER LINE
	DENOTES PROPOSED 6" WATER LINE
	DENOTES PROPOSED 8" WASTEWATER LINE
	DENOTES PROPOSED CONCRETE

GENERAL: SITE PLAN IS FOR A PROPOSED **\$84,492.48** SQUARE FOOT BUILDINGS LOCATED ON A 10.027 TRACT OF LAND, SITUATED IN SECTION 30, BLOCK 39, TOWNSHIP 1 SOUTH AND PACIFIC RAILWAY COMPANY SURVEY, CITY & COUNTY OF MIDLAND, TEXAS. RE-PLAN IN PROGRESS. THE SITE IS LOCATED NEAR THE INTERSECTION OF WOODCREST DRIVE & PRINCEXTON AVENUE. THE DEVELOPMENT IS CURRENTLY ZONED AS A LI.

- **DEVELOPMENT:** THE DEVELOPMENT WILL CONSIST OF:
 - **NORTH - A SINGLE STORY GARAGE FACILITY.**
 - **WEST - TWO SINGLE STORY GARAGE FACILITIES.**
 - **CENTRAL - A SINGLE THREE STORY APARTMENT BUILDING.**
 - **SOUTH - A SINGLE STORY GARAGE FACILITY.**
- **BUILDING HEIGHT:** THE NORTH STRUCTURE IS PLANNED TO BE A SINGLE STORY, WITH A MAXIMUM BUILDING HEIGHT OF 14 FT. THE CENTRAL STRUCTURE IS PLANNED TO BE A THREE STORY, WITH A MAXIMUM BUILDING HEIGHT OF 45 FT. THE WEST STRUCTURES ARE PLANNED TO BE A SINGLE STORY, WITH A MAXIMUM BUILDING HEIGHT OF 14 FT, AND THE SOUTHERN STRUCTURES ARE PLANNED TO BE A SINGLE STORY, WITH A MAXIMUM BUILDING HEIGHT OF 14 FT.
- **ACCESS:** THE SITE IS PLANNED TO HAVE THREE (3) ACCESS POINTS, ONE TO THE NORTHEAST ACCESSING WOODCREST DRIVE, ONE TO THE NORTHWEST ACCESSING WESTCLIFF DRIVE AND ONE TO THE SOUTHEAST ACCESSING WOODCREST DRIVE. ALL ACCESS POINTS ARE PLANNED FOR BOTH INGRESS AND EGRESS.
- **FIRE ACCESS:** ACCESS FOR FIRE TRUCKS WILL BE ALONG THE PROVIDED 26 FT. WIDE CORRIDOR WITH MINIMUM 28 FT. RADIUS THROUGHOUT OR ALONG THE ROAD.
- **PARKING:** ON-SITE PARKING WILL BE PROVIDED WITH 280 STANDARD PARKING SPACES, AND AN ADDITIONAL 16 ACCESSIBLE PARKING SPACES.
- **TRASH:** TRASH ENCLOSURES WILL BE IN COMPLIANCE WITH THE CITY OF MIDLAND REQUIREMENTS. ON-SITE TRASH COLLECTION WILL BE COLLECTED BY THE CITY OF MIDLAND UTILIZING SIDE LOADING TRUCKS.
- **UTILITIES:** PUBLIC UTILITIES ARE PRESENT. NEW WATER & SEWER SERVICE TAPS WILL BE REQUIRED
- **DRAINAGE:** STORM WATER RUNOFF WILL BE OBTAINED SO AS NOT TO INCREASE EXISTING PEAK RUNOFF.

- LANDSCAPING ELEMENTS SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATIVE PURPOSES ONLY, AND DOES NOT NECESSARILY REFLECT THE FINAL DESIGN LANDSCAPING.
- THE LANDSCAPE PLAN THAT WILL BE SUBMITTED FOR CITY APPROVAL WILL BE IN COMPLIANCE WITH CITY STANDARDS.

- DIMENSIONS SHOWN ARE TYPICALLY TO BACK OF CURB UNLESS NOTED OTHERWISE.
- SIDEWALKS WILL BE 5 FT. IN WIDTH UNLESS NOTED OTHERWISE.

UNIT TYPE 1 BEDROOM = (69 UNITS x 1.5) = REQUIRED 133.5 PARKING
UNIT TYPE 2 BEDROOM = ((112 UNITS x 2) = REQUIRED 224 PARKING
TOTAL UNIT COUNT = 201 UNITS

TOTAL **357.5 OR 358** PARKING SPACES REQUIRED

308 UNCOVERED PARKING SPACES PROVIDED
50 COVERED GARAGE PARKING SPACES PROVIDED
TOTAL PARKING SPACES PROVIDED = **358**

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	ZONE	BASE FLOOD ELEVATION
481239	182	F	09/16/2005	X	N/A

A map showing the area around the Abundant Life Worship Center. The map includes Princeton Ave and Harwood Ave. A red pin marks the location of the Abundant Life Worship Center. A blue pin marks the location of the Key Haus Credit Store. The map also shows the intersection of Princeton Ave and Harwood Ave.

N.T.S.

DRAWN BY:	TDE	REVISIONS	BY	DATE
CHECKED BY:	ALM			
APPROVED BY:	ALM			
DATE:	01/16/2023			
JOB:	220187			

PD SITE PLAN

CORNERSTONE HOUSING GROUP

CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.

THESE PLANS ARE RELEASED UNDER THE SEAL OF ANDREW L. MELLEN, P.E. #10657 AND MAVERICK ENGINEERING (FIRM # F-15089) ON THIS DAY 01/16/2023, FOR THE PURPOSES OF INTERIM/PRELIMINARY REVIEW. THEY SHALL NOT BE USED FOR THE PURPOSES OF CONSTRUCTION.

HEET **CI00** OF X



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-22-0318
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)
Printed Name: Brad Schwab

Phone (303) 517-7875
Email bschwab@cstonellc.net

Address
209 S 19th, Ste 100

City
Omaha

State
NE

Zip
68102

Property Owner

Printed Name: Michael E. Black, Pinon Ventures, LP

Phone (432) 684-9696
Email mblack@bcoperating.com

Address
PO Box 50820

City
Midland

State
TX

Zip
79710

Representative (if different from Applicant or Property Owner)

Firm: Maverick

Printed Name: Andrew Mellen

Phone (432) 262-0999
Email amellen@maverick-eng.com

Address
PO Box 6040

City
Midland

State
TX

Zip
79704

Street Address: ⁴⁸⁰⁵~~4805~~ Andrews Hwy, Midland, TX 79703

Legal Description

Lot: _____ Block: _____ Subdivision: See provided metes & bounds description

Current Zoning: LI, Light Industrial District

Proposed Zone: MF-22, Multi-Family Dwelling District
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To permit senior, multi-family housing.

Present Use of Property: Vacant

Proposed Use of Property: Up to 200 units of Senior (Age and Income Restricted), Multi-Family Housing built in one elevator served, three-story building.

How would this zone change affect the public health, safety and welfare? The requested MF-22 zoning will not negatively impact the public health, safety, and welfare at this location. Water and sewer utilities are at the site. Senior housing generates little traffic. The site has close proximity to health care, pharmacy, grocery, shopping, restaurants and Fire/EMS.

Describe how conditions affecting the property have changed since present zoning designation: The need for affordable, senior housing is high given recent housing cost increases, rapid inflation and interest rate hikes. Midland's housing values and local rents exceed what many seniors on fixed incomes can afford to pay.

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): Brad Schwab Date: 12/13/2022

Applicant (printed): Brad Schwab

Property Owner (signature): Michael E. Black Date: 12/14/2022

Property Owner (printed): Michael E. Black

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

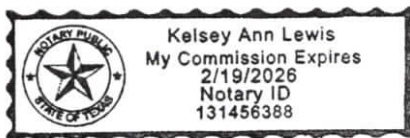
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Pinon Ventures LP, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen
Authorized Agent (signature)

Subscribed and sworn to before me, this 24th day of December, 2022, to certify which witness my hand and seal of office.



Dalton Ann Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 3965

Received By: London

Date:

RECEIVED
DEC 21 2022

PACKET
**Application will not be considered for scheduling until reviewed by a planner.



FIELD NOTE DESCRIPTION OF A 8.823 ACRE TRACT OF LAND, SITUATED IN SECTION 30, BLOCK 39, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT TRACT CALLED LOT 1, BLOCK 1, ORTLOFF ADDITION, SECTION 2, AS RECORDED IN DOCUMENT NUMBER 12374, IN CABINET D ON PAGE 61 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY AND BEING A PORTION OF THE TRACT CONVEYED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 5161 IN VOLUME 1452 ON PAGE 665 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED FOR A ZONING DESCRIPTION ONLY AS FOLLOWS;

BEGINNING AT N.(y): 10694925.39, E.(x): 1734544.87, A ONE HALF INCH IRON ROD WITH CAP MARKED "PSC RPLS 6453," FOUND AND ACCEPTED AS THE SOUTHEAST CORNER OF LOT 3-A, BLOCK 1, ORTLOFF ADDITION, SECTION 7 AS FILED IN CABINET "M", PAGE 33, OF SAID PLAT RECORDS, AND AN INTERIOR CORNER HEREOF;

THENCE N.14°22'51"W., ALONG THE EAST LINE OF SAID LOT 3-A, AT A RECORD 165.10 FEET PASSING THE EAST NORTHEAST CORNER THEREOF AND A POINT AT WHICH WESTCLIFF DRIVE RIGHT-OF-WAY COMMENCES, IN ALL, 181.26 FEET TO A FIVE EIGHTHS INCH IRON ROD (BENT) FOUND AT A POINT OF DEFLECTION AND CURVATURE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF N.19°41'56"W., 74.01 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT 83.32 FEET TO A FIVE EIGHTHS INCH IRON ROD WITH AN ILLEGIBLE YELLOW CAP AT A POINT OF DEFLECTION AND THE END OF CURVE;

THENCE N.14°22'51"W., ALONG THE EAST RIGHT-OF-WAY LINE OF SAID WESTCLIFF DRIVE, 89.99 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET ON THE SOUTH LINE OF A 20 FOOT ALLEY BEING THE SOUTH LINE OF ORTLOFF ADDITION SECTION 3, RECORDED AS DOCUMENT NUMBER 3790 IN CABINET G ON PAGE 31 OF SAID PLAT RECORDS FOR THE NORTH NORTHWEST CORNER HEREOF;

THENCE N.75°39'44"E., ALONG SAID ALLEY, 492.30 FEET TO AN "RPC" SET IN THE WEST RIGHT-OF-WAY LINE OF WOODCREST DRIVE AT THE SOUTHEAST CORNER OF SAID ORTLOFF ADDITION SECTION 3, FOR THE NORTHEAST CORNER HEREOF;

THENCE THE FOLLOWING 3 COURSES AND DISTANCES ALONG SAID WEST RIGHT-OF-WAY;

1. S.14°22'32"E., 122.25 FEET TO AN "RPC" SET;

2. N.75°37'28"E., 5.00 FEET TO AND "RPC" SET;

3. S.14°22'32"E., 450.00 FEET TO AN "RPC" SET AT THE SOUTHEAST CORNER OF SAID ORTLOFF ADDITION SECTION 2 AT THE INTERSECTION OF SAID WEST RIGHT-OF-WAY AND THE NORTH RIGHT-OF-WAY OF DOUGLAS AVENUE, FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°38'31"W., ALONG SAID RIGHT-OF-WAY, 167.67 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 538.54 FEET AND A CHORD BEARING AND DISTANCE OF S.61°29'12"W., 263.37 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT 266.06 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 478.54 FEET AND A CHORD BEARING AND DISTANCE OF S.59°13'15"W., 197.08 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONVEX TO THIS TRACT, 198.50 FEET TO A ONE HALF INCH IRON ROD FOUND AT A POINT OF DEFLECTION BEING THE POINT OF CURVATURE FOR A CUL-DE-SAC CONCAVE TO THIS TRACT HAVING A RADIUS OF 50.00 FEET AND A CHORD BEARING AND DISTANCE OF N.85°51'43"W., 87.00 FEET;

THENCE AROUND THE ARC OF SAID CUL-DE-SAC, 105.52 FEET TO A POINT OF DEFLECTION TO THE RIGHT AND THE END OF CURVE FOR A SOUTHERLY CORNER HEREOF;

THENCE THE FOLLOWING 4 COURSES AND DISTANCES INTERIOR TO SAID LOT 1;

1. S.86°40'47"W., 93.18 FEET TO A POINT;
2. N.14°43'02"W., 187.89 FEET TO A POINT;
3. N.75°37'28"E., 20.03 FEET TO A POINT;
4. N.14°22'32"W., 114.34 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 3-A;

THENCE N.75°39'22"E., ALONG SAID SOUTH LINE OF LOT 3-A, 276.75 FEET TO THE **POINT OF BEGINNING**, CONTAINING 8.823 ACRE OF LAND.



December 19, 2022

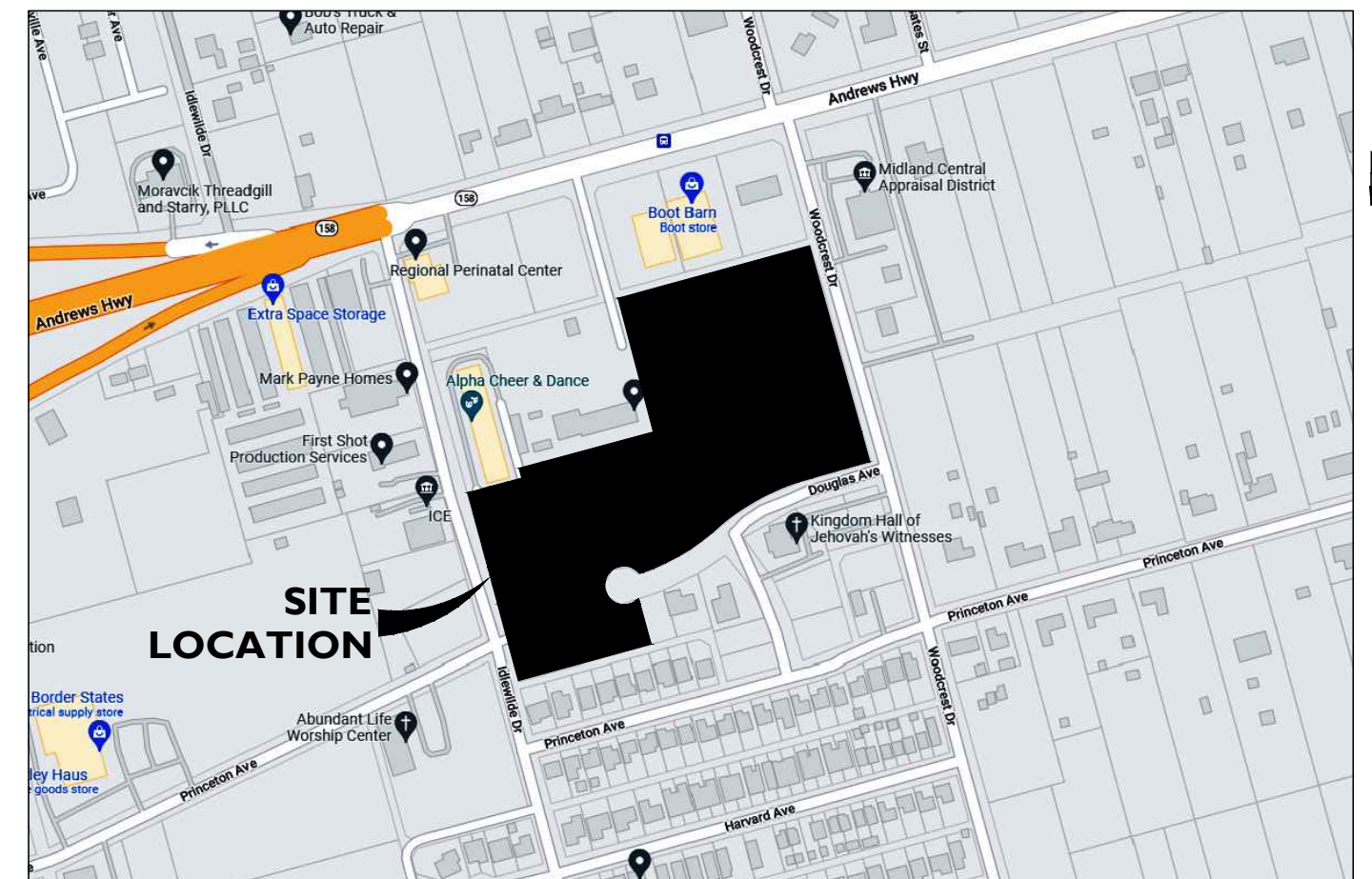
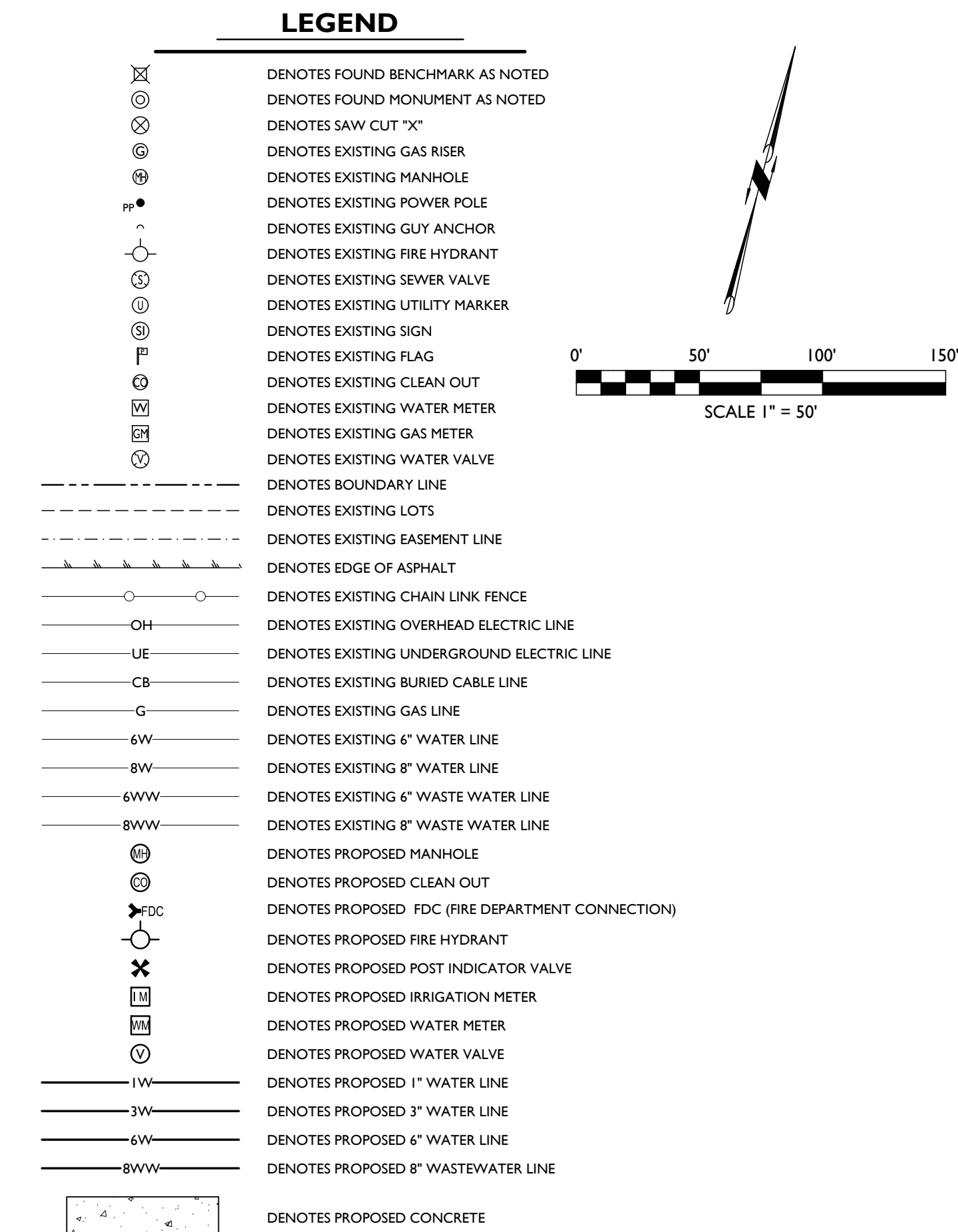
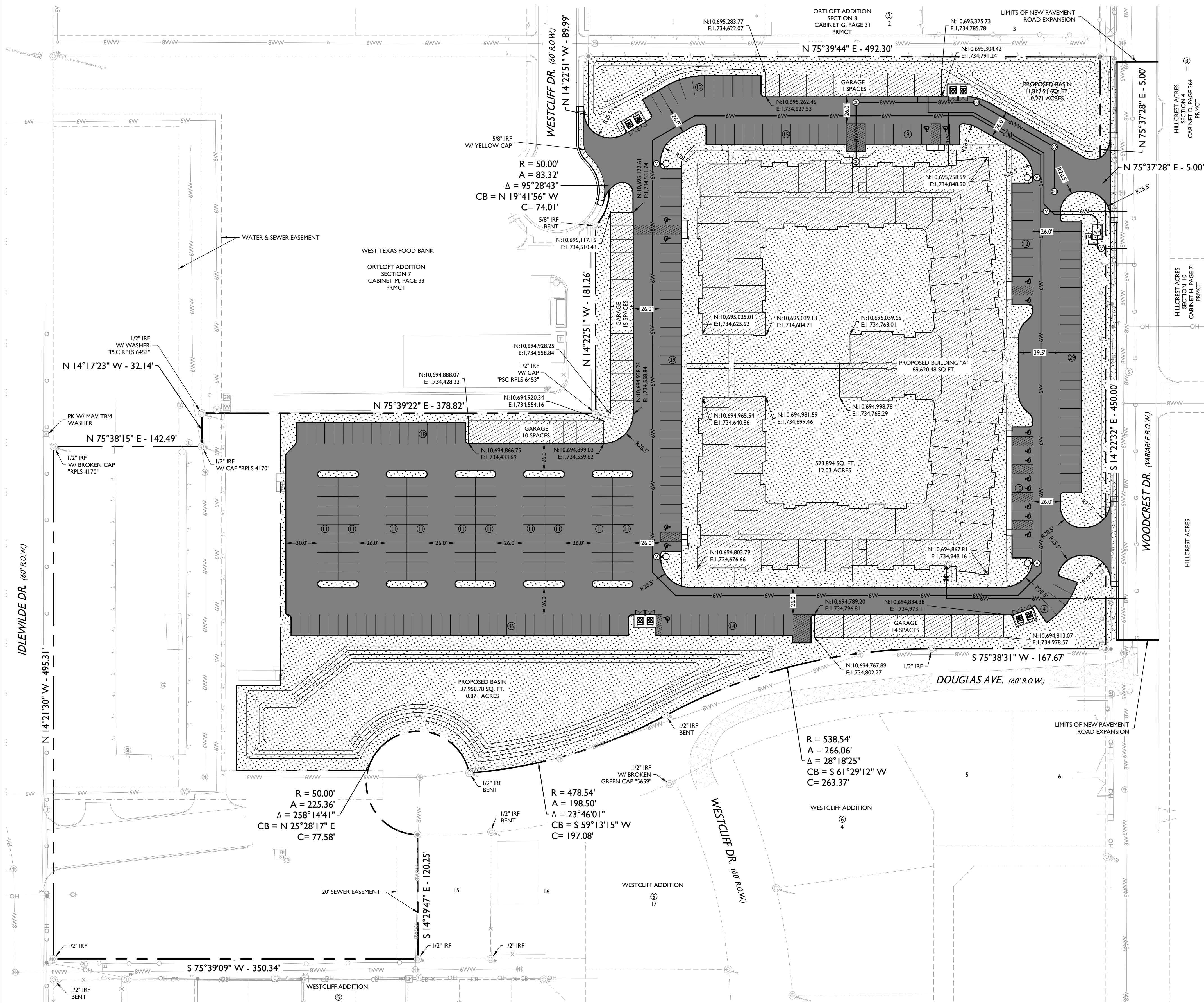
Gregory W. Shoults

www.maverick-eng.com

Texas RPLS - No. 5356

Maverick Engineering (FIRM – No. 10194514)





MAVERICK
 ENGINEERING / SURVEY / WATER RESOURCES
 1909 W Wall St. Ste. "K", Midland, TX 79701
 ENGINEER FIRM # F-15089
 SURVEY FIRM # F-10194514
 Tel: (432) 262-0999 Fax: (432) 262-0989
 www.Maverick-Eng.com



DATE	
APPROVED	
BY	
REVISIONS	
Δ	
DRAWN BY: TDE	
CHECKED BY: ALM	
APPROVED BY: ALM	
DATE: 01/16/2023	
JOB: 220187	

PD SITE PLAN

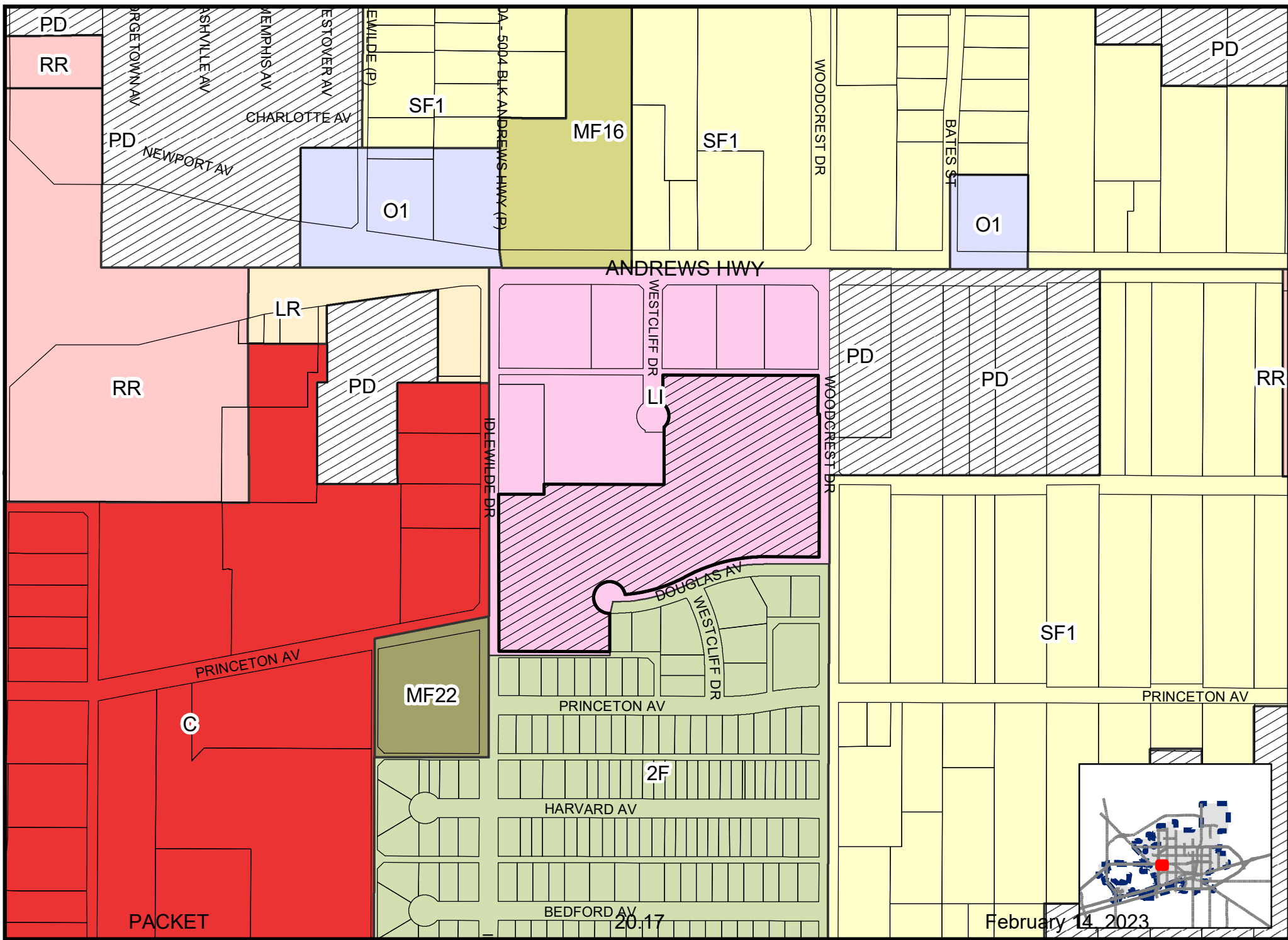
CORNERSTONE HOUSING GROUP

CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.

PRELIMINARY REVIEW:

THESE PLANS ARE RELEASED UNDER THE SEAL OF ANDREW L. MCELLEN, P.E. #100572 AND MAVERICK ENGINEERING (FIRM # F-15089) ON THIS DAY 01/16/2023, FOR THE PURPOSES OF INTERMEDIATE REVIEW. THEY SHALL NOT BE USED FOR THE PURPOSES OF CONSTRUCTION.

SHEET **C100** OF **XX**













FEB 02 2023

BY:

REDDY VARADAREDDY T
14 OASIS
ODESSA TX 79765-8574

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, February 6, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

LEGAL DESCRIPTION: A 8.823-acre tract of land out of Lot 1, Block 1, Ortloff Addition, Section 2, City and County of Midland, Texas.

LOCATION: Generally located on east side of Westcliff Drive approximately 335 feet south of Andrews Highway. (Council District 3)

PROPOSED ZONING: **From:** LI, Light Industrial District
To: MF-22, Multiple-Family Dwelling District

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request

X STRONGLY

Comments: _____

Required Information:

Property Owner's Signature

Printed Name

Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400.

Si usted desea más información en Español sobre este caso, llame a la Division de Planificación: 685-7400.

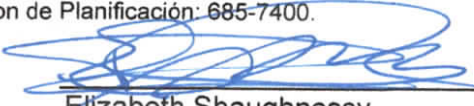
Notices Mailed: 37

Date Mailed: January 27, 2023

Case Number: Z-22-0318

Case Name: Cornerstone Housing Group

LO Planner's Initials


Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989. Videoconference information will be available by accessing the meeting agenda at <https://www.midlandtexas.gov/967/primegov-meeting>

www.MidlandTexas.gov

Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400
PACKET 20.22 February 14, 2023



FEB 02 2023

BY:

PUBLIC NOTICE

DE BRUIN-MARTIN MARI
4736 PRINCETON AVE
MIDLAND TX 79703-4604

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at 6:00 p.m. on **Monday, February 6, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

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I object to this request ☒

Comments:

Land should be for single housing

Required Information:

Mari de Bruin Martin

Property Owner's Signature

Mari de Bruin Martin

Printed Name

4236 Princeton

Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400.

Si usted desea más información en Español sobre este caso, llame a la División de Planificación: 685-7400.

Notices Mailed: 37

Date Mailed: January 27, 2023

Case Number: Z-22-0318

Case Name: Cornerstone Housing Group

LO Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov

Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400
PACKET 20.23 February 14, 2023

RECEIVED
FEB 02 2023



DE BRUIN-MARTIN MARI
4736 PRINCETON AVE
MIDLAND TX 79703-4604

PUBLIC NOTICE

The **City Council** of the City of Midland, Texas will hold a public hearing at **10 a.m.** on **Tuesday, February 14, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

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I object to this request ☒

Comments:

Should use land for single housing?

Required Information:

Mari de Bruin Mark
Property Owner's Signature

Mari de Bruin Martin
Printed Name

4736 Princeton
Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 27, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials


Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov

PACKET Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400
20.24 February 14, 2023

RECEIVED
FEB 02 2023



REDDY VARADAREDDY T
14 OASIS
ODESSA TX 79765-8574

BY:

PUBLIC NOTICE

The **City Council** of the City of Midland, Texas will hold a public hearing at **10 a.m.** on **Tuesday, February 14, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

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I object to this request X *Strongly*

Comments: _____

Required Information:

[Signature]
Property Owner's Signature

VARADAREDDY T. REDDY
Printed Name

4901 Andrews Hwy
Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400.
Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 27, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials

[Signature]
Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov

PACKET Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400
20.25 February 14, 2023

RECEIVED
JAN 17 2023



PUBLIC NOTICE

MAILED

The Planning and Zoning Commission of the City of Midland, Texas will hold a public hearing at 3:30 p.m. on Monday, January 17, 2023, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by Brad Schwab for approval of a Zone Change on the following described property:

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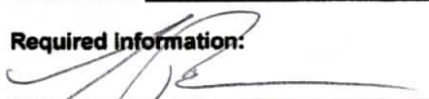
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To: MF-22, Multiple-Family Dwelling District

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I object to this request ☒

Comments: _____

Required Information:

	<i>West Texas Automotive</i> <i>London Torres</i>	<i>4703 Andrews Highway 79703</i>
Property Owner's Signature	Printed Name	Property Address (No P.O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 6, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials


Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov
Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400

RECEIVED
JAN 17 2023



EMBRY KATHY
1333 BRADBURY DR
CARROLLTON TX 75007

PUBLIC NOTICE

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I object to this request ☒

Comments: This type of low-income house project devalues our properties

Required Information:

Kathy Embry Kathy Embry 1601 Idlewild
Property Owner's Signature Printed Name Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 6, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov

PACKET

Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400

20.27

February 14, 2023



THREE GATES HOLDINGS LLC

P.O. BOX 11065

MIDLAND TX 79702

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, January 17, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

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I object to this request ☒

Comments: DHS - ICE is located on 1515 Idlewild until 2028. MF-22 zones not acceptable for their operations. Changing zones devalues property and potentially increases crime and other nuisances.

Required Information: potentially increases crime and other nuisances.

Joe Dawson Joe Dawson 1515 Idlewild
Property Owner's Signature Printed Name Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 6, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials


Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.

Videoconference information will be available by accessing the meeting agenda at <https://www.midlandtexas.gov/967/primegov-meeting>

www.MidlandTexas.gov



PUBLIC NOTICE

MAILED

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, January 17, 2023**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Brad Schwab** for approval of a **Zone Change** on the following described property:

LEGAL DESCRIPTION: Lot 1, Block 1, Ortloff Addition, Section 2, City and County of Midland, Texas.

LOCATION: Generally located on east side of Westcliff Drive approximately 335 feet south of Andrews Highway. (Council District 3)

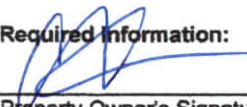
PROPOSED ZONING: From: LI, Light Industrial District
To: MF-22, Multiple-Family Dwelling District

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I object to this request ☒

Comments: _____

Required Information:

	<u>Caleb Hartley</u>	<u>1409 Idemilde</u>
Property Owner's Signature	Printed Name	Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37

Date Mailed: January 6, 2023

Case Number: Z-22-0318

Case Name: Cornerstone Housing Group

LO Planner's Initials


Elizabeth Shaughnessy
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Department of Development Services

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Planning Division • 300 N. Loraine, Midland TX 79702 • 432-685-7400



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I object to this request

Comments: ATTACHED

Required Information:

Byron Fender BYRON FENDER 1600 IOLEWILDE DR.
Property Owner's Signature Printed Name Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37
Date Mailed: January 6, 2023
Case Number: Z-22-0318
Case Name: Cornerstone Housing Group
LO Planner's Initials

[Signature]
Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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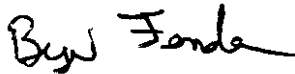
Byron Fender / 1600 Idlewilde Dr LLC
Owner of 1600 Idlewilde Dr., Midland, TX

I am asking for the zone change to not be approved. If the zone request is made, that would add crime to this area, apartment tenants walking across my property to go the store and restaurants in the area.

I own a building that was specifically built for Dance/Cheer, with young girls coming there for practice every day. If apartments were approved this would make the parents of these girls feel unsafe. Of course, the developer does background checks, but to what standard do they reject an applicant? What about adult children that may come to live with them, or visitors that come to visit the apartments.

There needs to be a lot of questions answered before this zone change should be approved. At this time, please reject the proposed zone change!

Thank you,

A handwritten signature in black ink that reads "Byron Fender". The signature is written in a cursive, flowing style.

Byron Fender
Partner
1600 Idlewilde Dr LLC

RECEIVED
JAN 10 2023



DE BRUIN-MARTIN MARI
4736 PRINCETON AVE
MIDLAND TX 79703-4604

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I object to this request ☒

Comments: There are too many multiple-family dwellings in this area

Required Information:

Mari de Bruin Martin Mari de Bruin-Martin 4736 Princeton Ave
Property Owner's Signature Printed Name Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37

Date Mailed: January 6, 2023

Case Number: Z-22-0318

Case Name: Cornerstone Housing Group

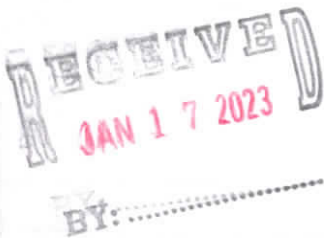
LO Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

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www.MidlandTexas.gov



MIDLAND CENTRAL APPRAISAL
DISTRICT OFFICE
PO BOX 908002
MIDLAND TX 79708-0002

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I object to this request X

Comments: CONCERN FOR TAXPAYER SAFETY DUE TO TRAFFIC CONGESTION

Required Information: Midland Central Appraisal District

Jerry Bundick
Property Owner's Signature

Jerry Bundick
Printed Name

4631 Andrews Hwy, Midland
Property Address (No P. O. Boxes)
432-699-4991

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 37

Date Mailed: January 6, 2023

Case Number: Z-22-0318

Case Name: Cornerstone Housing Group

LO Planner's Initials

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www.MidlandTexas.gov



City Council Meeting

Item Number: 21
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Kelly Martinez, Kelly Martinez
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 7,464-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, CLAYDESTA PLAZA, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF DESTA DRIVE AND SMITH ROAD), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER, 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 (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, MIDPYR/Roger Gearhart, is requesting a Specific Use Designation (SUD) for the sale of all alcoholic beverages, for on-premises consumption, in a bar, located at 15 Smith Road, Suite 2222.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

PD, Planned Development District for an Office Center (Ordinance No. 5995, 5632b)

Surrounding Zoning and Land Use:

The properties to the north, east, and south are zoned PD, Planned Development District, and the location of the Claydesta Memorial Fountain. The property to the east is zoned PD, Planned Development District, and the location of the Claydesta Center (offices). The properties to the south are zoned RR, Regional Retail District and O-1, Office District and the location of restaurants and office buildings. The location to the north is zoned PD, Planned Development, and the location of vacant land.

Discussion:

The property is located at 15 Smith Road, Suite 2222 in a PD, Planned District for an Office Center, which is regulated by Ordinance Numbers 5995 and 5632b. This zoning district permits the sale of all alcoholic beverages, for on-premises consumption, in a bar with the approval of a Specific Use Designation with Term. The floor plan attached hereto as "Exhibit A" illustrates that the establishment, will have a total square footage of 7,464 square feet, with an alcohol serviceable area of 6,320 square feet. This business is located within an office center that has shared parking. Therefore, all the businesses located in this office center has access to the parking spaces at any given time.

The proposed days and hours of operation including alcohol sales are the following:

Monday through Sunday from 11:00 a.m. 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 project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Building Code: (Approved with Conditions)

The SUD for The Apex Club is acceptable. The property must adhere to the maximum occupant load of 421 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code. This is contingent on the approval of the building permit and any alterations that might take place during renovations/construction as part of the required permit.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) The Axe Club offers a new concept to the nightlife in the city. This modern space provides Midland residents with a unique social gathering experience.

This request was recommended for approval on February 6, 2023, Planning and Zoning Commission meeting.

Staff recommends approval of this Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to conditions A through G.

Conditions:

- A. That the alcohol serviceable area of the nightclub shall be limited to approximately 6,320 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**
- B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

Monday through Sunday from 11:00 a.m. 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 and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**
- G. That in accordance with Section 11-1-9.07.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 February 1, 2022, staff has not received any letters of objections.



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 7,464-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, CLAYDESTA PLAZA, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF DESTA DRIVE AND SMITH ROAD), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER, 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 a 7,464-square foot portion of Lot 1, Block 8, Claydesta Plaza, 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 PD, Planned Development District for an Office Center.

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 6,320 square feet as shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Sunday from 11:00 a.m. 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 the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.
- G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

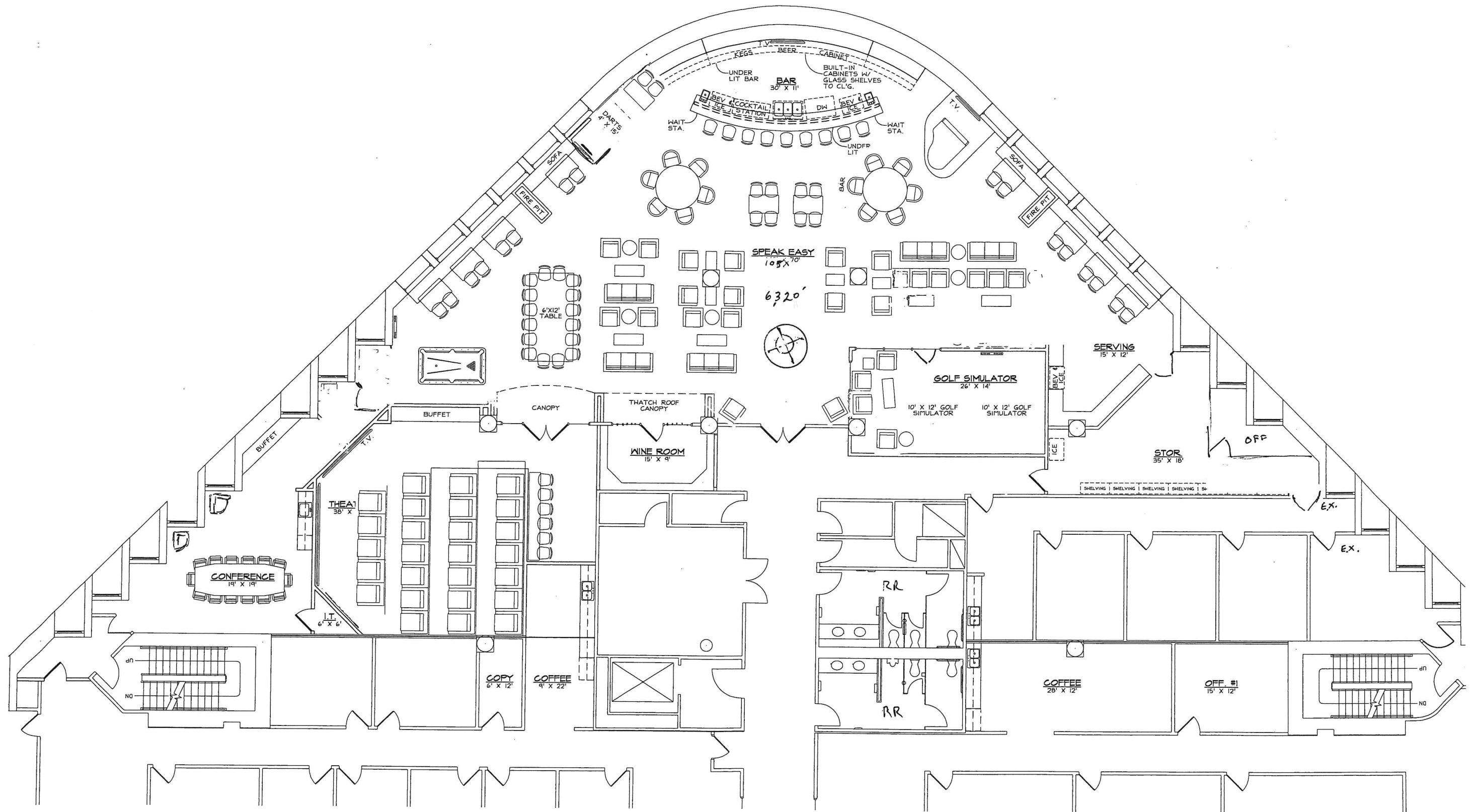
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



PREPARED BY:
J M DRAFTING & DESIGN
 Email: jmortink@gmail.com Cell: (432) 425-5297
 PROPOSED LEASE SPACE REMODEL FOR:
THE LOUNGE
 2ND FLOOR - APEX BUILDING
 #15 SMITH ROAD
 MIDLAND TEXAS

© COPYRIGHT, J M DRAFTING & DESIGN.
 2022 FEDERAL COPYRIGHT PROTECTION
 EXTENDING TO DERIVATIVE PLANS,
 IS APPLICABLE TO INTENTIONAL AND
 UNINTENTIONAL INFRINGEMENTS
 AND PROVIDES FOR SPECIFIC
 STATUTORY DAMAGES BOTH
 CIVIL AND CRIMINAL. UNAUTHORIZED
 REPRODUCTION IN ANY FORM IS
 STRICTLY PROHIBITED AND FORBIDDEN.

DATE:
 SEPT. 08, 2022
 DWG#2022/Gary/Glasscock/Apex/Apex-2022-A1
 JOB # JM22067

A PROPOSED FLOOR PLAN
 SCALE N. T. S.

EXHIBIT "A"



**Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption**

Project Number SWP-22-0146
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: MIDPYR, LLC/ ROGER GEARHART <u>432 557-9920</u>		Phone (432) 362-0401 Email roger@gbe7.com	
Address 6706 MOSSWOOD DR	City MIDLAND	State TX	Zip 79707

Property Owner Printed Name: TOGB, LLC / GARY M. GLASSCOCK, MANAGER		Phone (432) 685-1980 Email DENISE.HUBBARD@TOGAR.COM	
Address 203 W. WALL ST STE 1200	City MIDLAND	State TX	Zip 79701

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email _____	
Address _____	City _____	State _____	Zip _____

Street Address: 15 SMITH RD SUITE 2222 MIDLAND, TEXAS 79705	
Business Name: THE APEX CLUB	
Legal Description Lot: 001 Block: 008 Subdivision: CLAYDESTA	
Current Zoning: COMMERCIAL OFFICE	
Reason for Request: SALE OF ALCOHOL	

Type of Business (restaurant, <u>bar</u> , lounge, nightclub, etc.): BAR	
Proposed/Current Days and Hours of Operation: 7 DAYS A WEEK 11:00 AM - 12:00 AM	
Proposed Days and Hours of Alcohol Service: 7 DAYS A WEEK " " " "	
Total Square Footage of Business: 7,464'	
Square Footage of Alcohol Serviceable Area: 6,320	
Restroom Fixtures:	Toilets/Urinals: 2 / 1
Men	
Women	Toilets: 3
	Bathroom Sinks: 2
	Bathroom Sinks: 2

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Floor Plan
☒ Application Fee	☒ Site Plan
Check # <u>PACKET</u>	☒ Plans in Digital Format (PDF/JPEG)
Received By: <u>km</u>	Date: <u>February 14, 2023</u>

BY: _____

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
 - Seating 151
 - Exits 2
 - Restrooms 2
- Dimensioned Site Plan showing:
 - Parking
 - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)
- Kitchen (if applicable) NA
- Total Square Footage 7464
- Serviceable Square Footage 6,320

Signatures

Applicant (signature): Roger Gearhart Date: 12-19-22

Applicant (printed): ROGER GEARHART

Property Owner (signature): Gary M Glasscock Date: 12-19-22

Property Owner (printed): GARY M GLASSCOCK, MANAGER

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.

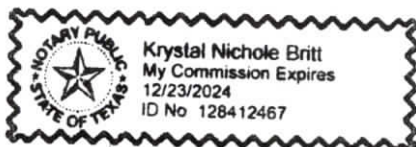
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Roger Gearhart who, being by me duly sworn, upon oath says: That (s)he is authorized by DL, 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.

Roger Gearhart
Authorized Agent (signature)

Subscribed and sworn to before me, this 19th day of December, 20 22, to certify which witness my hand and seal of office.



Krystal Britt
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

PACKET

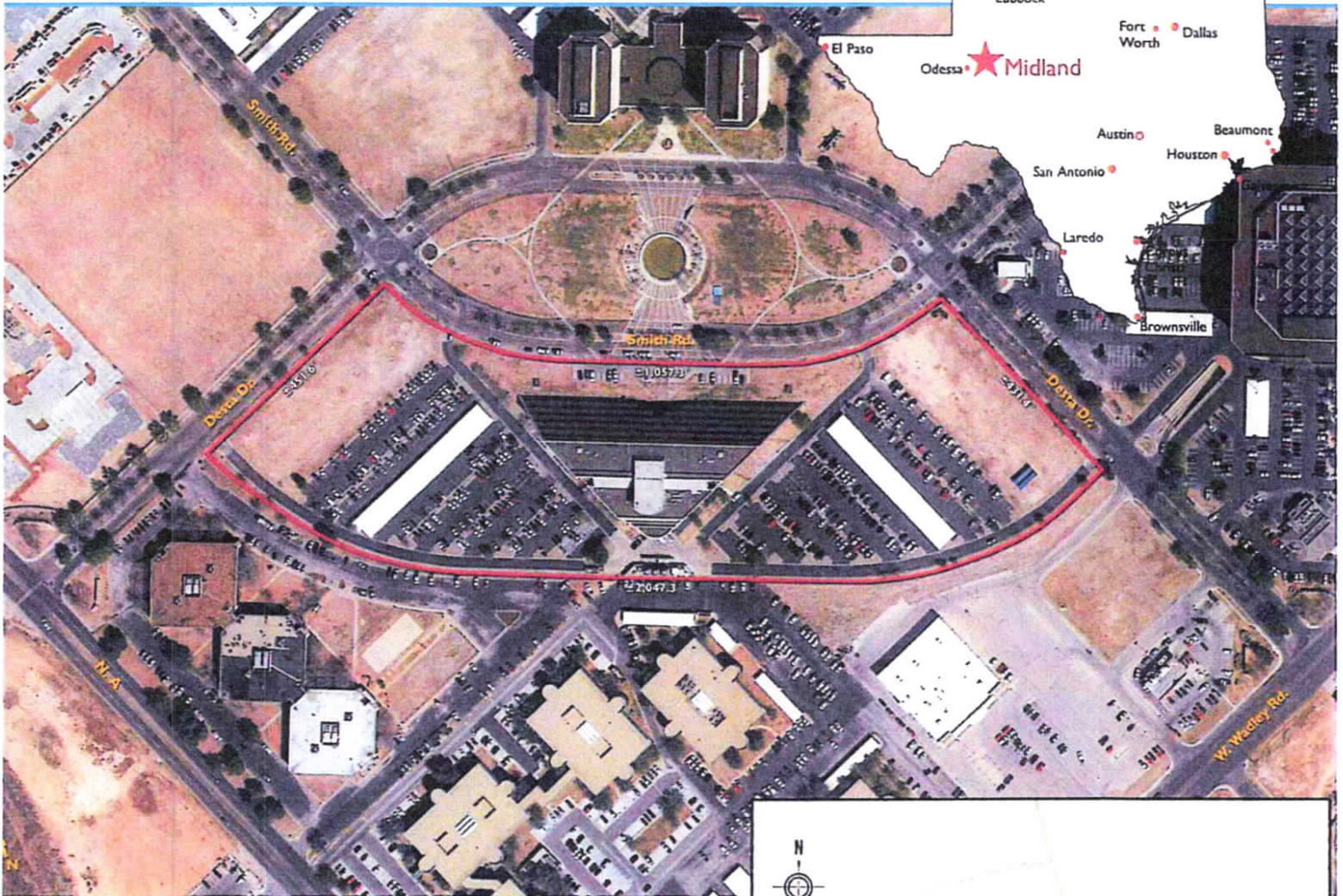
21.11

February 14, 2023

Application will not be considered for scheduling until reviewed by a planner.

15 SMITH ROAD

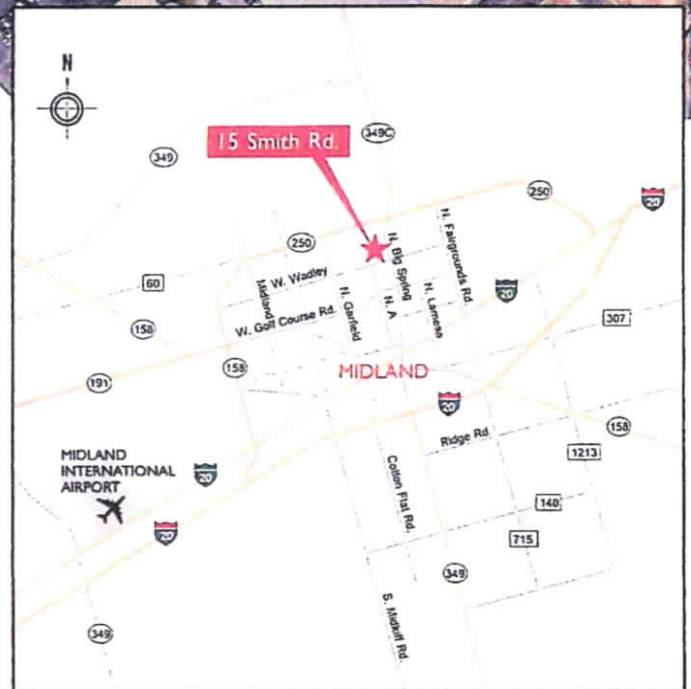
Midland, TX 79705



MIDLAND, TEXAS

With a current population of approximately 154,000, Midland is an important west Texas metropolitan area, that has exhibited a solid stretch of growth in the recent past. The Midland area has consistently outperformed most major markets in terms of employment levels.

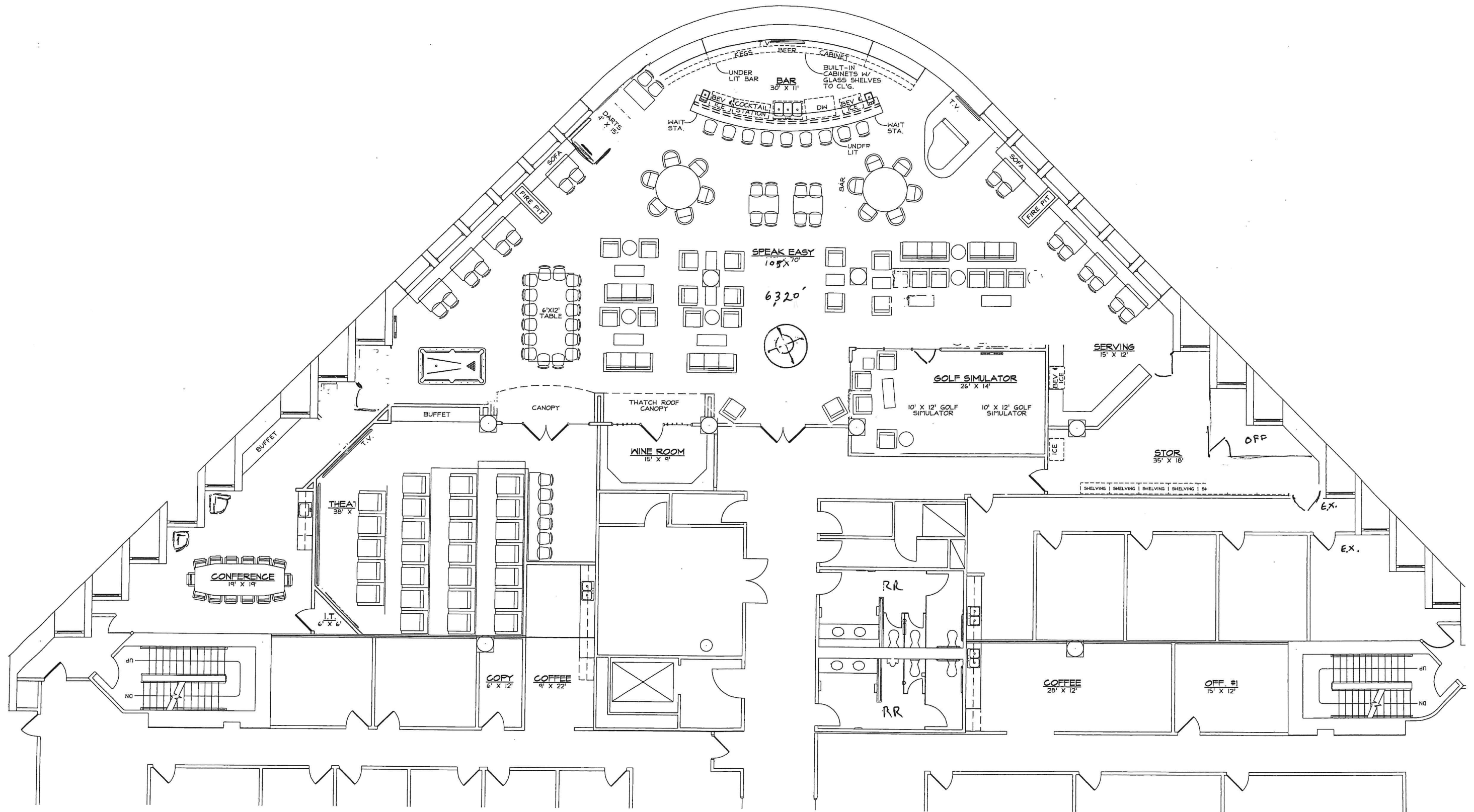
Located along the north side of Interstate 20 between Big Spring and Odessa, Midland is a thriving regional energy center with an impressive roster of energy companies including several integrated majors, large domestic focused E&P firms, and dozens of globally recognized oilfield service and transmission companies.



PACKET

21-12
STAGG INVESTMENT GROUP, INC.
203 W. Wall Street, Suite 1200, Midland, TX 79701
T: (432) 685-1980 F: (432) 685-1242

February 14, 2023



PREPARED BY:
J M DRAFTING & DESIGN
 Email: jmortink@gmail.com Cell: (432) 425-5297
 PROPOSED LEASE SPACE REMODEL FOR:
THE LOUNGE
 2ND FLOOR - APEX BUILDING
 #15 SMITH ROAD
 MIDLAND TEXAS

© COPYRIGHT, J M DRAFTING & DESIGN.
 2022 FEDERAL COPYRIGHT PROTECTION
 EXTENDING TO DERIVATIVE PLANS,
 IS APPLICABLE TO INTENTIONAL AND
 UNINTENTIONAL INFRINGEMENTS
 AND PROVIDES FOR SPECIFIC
 STATUTORY DAMAGES BOTH
 CIVIL AND CRIMINAL. UNAUTHORIZED
 REPRODUCTION IN ANY FORM IS
 STRICTLY PROHIBITED AND FORBIDDEN.

DATE:
 SEPT. 08, 2022
 DWG: 2022/Gary/Gloss/Arch/Apex/Apex-2022-A1
 JOB # JM22067

A PROPOSED FLOOR PLAN
 SCALE N. T. S.

ORDINANCE NO. 5995

AN ORDINANCE AMENDING ORDINANCE NO. 5632b CREATING A "PLANNED DISTRICT" FOR AN OFFICE CENTER SO AS TO AMEND SUBPARAGRAPH 1 OF PARAGRAPH A OF SECTION TWO THEREOF TO CHANGE THE SPECIAL CONDITIONS AND RESTRICTIONS OF SAID "PLANNED DISTRICT"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; 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 amendment of the "Planned District" created by Ordinance No. 5632b 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 Subparagraph 1 of Paragraph A of Section Two of said Ordinance No. 5632b is hereby amended so as to hereafter read as follows:

1. That the basement of the building on Block 4 of Claydesta Plaza, an Addition to the City of Midland, Midland County, Texas, located as shown on the attached location drawing, may be used for printing and distribution of oil field scouting reports, job printing and blueprinting services as well as the limited retail uses permitted by an "O-2", Office District. Additionally, the limited retail uses permitted by an "O-2", Office District, (and the area used for printing and distribution of oil field scouting reports, job printing or blueprint services within said designated building) shall not occupy in total more than one-sixth (1/6) of the floor area of any building without regard to a maximum percentage of the total floor area of the tract on which the building is located.

SECTION TWO. That 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.

Councilmen voting "AYE":

Sloan, Hatfield and Akins

Councilmen voting "NAY":

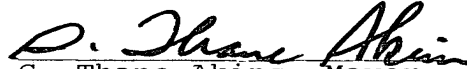
None

Councilmen ABSTAINING:

Thomas and Davidson

PASSED AND APPROVED THIS 25th day of May, A.D.,

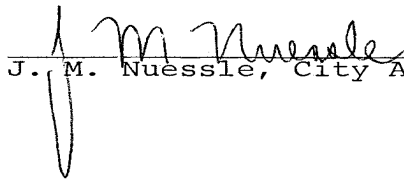
1982.


G. Thane Akins, Mayor

ATTEST:


J. W. McCullough, City Secretary

APPROVED AS TO FORM:


J. M. Nuessle, City Attorney

ORDINANCE NO. 5995

AN ORDINANCE AMENDING ORDINANCE NO. 5632b CREATING A "PLANNED DISTRICT" FOR AN OFFICE CENTER SO AS TO AMEND SUBPARAGRAPH 1 OF PARAGRAPH A OF SECTION TWO THEREOF TO CHANGE THE SPECIAL CONDITIONS AND RESTRICTIONS OF SAID "PLANNED DISTRICT"; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; 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 amendment of the "Planned District" created by Ordinance No. 5632b as set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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1. That the basement of the building on Block 4 of Claydesta Plaza, an Addition to the City of Midland, Midland County, Texas, located as shown on the attached location drawing, may be used for printing and distribution of oil field scouting reports, job printing and blueprinting services as well as the limited retail uses permitted by an "O-2", Office District. Additionally, the limited retail uses permitted by an "O-2", Office District, (and the area used for printing and distribution of oil field scouting reports, job printing or blueprint services within said designated building) shall not occupy in total more than one-sixth (1/6) of the floor area of any building without regard to a maximum percentage of the total floor area of the tract on which the building is located.

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Sloan, Hatfield and Akins

Councilmen voting "NAY":

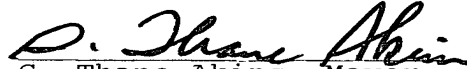
None

Councilmen ABSTAINING:

Thomas and Davidson

PASSED AND APPROVED THIS 25th day of May, A.D.,

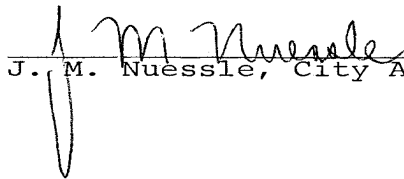
1982.

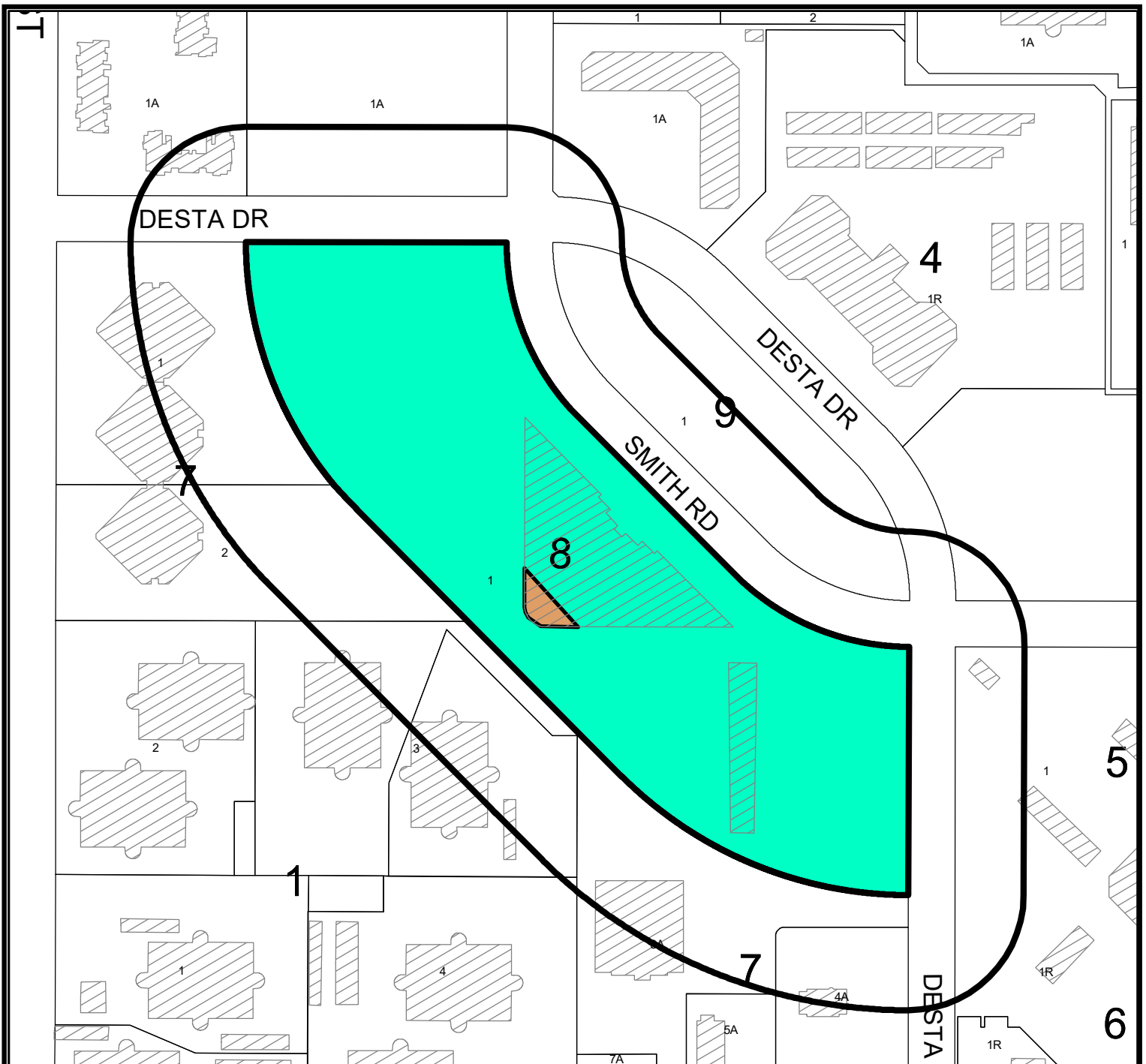

G. Thane Akins, Mayor

ATTEST:


J. W. McCullough, City Secretary

APPROVED AS TO FORM:


J. M. Nuessle, City Attorney



LOCATION MAP

SUD-22-0146

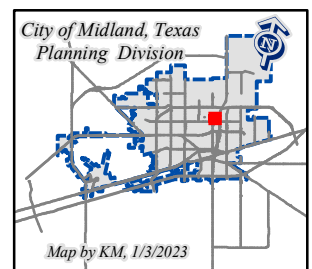
Scale: 1" = 200'

Consider a request by MIDPYR LLC/Roger Gearhart for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption in a Bar, on a 7,464-square foot portion of Lot 1, Block 8, Claydesta Plaza, City and County of Midland, Texas.

Generally located on the southwest corner of Desta Drive and Smith Road (Council District 3) **21.18**

LEGEND

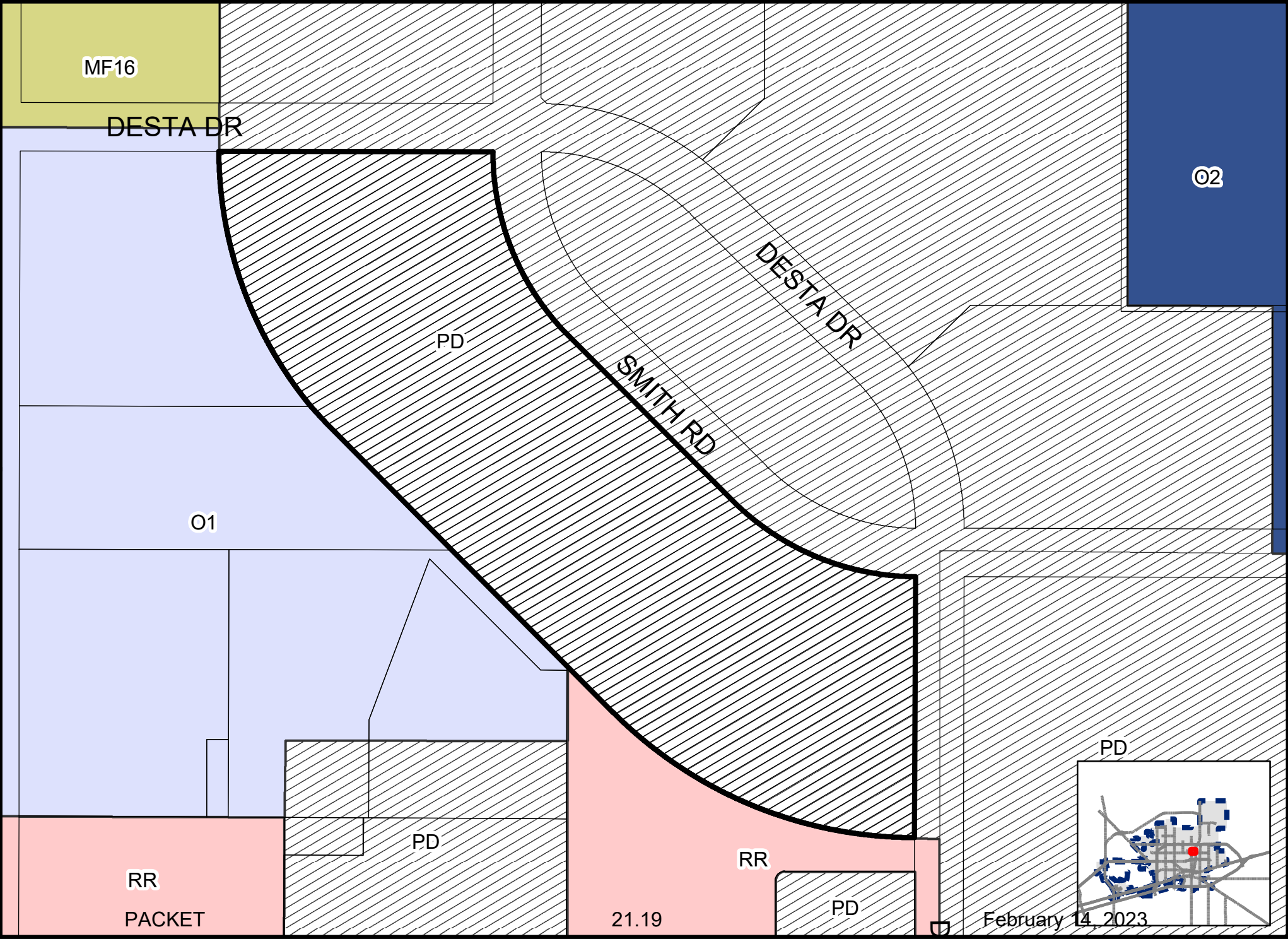
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

February 14, 2023

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING DRAWING. NOR IS IT DESIGNED TO BE USED AS A DESIGN OR TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 22
Meeting Date: February 14, 2023
To: City Council / City Manager
From: James Reber, Planner
Subject: AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The applicants, CG 191 and 158 LLC, are requesting annexation of a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, located on the southeast corner of the intersection of W State Highway 158 and State Highway 191, for the use of general retail.

Recommended City Council Action:

Approve

Fiscal Impact:

Additional land to be developed under City regulations in an expanded growth area.

Discussion:

The applicants, CG 191 and 158 LLC, are requesting for the initial zoning of annexed land to RR, Regional Retail District, for the use of general retail. The proposed annexation will allow the provision of City services to the property. This is considered a voluntary annexation.

On December 6, 2023, the service agreement between the City and the property was executed. This is the next step in the annexation process.

This project has been circulated to all respective departments for internal review and received no objections.

Engineering: (Approved)

No objections. [For the Applicant's information only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Fire: (Approved)

No objections to annexation

Building Code: (Approved)

ETJ, no jurisdiction

Oil and Gas: (Approved)

No Oil and Gas issues.

GIS: (Approved)

No comments yet...

Planning: (Approved)

The Future Land Use Plan in the Tall City Tomorrow Comprehensive Plan calls for Urban – High (U – H) land uses in this area. Proposed uses should consist of a mix of complimentary uses, including multi-family residential, large offices, medical buildings, regional commercial, limited industrial, institutional uses such as churches, schools, or hospitals, and other regional attractors.

As this proposed development will conform with the Tall City Tomorrow Comprehensive Plan, staff recommends approval of this annexation.

Attachments:

Petition for Annexation (Exhibit A)
Signed Service Agreement (Exhibit B)
Application
Maps

Marino Wilkerson Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, a public hearing before the City Council of the City of Midland, Texas, a home rule municipal corporation, was held in the City Council Chamber on February 14, 2023, during which all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory; and

WHEREAS, notice of the public hearing was published on the City of Midland, Texas' Internet website on January 25, 2023, and the notice remained posted until the date of the public hearing; and

WHEREAS, notice of the public hearing was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on January 27, 2023; and

WHEREAS, all required notices of the proposed annexation and the public hearing were given in accordance with applicable laws; and

WHEREAS, the City of Midland has entered into a written agreement with the owner(s) of the hereinafter described territory for the provision of services in said area;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR

Co. Survey, Midland County, Texas, and being more fully described by metes and bounds in the petition for annexation attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That this ordinance shall be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication thereof.

SECTION THREE. That the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for the purpose of recording in the Deed Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE": _____

Council members voting "NAY": _____

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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"

PETITION FOR ANNEXATION

Dear City of Midland:

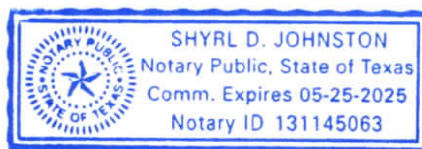
As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, CG 1914158 LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

[Signature]
Signature of Owner or Owner's Authorized Representative

Coy Haynes
Printed Name

Owner
Title

THE STATE OF TEXAS §
COUNTY OF Midland §



This instrument was acknowledged before me on the 12TH day of October 2022, by Coy Haynes in the capacity herein stated.

MY COMMISSION EXPIRES

05/25/2025

[Signature]
Notary Public, State of 10/12/2020

Drawing : F:\2022\220110-COY HAYNES (REF #210211, 210210, 180124) 191 & 158 MASTER PLAN & PLAT\DRAWINGS\ANNEXATION\220110 BOUNDARY SURVEY.DWG Last Saved By: ADevine on 10/27/22

EXHIBIT A

FIELD NOTE DESCRIPTION

FIELD NOTE DESCRIPTION OF A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME LAND AS DESCRIBED AS TRACT SEVEN IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, ALSO DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2018-2101 OF SAID "OPR" AND A PORTION OF STATE HIGHWAY 158, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(Y): 10693732.66', E.(X): 1726261.95', WITHIN A TXDOT TYPE I CONCRETE MONUMENT (TYPE I) FOUND AND ACCEPTED AS BEING ON THE NORTH LINE OF STATE HIGHWAY 191, AT THE SOUTHEAST CORNER OF A TRACT DESCRIBED AS AN 80 FOOT WIDE DRAINAGE EASEMENT IN VOLUME 715 ON PAGE 280 OF SAID "OPR" AND BEING A PORTION OF CALLED TRACT SEVEN AND BEING THE SOUTHWEST CORNER HEREOF;

THENCE N.14°42'04"W., ALONG THE EAST LINE OF SAID DRAINAGE EASEMENT, 784.99 FEET TO A "TYPE I" FOUND AT AN ANGLE POINT HEREOF;

THENCE N.32°08'12"E., ALONG THE SOUTHEAST LINE OF SAID DRAINAGE EASEMENT, AT 73.69 FEET PASSING A "TYPE I" FOUND ON THE SOUTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, IN ALL 174.09 FEET TO A POINT ON THE SOUTHEAST LINE OF CITY ORDINANCE 8214, BEING 20.00 FEET FROM NORTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, NEAR THE WESTERN MOST CORNER OF GRASSLAND ESTATES WEST SECTION 5, AS DEPICTED ON A PLAT RECORDED AS DOCUMENT NUMBER 20547 IN PLAT CABINET G ON PAGE 185 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'39"E. 20.00 FEET PARALLEL TO SAID RIGHT-OF-WAY, ALONG THE SOUTHEAST LINE OF SAID ORDINANCE, 337.74 FEET TO A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 2824.49 FEET, AND A CHORD BEARING AND DISTANCE OF S.63°55'14"E., 475.35 FEET;

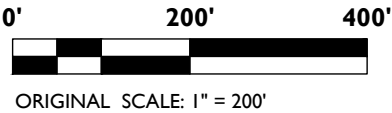
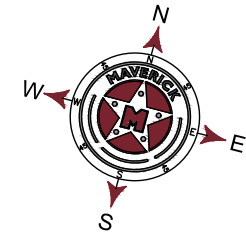
THENCE ALONG THE ARC OF SAID CURVE, CONCAVE TO THIS TRACT, 475.92 FEET TO A POINT ON OR NEAR THE EAST LINE OF SAID SECTION 35, BEING ON THE WEST LINE OF CITY ORDINANCE NUMBER 7975, FOR AN ANGLE CORNER HEREOF;

THENCE S.14°17'16"E., ALONG SAID SECTION LINE, AND SAID WEST LINE OF SAID ORDINANCE, 351.72 FEET TO A POINT FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°15'20"W., AT 228.45 FEET PASSING A "TYPE I" FOUND IN THE NORTH RIGHT-OF-WAY OF SAID STATE HIGHWAY 191, CONTINUING ALONG SAID RIGHT-OF-WAY, 720.66 FEET TO THE **POINT OF BEGINNING** CONTAINING 10.817 ACRES OF LAND.

SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, TEXAS CENTRAL ZONE (4203), U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TX DOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82
2. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.



LEGEND

- ⊙ TXDOT TYPE I CONCRETE MONUMENT
- ⊗ CONTROL MARK
- TRACT BOUNDARY
- - - EXISTING LOTS
- . - . - EXISTING EASEMENTS
- - - EXISTING SECTION LINE
- . - . - EXISTING CITY LIMITS



MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
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

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

Gregory W. Shoults
GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

OCTOBER 26, 2022



EXHIBIT A

ANNEXATION BOUNDARY

A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

JOB NO.: 220110 FIELD WORK: DRAWN BY: AKIAD REV 1: REV 2:



Annexation/Zone Change Application

Project Number: A-22-0032
Case Number: 2-22-0310

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: CG 191 And 158 LLC

Phone ()
Email

Address 1901 N Akard St

City Dallas

State TX

Zip 75201

Property Owner

Printed Name: See Applicant

Phone (214) 335-4702

Email coy@laramie-inv.com

Address 1901 N Akard St

City Dallas

State TX

Zip 75201

Representative (if different from Applicant or Property Owner)

Firm: Maverick Engineering

Printed Name: Paladin Huckaba

Phone (432) 262-0999

Email
phuckaba@maverick-eng.com

Address 1909 W Wall St Ste K

City Midland

State TX

Zip 79701

Street Address: NA

Legal Description A 11.229 Acre Tract of Land, Situated in Section 35, Block 40, Township 1 South, Texas and Pacific Railway Company Survey, Midland County, Texas
Lot: Block: Subdivision:

Current Zoning:

ETJ

Proposed Zone:

RR

(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: Advance the incorporation of this tract into the City Limits of Midland

Present Use of Property: vacant

Proposed Use of Property: General retail

How would this annexation/zone change affect the public health, safety and welfare?

no adverse affect. Addition of newly developed tracts to the City of Midland

Describe how this annexation/zone change will affect adjacent properties: Extend

infrastructure and amenities west of existing City limits to make adjacent incorporation more feasible.

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): Coy Haynes

Date: 9/14/22

Applicant (printed): Coy Haynes

Property Owner (signature): Coy Haynes

Date: 9/14/22

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.

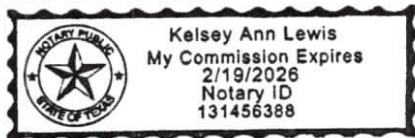
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly sworn, upon oath says: That (s)he is authorized by CG 191 and 158, 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.

Andrew L. Mellen
Authorized Agent (signature)

Subscribed and sworn to before me, this 15th day of September, 2022, to certify which witness my hand and seal of office.



Kelsey Ann Lewis

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 3913

Received By: ES

Date:

OCT 21 2022

PETITION FOR ANNEXATION

Dear City of Midland:

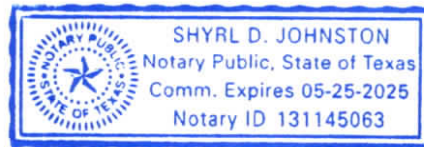
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Coy Haynes
Signature of Owner or Owner's Authorized Representative

Coy Haynes
Printed Name

Owner
Title

THE STATE OF TEXAS §
COUNTY OF Midland §



This instrument was acknowledged before me on the 12TH day of October 2022, by Coy Haynes in the capacity herein stated.

MY COMMISSION EXPIRES
05/25/2025

Shyrl D Johnston
Notary Public, State of TX

Drawing : F:\2022\220110-COY HAYNES (REF #210211, 210210, 180124) 191 & 158 MASTER PLAN & PLATDRAWINGS\ANNEXATION\220110 BOUNDARY SURVEY.DWG Last Saved By: ADevine on 10/27/22

EXHIBIT A

FIELD NOTE DESCRIPTION

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THENCE N.14°42'04"W., ALONG THE EAST LINE OF SAID DRAINAGE EASEMENT, 784.99 FEET TO A "TYPE I" FOUND AT AN ANGLE POINT HEREOF;

THENCE N.32°08'12"E., ALONG THE SOUTHEAST LINE OF SAID DRAINAGE EASEMENT, AT 73.69 FEET PASSING A "TYPE I" FOUND ON THE SOUTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, IN ALL 174.09 FEET TO A POINT ON THE SOUTHEAST LINE OF CITY ORDINANCE 8214, BEING 20.00 FEET FROM NORTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, NEAR THE WESTERN MOST CORNER OF GRASSLAND ESTATES WEST SECTION 5, AS DEPICTED ON A PLAT RECORDED AS DOCUMENT NUMBER 20547 IN PLAT CABINET G ON PAGE 185 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'39"E. 20.00 FEET PARALLEL TO SAID RIGHT-OF-WAY, ALONG THE SOUTHEAST LINE OF SAID ORDINANCE, 337.74 FEET TO A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 2824.49 FEET, AND A CHORD BEARING AND DISTANCE OF S.63°55'14"E., 475.35 FEET;

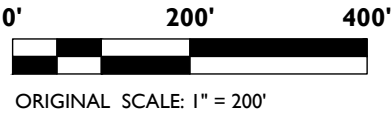
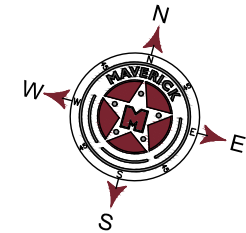
THENCE ALONG THE ARC OF SAID CURVE, CONCAVE TO THIS TRACT, 475.92 FEET TO A POINT ON OR NEAR THE EAST LINE OF SAID SECTION 35, BEING ON THE WEST LINE OF CITY ORDINANCE NUMBER 7975, FOR AN ANGLE CORNER HEREOF;

THENCE S.14°17'16"E., ALONG SAID SECTION LINE, AND SAID WEST LINE OF SAID ORDINANCE, 351.72 FEET TO A POINT FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°15'20"W., AT 228.45 FEET PASSING A "TYPE I" FOUND IN THE NORTH RIGHT-OF-WAY OF SAID STATE HIGHWAY 191, CONTINUING ALONG SAID RIGHT-OF-WAY, 720.66 FEET TO THE **POINT OF BEGINNING** CONTAINING 10.817 ACRES OF LAND.

SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, TEXAS CENTRAL ZONE (4203), U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TX DOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82
2. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.



LEGEND

- ⊙ TXDOT TYPE I CONCRETE MONUMENT
- ⊗ CONTROL MARK
- TRACT BOUNDARY
- - - EXISTING LOTS
- . - . - EXISTING EASEMENTS
- - - EXISTING SECTION LINE
- . - . - EXISTING CITY LIMITS



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CIVIL ENGINEERING / LAND SURVEYING
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

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

Gregory W. Shoults
GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

OCTOBER 26, 2022



EXHIBIT A

ANNEXATION BOUNDARY

A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

JOB NO.: 220110 FIELD WORK: DRAWN BY: AKIAD REV 1: REV 2:

SERVICE AGREEMENT

THIS AGREEMENT is made and effective the 6 day of December 2022, by and between the CITY OF MIDLAND, TEXAS, hereinafter called "CITY," and CG 191 & 158 LLC, hereinafter referred to as "PETITIONER" whether one or more.

WHEREAS, a petition for annexation of a **10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas**, said tract being more fully described by metes and bounds therein (the "Area"), has been submitted to CITY by PETITIONER, the owner(s) of the land located in the Area, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, before CITY annexes the Area, CITY and PETITIONER must enter into a written agreement for the provision of services in the Area in accordance with Section 43.0672 of the Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is (1) to list each service CITY will provide in the Area on the effective date of the annexation, (2) to establish a schedule that includes the period within which CITY will provide each service in the Area that is not provided on the effective date of the annexation, and (3) to establish the duty of PETITIONER to pay fees similar to impact fees in the event that CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees. PETITIONER understands and agrees that CITY is not required to provide a service that is not included in this Agreement. PETITIONER further understands and agrees that the execution of this Agreement does not constitute a promise by CITY to annex the Area and that this Agreement is not a permit for purposes of Chapter 245 of the Local Government Code.

ARTICLE II. TERM

The term of this Agreement shall be one year; provided, however, that if CITY annexes the Area within one year from the effective date, the term of this Agreement shall continue until such time when all services described in this Agreement are provided in the Area, and at such time, the Agreement shall terminate and shall be of no further force or effect except for those provisions that expressly survive termination. If CITY does not annex the Area during the term of this Agreement, this Agreement shall terminate and shall be of no further force or effect, and CITY shall have no duty to provide services to the Area.

ARTICLE III. SERVICES TO BE PROVIDED UPON ANNEXATION

CITY will provide the following services in the Area on the date that the ordinance annexing the Area becomes effective:

- A. Engineering:** CITY's Engineering Services Department will maintain streets, drainage facilities, and rights-of-way in accordance with CITY policies, procedures, and ordinances and applicable laws. PETITIONER understands and agrees that PETITIONER may be required to construct public improvements, including but not limited to (i) roadways adjacent to property located in the Area upon platting and (ii) roadway connections to existing facilities in the Area upon issuance of building permits in accordance with applicable laws and ordinances. PETITIONER understands and agrees that the Area will be included in CITY's service area of CITY's drainage utility.
- B. Utilities:** CITY will provide water services and wastewater collection services, upon platting property in the Area, in accordance with the City Code at rates established by ordinances for such services; provided, however, that no such service shall be provided until the public improvements necessary therefor have been constructed and CITY has approved said improvements. PETITIONER understands and agrees that CITY may require PETITIONER to construct such public improvements in accordance with applicable laws and ordinances.
- C. Development:** CITY's Development Services Department will provide planning, land development, land use, building review and inspection, and code enforcement services in accordance with applicable laws, rules, regulations, and ordinances.
- D. Police:** CITY's Police Department will provide emergency and routine call response, traffic enforcement, and law enforcement services in the Area.
- E. Fire:** CITY's Fire Department will provide emergency service for fire protection services and emergency medical services.
- F. Community Services:** CITY's Community Services Department will provide access to services and programs that may be offered by the Health and Senior Services Division, services and programs that may be offered by Animal Services Division, and access to City-owned parks.
- G. Solid Waste:** CITY's Solid Waste Department will provide residential garbage pickup service only. PETITIONER understands and agrees that CITY will not provide garbage pickup services to new commercial developments.

Regarding the services described above, PETITIONER understands and agrees that CITY will provide a level of services that is comparable to the level of services available in other parts of the City of Midland with topography, land use, and population density similar to those reasonably contemplated or projected for the Area. PETITIONER understands and acknowledges that any CITY departments or divisions identified above may change names or be reorganized. Any reference to a specific CITY department or division also includes any subsequent CITY department or division that will provide the same or similar services.

ARTICLE IV. IMPACT FEES

- A. **Fees to be assessed and collected.** Except as otherwise described herein, if CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees in accordance with Chapter 395 of the Local Government Code, CITY shall assess and collect fees associated with the development of the Area as described for impact fees in the applicable impact fee ordinance(s) (the "Fees").
- B. **Service areas.** For purposes of assessing and collecting Fees for water and wastewater under this Agreement, the Area is deemed to be located within CITY's capital improvements plan service area therefor. For the purpose of assessing and collecting Fees for roadways under this Agreement, the Area is deemed to be located in CITY's capital improvements plan roadway service area(s) immediately adjacent thereto; provided, however, that if the Area is not located immediately adjacent to a roadway service area and is located immediately adjacent to a tract of land that is associated with an agreement regarding fees similar to the Fees in this Agreement, the Area is deemed to be located in the roadway service area(s) specified in such similar agreement associated with the adjacent tract of land.
- C. **Capital improvements and facility expansions.** For purposes of this Agreement, a capital improvement or facility expansion that will serve the Area shall be deemed to be included in CITY's capital improvements plan if:
- a. said capital improvement or facility expansion is substantially similar to a type of capital improvement or facility expansion identified in CITY's capital improvements plan; or
 - b. said capital improvement or facility expansion is an extension of a capital improvement or facility expansion identified in CITY's capital improvements plan.
- D. **Time of assessment.** Fees shall be assessed at the time of recordation of a final plat of any portion of the Area, at the time the Area is annexed, or on the effective date(s) of the applicable impact fee ordinance(s), whichever is later.
- E. **Time of collection.** CITY shall collect the Fees from PETITIONER at the time of issuance of a building permit. PETITIONER acknowledges and agrees that no building permit or certificate of occupancy shall be issued until PETITIONER has paid the applicable Fees.
- F. **Amendment to land use assumptions, capital improvements plan, or impact fees.** Notwithstanding any provision in this Agreement to the contrary, if CITY amends its land use assumptions, capital improvements plan, or impact fees such that PETITIONER would be required to pay impact fees, CITY shall assess and PETITIONER shall pay the applicable impact fees in accordance with the applicable impact fee ordinance(s), as amended; provided, however, that to the extent CITY assesses applicable Fees for service units under this Agreement, PETITIONER shall pay such Fees in accordance with this Agreement and shall not be required to pay the applicable impact fees for the same service units.
- G. **Article to survive termination.** If CITY annexes the Area within one year from the

effective date, the provisions of this Article shall survive termination of this Agreement.

ARTICLE V. GOVERNMENTAL IMMUNITY

By executing this agreement CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VI. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, PETITIONER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PETITIONER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, CITY'S NEGLIGENCE, OR CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VII. ATTORNEYS' FEES

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code §37.001, et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys' fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY, SPECIFICALLY AND SOLELY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING

RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PARTY BRINGING THE ACTION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH THE PARTY MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. EACH PARTY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND PETITIONER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT. PETITIONER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE VIII. GENERAL PROVISIONS

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

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

follows:

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

If to PETITIONER: CG 191 & 158 LLC
1901 N. Akard St.
Dallas, Texas 75201

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

- C. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- D. **Use of language.** Words in the singular shall be held to include the plural, unless the context otherwise requires.
- E. **Amendments, modifications, alterations.** No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- F. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- G. **Notice of alleged breach; statutory prerequisites.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, PETITIONER or PETITIONER'S legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which PETITIONER will settle, the physical and mailing addresses of PETITIONER at the time and date the claim was presented and the physical and mailing addresses of PETITIONER for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom PETITIONER relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to PETITIONER that PETITIONER'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be

supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, PETITIONER'S failure to comply with the requirements herein shall perpetually bar PETITIONER'S claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless of whether CITY has actual or constructive notice or knowledge of said claim or alleged damages. The provisions of this Article VIII.G. shall survive termination of this agreement. **PETITIONER AGREES THAT THE REQUIREMENTS OF THIS ENTIRE AGREEMENT ARE REASONABLE.**

H. **Covenants run with the land.** The provisions of this Agreement are covenants that run with the land located in the Area. CITY and PETITIONER agree that this Agreement may be recorded in the deed records of the county in which the Area is located. CITY and PETITIONER acknowledge and agree that this Agreement is binding upon CITY and PETITIONER and their respective successors, executors, heirs, and assigns, as applicable. The provisions of this Article VIII.H. shall survive termination of this Agreement.

EXECUTED the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: 
Robert Patrick, City Manager

ATTEST


Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM


John Ohnemiller, City Attorney

PETITIONER:

By: [Signature]
Name: Garrett Inman

Title: Manager

STATE OF Texas §

§

COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this 2 day of December, 20 22 personally appeared, Garrett Inman, an officer of CG 1919 IS LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2 day of December, 2022.

[Signature]
Notary Public, State of Texas

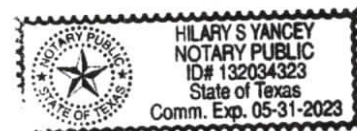


Exhibit "A" to Service Agreement

PETITION FOR ANNEXATION

Dear City of Midland:

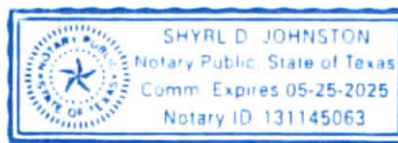
As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, CG 1914152 LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

[Signature]
Signature of Owner or Owner's Authorized Representative

Coy Haynes
Printed Name

Owner
Title

THE STATE OF TEXAS §
COUNTY OF Midland §

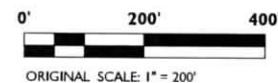
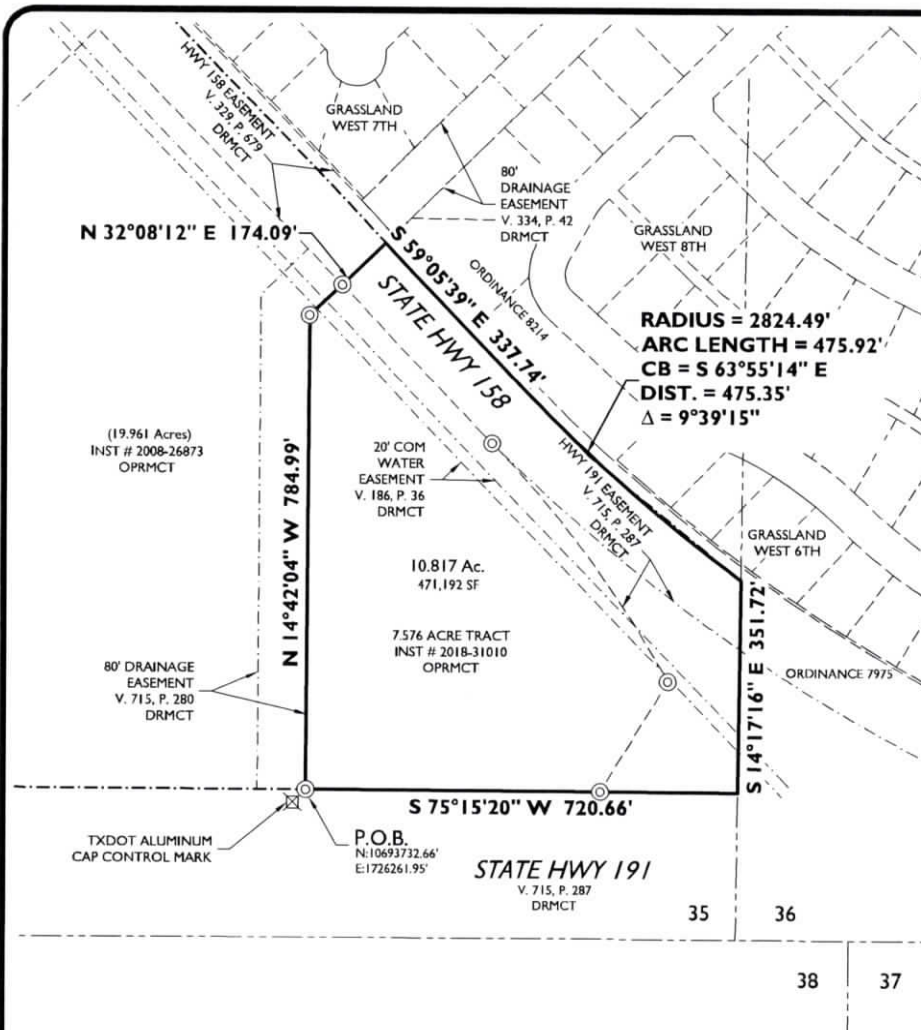


This instrument was acknowledged before me on the 12th day of October 2022, by Coy Haynes in the capacity herein stated.

MY COMMISSION EXPIRES

05/25/2025

[Signature]
Notary Public, State of 10/12/2020



LEGEND

- TXDOT TYPE I CONCRETE MONUMENT
- CONTROL MARK
- TRACT BOUNDARY
- EXISTING LOTS
- EXISTING EASEMENTS
- EXISTING SECTION LINE
- EXISTING CITY LIMITS

FIELD NOTE DESCRIPTION

FIELD NOTE DESCRIPTION OF A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME LAND AS DESCRIBED AS TRACT SEVEN IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, ALSO DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2018-2101 OF SAID "OPR" AND BEING A PORTION OF CALLED TRACT SEVEN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT N.(Y):10693732.66', E.(X): 1726261.95', WITHIN A TXDOT TYPE I CONCRETE MONUMENT (TYPE I) FOUND AND ACCEPTED AS BEING ON THE NORTH LINE OF STATE HIGHWAY 191, AT THE SOUTHEAST CORNER OF A TRACT DESCRIBED AS AN 80 FOOT WIDE DRAINAGE EASEMENT IN VOLUME 715 ON PAGE 280 OF SAID "OPR" AND BEING A PORTION OF CALLED TRACT SEVEN AND BEING THE SOUTHWEST CORNER HEREOF;

THENCE N.14°42'04"W, ALONG THE EAST LINE OF SAID DRAINAGE EASEMENT, 784.99 FEET TO A "TYPE I" FOUND AT AN ANGLE POINT HEREOF;

THENCE N.32°08'12"E, ALONG THE SOUTHEAST LINE OF SAID DRAINAGE EASEMENT, AT 73.69 FEET PASSING A "TYPE I" FOUND ON THE SOUTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, IN ALL 174.09 FEET TO A POINT ON THE SOUTHEAST LINE OF CITY ORDINANCE 8214, BEING 20.00 FEET FROM NORTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, NEAR THE WESTERN MOST CORNER OF GRASSLAND ESTATES WEST SECTION 5, AS DEPICTED ON A PLAT RECORDED AS DOCUMENT NUMBER 20547 IN PLAT CABINET G ON PAGE 185 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'39"E, 20.00 FEET PARALLEL TO SAID RIGHT-OF-WAY, ALONG THE SOUTHEAST LINE OF SAID ORDINANCE, 337.74 FEET TO A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 2824.49 FEET, AND A CHORD BEARING AND DISTANCE OF S.63°55'14"E, 475.35 FEET;

THENCE ALONG THE ARC OF SAID CURVE, CONCAVE TO THIS TRACT, 475.92 FEET TO A POINT ON OR NEAR THE EAST LINE OF SAID SECTION 35, BEING ON THE WEST LINE OF CITY ORDINANCE NUMBER 7975, FOR AN ANGLE CORNER HEREOF;

THENCE S.14°17'16"E, ALONG SAID SECTION LINE, AND SAID WEST LINE OF SAID ORDINANCE, 351.72 FEET TO A POINT FOR THE SOUTHEAST CORNER HEREOF;

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SURVEY NOTES:

- BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, TEXAS CENTRAL ZONE (4203), U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TX DOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82
- SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.



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CIVIL ENGINEERING / LAND SURVEYING
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Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

Gregory W. Shoults
GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

OCTOBER 26, 2022

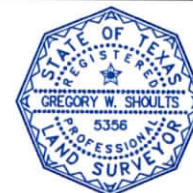
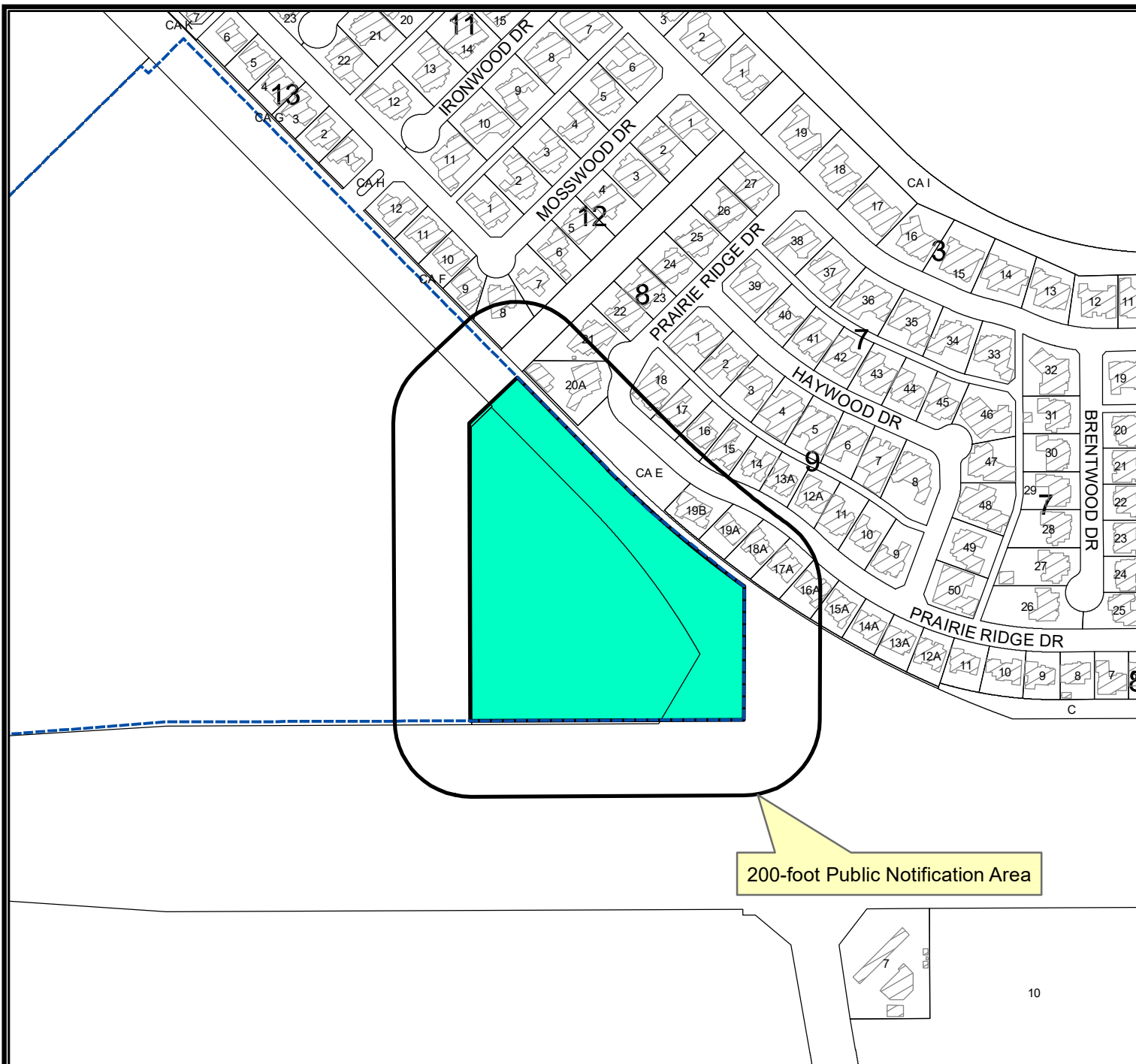


EXHIBIT A

ANNEXATION BOUNDARY

A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS



LOCATION MAP

Z-22-0310

Scale: 1" = 640'

Consider a request by CG 191 and 158 LLC for the initial zoning of a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Generally located on the northwest corner of the intersection of W State Highway 158 and State Highway 191.

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR FOR IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 14, 2023

22.23

PACKET











PACKET

22.28

February 14, 2023



City Council Meeting

Item Number: 23
Meeting Date: February 14, 2023
To: City Council / City Manager
From: James Reber, Planner
Subject: AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The applicants, CG 191 and 158 LLC, are requesting the initial zoning of a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, located on the southeast corner of the intersection of W State Highway 158 and State Highway 191, which is currently being annexed to be RR, Regional Retail District.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The applicants, CG 191 And 158 LLC, are requesting for the initial zoning of annexed land to RR, Regional Retail District, for the use of general retail.

The site is currently in the process of being annexed into City Limits as well as in the process of being platted.

The proposed site plan attached hereto illustrates two (2) buildings consisting of A single-family house and a detached garage, as well as an 8-foot diameter water tank. The total square footage of both the buildings combined is about 4,187 square feet

This case has been circulated to and reviewed by all pertinent City departments for internal review and has received no objections. Their comments are as follows.

The applicants, CG 191 and 158 LLC, are requesting for the initial zoning of annexed land to RR, Regional Retail District, for the use of general retail.

The site is currently in the process of being annexed into City Limits as well as in the process of being platted.

This case has been circulated to and reviewed by all pertinent City departments for internal review and has received no objections. Their comments are as follows.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Fire: (Approved)

No objections to zone change request

Code Administration: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Oil and Gas: (Approved)

No Oil and Gas issues.

GIS: (Approved)

No comments.

Planning: (Approved)

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan calls for (U-H) Urban-High Lot utilization in this area, which emphasizes higher-density mix of housing, major commercial, office, and service uses, and limited industrial in suitable locations. Potential zonings for this classification include Townhouse District, Multi-Family Dwelling District, Office District, and Commercial District. The properties to the north and east are the locations of housing. Across State Highway 191 to the southeast is the location of a gas station and future commercial development.

As this proposed initial zoning conforms to the Tall City Tomorrow Comprehensive Plan, staff recommends approval of this initial zoning of RR, Regional Retail District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

As of February 1, 2023, staff has received one letter of objection to this request.

Attachments:

Petition for Annexation (Exhibit A)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.817-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 158 AND STATE HIGHWAY 191; 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, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise of a public hearing to be held before the City Council on HEARING DATE (the “Hearing Date”), to consider an amendment to the Zoning District Map of the City of Midland, Texas, so as to establish the initial zoning classification of the property described in Section One hereof as an RR, Regional Retail District, as set out in Title XI, Chapter 1 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers on the Hearing Date, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the Zoning District Map accordingly;

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

SECTION ONE. That the initial zoning classification of the area indicated on Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as

an RR, Regional Retail District, and the Zoning District Map of the City of Midland, Texas, is hereby amended to reflect the establishment of this initial zoning classification.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The 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 FIVE. 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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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"

PETITION FOR ANNEXATION

Dear City of Midland:

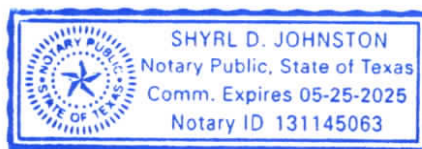
As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, CG 1914158 LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

Coy Haynes
Signature of Owner or Owner's Authorized Representative

Coy Haynes
Printed Name

Owner
Title

THE STATE OF TEXAS §
COUNTY OF Midland §



This instrument was acknowledged before me on the 12TH day of October 2022, by Coy Haynes in the capacity herein stated.

MY COMMISSION EXPIRES

05/25/2025

Shyrl D. Johnston
Notary Public, State of TX

Drawing : F:\2022\220110-COY HAYNES (REF #210211, 210210, 180124) 191 & 158 MASTER PLAN & PLATDRAWINGS\ANNEXATION\220110 BOUNDARY SURVEY.DWG Last Saved By: ADevine on 10/27/22

EXHIBIT A

FIELD NOTE DESCRIPTION

FIELD NOTE DESCRIPTION OF A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME LAND AS DESCRIBED AS TRACT SEVEN IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, ALSO DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2018-2101 OF SAID "OPR" AND A PORTION OF STATE HIGHWAY 158, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

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THENCE N.14°42'04"W., ALONG THE EAST LINE OF SAID DRAINAGE EASEMENT, 784.99 FEET TO A "TYPE I" FOUND AT AN ANGLE POINT HEREOF;

THENCE N.32°08'12"E., ALONG THE SOUTHEAST LINE OF SAID DRAINAGE EASEMENT, AT 73.69 FEET PASSING A "TYPE I" FOUND ON THE SOUTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, IN ALL 174.09 FEET TO A POINT ON THE SOUTHEAST LINE OF CITY ORDINANCE 8214, BEING 20.00 FEET FROM NORTHEAST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, NEAR THE WESTERN MOST CORNER OF GRASSLAND ESTATES WEST SECTION 5, AS DEPICTED ON A PLAT RECORDED AS DOCUMENT NUMBER 20547 IN PLAT CABINET G ON PAGE 185 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'39"E. 20.00 FEET PARALLEL TO SAID RIGHT-OF-WAY, ALONG THE SOUTHEAST LINE OF SAID ORDINANCE, 337.74 FEET TO A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 2824.49 FEET, AND A CHORD BEARING AND DISTANCE OF S.63°55'14"E., 475.35 FEET;

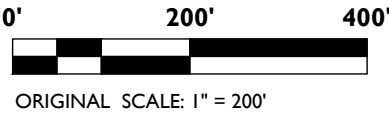
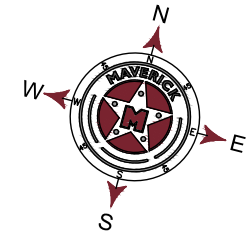
THENCE ALONG THE ARC OF SAID CURVE, CONCAVE TO THIS TRACT, 475.92 FEET TO A POINT ON OR NEAR THE EAST LINE OF SAID SECTION 35, BEING ON THE WEST LINE OF CITY ORDINANCE NUMBER 7975, FOR AN ANGLE CORNER HEREOF;

THENCE S.14°17'16"E., ALONG SAID SECTION LINE, AND SAID WEST LINE OF SAID ORDINANCE, 351.72 FEET TO A POINT FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°15'20"W., AT 228.45 FEET PASSING A "TYPE I" FOUND IN THE NORTH RIGHT-OF-WAY OF SAID STATE HIGHWAY 191, CONTINUING ALONG SAID RIGHT-OF-WAY, 720.66 FEET TO THE **POINT OF BEGINNING** CONTAINING 10.817 ACRES OF LAND.

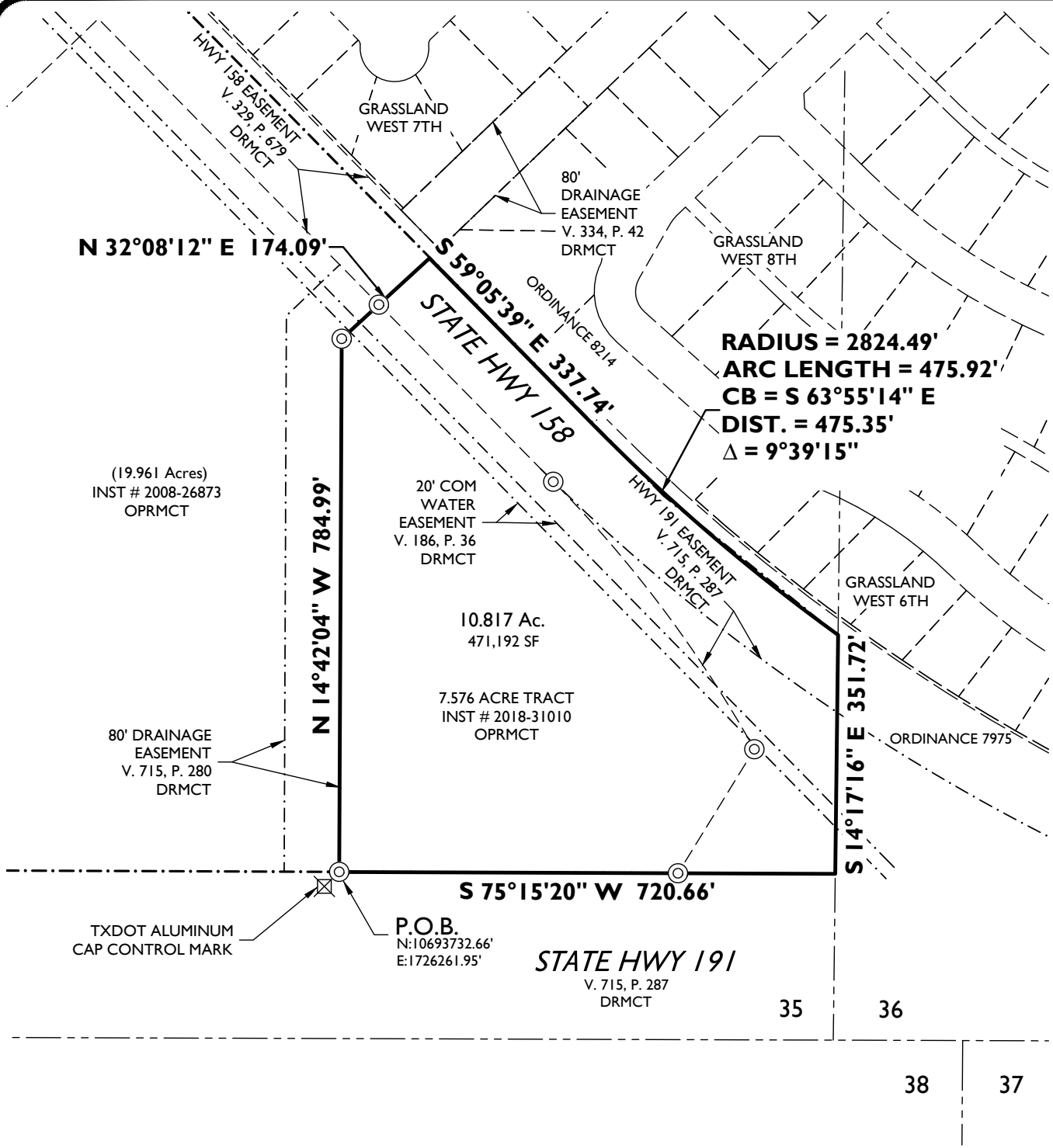
SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, TEXAS CENTRAL ZONE (4203), U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TX DOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82
2. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.



LEGEND

- ⊙ TXDOT TYPE I CONCRETE MONUMENT
- ⊗ CONTROL MARK
- TRACT BOUNDARY
- - - EXISTING LOTS
- . - . - EXISTING EASEMENTS
- - - EXISTING SECTION LINE
- . - . - EXISTING CITY LIMITS



MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
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

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

Gregory W. Shoults
GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

OCTOBER 26, 2022



EXHIBIT A

ANNEXATION BOUNDARY

A 10.817 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS



Annexation/Zone Change Application

Project Number:

Case Number:

A-22-0032
2-22-0310

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: CG 191 And 158 LLC

Phone ()

Email

Address 1901 N Akard St

City Dallas

State TX

Zip 75201

Property Owner

Printed Name: See Applicant

Phone (214) 335-4702

Email coy@laramie-inv.com

Address 1901 N Akard St

City Dallas

State TX

Zip 75201

Representative (if different from Applicant or Property Owner)

Firm: Maverick Engineering

Printed Name: Paladin Huckaba

Phone (432) 262-0999

Email
phuckaba@maverick-eng.com

Address 1909 W Wall St Ste K

City Midland

State TX

Zip 79701

Street Address: NA

Legal Description A 11.229 Acre Tract of Land, Situated in Section 35, Block 40, Township 1 South, Texas and Pacific Railway Company Survey, Midland County, Texas

Lot: Block: Subdivision:

Current Zoning:

ETJ

Proposed Zone:

RR

(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: Advance the incorporation of this tract into the City Limits of Midland

Present Use of Property: vacant

Proposed Use of Property: General retail

How would this annexation/zone change affect the public health, safety and welfare?

no adverse affect. Addition of newly developed tracts to the City of Midland

Describe how this annexation/zone change will affect adjacent properties: Extend

infrastructure and amenities west of existing City limits to make adjacent incorporation more feasible.

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): Coy Haynes

Date: 9/14/22

Applicant (printed): Coy Haynes

Property Owner (signature): Coy Haynes

Date: 9/14/22

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.

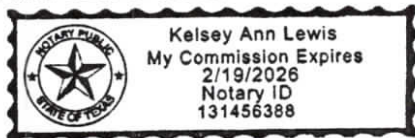
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly sworn, upon oath says: That (s)he is authorized by CG 191 and 158, 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.

Andrew L. Mellen
Authorized Agent (signature)

Subscribed and sworn to before me, this 15th day of September, 2022, to certify which witness my hand and seal of office.



Kelsey Ann Lewis

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 3913

Received By: ES

Date:

OCT 21 2022

PETITION FOR ANNEXATION

Dear City of Midland:

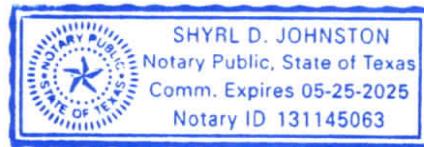
As current owner of the tract(s) of land described in Exhibit(s) A (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, CG 1914158 LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

Coy Haynes
Signature of Owner or Owner's Authorized Representative

Coy Haynes
Printed Name

Owner
Title

THE STATE OF TEXAS §
COUNTY OF Midland §



This instrument was acknowledged before me on the 12TH day of October 2022, by Coy Haynes in the capacity herein stated.

MY COMMISSION EXPIRES
05/25/2025

Shyrl D Johnston
Notary Public, State of TX

Drawing : F:\2022\220110-COY HAYNES (REF #210211, 210210, 180124) 191 & 158 MASTER PLAN & PLATDRAWINGS\ANNEXATION\220110 BOUNDARY SURVEY.DWG Last Saved By: ADevine on 10/27/22

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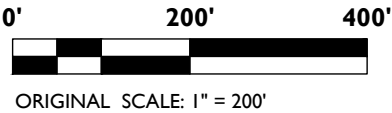
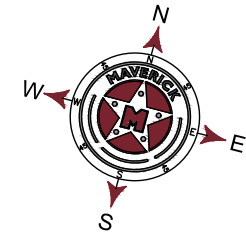
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LEGEND

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- TRACT BOUNDARY
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MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
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

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Gregory W. Shoults
GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

OCTOBER 26, 2022

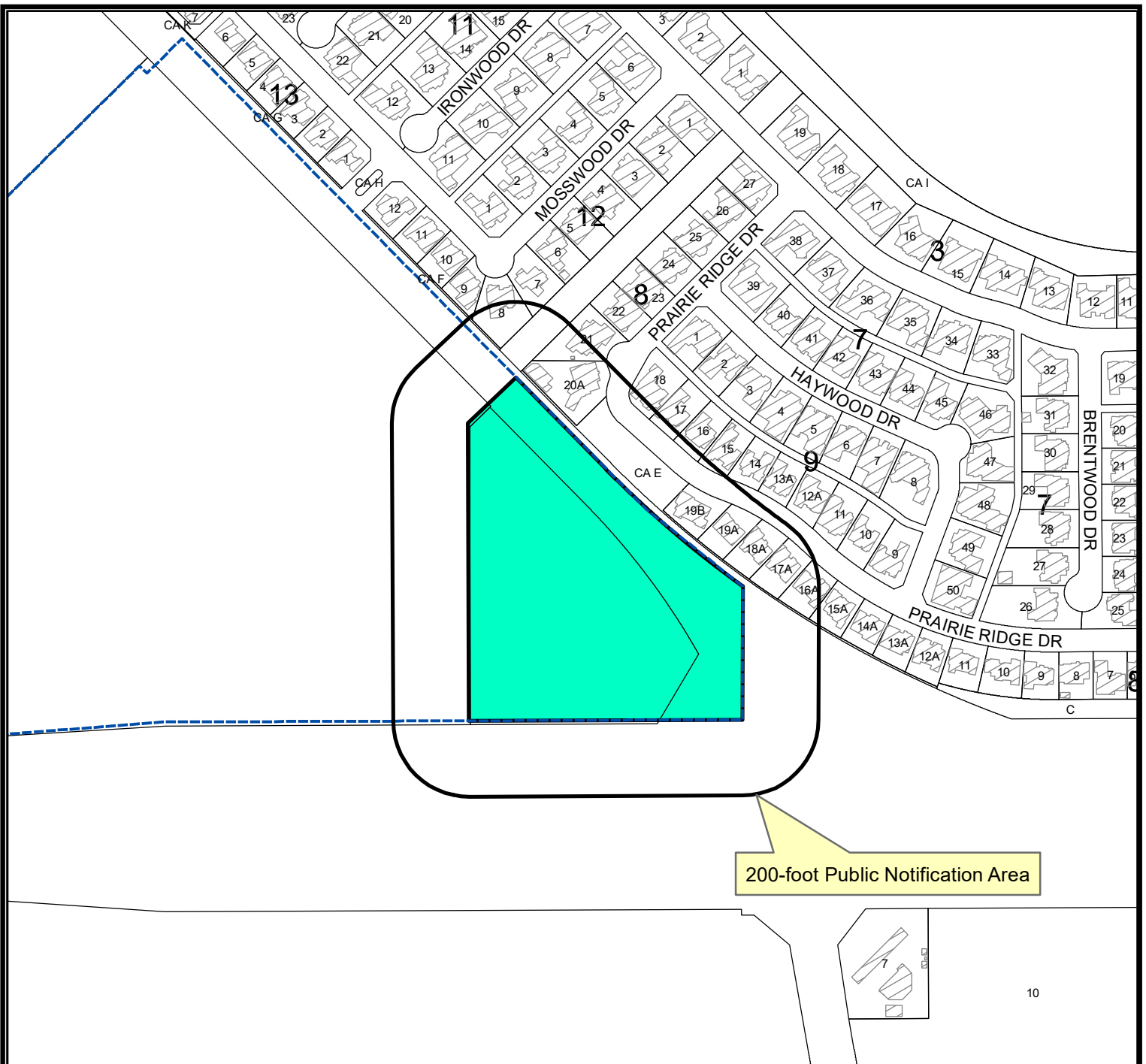


EXHIBIT A

ANNEXATION BOUNDARY

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JOB NO.: 220110 FIELD WORK: DRAWN BY: AKIAD REV 1: REV 2:



LOCATION MAP

Z-22-0310

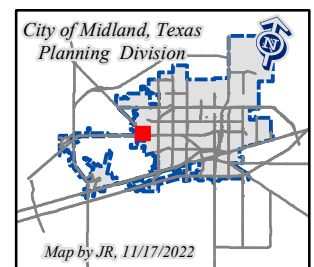
Scale: 1" = 640'

Consider a request by CG 191 and 158 LLC for the initial zoning of a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Generally located on the northwest corner of the intersection of W State Highway 158 and State Highway 191.

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

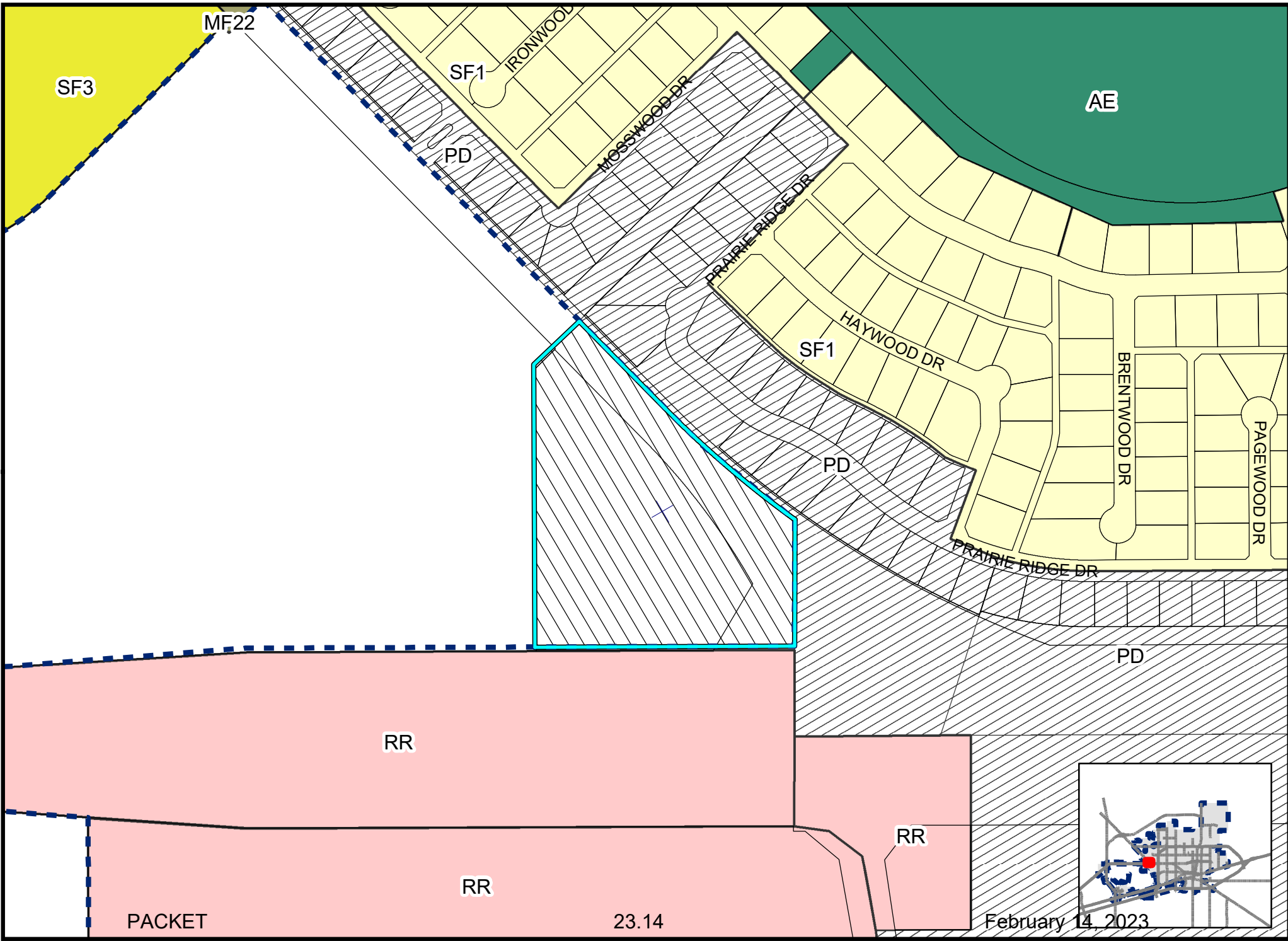


©THE CITY OF MIDLAND - 2021

February 14, 2023

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR FOR IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.





PUBLIC NOTICE

GONZALES JAIME
6325 PRAIRIE RIDGE
MIDLAND TX 79707

The **Planning and Zoning Commission** of the City of Midland, Texas, will hold a public hearing at **3:30 p.m. on Tuesday, January 17, 2023**, in the Council Chamber, City Hall, 300 N. Loraine, Midland, TX 79701 and via video conference, on a request by **CG 191 And 158 LLC** for the **Initial Zoning** of the following described property:

LEGAL DESCRIPTION: A 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the southeast corner of the intersection of W State Highway 158 and State Highway 191 – (Extraterritorial Jurisdiction)

PROPOSED ZONING: **From:** No Current Zoning
To: RR, Regional Retail District

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: Object to RR zoning - if development for outdoor concert or music venue due to noise level it will create.

Required Information:

Jaime Gonzales
Property Owner's Signature

Jaime Gonzales
Printed Name

6325 PRAIRIE RIDGE DR, MIDLAND TX 79707
Property Address (No P. O. Boxes)

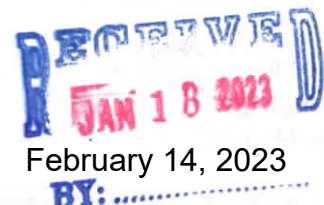
If any further information is desired, please contact the Planning Division at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 20
Date Mailed: January 6, 2023
Case Number: Z-22-0310
Case Name: CG 191
JR Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.

Video Conference information can be found on the City of Midland's website:
<http://www.midlandtexas.gov/9671/PrimeGov-Meetings>

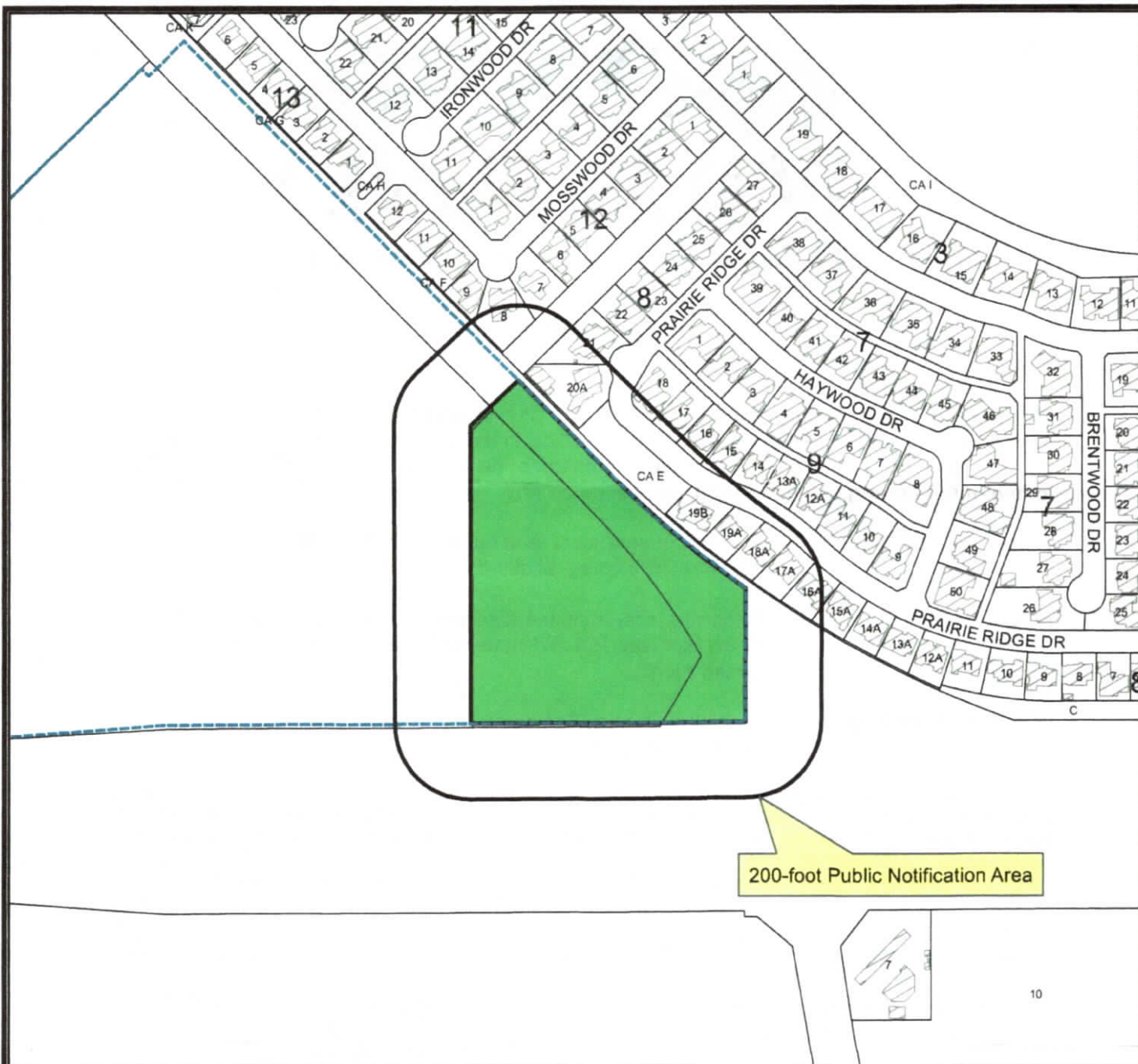


PACKET

23.15

February 14, 2023

BY:



LOCATION MAP

A-22-0032/Z-22-0310 Scale: 1" = 640'

Consider a request by CG 191 And 158 LLC for the initial zoning of a 10.817-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Generally located on the southeast corner of the intersection of W State Highway 158 and State Highway 191.

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTE 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 USER SHALL BE RESPONSIBLE FOR ANY DECISIONS BASED ON THE USE OF THIS DATA.









PACKET

23.20

February 14, 2023



City Council Meeting

Item Number: 24
Meeting Date: February 14, 2023
To: City Council / City Manager
From: James Reber, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND BY REPEALING ORDINANCE NO. 8961, WHICH GRANTED A SPECIFIC USE DESIGNATION WITHOUT TERM THAT ALLOWED AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS ON LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED O-1, OFFICE 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 PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Steve Jeter, d/b/a The Venue, is requesting a Specific Use Designation without term to repeal Ordinance No. 8961, which granted a specific use designation without term that allowed an accessory building to be used for living or sleeping quarters.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

O1, Office District (Ordinance No. 9759)

Surrounding Zoning and Land Use:

The properties to the north, south, and west are zoned AE, Agriculture-Estate District. The northern and southern properties are vacant, and the western property is the location of a residential property. The property to the east is in the Extraterritorial Jurisdiction.

Discussion:

The applicant, Steve Jeter, is requesting to Repeal Ordinance No. 8961 of the Specific Use Designation, without Term, for the granted Accessory Building that approved for a Living or Sleeping Quarters. The property is located at 3201 Elkins Rd and is currently zoned O1, Office District, which permits for the land use of a wedding chapel, reception facility, and special events center.

The event center currently is in operation. The site and floor plan attached hereto a "Exhibit A" illustrates that the establishment has a total of two buildings and an outdoor enclosed space. The event building (primary) is being used as an office space and events. In addition to an enclosed outdoor space located to the southwest of the event building; The purpose of this request will repeal the previous ordinance and allow the accessory building to be used for a bridal room or storage.

Ordinance 8961 allowed for the following conditions:

- A. That the accessory building shall not exceed 1,800 square feet in area.
- B. That the accessory building shall be located in the location illustrated on Exhibit A.
- C. That the accessory building may be occupied only by family members or guests of the owner. It may never be rented as a separate dwelling unit.
- D. The owner shall obtain all of the necessary permits from the City of Midland related to the construction of the accessory building.

The new ordinance will repeal conditions A through D, from Ordinance 8961.

The applicant is now requesting to use the building illustrated on Exhibit A as a multi-function accessory building, such as a bridal room or storage. The existing accessory building is 1,532 square feet.

The applicant will be required to adhere to the Accessory Buildings and Uses standards outline within the City of Midland Zoning Ordinance Section 4.09(B)5.

This request 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 to zone change

Engineering: (Approved)

No objections. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Building Code: (Approved)

No objections

Planning: (Approved)

This request will be heard on February 6, 2023, by the Planning and Zoning Commission..

Staff recommends approval of a Repeal of Ordinance No. 8961, Specific Use Designation without Term on a granted Accessory Building that was approved for a Living or Sleeping Quarters, subject to conditions A and B.

Conditions:

A. That Ordinance 8961 is repealed.

B. That the use and development of this accessory building shall conform to the regulations regarding an accessory building in the O-1, Office District.

Letters of Objection:

As of February 1, 2023, staff has not received any letters of objections.

Attachments:

Application
Site Plan
Maps
Ordinance 8961

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND BY REPEALING ORDINANCE NO. 8961, WHICH GRANTED A SPECIFIC USE DESIGNATION WITHOUT TERM THAT ALLOWED AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS ON LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED O-1, OFFICE 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 PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, Ordinance No. 8961 granted a specific use designation without term that allowed an accessory building to be used for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas (the “Property”); and

WHEREAS, when Ordinance No. 8961 was adopted, the Property was zoned AE, Agricultural Estate District; and

WHEREAS, the Property is presently zoned O-1, Office District; and

WHEREAS, the City’s 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 repealing Ordinance No. 8961;

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 by repealing Ordinance No. 8961. Ordinance No. 8961 shall be of no further force or effect. The use and development of the Property and all buildings thereon shall conform to Title XI, "Planning and Development", Chapter 1, "Zoning Ordinance", of the City Code of Midland, Texas, including all rules and regulations that apply to the Property's then-current zoning district, which is presently O-1, Office District.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The 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 FIVE. 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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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



**Specific Use Designation
Application (Non-Alcohol)**

Case Number

30 No / 22 / 0033

Ord. Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Steve Jeter

Phone (432) 413-1501

Email
steve@kvloperating.co

Address P.O. Box 7307

City Midland

State TX

Zip 79708

Property Owner

Printed Name: 3201 Properties, LLC

Phone (432) 413-1501

Email
steve@kvloperating.co

Address 3201 Elkins Rd.

City Midland

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: Steve Jeter

Phone (432) 413-1501

Email
steve@kvloperating.co

Address _____

City _____

State _____

Zip _____

Type of Permit: ☐ SUD Repeal Ordinance No. 8961

For Office Use Only

☐ with Term

☐ without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☒ No

Street Address: 3201 Elkins Rd., Midland, TX 79705

Legal Description

Lot: 1

Block: 1

Subdivision: Camelot

Current Zoning: Residential

Maximum Floor Area: 1,532

Maximum Occupancy: none

Proposed hours and days of use or operation: none

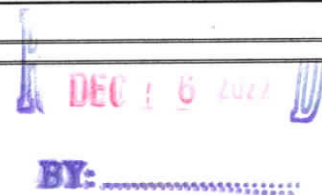
Reason for request: Repeal Ordinance No. 8961 to allow for the use of the accesory building to be used for the event center as storage or a bridal room.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: _____

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing
 - Parking (if applicable)
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)



Signatures

Applicant (signature):

Date: 12/16/2022

Applicant (printed): **Steve Jeter**

Property Owner (signature):

Date: 12/16/2022

Property Owner (printed): **Steve Jeter**

The Specific Use Designation shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ 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

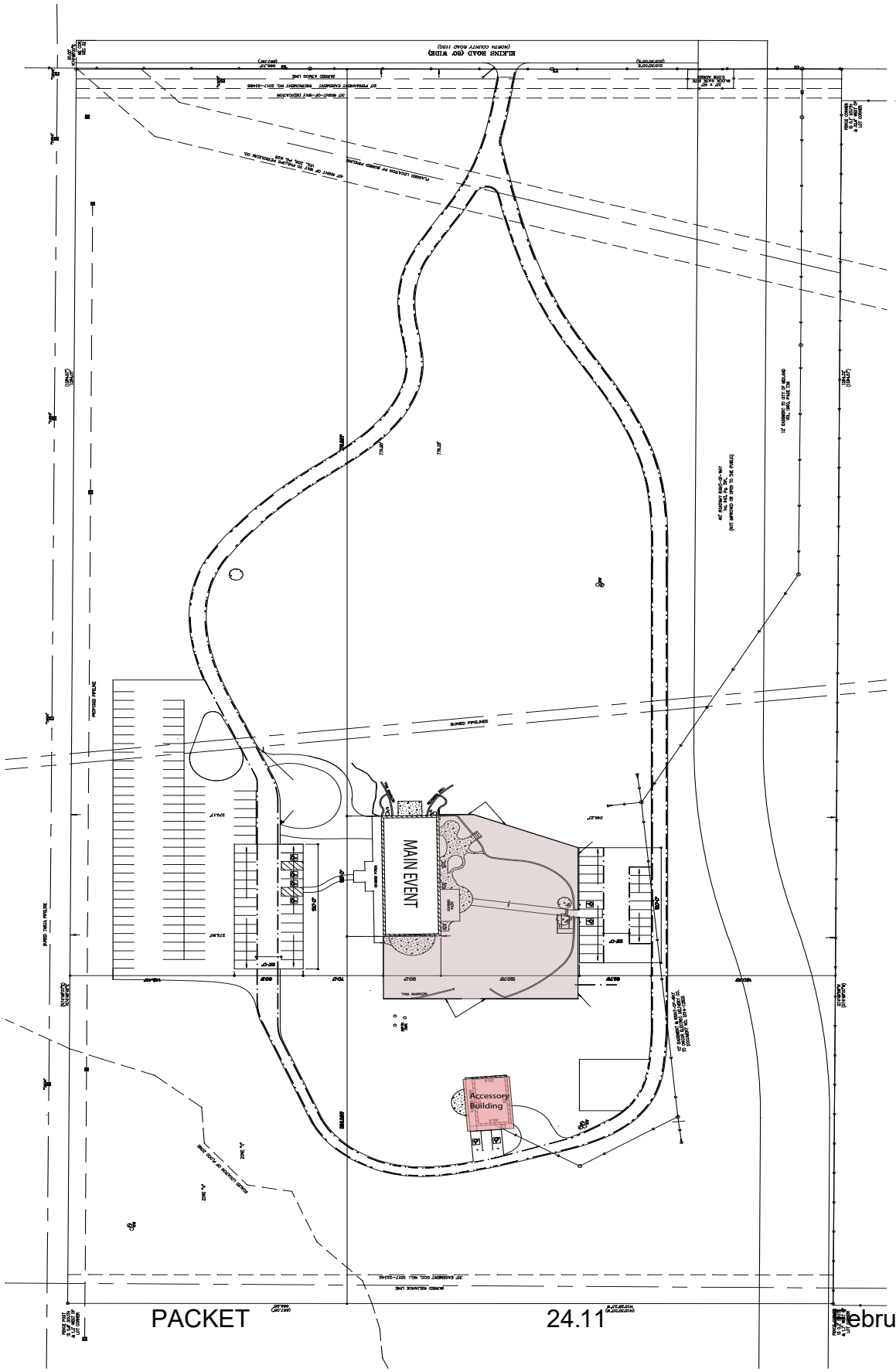
FOR OFFICE USE ONLY☒ Property Owner Authorization☒ Dimensioned Site Plan☒ Application Fee☒ Site Plan in Digital Format (PDF/JPEG)Check # 2529Received By: James R. RifeDate: 12/16/22

NO PARKING FIRE LANE
20' OC
20' OC



SERVICE
VEHICLES
ONLY
DO NOT
ENTER

10' OF PARKING



BUILDING REMODEL
3201 ELKINS ROAD
MIDLAND
TEXAS



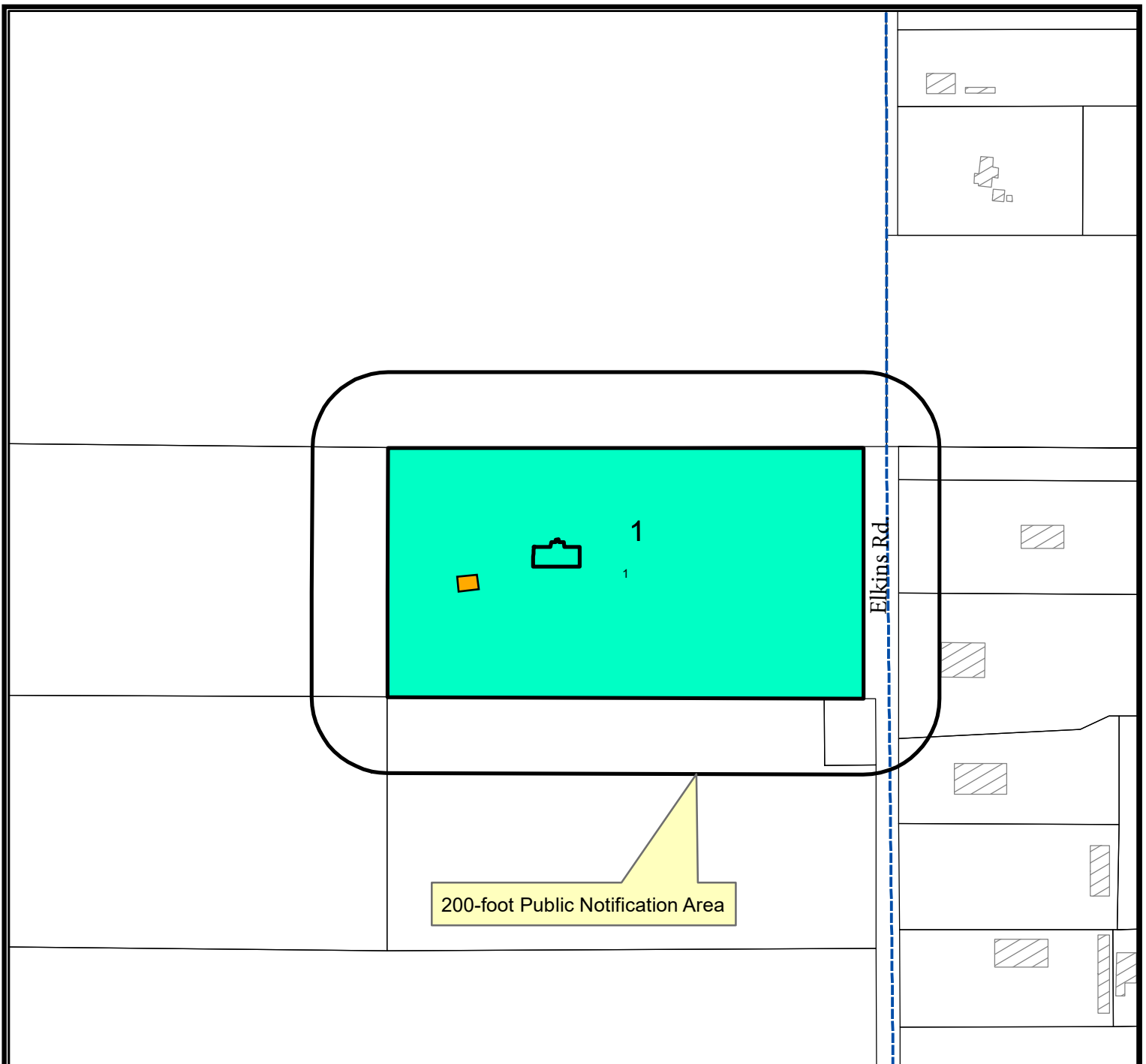
J. PHILLIP FURQUERON, Architect
407 CHARMANTIC DRIVE
432 270 3646
MIDLAND, TEXAS
78705

THIS DOCUMENT MAY NOT BE
REPRODUCED OR TRANSMITTED
IN ANY FORM OR BY ANY
MEANS, ELECTRONIC OR
MECHANICAL, INCLUDING
PHOTOCOPYING, RECORDING,
OR BY ANY INFORMATION
SYSTEM, WITHOUT THE
WRITTEN PERMISSION OF THE
ARCHITECT. EXAMINERS
OF ARCHITECTURAL EXAMINERS
STATE, 1-10-04

PACKET

24.11

February 14, 2023



LOCATION MAP

SUDwo-22-0033

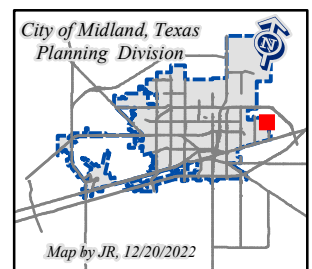
Scale: 1" = 200'

Consider a request by Steve Jeter for a Specific Use Designation, without term, to repeal Ordinance No. 8961, which granted a specific use designation without term that allowed an accessory building to be used for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

Generally located on the west side of Elkins Rd, approximately one mile north of Business Interstate 20.
(Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



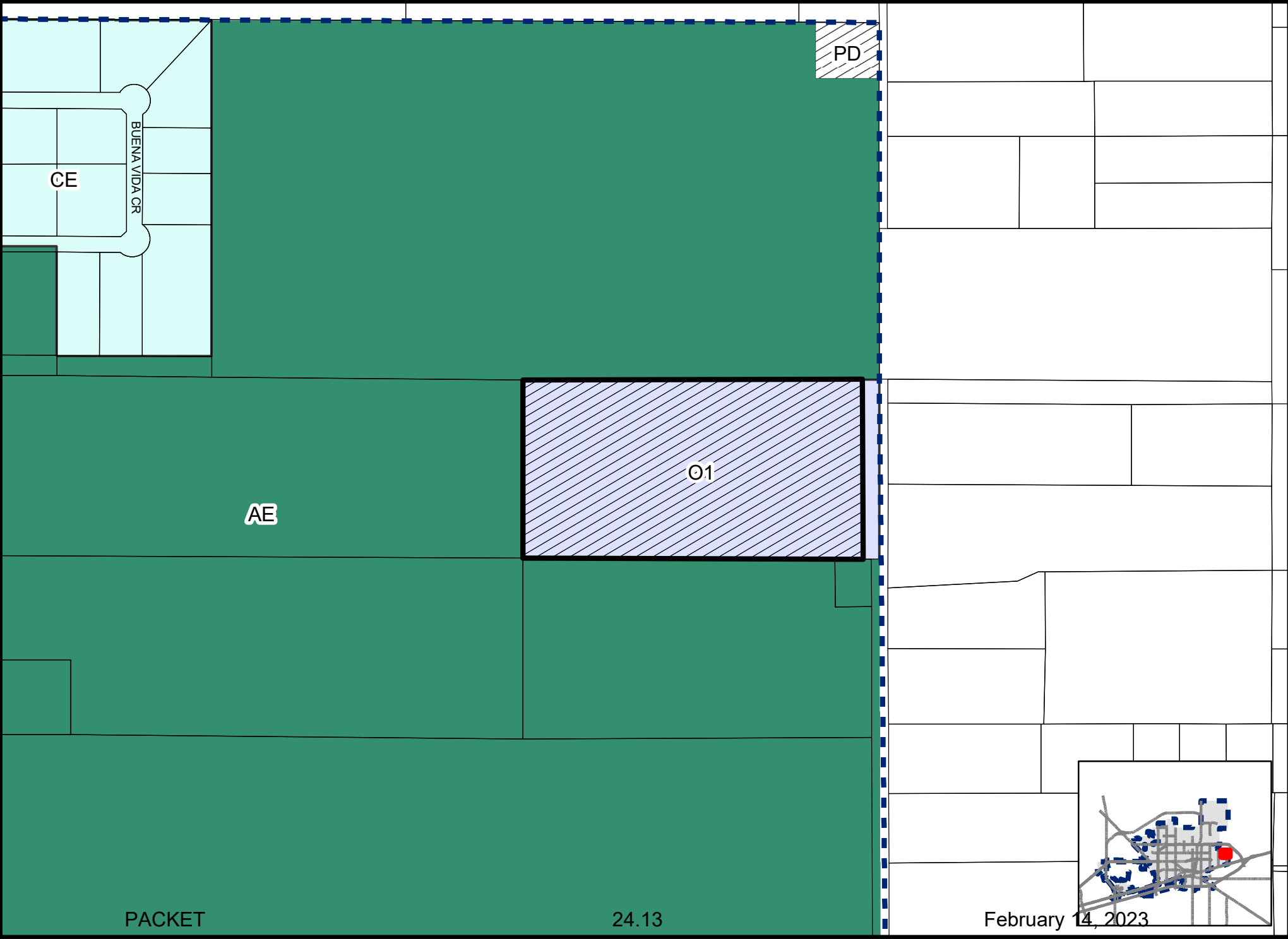
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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 14, 2023

24.12











ORDINANCE NO. 8961

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and 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 health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned AE, Agriculture Estate District, to wit:

Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for an accessory building to be used for living or sleeping quarters, together with the uses

permitted in an AE, Agriculture Estate District, subject to the following conditions:

1. That the accessory building shall be located as shown on Exhibit "A", which is attached hereto and incorporated herein.
2. That the accessory building shall not exceed 1,800 contiguous square feet in area.
3. That the use of the accessory building for living or sleeping quarters shall be limited to family members or guests of the occupant of the primary residence; the accessory building shall not be rented out as a separate residence or used for any commercial purpose.
4. That the applicant shall obtain all necessary permits from the City of Midland related to the construction of the accessory building.

SECTION TWO. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

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 City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the 10th day of January, A.D., 2011; and passed to second reading on motion of Council member Sparks, seconded by Council member James, by the following vote:

Council members voting "AYE": Morales, Trost, Hailey, Perry, Dufford, James and Sparks

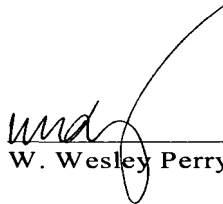
Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Hailey, seconded by Council member Dufford, on the 10th day of January, A.D., 2012, at a regular meeting of the City Council:

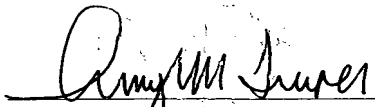
Council members voting "AYE": Morales, Trost, Hailey, Perry, Dufford and Sparks

Council members voting "NAY": None

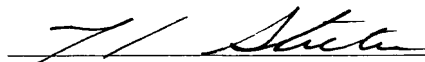
PASSED AND APPROVED THIS 10th day of January, A.D., 2012.


W. Wesley Perry, Mayor

ATTEST:


Amy M. Turner, City Secretary

APPROVED AS TO FORM:


Keith Stretcher, City Attorney

**Planning and Zoning Commission
Minutes
October 31, 2011**

S-11-017 - Hold a public hearing and consider a request by **Gary Dawson** for a *Specific Use Permit Without Term* for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas. (Generally located on the west side of Elkins Road, approximately 1 mile north of Business I-20.)

Mr. Compton explained that the applicant wishes to construct an additional small residence on the lot, that current zoning allows for only one residence on the lot, but the specific use permit will allow for the requested residence. He stated that an accessory building may not be rented as a separate living unit.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

A motion for approval, subject to Conditions A-D, was made by Commissioner Watkins, seconded by Commissioner Gatten. The motion carried by the following vote: AYE: Wolf, York, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: Lanning and Woodruff

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: S-11-017.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, Without Term, for an Accessory Building for Living and Sleeping Quarters.

APPLICANT/OWNER: Gary Dawson.

LEGAL DESCRIPTION: Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

LOCATION: West side of Elkins Road, approximately one mile north of Business I-20.

CURRENT ZONING: AE, Agriculture Estate District.

DETAILS OF REQUEST:

1. Mr. Dawson owns a 19.67-acre lot on the west side of Elkins Road. He wishes to construct another small residence on this lot. Since the AE District only allows one residence per lot, he is requesting a specific use permit to allow an accessory building that can be used for living and sleeping quarters. The accessory building is proposed to be 1,780 square feet in area, and is located as shown on the attached Exhibit A.

SURROUNDING ZONING AND LAND USE:

2. This lot is located on the west side of Elkins Road. The land on the east side is outside the City limit, and is generally vacant except of an oil well. The land to the north, west and south of this property is zoned AE District, and is generally vacant with the exception of the occasional pump jack. The nearest residence is over one-quarter mile from the applicant's home.

ANALYSIS:

3. The Planning and Zoning Commission has developed several policies that are helpful in reviewing applications for accessory buildings that are used as a living and sleeping quarter:
 - A. The maximum floor area should not exceed 600 square feet, or 35 percent of the size of the principle residence, whichever is larger.

- B. Vehicular access to the accessory building should not be allowed from the rear of the lot.
- C. The specific use permit should delineate who is allowed to stay in the accessory building.

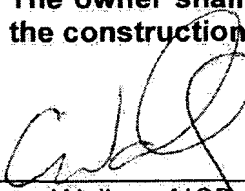
In addition to these policies, the Zoning Code prohibits the use of the accessory building as rental property.

- 4. The principle residence contains 6,250 square feet, while the accessory building is proposed to be 1,780 square feet, which represents 28 percent the principle residence. With no alley system serving this lot, all access to the accessory building must be through the front of the lot. The applicant indicates that the guesthouse will only be occupied by family members or guests, and he has been advised that it cannot be rented as a separate dwelling unit. We find that this application meets the policy guidelines and regulations of the Zoning Code. Further, there are no nearby residences that could be negatively impacted by approval of this request.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit, Without Term, to allow an accessory building to be used as a living and sleeping quarters, subject to the following conditions:

- A. That the accessory building shall not exceed 1,800 square feet in area.
- B. That the accessory building shall be located in the location illustrated on Exhibit A.
- C. That the accessory building may be occupied only by family members or guests of the owner. It may never be rented as a separate dwelling unit.
- D. The owner shall obtain all of the necessary permits from the City of Midland related to the construction of the accessory building.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number:

5-11-017

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Applicant Name <u>GARY DAWSON</u>		Contact Phone #s <u>432 352 5365</u>
Address <u>3201 ELICINS Rd</u>		Zip Code <u>79705</u>
E-Mail address: <u>joshua.gd1977@yahoo.com</u>		
Property Owner Name <u>S A A</u>		Contact Phone #s <u> </u>
Address <u> </u>		Zip Code <u> </u>
E-Mail address: <u> </u>		
Operator (if different from Applicant or Property Owner) <u> </u>		Contact Phone #s <u> </u>
Address <u> </u>		Zip Code <u> </u>
Type of Permit: <u>SPECIFIC USE</u> <u>ACCESSORY LIVING QUARTER</u>	SUP with Term: <u> </u> Yes <u> </u> No (For Office Use)	

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

3201 ELICINS Rd Lot 1 Blk. 1 CAMELOT Sub.

Current Zoning: AE

Maximum Floor Area: 1780 sq ft. Max. Occupancy: 1 Adult

Proposed hours and days of use or operation: NA

Reason for request: Family & friend place to stay

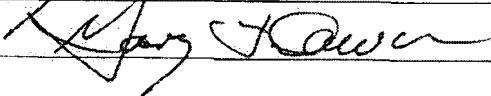
Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: NO NEIGHBORS WITHIN 1/4 MILE

PROPERTY IS 20 AC IN SIZE THIS WILL BE THE
ONE AND ONLY out building used as a living quarter

REQUIRED SUBMITTALS

1. Application fee: **\$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant:  Date: 9/15/11
Property Owner:  Date: 9/15/11

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

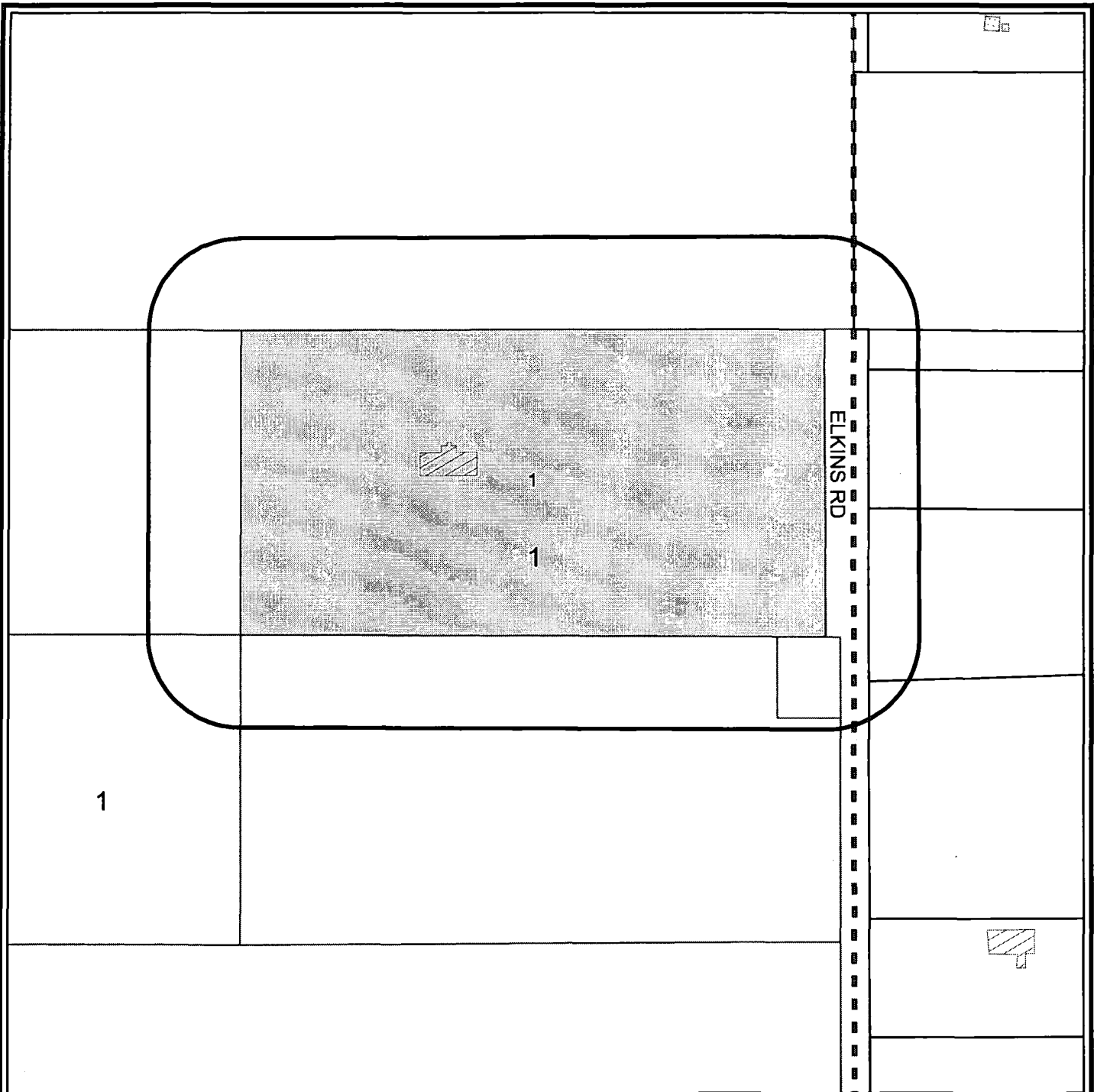
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

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	
Rec'd By: <u>BL</u>	Date: <u>09/16/11</u>
Assigned: <u>JC</u>	
For: <u>P+Z</u>	On: <u>10/31/11</u>

****Application will not be considered for scheduling until reviewed by a planner.****



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

S - 11 - 017

Scale: 1" = 300'

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

PACKET

24.26

LEGEND

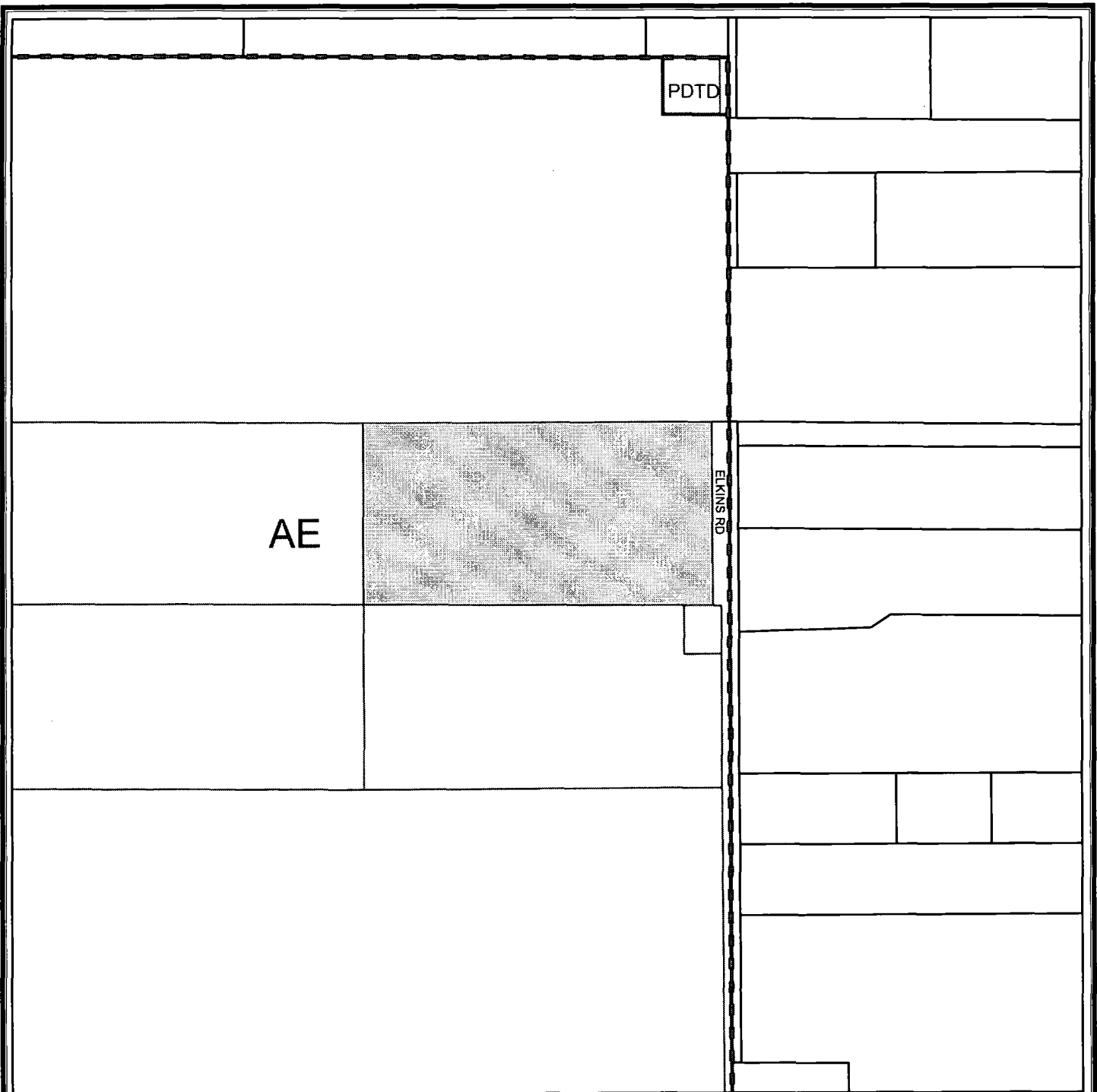
- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2011
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND. THE CITY OF MIDLAND IS NOT RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. THE CITY OF MIDLAND IS NOT RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

Fel

30.12



ZONING MAP

S - 11 - 017

Scale: 1" = 500'

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

PACKET

LEGEND

- ZONING
 PARCELS
 COUNTY PARCELS
 - - - CITY LIMITS
 SPECIFIC USE PERMITS

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	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF	MULTIPLE FAMILY DWELLING	HE	HEAVY INDUSTRY

February 14, 2023



30.13

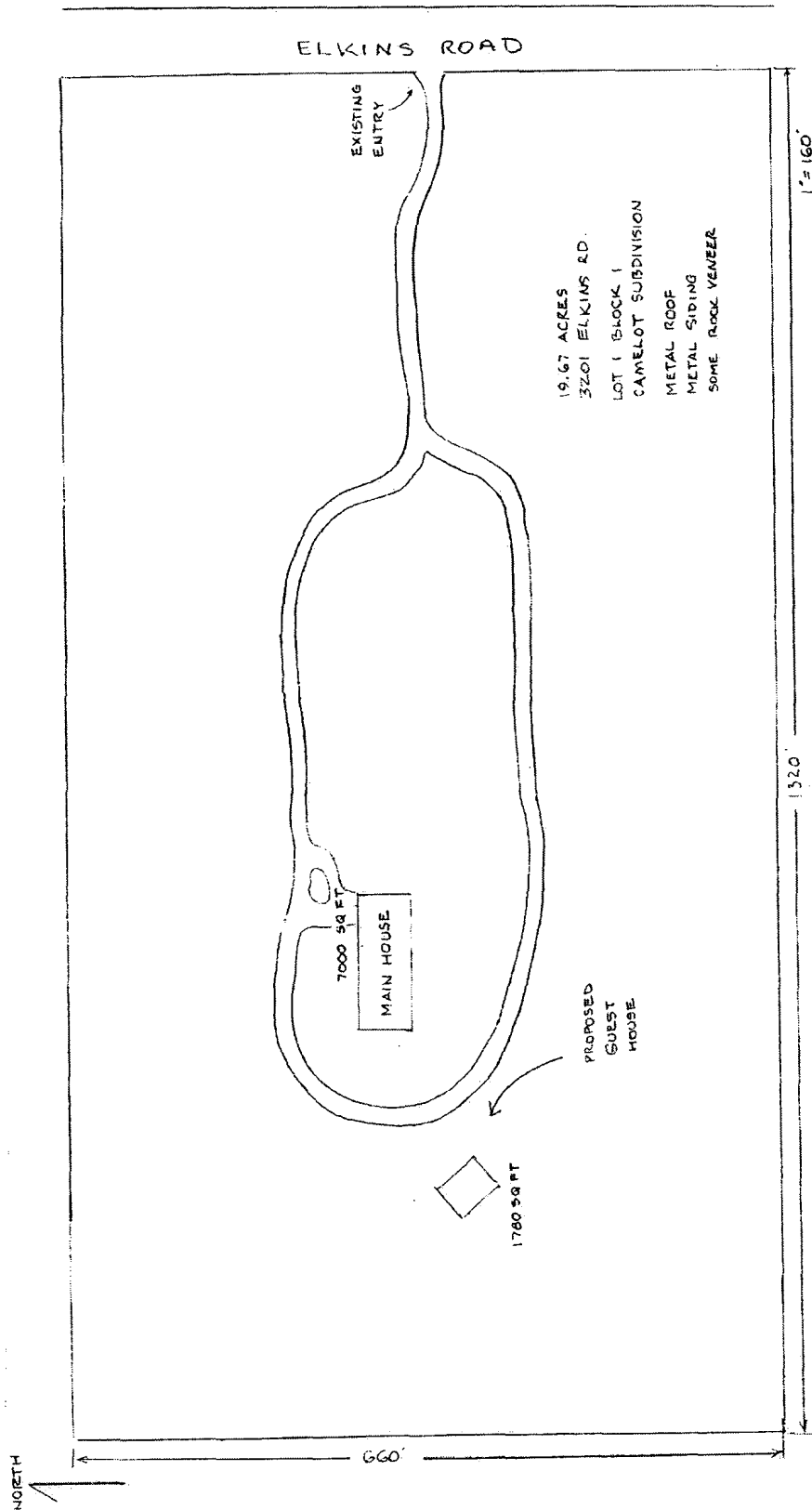


EXHIBIT A

PACKET

24.28

February 14, 2023 ^{S-11-017} 30.14



City Council Agenda

Permits-Temp. Land Use-
Accessory Bldg.
8961

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 10, 2012
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, Planning Division Manager
SUBJECT: S-11-017, Gary Dawson

Purpose:

Consider an ordinance on second reading on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure; however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this application. The accessory building (1,780 square feet) would not exceed 35 percent of the size of the residential structure, there is no vehicular access from the rear of the property, the residence would only be occupied by family members or guests and the property cannot be rented as a separate dwelling. The Planning and Zoning Commission recommended unanimous approval, and no opposition was expressed at that meeting. No changes have been requested regarding this zone change since first reading.

Attachments:

Proposed Ordinance



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 13, 2011
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, Planning Division Manager
SUBJECT: S-11-017, Gary Dawson

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure on his property, however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this permit request. The size of the proposed accessory building (1,780 square feet) would be less than 35% of the existing residential structure. There is no vehicular access from the rear of the property and the residence would only be occupied by family members or guests. Approval of this permit request would be conditioned upon the property not being utilized as a separate rental dwelling. The Planning and Zoning Commission recommended unanimous approval, and no public opposition was expressed at that meeting.

Attachments:

October 31, 2011 P&Z Staff Report
Proposed Ordinance



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 13, 2011
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, Planning Division Manager
SUBJECT: S-11-017, Gary Dawson

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure on his property, however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this permit request. The size of the proposed accessory building (1,780 square feet) would be less than 35% of the existing residential structure. There is no vehicular access from the rear of the property and the residence would only be occupied by family members or guests. Approval of this permit request would be conditioned upon the property not being utilized as a separate rental dwelling. The Planning and Zoning Commission recommended unanimous approval, and no public opposition was expressed at that meeting.

Attachments:

October 31, 2011 P&Z Staff Report
Proposed Ordinance



City Council Meeting

Item Number: 25
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Alexandra Walling, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.73-ACRE TRACT OF LAND OUT OF LOT 22, BLOCK 22, WESTERN HILLS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BEAL PARKWAY, APPROXIMATELY 154 FEET SOUTH OF BLUE HAVEN DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Drew Wegman, is requesting a Zone Change from MF-16, Multiple-Family Dwelling District to TH, Townhouse (Attached) Dwelling District, for a future development of townhomes.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Current Zoning:

MF-16, Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north are zoned TH, Townhouse (Attached) Dwelling District in part 2F, Two-Family Dwelling District and are the location of multi-family homes. The properties to the east are zoned SF3, Single-family Dwelling District and are the location of single-family homes. The properties to the south are zoned 2F, Two-Family Dwelling District in part PD, Planned Development District for a multi-family housing development. Lastly, the property to the west is zoned PD, Planned Development District for a shopping center.

Analysis:

The applicant is requesting to rezone the property from MF-16, Multiple-Family Dwelling District to TH, Townhouse (Attached) Dwelling District, to allow for the construction of townhomes. Townhouse dwellings are not allowed in MF-16, Multiple-Family Dwelling District. Therefore, this zone change will allow this lot to conform to Townhouse (Attached) Dwelling District standards and allow for the redevelopment of this side. The TH, Townhouse (Attached) Dwelling District requires a minimum of 2,500 square feet per lot, with a minimum width of 25-feet for an interior lot or 30-feet for a corner lot.

Additionally the property is in the process of being platted. The applicant intends to split the land into forty individual lots. There will be a new road constructed, a 50-foot ROW will be added in a circular drive around the townhomes.

The applicant will be required to adhere to the site plan review standards outline within the City of Midland Zoning Ordinance Section 5.04: - Residential Zoning District Dimensional Regulations Chart.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections to zone change request

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering

and Traffic Operations. [For the Applicant's information only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

According to the Tall City Tomorrow Comprehensive Plan, (UR-M) Urban Residential-Medium land incorporates an array of housing styles such as single-family housing, two-family housing, townhouses and manufactured housing. The aim of the UR-M land use is to provide a sense of neighborhood. MF-16, Multiple-Family District is not included under the potential zoning for this UR-M land use. Therefore changing the zoning to TH, Townhouse (Dwelling) District would fit the intended land use appropriately. The City of Midland Planning Department supports this rezone because the proposed project fits the existing surrounding uses properly.

Staff recommends approval of this zone change from MF-16, Multiple-Family Dwelling District to TH, Townhouse (Attached) Dwelling District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the TH, Townhouse (Attached) Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of February 1, 2023.

Attachments:

Application
Metes and Bounds (Exhibit A)
Proposed Plat (Illustrative Only)
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.73-ACRE TRACT OF LAND OUT OF LOT 22, BLOCK 22, WESTERN HILLS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BEAL PARKWAY, APPROXIMATELY 154 FEET SOUTH OF BLUE HAVEN DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 4.73-acre tract of land out of Lot 22, Block 22, Western Hills Addition, Section 2, 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 TH, Townhouse (Attached) Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-16, Multiple-Family Dwelling District to TH, Townhouse (Attached) Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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"

MAVERICK

ENGINEERING - SURVEY - WATER RESOURCES

1909 West Wall Street, Suite K - Midland, TX 79701

Tel: 432.262.0999 - Fax: 432.262.0989 - maverick-eng.com

ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514



FIELD NOTE DESCRIPTION OF A 4.73 ACRE TRACT OF LAND, BEING OUT OF AND PART OF LOT 22, BLOCK 22, CORRECTION PLAT OF WESTERN HILLS, SECTION TWO AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN CABINET C, ON PAGE 106, OF THE PLAT RECORDS, OF SAID MIDLAND COUNTY, BEING OUT OF AND PART OF THE REMAINING PORTION OF A TRACT OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 1438, ON PAGE 308, OF THE OFFICIAL PUBLIC RECORDS, (OPR) OF SAID MIDLAND COUNTY, AND IN A DEED RECORDED IN VOLUME 1438, ON PAGE 322, OF SAID "OPR" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10686280.74, E.(x): 1735425.60, A ONE HALF INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID LOT 22, BEING THE NORTHWEST CORNER OF WESTERN HILLS ADDITION, SECTION 4, AS RECORDED IN CABINET C ON PAGE 169 OF SAID PLAT RECORDS, ON THE SOUTH LINE OF A 20 FOOT ALLEY AS SHOWN ON A PLAT FOR WILLSHIRE PARK ADDITION, SECTION 14, RECORDED IN CABINET G ON PAGE 158 OF SAID PLAT RECORDS FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°22'59"E., ALONG THE COMMON LINE OF SAID WESTERN HILLS ADDITIONS SECTIONS 2 AND 4, 509.83 FEET (510.00 FEET), TO A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "ALS 6224 6332", FOUND AT THE NORTHEAST CORNER OF A CALLED "DRILL SITE" FOR THE EAST SOUTHEAST CORNER HEREOF;

THENCE S.75°36'35"W., ALONG THE NORTH LINE OF SAID DRILL SITE, 300.05 FEET (300.00 FEET) TO A ONE HALF INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID DRILL SITE AND AN INTERIOR CORNER HEREOF;

THENCE S.14°24'01"E., ALONG THE EAST LINE OF SAID DRILL SITE, 174.59 FEET (174.66 FEET) TO A ONE HALF INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF A CALLED 20 FOOT WIDE ALLEY FOR THE SOUTH SOUTHEAST CORNER HEREOF;

THENCE S.75°37'31"W., ALONG SAID ALLEY, AT 122.95 FEET PASSING A ONE HALF INCH IRON ROD (BENT), AT THE SOUTHEAST CORNER OF A CALLED 0.16 ACRE TRACT FOR FUTURE DEDICATION TO BEAL PARKWAY STREET, IN ALL 132.95 FEET TO A POINT FOR THE SOUTHEAST CORNER OF A CALLED 0.97 ACRE "SAVE AND EXCEPT" TRACT IN ABOVE MENTIONED DEEDS FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°14'45"W., ALONG THE EAST LINE OF SAID CALLED 0.97 ACRE TRACT, 139.94 FEET (140.09 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS N.75°41'03"E., 10.00 FEET, FOR THE POINT OF CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 370.00 FEET, AND A CHORD BEARING AND DISTANCE OF N.02°23'24"W., 153.79 FEET;

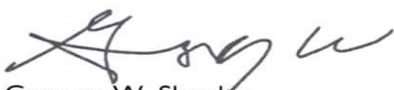
THENCE ALONG THE ARC OF SAID CURVE CONVEX TO THIS TRACT, 154.92 FEET (154.78 FEET) TO A POINT OF TANGENCY HEREOF;

THENCE N09°36'16"E., 102.47 FEET (102.46 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS S.80°20'42"E., 10.00 FEET, FOR THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET AND A CHORD BEARING AND DISTANCE OF N.02°22'34"W., 179.26 FEET;

THENCE ALONG THE ARC OF SAID CURVE CONCAVE TO THIS TRACT, 180.58 FEET (180.69 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS N.75°33'37"E., 10.00 FEET, FOR THE POINT OF TANGENCY HEREOF;

THENCE N.14°28'18", ALONG THE EAST LINE OF SAID CALLED 0.97 ACRE TRACT, 124.35 FEET (124.72 FEET) TO A "+" MARKED IN CONCRETE ON THE SOUTH LINE OF SAID ALLEY FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°28'51"E., ALONG SAID ALLEY, 321.90 FEET TO THE **POINT OF BEGINNING** CONTAINING 4.73 ACRES OF LAND.


Gregory W. Shoults
www.maverick-eng.com

December 1, 2022

Texas RPLS - No. 5356

Maverick Engineering (FIRM - No. 10194514)





**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 222-0317
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Drew Wegman</u>		Phone () Email	
Address <u>5617 Delaney</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79707</u>

Property Owner Printed Name: <u>Parkway Villas LLC</u>		Phone () Email	
Address <u>101 Nursery Ln Ste 244</u>	City <u>Fort Worth</u>	State <u>TX</u>	Zip <u>76114</u>

Representative (if different from Applicant or Property Owner) Firm: <u>Maverick Engineering</u> Printed Name: <u>Paladin Huckaba</u>		Phone () Email <u>phuckaba@maverick-eng.com</u>	
Address <u>1909 W Wall St Ste K</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79701</u>

Street Address: <u>NA</u>	
Legal Description <u>See attached Metes & Bounds</u> Lot: <u>22</u> Block: <u>22</u> Subdivision: <u>Western Hills</u>	

Current Zoning: <u>MF16</u>	Proposed Zone: <u>TH</u> (List by tracts if more than one district is requested)
------------------------------------	--

Reason for Zone Change Request: <u>The building of Townhomes</u>

Present Use of Property: <u>Vacant</u>

Proposed Use of Property: <u>Housing</u>

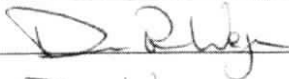
How would this zone change affect the public health, safety and welfare? <u>No adverse effect</u>
--

Describe how conditions affecting the property have changed since present zoning designation: <u>no change</u>

Submittal and Fees Items to be submitted with this application form: • Application Fee – Payable to the 'City of Midland' • Dimensioned Site Plan • Digital Copies of Site Plan (PDF/JPEG)	RECEIVED DEC 01 2022 BY: JR
---	--

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature):



Date:

12/1/2022

Applicant (printed):

Dew Wegman - Managing Member Parkway Villas LLC

Property Owner (signature):

Date:

Property Owner (printed):

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Parkway Villas 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)

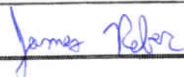
Subscribed and sworn to before me, this 1st day of December, 2022, to certify which witness my hand and seal of office.



NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☒ Property Owner Authorization☒ Dimensioned Site Plan☐ Application Fee☒ Plans in Digital Format (PDF/JPEG)Check # 3954

Received By:



Date:

12/1/22

BY:



****Application will not be considered for scheduling until reviewed by a planner.****

PACKET
Special Exception Application

25.10

February 14, 2023 16



FIELD NOTE DESCRIPTION OF A 4.73 ACRE TRACT OF LAND, BEING OUT OF AND PART OF LOT 22, BLOCK 22, CORRECTION PLAT OF WESTERN HILLS, SECTION TWO AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS RECORDED IN CABINET C, ON PAGE 106, OF THE PLAT RECORDS, OF SAID MIDLAND COUNTY, BEING OUT OF AND PART OF THE REMAINING PORTION OF A TRACT OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 1438, ON PAGE 308, OF THE OFFICIAL PUBLIC RECORDS, (OPR) OF SAID MIDLAND COUNTY, AND IN A DEED RECORDED IN VOLUME 1438, ON PAGE 322, OF SAID "OPR" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10686280.74, E.(x): 1735425.60, A ONE HALF INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID LOT 22, BEING THE NORTHWEST CORNER OF WESTERN HILLS ADDITION, SECTION 4, AS RECORDED IN CABINET C ON PAGE 169 OF SAID PLAT RECORDS, ON THE SOUTH LINE OF A 20 FOOT ALLEY AS SHOWN ON A PLAT FOR WILLSHIRE PARK ADDITION, SECTION 14, RECORDED IN CABINET G ON PAGE 158 OF SAID PLAT RECORDS FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°22'59"E., ALONG THE COMMON LINE OF SAID WESTERN HILLS ADDITIONS SECTIONS 2 AND 4, 509.83 FEET (510.00 FEET), TO A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "ALS 6224 6332", FOUND AT THE NORTHEAST CORNER OF A CALLED "DRILL SITE" FOR THE EAST SOUTHEAST CORNER HEREOF;

THENCE S.75°36'35"W., ALONG THE NORTH LINE OF SAID DRILL SITE, 300.05 FEET (300.00 FEET) TO A ONE HALF INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID DRILL SITE AND AN INTERIOR CORNER HEREOF;

THENCE S.14°24'01"E., ALONG THE EAST LINE OF SAID DRILL SITE, 174.59 FEET (174.66 FEET) TO A ONE HALF INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF A CALLED 20 FOOT WIDE ALLEY FOR THE SOUTH SOUTHEAST CORNER HEREOF;

THENCE S.75°37'31"W., ALONG SAID ALLEY, AT 122.95 FEET PASSING A ONE HALF INCH IRON ROD (BENT), AT THE SOUTHEAST CORNER OF A CALLED 0.16 ACRE TRACT FOR FUTURE DEDICATION TO BEAL PARKWAY STREET, IN ALL 132.95 FEET TO A POINT FOR THE SOUTHEAST CORNER OF A CALLED 0.97 ACRE "SAVE AND EXCEPT" TRACT IN ABOVE MENTIONED DEEDS FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°14'45"W., ALONG THE EAST LINE OF SAID CALLED 0.97 ACRE TRACT, 139.94 FEET (140.09 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS N.75°41'03"E., 10.00 FEET, FOR THE POINT OF CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 370.00 FEET, AND A CHORD BEARING AND DISTANCE OF N.02°23'24"W., 153.79 FEET;

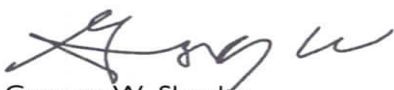
THENCE ALONG THE ARC OF SAID CURVE CONVEX TO THIS TRACT, 154.92 FEET (154.78 FEET) TO A POINT OF TANGENCY HEREOF;

THENCE N09°36'16"E., 102.47 FEET (102.46 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS S.80°20'42"E., 10.00 FEET, FOR THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET AND A CHORD BEARING AND DISTANCE OF N.02°22'34"W., 179.26 FEET;

THENCE ALONG THE ARC OF SAID CURVE CONCAVE TO THIS TRACT, 180.58 FEET (180.69 FEET) TO A POINT FROM WHICH A FOUND ONE HALF INCH IRON ROD (BENT) BEARS N.75°33'37"E., 10.00 FEET, FOR THE POINT OF TANGENCY HEREOF;

THENCE N.14°28'18", ALONG THE EAST LINE OF SAID CALLED 0.97 ACRE TRACT, 124.35 FEET (124.72 FEET) TO A "+" MARKED IN CONCRETE ON THE SOUTH LINE OF SAID ALLEY FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°28'51"E., ALONG SAID ALLEY, 321.90 FEET TO THE **POINT OF BEGINNING** CONTAINING 4.73 ACRES OF LAND.


Gregory W. Shoults
www.maverick-eng.com

December 1, 2022

Texas RPLS - No. 5356

Maverick Engineering (FIRM - No. 10194514)



168

1A

BLUE HAVEN DR

168

22R

23

PLEASANT CT

22
BEAL PARKWAY

AUDIE CT

ARTHUR

REEVES

21

LOCATION MAP

Z-22-0317

Scale: 1" = 200'

Consider a request by Drew Wegman for a Zone Change from MF-16, Multiple-Family Dwelling District to TH, Townhouse (Attached) Dwelling District on a 4.73-acre tract of land out of Lot 22, Block 22, Western Hills Addition, Section 2, City and County of Midland, Texas.

Generally located to the east of Beal Parkway, approximately 154 feet south of Blue Haven Drive (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

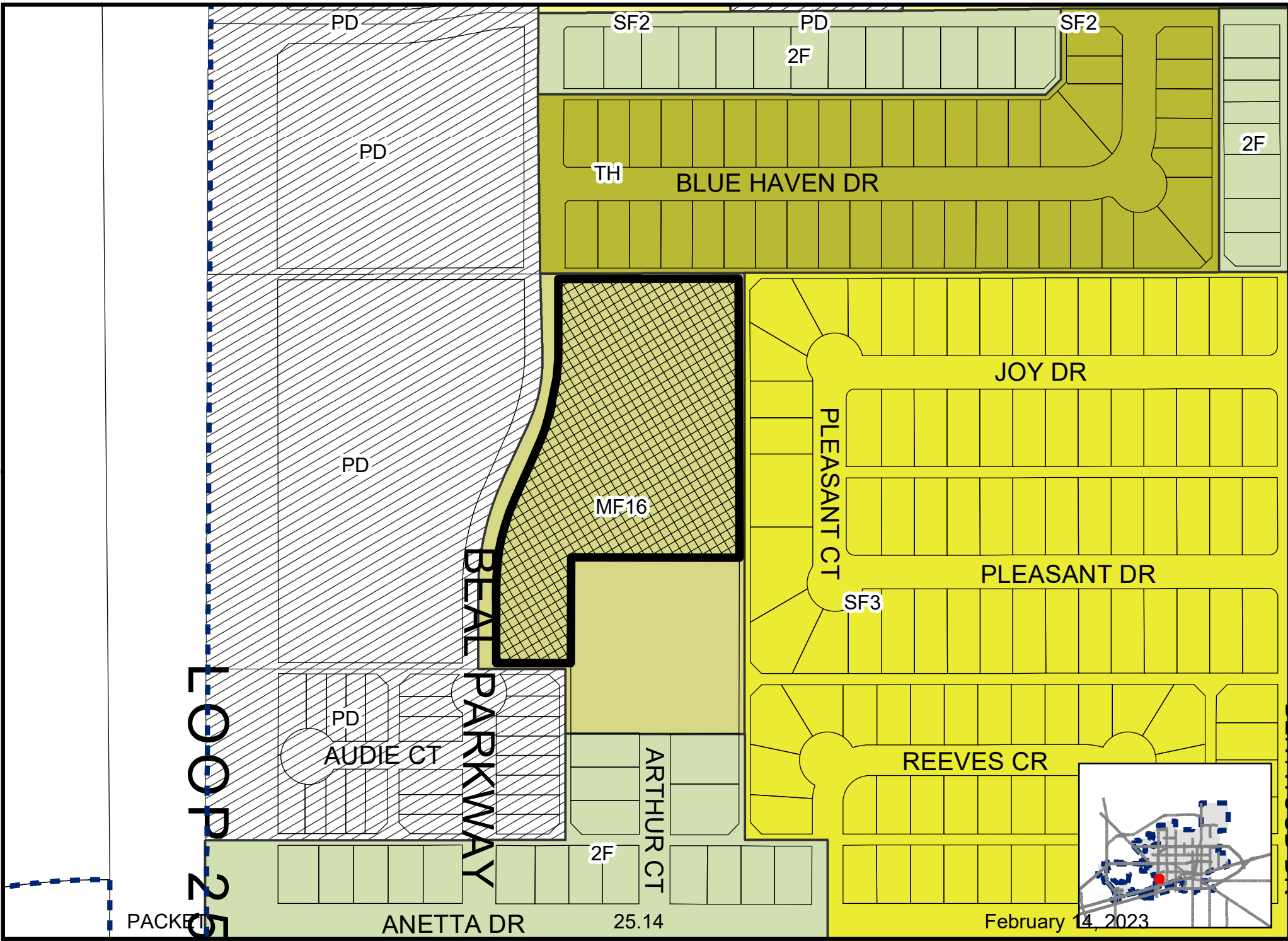


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 14, 2023













City Council Meeting

Item Number: 26
Meeting Date: February 14, 2023
To: City Council / City Manager
From: Charles Harrington, Director
Subject: AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 2, "PLATS AND SUBDIVISIONS", SECTION THREE, "PLATTING PROCEDURES", SUBSECTION (D), "PRELIMINARY PLAT", SUB-SUBSECTION 11, "APPROVAL BY THE COUNCIL" OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REQUIRE COUNCIL APPROVAL OF A PRELIMINARY PLAT THAT WAS APPROVED BY THE PLANNING AND ZONING COMMISSION BY OPERATION OF LAW; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES)

Purpose:

Section 212 of the Texas Local Government Code (TLGC) requires that the municipal authority responsible for approving plats must approve, approve with conditions, or disapprove the plat within 30 days from the date it is filed. In the City of Midland, the Planning and Zoning Commission (P&Z) must render the decision on all preliminary plats within 30 days of filing consistent with the TLGC. Certain preliminary plats also require approval from City Council, but P&Z must initially act within 30 days.

If adopted, this ordinance will require Council approval of any preliminary plat that is approved by operation of law due to P&Z missing a deadline (e.g., failure to initially act on a preliminary plat within 30 days; failure to act within 15 days after the applicant responds to the initial conditional approval or disapproval) or due to P&Z failing to comply with any other requirement of Chapter 212 of the Local Government Code (e.g., failure to provide a written statement of the conditions or reasons for disapproval and a legal citation for each).

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Discussion:

The adopting ordinance would amend 11-2-3(D) of the Midland City Code under platting procedures for Plats and Subdivisions by requiring City Council to approve a preliminary plat that:

- (10) Was approved by operation of law due to the commission's failure to approve, approve with conditions, or disapprove said plat within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, or due to the commission's failure to otherwise comply with a requirement of Chapter 212 of the Local Government Code, as amended.

Adding this subsection would ensure compliance with the Texas Local Government Code.

The other types of preliminary plats requiring Council approval remain in effect under 11-2-3(D).11(a) of the City Code and are in the attached ordinance.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 2, “PLATS AND SUBDIVISIONS”, SECTION THREE, “PLATTING PROCEDURES”, SUBSECTION (D), “PRELIMINARY PLAT”, SUB-SUBSECTION 11, “APPROVAL BY THE COUNCIL” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REQUIRE COUNCIL APPROVAL OF A PRELIMINARY PLAT THAT WAS APPROVED BY THE PLANNING AND ZONING COMMISSION BY OPERATION OF LAW; 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 Council finds it to be in the public interest to approve and adopt an amendment to Title XI, “Planning and Development”, Chapter 2, “Plats and Subdivisions”, Section Three, “Platting Procedures”, Subsection (D), “Preliminary Plat”, Sub-Subsection 11, “Approval by the Council” of the City Code of Midland, Texas, so as to require Council approval of a preliminary plat that is approved by the Planning and Zoning Commission by operation of law under Chapter 212 of the Local Government Code; and

WHEREAS, the City Council finds that the public health, safety and general welfare will be best served by amending Title XI, “Planning and Development”, Chapter 2, “Plats and Subdivisions”, Section Three, “Platting Procedures”, Subsection (D), “Preliminary Plat”, Sub-Subsection 11, “Approval by the Council” of the City Code of Midland, Texas, as described in this ordinance;

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

SECTION ONE. That Title XI, “Planning and Development”, Chapter 2, “Plats and Subdivisions”, Section Three, “Platting Procedures”, Subsection (D), “Preliminary Plat”, Sub-Subsection 11, “Approval by the Council” of the City Code of Midland, Texas, is hereby amended to read in its entirety as follows:

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:
 - (1) Is ten hectares (25 acres) or more in area and involves any request for a variance from the regulations of this Chapter;
 - (2) Includes any new street or continuation of an existing street which connects two arterial streets;
 - (3) Involves a request for a variance from any of the subdivision design standards affecting any arterial street;
 - (4) Does not provide an alley abutting or connected by pedestrian access easement to each lot zoned for four dwelling units or less;
 - (5) Includes any proposed private street or alley or other area of common ownership;
 - (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 a public school and park, or public site reservation therefor;
 - (7) Involves any other matter cited in this Chapter as requiring Council approval;
 - (8) Involves any matter of such policy significance that the commission determines that said plat should be considered by the Council;
 - (9) Includes any potentially significant problem, in its form as approved by the commission, that the City Manager determines, upon the recommendation of any department head of the City, should be considered by the Council; or
 - (10) Was approved by operation of law due to the commission's failure to approve, approve with conditions, or disapprove said plat within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, or due to the commission's failure to otherwise comply with a requirement of Chapter 212 of the Local Government Code, as amended.
- (b) The preliminary plat, together with the recommendation of the commission, shall be submitted, by the director, to the Council for its consideration where required, promptly after approval or conditional approval by the commission or following the filing of a revised preliminary plat, conforming to all conditions of approval by the commission.
- (c) The Council shall act on the preliminary plat and recommendation of the commission within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, unless such time is extended by agreement with the property owner.
- (d) The Council shall review the recommendation of the commission and determine whether to approve, conditionally approve, or disapprove the preliminary plat.

SECTION TWO. That the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby

expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. That 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 FIVE. That this ordinance shall become effective immediately upon final adoption.

SECTION SIX. That 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., 2023; 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., 2023, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, 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

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND
February 14, 2023

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Wes Reeves	08/15*	Sept 30 2023	Sept 30 2023
Gena Linebarger	09/20	Sept 30 2023	Sept 30 2026
Benjamin Fietz	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	10/21	Sept 30 2024	Sept 30 2027
Dave Joyner	10/21	Sept 30 2024	Sept 30 2027
James Linderman	04/22	Sept 30 2025	Sept 30 2028
Justin Kuethe	09/19	Sept 30 2025	Sept 30 2025
Nick McClure	09/19	Sept 30 2025	Sept 30 2025
Frank Kisner	09/22	Sept 30 2025	Sept 30 2028
Brandon Patterson	09/22	Sept 30 2025	Sept 30 2028

Justine Ruff (Liaison)

Lori Blong (Council Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

Eligibility Requirements: Resident of Midland County

ANIMAL CONTROL ADVISORY COMMISSION

(Advisory)

(Membership - 7; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ty Coleman (daily operations)	09/17	Sept 30 2025	Does Not Expire
Dr. J. Annette Jensen (Veterinarian)	04/20	Sept 30 2024	Does Not Expire
Tasha Sport	04/20	Sept 30 2024	Sept 30 2028
Sharla Hotchkiss	04/20	Sept 30 2024	Sept 30 2028
Robert "Robin" Donnelly (County)	11/13	Sept 30 2025	Does Not Expire
Alyson Dial	09/18	Sept 30 2026	Sept 30 2026
Beth Meeks	09/22	Sept 30 2026	Sept 30 2030

Ty Coleman (Liasion)

Dan Corrales (Council Liaison)

Eligibility Requirements: 1 License Veterinarian, 1 Animal Shelter Employee, 1 Animal Welfare Organization Representative, 1 County or Municipal Official, 3 Citizens

**BUILDING AND FIRE CODE REVIEW COMMITTEE/CONSTRUCTION BOARD OF
ADJUSTMENTS & APPEALS**

(Decision Making)

(Membership – 9; Terms – 6 Years)

Shall consist of two architects, a fire protection contractor or specialist, a general contractor, an electrical contractor, a homebuilder, a plumbing and mechanical contractor, a structural engineer, a City Council Liaison

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
T.J. McClure (Architect)	12/18	Sept 30 2024	Sept 30 2030
Laurence Oeth (Structural Engineer)	12/18	Sept 30 2024	Sept 30 2030
Gary Glasscock (General Contractor)	12/18	Sept 30 2024	Sept 30 2030
Robert Anderson (Homebuilder)	12/18	Sept 30 2024	Sept 30 2030
Dean Kelly (Plumbing & Mechanical Contractor)	04/22	Sept 30 2028	Sept 30 2034
Kenneth Whiting (Fire Protection)	04/22	Sept 30 2028	Sept 30 2034
Jeff Pinkstaff (Liaison)	12/18	Sept 30 2024	Sept 30 2030
Dan Corrales (Council Liaison)			

Eligibility Requirements: Members shall reside within the City.

CAPITAL IMPROVEMENT ADVISORY COMMITTEE

(Advisory)

(Membership – 7)

A minimum of 40% must be representative of real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity.)

	<u>Appt Date</u>
Carl Craigo	10/19
Walter Pate	06/18
Mark Payne	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz (Liaison)	06/18
Bill Scott	09/22
Lori Blong (Council Liaison)	

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Clint Williamson	04/21*	Sept 30 2023	Sept 30 2025
Ellen K. Ramsey	10/18	Sept 30 2023	Sept 30 2023
Vicky Hailey	09/21	Sept 30 2023	Sept 30 2025
Brandon Ofield	09/20	Sept 30 2024	Sept 30 2024
Ankur Bhakta	09/22	Sept 30 2024	Sept 30 2026
Cole Harrison	09/22	Sept 30 2024	Sept 30 2026
Reggie Lawrence	09/22	Sept 30 2024	Sept 30 2026

Marcia Bentley-German (Liaison)

Robin Poole (Council Liaison)

John Norman (Council Liaison)

Eligibility Requirements: Members shall be thoroughly familiar with Chapter 351, "Municipal Hotel Occupancy Taxes", 1 Member Representative of Hotel/Motel Association.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

(Separate Legal Entity)

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Robert McNaughton	11/15	Dec 31 2024

MIDLAND DEVELOPMENT CORPORATION

(Decision Making/Separate Legal Entity)

(Membership - 7; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Chase Gardaphe	01/19	Jan 14 2025	Jan 14 2025
Barry Simpson	01/19	Jan 14 2025	Jan 14 2025
Brad Bullock	04/21*	Jan 14 2026	Jan 14 2029
Lucy Sisniega	02/22	Jan 14 2025	Jan 14 2028
P Lourcey Sams	04/20*	Jan 14 2026	Jan 14 2026
Jill Pennington	04/20*	Jan 14 2026	Jan 14 2026
Zachary Deck	01/23	Jan 14 2026	Jan 14 2029

Marcia Bentley-German (Liaison)

Lori Blong (Council Liaison)

Eligibility Requirements: No director or employee shall be related to a current City Council member.

* Indicates appointment to an unexpired term.

member.

MIDLAND DOWNTOWN PARK CONSERVANCY BOARD

(Separate Legal Entity)

(Membership - 7; City Appoints 3 Seats; Terms -3 Years - Staggered)

(Resolution of appointment is made each February and each appointment must be ratified by the Conservancy Board in March at their annual meeting)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Barry Beal Jr.	08/18	Sep 30 2024	Sep 30 2024
David Byrd	08/18	Sep 30 2023	Sep 30 2023
Sharla Hotchkiss	07/20*	Sep 30 2025	Sep 30 2025

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014
Sharla Hotchkiss (Liaison)			

MIDLAND HOUSING AUTHORITY COMMISSION

(Separate Legal Entity)

(Membership - 5; Terms - 2 Years expiring 3 even & 2 odd.)

Appointments Made by Mayor (LGC 392.031)

	<u>Appt Date</u>	<u>Term Expires</u>
Latoya Mayberry	06/21	Oct 2023
Sylvester Cantu	09/18*	Oct 2023
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2023
Wes Gotcher	09/20	Oct 2024
Robert Lehrer	09/20	Oct 2024

Isaac Garnett (Staff Liaison)

Eligibility Requirements: No member may be an officer or employee of the City of Midland.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making/Separate Legal Entity)

(Membership – 12 with 6 appointed by Midland; Terms - 2 Years Staggered; Can serve 3 terms)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Joseph Sanchez	12/19*	Sept 30 2023	Sept 30 2027
Daniel Norwood	04/21*	Sept 30 2023	Sept 30 2029
Brian Stubbs	06/22*	Sept 30 2023	Sept 30 2029
Don “Woody” Woodward	09/22	Sept 30 2024	Sept 30 2028
Dan Corrales	09/22	Sept 30 2024	Sept 30 2028
Robert Crites	10/22	Sept 30 2024	Sept 30 2028

Charles Harrington (Liaison)

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Court Adkins (Petroleum Eng.)	09/17	Sept 30 2023	Sept 30 2023
Rhett Bullock (Petroleum Eng.)	09/21	Sept 30 2024	Sept 30 2027
Cameron Willmann (Real Estate)	10/21*	Sept 30 2024	Sept 30 2027
Scott Bowden (Real Estate)	10/19	Sept 30 2025	Sept 30 2025
Ross Klabon (Petroleum Eng.)	10/19	Sept 30 2025	Sept 30 2025

Ron Jenkins (Liaison)

Eligibility Requirements: 3 Petroleum Engineers or Geologists and 2 with Property Development or Real Estate Experience.

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Susannah Prucka	04/20*	Sept 30 2023	Sept 30 2026
Dal Watson	09/20	Sept 30 2023	Sept 30 2026
Ron Stroman	09/20	Sept 30 2023	Sept 30 2026
Shirley Howard	02/16*	Sept 30 2024	Sept 30 2024
Laura Smith	10/19	Sept 30 2025	Sept 30 2025
Amber Voithorer	09/22	Sept 30 2025	Sept 30 2028
Rachel Overman	09/22	Sept 30 2025	Sept 30 2028
Sarah Judge	09/22	Sept 30 2025	Sept 30 2028
Lynn Rogers	09/22	Sept 30 2025	Sept 30 2028

Cristina Odenburg-Burns (Liaison)

John Norman (Council Liaison)

Eligibility Requirements: Resident Citizen, Taxpayer and Qualified Voter.**PERMIAN BASIN COMMUNITY CENTER FOR MH/MR (PermiaCare)**

(Separate Legal Entity)

(Membership 9 - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Derek Cook (City)	06/21	June 2023
Ryan Peckham (City)	08/20	June 2024

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms. Mayor appoints.)

	<u>Appt. Date</u>
Scott Dufford	01/14
Hugh A. "Andy" Shaffer	09/05
Patrick Payton	01/20

Mark Widman (Liaison)

Eligibility Requirements: Board consists of two City Council members and one other member who is not a City employee.

PLANNING AND ZONING COMMISSION

(Decision Making)

(Membership - 7; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Diane Williams	09/17	Sept 30 2023	Sept 30 2023
Lucy Sisniega	09/20	Sept 30 2023	Sept 30 2026
Stacey Jo Grosse	09/20	Sept 30 2023	Sept 30 2026
Zachary Deck	09/20	Sept 30 2023	Sept 30 2026
Adrian Carrasco	09/21	Sept 30 2024	Sept 30 2027
Emily Holeva	09/22	Sept 30 2025	Sept 30 2028
Abraham Bejil	09/22	Sept 30 2025	Sept 30 2028

ALTERNATES:

Beverly Dillow	09/21	Sept 30 2024	Sept 30 2027
Sallie Vega	09/22	Sept 30 2025	Sept 30 2028

Elizabeth Shaughnessy (Liaison)

Eligibility Requirements: Resident citizen of City of Midland, owner of real property within the City Limits and qualified Voter.

ZONING BOARD OF ADJUSTMENT**AND****AIRPORT ZONING BOARD OF ADJUSTMENT**

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Derek Whiting	01/18*	Sept 30 2023	Sept 30 2023
E.J. Baldrige	02/18*	Sept 30 2023	Sept 30 2023
Robert Gray	01/21*	Sept 30 2023	Sept 30 2027
Reed Claybrook	03/19*	Sept 30 2024	Sept 30 2024
James Gerety	10/22	Sept 30 2024	Sept 30 2026

ALTERNATES: (not applicable to Airport Zoning)

Ross Schumann Sept 30 2025

VACANCY Sept 30 2020**VACANCY Sept 30 2020****VACANCY Sept 30 2020**

Jeff Pinkstaff (Staff Liaison)

MIDLAND DOWNTOWN PARK CONSERVANCY BOARD
(Membership - 7; City Appoints 3 Seats; Terms -3 Years - Staggered)
January 2022 - January 2023

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Barry Beal Jr.	Sept 30 2024	57%	4	7	Yes	
David Byrd	Sept 30 2023	100%	7	7	No	
Sharla Hotchkiss	Sept 30 2025	86%	6	7	Yes	
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
Lee Sanchez (D4)						
James Rex (D4)						
Gustavo Gonzalez (D4)						



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Lee Sanchez

Address: 5105 King Richards row

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 34 years.

Professional and/or Community Activities:

Owner of Sculpt Haus Medical Spa, and Sip Haus Cocktail Lounge. Previous owner of
Trinity Providers Home Health.

What is your personal vision for the City?

I would like to see Midland continue to develop, grow, and expand, especially in areas of
entertainment, hospitality, and recreation.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Park Conservancy Board

Please tell us why you are interested in serving on this board or commission.

I believe the park is the hub of downtown. The parks development and maintenance is
crucial to the success of businesses in downtown Midland.

Date: 1/19/2023

Phone: 432-853-5659 (Home)

432-218-8640 (Business)

Email: Lee@sculpt-haus.com

Are you a graduate of Midland 101? ☐ yes ☐ no

Occupation: Nurse Practitioner/Self-employed

What contribution would you most like to make?

I would like to head a project that encourages increased attendance activities, and overall use of the park.

Additional pertinent information or references:

Jessica Rule (432)230 - 2328

Brennan Berry (646)460 - 4778

Scooter Brown (432)889-5080

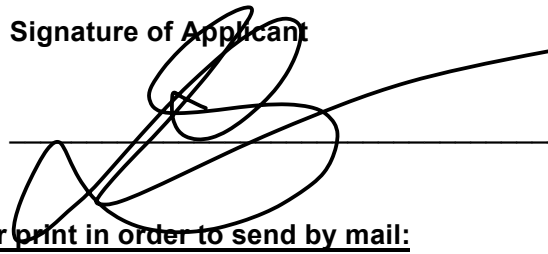
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702

Submit Via Email

Print Application



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PLEASE TYPE OR PRINT CLEARLY:

Name: GUSTAVO GONZALEZ

Address: 6609 MOSSWOOD DR
MIDLAND TX 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 6 years.

Professional and/or Community Activities:

SPE - Society of Petroleum Engineers (Chair Program), SWPSC (Program Committee Member)

SPE- Volunteer Activities in the permian such as West Texas Food bank, social events thru SPE Permian Basin

Date: 1/6/2023

Phone: 432-257-2009 (Home)

432-257-2009 (Business)

Email: GGONZALEZ@ODSEP.COM

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Chief Comercial Officer for Odessa Separator Inc

What is your personal vision for the City?

My vision of Midland is a place where Midlanders feel proud about the city, a safe place where the community feels protected and wants to raise their families. I beleive in our local market, skills and talents from the community where we can create more events such as concerns, theatre, festivals, Opera, Art shows, etc,

Please specify any time constraints you may have.

Once a month I need to travel to Houston, Denver or Dallas due to business meetings. But these trips are scheudle with at least .
2 weeks in advance

Please list below the Board(s) or Commission(s) on which you are interested in serving:

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(1) Name of Board/Commission:

Midland Downtown Park Conservancy Board

Please tell us why you are interested in serving on this board or commission.

I can add value to the Board, and help them to protect and create innovate ways to have the community participating and using our green areas, as well of making these social areas more enjoyable.

What contribution would you most like to make?

My background is an Industrial Engineering, but has been involved in the Oil and Gas from the past 10 years. but I have some engineering knowledge and Financial/Operational background that could help the board.

Additional pertinent information or references:

My current position involves a lot of constant communication with people from E&P companies that are either moving to Midland or already live in Midland. If they want some references: Paula Tocora (Environmental Eng from ConocoPhillips), Seth Riddle

(2) Name of Board/Commission:

Oil and Gas Advisory Committee:

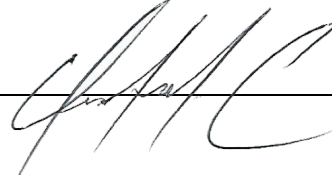
What contribution would you most like to make?

I have more than 10 years of experience in the Oil and Gas industry including US and Overseas shales. Managing personnel and working in conjunction with a very diverse group of people from different countries.

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Name: James Rex

Address: 5200 Briarwood #15301

Midland Texas 79707

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴ years.

Professional and/or Community Activities:

Board Member - Midland West Rotary Club, Service Director - Midland West Rotary Club, Member - Midland West Rotary Club,

Member - Northeast Midland Volunteer Fire Department

Date: 2/3/2022

Phone: 281-785-9447 (Home)

432-688-4454 (Business)

Email: jryanrex@hotmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Assistant Chief Investigator - Midland DA's Office

What is your personal vision for the City?

My personal vision for Midland is a city that is a destination. I would like for Midland to be a destination, not just for out of town visitors, but for residents of Midland as well. Instead of considering a weekend trip to Lubbock or the Metroplex, I envision Midland as a place where residents are perfectly content to stay at home and meet out of town visitors at parks, restaurants, and venues.

Please specify any time constraints you may have.

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(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy

Please tell us why you are interested in serving on this board or commission.

Parks and green spaces greatly contribute to the quality of life of residents and to the draw a city has for out of town visitors. I would to make sure our downtown park maintains its excellence and continues to improve and progress as a premier park destination.

What contribution would you most like to make?

I worked many years in high school and college in parks maintenance. I also regularly utilize several Midland parks. I would just hope to contribute my unique perspective and experience in matters of the park conservancy.

Additional pertinent information or references:

Rowdy Stilwell; Operations Manager - McClure Oil Company; 5700 Oak Valley, Midland, Texas 79707; 432-288-2026

Lisa Borden; Trial Team Chief, 385th District Court, Midland County DA's Office, 500 N. Lorraine, Midland; 432-688-4411

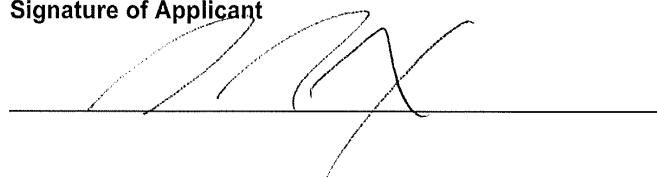
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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