CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 22, 2022 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

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Webinar ID: 882 3850 5573
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The City Council may discuss, consider, and take action on any item listed on this agenda.

OPENING ITEMS

1. Invocation – Pastor Mabio Gomes, Seventh-Day Adventist 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 a Proclamation for Women's History Month

   3b. Presentation of a Proclamation for Midland RSVP Recognition Day

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. BRIEFING SESSION OF FEBRUARY 8, 2022

   4b. REGULAR SESSION OF FEBRUARY 8, 2022

5. 020-2022 – MOTION ALLOCATING THE SUM OF $700,000.00 OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FUNDS TO THE HEALTH DEPARTMENT'S COVID-19 PROGRAM (DISTRICT: NONE) (FINANCE)

6. 2022-022 – RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR THE REYES-MASHBURN-NELMS PARK PHASE 1 IMPROVEMENTS PROJECT TO LUCK DESIGN TEAM, LLC, FOR A TOTAL COST OF $295,750.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

7. 2022-023 – RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS PUMP STATION REHABILITATION PROJECT TO EDGARDO MADRID & ASSOCIATES, LLC, FOR AN AMOUNT OF $2,725,387.00; APPROVING $681,346.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

8. 021-2022 – MOTION RATIFYING THE CITY OF MIDLAND'S ACCEPTANCE OF CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT NO. 3-48-0150-067-2022 IN THE AMOUNT OF $576,026.00, WHICH IS DISTRIBUTED BY THE FEDERAL AVIATION ADMINISTRATION IN ACCORDANCE WITH THE AMERICAN RESCUE PLAN ACT GRANT PROGRAM; AND RATIFYING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EVIDENCE THE CITY OF MIDLAND'S ACCEPTANCE OF SAID GRANT FUNDS (DISTRICT 4) (AIRPORTS)

9. 022-2022 – MOTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND, TEXAS, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; SAID AGREEMENT PROVIDING FOR CERTAIN COSTS ASSOCIATED WITH THE TODD DRIVE EXPANSION AND COUNTY ROAD 1160 OVERPASS IMPROVEMENTS PROJECT (DISTRICT: ALL) (CITY MANAGER)

10. 023-2022 – MOTION APPROVING A CONSULTANT SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND INTERFLIGHT GLOBAL CORPORATION FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK (DISTRICT 4) (CITY MANAGER)

11. 2022-024 – RESOLUTION ESTABLISHING GUIDELINES FOR PERSONS SUBMITTING SPECIFIC REDISTRICTING PROPOSALS AND PROVIDING COMMENTS (DISTRICT: ALL) (CITY MANAGER)

12. 2022-025 – RESOLUTION ADOPTING CRITERIA FOR USE IN THE CITY OF MIDLAND'S 2022 REDISTRICTING PROCESS (DISTRICT: ALL) (CITY MANAGER)

13. 024-2022 – 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)

14. 2022-026 – RESOLUTION REAPPOINTING SHARLA HOTCHKISS TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (DISTRICT 2) (COMMUNITY SERVICES)

15. 2022-027 – RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,690 FEET WEST OF RANKIN HIGHWAY AND 605 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

16. 2022-028 – RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,365 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

17. 025-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-007) WITH ENVIRONMENTAL DISPOSAL SYSTEMS LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 21, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

18. 10288 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH

STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD FEBRUARY 08, 2022)

19. 10289 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.97-ACRE TRACT OF LAND OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO CE, COUNTRY ESTATE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF PIMLICO DRIVE, APPROXIMATELY 170 FEET EAST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (FIRST READING HELD FEBRUARY 08, 2022)

20. 10290 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND RUBY DRIVE), BY PERMITTING A REDUCED MINIMUM FRONT YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE NORTH 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 4) (DEVELOPMENT SERVICES) (FIRST READING HELD FEBRUARY 08, 2022)

PUBLIC HEARINGS

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

21. 10291 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 6, EASTOVER ADDITION, THIRD EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH CALHOUN STREET, APPROXIMATELY 112 FEET SOUTH OF EAST ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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)

22. 10292 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, EASTOVER ADDITION, SECOND EXTENSION, CITY AND COUNTY OF MIDLAND,

TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF JESSE STREET AND ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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)

23. 10293 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BUNCHE STREET, APPROXIMATELY 250 FEET SOUTH OF CALIFORNIA 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)

24. 10294 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 11, BLOCK 5, AVALON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF HUMBLE AVENUE, APPROXIMATELY 145 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

25. 10295 – AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 3, “FLOOD DAMAGE PREVENTION CODE”, SO AS TO REVISE CERTAIN STANDARDS FOR CONSTRUCTION IN FLOOD HAZARD AREAS WITHIN THE CITY OF MIDLAND; SETTING FORTH VARIANCE AND APPEAL PROCEDURES; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: NONE) (ENGINEERING SERVICES)

MISCELLANEOUS

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

PUBLIC COMMENT

27. 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

28. 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 551.074, Personnel Matters

    a.1. Deliberate the employment, evaluation, and duties of the City Manager, City Attorney, City Secretary, Municipal Court Presiding Judge, and Municipal Court Associate Judge

    b. Section 551.087, Deliberate Economic Development Negotiations

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

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
February 8, 2022

The City Council convened in briefing session in the Council Chamber, City Hall, Midland, Texas, at 9:30 AM, February 08, 2022.

Council Members present:	Dan Corrales, Robin Poole, Patrick Payton, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	Lori Blong
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 9:30 a.m.

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

1. Receive an initial assessment presentation from Bickerstaff Heath Delgado Acosta LLP regarding the City of Midland's 2022 redistricting process

   Mr. Syd Falk, Bickerstaff Heath Delgado Acosta LLP, gave a presentation on redistricting for the City of Midland. He reported that when new census data shows a city is out of balance they need to redistrict, which is driven by federal law. It is rare that a city does not have to redistrict after 10 years.

   Mr. Falk reported that a rule of thumb for the total deviation is less than 10%, you don't want to have a difference of more than 10%. He also shared information regarding Sections two and five of the Voting Rights Act and the 14th Amendment (Shaw v. Reno) showing maps of a landmark case on redistricting.

   Mr. Falk would like to coordinate with other Midland entities who are also doing redistricting at this time.

DRAFT

All the business at hand having been completed, the meeting adjourned at 10:02 a.m.

PASSED AND APPROVED .

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT

MIDLAND CITY COUNCIL
MINUTES
February 8, 2022

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., February 08, 2022.

Council Members present:	Dan Corrales, Robin Poole, Patrick Payton, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	Lori Blong
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 10:08 a.m.

OPENING ITEMS

1. Invocation – Pastor Pat Bryant, Travis Baptist Church

2. Pledge of Allegiance

CONSENT AGENDA

John Norman moved to approve Consent Agenda items 3-10, excluding item(s) 5, 7 and 8; seconded by Dan Corrales.

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

3. MOTION APPROVING THE FOLLOWING MINUTES:

   3a. REGULAR SESSION OF JANUARY 25, 2022

   3b. SPECIAL CITY COUNCIL MEETING OF JANUARY 26, 2022

DRAFT

3c. SPECIAL CITY COUNCIL MEETING OF JANUARY 27, 2022

4. 2022-017 – RESOLUTION AUTHORIZING THE PURCHASE OF VARIOUS VEHICLES FOR THE GENERAL SERVICES DEPARTMENT FOR A TOTAL COST OF $800,160.00 (DISTRICT: NONE) (GENERAL SERVICES)

6. 2022-019 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH ENPROTEC/HIBBS & TODD, INC., FOR VARIOUS DESIGN, BIDDING AND CONSTRUCTION PHASE SERVICES FOR WATER AND WASTEWATER PROJECTS FOR THE UTILITIES DEPARTMENT FOR AN ANNUAL COST OF $90,000.00 (DISTRICT: ALL) (GENERAL SERVICES)

9. 015-2022 – MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING FOR THE RECONSTRUCT ASPHALT AIR CARRIER APRON PAVEMENT WITH CONCRETE PROJECT, THE AIRFIELD WILDLIFE FENCE IMPROVEMENTS PROJECT, AND THE SPACEPORT BUSINESS PARK ENVIRONMENTAL PROJECT; AUTHORIZING THE APPROPRIATION OF $265,000.00 FROM THE AIRPORT FUND UNAPPROPRIATED FUND BALANCE TO THE RECONSTRUCT ASPHALT AIR CARRIER APRON PAVEMENT WITH CONCRETE PROJECT IN FUND 505; AUTHORIZING THE APPROPRIATION OF $290,000.00 FROM THE AIRPORT FUND UNAPPROPRIATED FUND BALANCE TO PROJECT 900345, MAF AIRFIELD WILDLIFE FENCE IMPROVEMENTS PROJECT IN FUND 506; AND AUTHORIZING THE APPROPRIATION OF $180,650.00 FROM THE AIRPORT FUND UNAPPROPRIATED FUND BALANCE TO PROJECT 900111, DEVELOPMENT PARK PROGRAMMATIC EA (DISTRICT 4) (AIRPORTS)

10. 2022-021 – RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS FOR TRAFFIC MANAGEMENT-RELATED DONATIONS TO THE CITY OF MIDLAND; AND AUTHORIZING THE CITY MANAGER TO ACCEPT SAID DONATIONS ON BEHALF OF THE CITY (DISTRICT: NONE) (ENGINEERING SERVICES)

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

5. 2022-018 – RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH HUBER TECHNOLOGY INC. FOR THE LABOR, MATERIALS, EQUIPMENT AND SUPERVISION NECESSARY FOR THE REPAIR OF SCREENS AT THE WATER RECLAMATION FACILITY FOR THE UTILITIES DEPARTMENT AT A TOTAL COST OF $238,881.31 AND APPROVING $23,894.69 FOR CONTINGENCIES (DISTRICT: ALL) (GENERAL SERVICES)

Utilities Director Carl Craigo reported the screens are about ten years old and need to be replaced to stop solids from getting into the plant. Ten years is about the average time for replacement. Council Member Corrales suggested that we can get the word out through the PIO team regarding items that should not be flushed.

Dan Corrales moved to approve Resolution No. 2022-018; seconded by Robin Poole.

DRAFT

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

7. 014-2022 – MOTION APPROVING PLANS AND SPECIFICATIONS FOR THE MIDLAND UTILITIES SERVICE CENTER PROJECT, SAID PLANS AND SPECIFICATIONS BEING ON FILE IN THE CITY SECRETARY'S OFFICE AND REFERENCED BY THE DATE AND NUMBER OF THIS MOTION, AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE FOR COMPETITIVE BIDS FOR SAID PROJECT PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN SAID PLANS AND SPECIFICATIONS (DISTRICT 2) (GENERAL SERVICES)

Council Member Norman wanted to know if this item is for the center and the vehicles or is it just the center. General Services Director Regina Stephenson reported that it includes Water & Wastewater, Vehicle Services and Solid Waste.

John Norman moved to approve Motion No. 014-2022; seconded by Jack Ladd.

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

8. 2022-020 – RESOLUTION AUTHORIZING THE EXECUTION OF THE SIXTH 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 AND PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (ADMINISTRATIVE SERVICES)

Administrative Services Director Mark Widman reported the City of Midland is self-insured and has a contract with the clinic and hospital to provide general diagnostic services. The clinic is operated 5 days a week during normal business hours and served just over 3,000 clients last year.

Dan Corrales moved to approve Resolution No. 2022-020; seconded by Robin Poole.

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

SECOND READINGS

DRAFT

11. 10284 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 12, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF TYLER STREET AND ORCHARD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 25, 2022)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10284.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10284; seconded by John Norman.

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

12. 10285 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 6, ELMWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF STOREY AVENUE AND PECOS STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 25, 2022)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10285.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10285; seconded by John Norman.

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

13. 10286 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,627-SQUARE FOOT PORTION OF LOT 1, BLOCK 6, BANKHEAD ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FRONT STREET AND

DRAFT

BANKHEAD HIGHWAY), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN AN AXE 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 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 25, 2022)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10286.

John Norman moved to approve the second and final reading of Ordinance No. 10286; seconded by Robin Poole.

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

14. 10287 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,011-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 615 FEET NORTH OF WEST 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 25, 2022)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10287.

John Norman moved to approve the second and final reading of Ordinance No. 10287; seconded by Dan Corrales.

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

PUBLIC HEARINGS

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

DRAFT

15. 016-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE OIL AND GAS WELL MUSTANG 110 MIPA UNIT #H110WA; SAID WELL BEING GENERALLY LOCATED 2,395 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:19 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

16. 017-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PIONEER NATURAL RESOURCES, USA, INC. FOR THE DRILLING OF THE OIL AND GAS WELL NAIL C 3; SAID WELL BEING GENERALLY LOCATED 4,098 FEET NORTH OF OCCIDENTAL PARKWAY AND 7,385 FEET EAST OF NORTH STATE HIGHWAY 349 (DISTRICT 1) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:20 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

17. 018-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PIONEER NATURAL RESOURCES, USA, INC. FOR THE DRILLING OF THE OIL AND GAS WELL NAIL E 4; SAID WELL BEING GENERALLY LOCATED 3,172 FEET NORTH OF OCCIDENTAL PARKWAY AND 2,135 FEET EAST OF NORTH STATE HIGHWAY 349 (DISTRICT 1) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:21 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

18. 019-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PIONEER NATURAL RESOURCES, USA, INC. FOR THE DRILLING OF THE OIL AND GAS WELL STIMSON BURLEY D 5; SAID WELL BEING GENERALLY LOCATED 2,220 FEET NORTH OF OCCIDENTAL PARKWAY EXTENSION AND 5,945 FEET WEST OF NORTH ELKINS ROAD (DISTRICT 1) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:22 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

19. 10288 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10288.

DRAFT

John Norman moved to approve the first of two readings of Ordinance No. 10288; seconded by Robin Poole.

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

20. 10289 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.97-ACRE TRACT OF LAND OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO CE, COUNTRY ESTATE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF PIMLICO DRIVE, APPROXIMATELY 170 FEET EAST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10289.

Development Services Director Chuck Harrington reported the request is being made on behalf of the applicant with a 4.978 acre tract of land off of Pimlico Lane. He is proposing to rezone this in order to develop four lots on his property which would be in compliance with CE zoning. This area is currently zoned AE, however, 50% of lots out there do not meet AE standards. We are trying to get them to the point they all have similar lot sizes. A hearing was held and Planning and Zoning recommends approval. No one came with any opposition and there were no letters of objection. One person did express concerns about the community. Mr. Harrington answered questions regarding Fire Department access at this location.

Mr. Harrington clarified this item will not come before Council again.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10289; seconded by John Norman.

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

21. 10290 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND RUBY DRIVE), BY PERMITTING A REDUCED MINIMUM FRONT YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE NORTH SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO

DRAFT

THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10290.

Development Services Director Chuck Harrington gave a brief overview of the item noting the home owner built a carport on their property that does not meet City requirements. The home owner hired a contractor who did not get a permit to do the work. There have been no objections from neighbors regarding this carport. Mr. Harrington answered questions about holding contractors accountable when a permit is not obtained.

Elisa Padilla, 616 Ruby, is the homeowner. Ms. Padilla apologized for not being aware of needing permits. She stated she is willing to take down the carport if this is what Council wants her to do. She explained that she found the Contractor on Facebook, had him do the work and found out it should not have been done after receiving a letter and picture from the City.

Dan Corrales moved to approve the first of two readings of Ordinance No. 10290; seconded by Robin Poole.

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

PUBLIC COMMENT

22. 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.)

Caitlin Egan, 1601 W. Pine Ave., Fix West Texas, thanked the City for continuing the spay and neuter voucher program, as well as Council Members Ladd and Corrales for continuing to advocate for the animals of this community. She asked the Mayor questions about the last meeting. Mayor Payton stated they could have a private meeting to discuss.

All the business at hand having been completed, the meeting adjourned at 10:46 a.m.

PASSED AND APPROVED February 22, 2022.

_____
Patrick Payton, Mayor

ATTEST:

_____

DRAFT

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Christy Weakland, Director

Subject: MOTION ALLOCATING THE SUM OF $700,000.00 OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT FUNDS TO THE HEALTH DEPARTMENT'S COVID-19 PROGRAM (DISTRICT: NONE) (FINANCE)

Purpose:

City of Midland Health Department COVID-19 Program funding ($700,000)

Recommended City Council Action:

Approve

Fiscal Impact:

$700,000 is available in fund 065 and will be allocated in a project for this purpose.

Discussion:

This is to provide ten additional contact tracing and case investigators for Health Department, medical supplies for COVID-19 related health care, office equipment, computers, PPE, printing and health promotional materials. The CDBG PY2020 program has expended the grant fund according to HUD authorization and is seeking additional funding for personnel to continue to address the COVID crisis in a proactive manner. In addition, the CDBG office will encourage the health department staff to apply for the PY2022 program grant of ($430,000). The total allocation of funding is projected to extend the temporary health outreach team in the performance of prevention and intervention services.

Morris Williams Jr.

City Manager's Office

City Council Meeting

Item Number: 6

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR THE REYES-MASHBURN-NELMS PARK PHASE 1 IMPROVEMENTS PROJECT TO LUCK DESIGN TEAM, LLC, FOR A TOTAL COST OF $295,750.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a Professional Services Agreement with Luck Design Team for preparation for the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements as directed by City Staff.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding for the PSA in the amount of $295,750 is available in the Parks Bond Projects Fund (126) and will be appropriated to a project for said purpose.

Discussion:

Resolution 2019-264 authorized the issuance of a request for qualifications for Hogan and Reyes, Mashburn, Nelms Park Master Plan Development and Phase I Construction Documents and Construction oversight. One hundred nine (109) requests were issued. We received two (2) proposals. In 2019, staff awarded the Hogan and Reyes, Mashburn, Nelms Park Master Plan to Luck Design Team. To continue with this project, staff recommends awarding a professional services agreement for the Reyes, Mashburn, Nelms Park Phase I Improvements to Luck Design Team of Austin, Texas. Please see the attached memo from Cristina Burns, Community Services Director, for additional information.

Therefore, please consider a resolution awarding a professional services agreement for the Reyes, Mashburn, Nelms Park Phase I Improvements to Luck Design Team of Austin, Texas for a total amount of $295,750.00 and appropriating funds therefore.

Tina Gauz

City Manager's Office

CITY OF MIDLAND
Community Services Department
Parks Division
Interoffice Memorandum

Date: February 10, 2022
To: Morris Williams Jr., Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Professional Services Agreement – Consulting Services for Phase I Construction Documents for Reyes Mashburn Nelms Park

In 2019, the City of Midland contracted with Luck Design Team to prepare the Master Plans for Hogan and Reyes Mashburn Nelms Parks. The initial project under the master plan was two multi-purpose turf fields, which are near completion. The next step to renovating Reyes Mashburn Nelms Park is to enter into a Professional Services Agreement with Luck Design to prepare Phase I construction documents. That work will be followed by bidding and construction. Phase I of the plan is to construct a wagon wheel layout of 4 junior baseball fields with associated parking and a restroom/concession building. The current estimated cost for Phase I is $7,884,000.

The following is a list of amenities that will be provided in the Phase I development of Reyes Mashburn Nelms Park:

* 4 Turf Baseball fields with fencing and LED Field lighting
* Pre-fabricated Restroom/Concession building
* On-site walkways and trails
* 207 Parking Spaces
* On-site storm water retention/detention and storm water conveyance
* On-site wet utilities, includes service to the concession/restroom building
* Landscape and irrigation improvements
* Ballfield lighting design
* Ballfield scoreboards
* Park entry marquee and kiosk signage
* Site Electric Primary/Secondary distribution and lighting

Luck Design Team will provide the following in their scope of work:

Item	Description	Fee Basis	Fee
A	Design Survey Allowance	Lump Sum	$16,500
B	Geotechnical Evaluation	Lump Sum	$ 8,600
C	Schematic Plan (30% Completion)	Lump Sum	$41,700
D	Design Development (60% Completion)	Lump Sum	$60,375
E	Construction Documents (100% Completion)	Lump Sum	$78,925
F	Regulatory Services	Lump Sum	$18,050
G	Bidding Services	Lump Sum	$14,600
H	Construction Phase Services	Lump Sum	$46,000
I	Reimbursable Expenses	Est. Lump Sum	$11,000
		Total Design Fee	**$295,750**

Completion of the Phase I Construction Plans would be by August 2022. The plans would then be put out for bids with construction starting in November 2022. The anticipated time of construction would be 12 months.

Funding for the PSA in the amount of $295,750 is available in the Parks Bond Projects Fund (126) and will be appropriated to a project for said purpose.

RESOLUTION NO. _____

RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR THE REYES-MASHBURN-NELMS PARK PHASE 1 IMPROVEMENTS PROJECT TO LUCK DESIGN TEAM, LLC, FOR A TOTAL COST OF $295,750.00; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, the City Council approved Resolution 2019–264, which authorized the issuance of a request for qualifications for professional services associated with renovations to Reyes-Mashburn-Nelms Park; and

WHEREAS, two (2) statements of qualifications were received, with the most qualified submittal belonging to Luck Design Team, LLC, for a total cost of $295,750.00; and

WHEREAS, the City Council finds the amount proposed by Luck Design Team, LLC, to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a professional services agreement to Luck Design Team, LLC, for said professional services; and

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 Luck Design Team, LLC, for the Reyes-Mashburn-Nelms Park Phase 1 Improvements Project. Said agreement being in form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes

SECTION TWO. That the sum of $295,750.00 is hereby appropriated from the Parks Bond Projects Fund (126) to a project established by the City of Midland Finance Department.

SECTION THREE. That the City Comptroller is hereby authorized and directed to

pay Luck Design Team, LLC, pursuant to the terms of said agreement from funds available in the project established by the City of Midland Finance Department upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
#22002180

THIS AGREEMENT is made and effective the 23 day of February 2022, by and between the CITY OF MIDLAND, TEXAS ("*CITY*"), a home-rule municipal corporation, and Luck Design Team, 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 Mashburn, Nelms Park Phase I 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 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 $295,750.00 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 23, 2022 until the project is completed 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 perorm 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, may 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 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 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: Luck Design Team LLC
9600 Excarpment Blvd., #745-4
Austin, Texas 78749

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 _____, 20____ personally appeared, _____, an officer of Luck Design Team 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

LUCK | DESIGN TEAM

January 27, 2022

Mr. Robert Patrick
City Manager
City of Midland
300 N. Loraine
Midland, TX 79701

Re: Construction Documents Preparation for the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements - located in the Midland, Texas.

Dear Mr. Patrick,

LUCK Design Team, LLC is pleased to submit the following proposal for the preparation of Construction Documents for the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements. To complement our services, we have teamed with Halff & Associates, Inc. for civil engineering; locally based Hamilton Engineering, Inc. for Geotechnical evaluation; M&S Engineering for electrical engineering; Outlier Engineering for structural engineering; and James Pole Irrigation for irrigation design services. We propose the following services:

I. SCOPE OF SERVICES FOR CONSTRUCTION DOCUMENTS PREPARATION FOR THE CITY OF MIDLAND REYES MASHBURN NELMS PHASE1 PARK IMPROVEMENTS

A. Design Survey Allowance For Reyes Mashburn Nelms Park Phase 1

This phase will include the following tasks for the previously identified portion(s) of the CITY park property for use in Phase 1 design:

1. Survey Control
• The surveyor will establish a minimum of 4 survey control points which should survive through construction.
• All data will be on the current Texas State Plane coordinate system.

2. Design Survey—Field
• Contact Texas One Call to have utilities in the project area marked on the ground.
• Locate the following street features: edge of pavement, pavement type, curb lines, gutter lines, lip of gutter, driveway locations, ramps, sidewalk locations, grade breaks, and elevations at ROW (if applicable).
• All survey field work shall extend 10' beyond ROW line or to edge of existing utilities, culverts, etc., whichever is greater.
• Locate the following drainage features: high banks, flow lines, break lines, swales, channel cross sections, culverts, bridge details, ponds, edge of water, and gabions (if applicable).
• Locate the following waterline features: valves, valve nut elevations, meters, manholes, hydrants, and sprinklers (if applicable).
• Locate the following wastewater features: manholes, manhole rim elevations, manhole invert details, pump structure details, cleanouts, and cleanout inverts (if applicable). Locate the following storm sewer features: manholes, manhole rim elevations, manhole invert details, inlet structures, inlet details, and outlet structures (if applicable).
• Locate the following building structures: structure type/material, structure dimensions, finish floor elevations, building overhangs, and fences (if applicable).
• Locate all hardwood trees 8" DBH within project limits to include the following: trunk diameter, tag number, species, edge of canopy, and tree condition.
• Locate the following additional features: signs, utility poles, guy anchors, overhead power lines, electric facilities, traffic control facilities, telecom facilities, telecom markers, gas valves, gas line markers, gas line vents, bore holes, and one-call markings (if applicable).
• Obtain break lines and spot elevations sufficient for 1-foot contour intervals.
• Process field collected data for field survey.
• Perform quality control for survey requirements.

3. Prepare Digital Terrain Model (DTM)
• Extract spot elevations and break lines into DTM.
• Extract and prepare triangulated irregular network into DTM.
• Load 1-foot contour information.
• Create Triangulated Irregular Network (TIN)

B. Geotechnical Evaluation

The consultant will provide the City of Midland with a geotechnical report for the improvements at the park site as indicated in Attachment A. The report shall include:

- Four (4) boring locations - 20’ deep
- One (1) boring location - 5’ deep

Approximate boring locations are indicated in Attachment A. Design recommendations for foundation, pavement and structural recommendations will be provided.

C. Schematic Plan Development (30% Construction Document Completion)

The consultant will prepare Schematic Plans (30% completion of construction document preparation) for the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements illustrating general locations, sizes and relationships of improvements, materials and forms of construction, and proposed equipment for use in development of the park facilities. The proposed improvements to be included are shown on the Reyes Mashburn Nelms Park Master Plan dated June 24, 2020 (Attachment B) and further described in Item “II – Client Responsibilities and Project Assumptions”. These improvements will be shown within context of the topographic and boundary survey. Material cut-sheets as necessary to illustrate design characteristics of selected equipment, finishes and materials will also be included..

The consultant will prepare a revised opinion of probable construction costs for improvements and review schematic plans with City Staff and document their comments for use during preparation of design development plans.

The consultant will attend meetings with the City of Midland Staff for project review and coordination and to ensure master-planning intent of the improvements is carried into the early stages of the construction document preparation.

The consultants will assist in presenting final schematic design to City Council for approval is required to proceed with Design Development.

The consultant will attend a maximum of two (2) meetings with the City of Midland for project review and coordination.

D. Design Development (60% Construction Document Completion)

The consultant will prepare Design Development Plans (60% completion of construction document preparation) for the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements site improvements illustrating general locations, sizes and relationships of improvements, materials and forms of construction, and proposed equipment for use in development of the park facilities.

The design development plans will be prepared for City of Midland review and comment. The design team will finalize locations and configurations of site and recreational facility improvements and illustrate in digital form.

Design development site plans will identify types and size requirements of site elements including site recreational amenities, access and circulation routes, electrical utilities, pedestrian circulation routes, and landscape and irrigation improvements (mainline and quick coupling locations only). Design development plans will also coordinate site grading, wet utilities improvements, water quality improvements and landscape architectural improvements. Project phasing will be indicated on these plans, if applicable. Material cut-sheets as needed to illustrate the final designs proposed at the park will be provided.

Conduct predevelopment meetings and/or research with regulatory entities to determine permit requirements including Pre-application conference with CITY Planning and Development Services, Public Works, Floodplain Administrator, and Parks staff members (2 meetings maximum same day).

Prepare final design development drawings incorporating the City's 30% plan comments and prepare and a revised opinion of probable construction costs (OPCC) for park improvements will also be prepared.

The consultant will attend a maximum of two (2) meetings with the City of Midland for project review and coordination.

E. Construction Documents Preparation

The consultant will prepare construction documents and specifications to allow bidding and construction of the proposed City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements (estimated at $7,884,000.00 for construction only). The construction documents will include the proposed park improvement elements as indicated the Reyes Mashburn Nelms Park Master Plan dated June 24, 2020 (See Attachment B) and further described in Item "II – Client Responsibilities and Project Assumptions". Site layout plans with dimensional control information necessary to construct site improvements, including general building and shade pavilion locations, site grading and drainage, utility, parking area lighting / site lighting and general pedestrian walkway and park improvements will be provided.

The consultant will design grading plans with vertical information necessary for construction. Site drainage and storm sewer plans with information necessary for construction will be provided with site details indicating specific information and data necessary for construction site improvements. Irrigation plans and details necessary for construction of the mainline and quick couplers will be provided as well. It is assumed that the water source for the irrigation will be from a metered potable water line.

On March 5, 2003, the National Pollution Discharge Elimination System (NPDES) permitting authority was transferred over to the Texas Commission on Environmental Quality (TCEQ). TCEQ's general permit (TPDES construction General Permit TXR 150000) combines large construction activity (5 or more acres) and small construction activity (1 to less than 5 –acres) requirements for all projects in the state of Texas. The construction activity for the park is anticipated to be over five acres; therefore, this project falls under large construction activity requirements.

1. We will prepare an erosion control layout plan for the project, identifying locations of proposed erosion control measures and furnish to the City of Midland. The contractor must display the plan at the job site as part of his Storm Water Pollution Prevention Plan and update the plan accordingly to the requirements listed in the SWP3. The contractor must follow the plan and the local MS4 operator must be notified 48 hours prior to the start of the construction.

2. A Notice of Intent (NOI) form and an application fee is required under large construction activity guidelines. A Construction Site Notice is required to be posted.

By law, this is a separate plan from the erosion and sedimentation control plan contained in the construction drawings. This is a compliance document which both the City and the contractor are required by federal law to follow

The consultant will prepare drainage plans for submittal for a Comprehensive Site Preparation Application to the City, if applicable.

The consultant will prepare an erosion control sheet for inclusion into the plan set.

We will prepare a water service plan to the park improvements based on the City of Midland design criteria. The water service plan will include the proposed water line from the existing nearby water source to the proposed new rest room building.

We will prepare an electrical power service plan to the parking area lighting and area lighting improvements and to the proposed restroom based on the City of Midland design criteria.

Prepare final design development drawings incorporating the City's 60% plan comments.

The consultant will provide the City with a final opinion of probable construction costs for the Reyes Mashburn Nelms Park Phase 1 site improvements at the 100% plan completion stage. Specifications and bidder instructions in CSI format and will be provided to assist staff in the preparation of bid packets and bid form formatting.

The consultant will deliver to the Owner one (1) original Issue for Bid set of construction documents and specifications and PDF documents of the same for bidding purposes. Bidding contractors will be responsible for purchasing all bid sets at cost.

The consultant will attend a maximum of four (4) meetings with the City of Midland for project review and coordination

F. Regulatory Services

The consultant will prepare documents and drawings as reasonably required by the following governmental authorities to comply with permitting requirements that are in effect on the date of this agreement:

- The City of Midland Comprehensive Site Preparation Application permit. All City filing, permit review, application and inspection fees to be waived for City projects.
- Texas Department of Licensing and Registration - Texas Accessibility Review (The consultant will register the project for accessibility with TDLR or the appropriate authorized agent as required prior to construction and make design modifications specifically identified by TDLR or the appropriate authorized agent as part of their pre-construction review.)

As is reasonably necessary, the consultant will evaluate, confer and respond to government staff and review comments regarding proposed improvements at the park site, including attending public hearings and addressing permitting issues if applicable.

The consultant will make design modifications as requested by the applicable governmental authorities and approved by City Staff as they apply to the park components

G. Bidding Services

The design team will provide assistance during the bidding phase of the City of Midland Reyes Mashburn Nelms Park Phase 1 Improvements by answering technical questions from contractors and conducting a pre-bid meeting with the City and potential contractors. Bid packets consisting of project specifications and plans and bid form formatting, utilizing front-end documents preferred by the City of Midland will be prepared and issued.

Attend and assist the CITY with a pre-bid conference (1 meeting).

The design team will tabulate contractor bids in a spreadsheet format for City review and assist the CITY with bid opening, review/evaluate bids including alternates (1 meeting).

H. Construction Phase Services

The design team will participate in a preconstruction conference prior to commencement of Work at the Site and provide assistance during the construction phase by reviewing contractor shop drawings when appropriate, visiting the project site at appropriate intervals to observe the progress and quality of the Work completed by the Contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work. Observations are to allow LUCK Design Team or its assigns, as experienced professionals, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. We anticipate that an average of one site visit every two weeks (for two hours each visit) will be made during the construction phase of the project, which is projected to last twelve months. A total of sixteen (16) construction site visits is included in this scope of services.

LUCK Design Team shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. LUCK Design Team does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.

The design team will recommend to the Owner that Contractor's work be disapproved and rejected while it is in progress if, based on such observations, LUCK Design Team believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

The design team will issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be

consistent with the intent of and reasonably inferable from the Contract Documents. LUCK Design Team may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

We will recommend Change Orders and Work Change Directives to the Owner, as appropriate, and prepare Change Orders and Work Change Directives as required and determine the appropriate pay amounts due Contractor, based on observations by LUCK Design Team or its assigns, as experienced and qualified design professionals and on review of Applications for Payment and accompanying supporting documentation.

A final walk-through of the construction site with the Owner's representative and the Contractor prior to the preparation of a final punch list will also be conducted. Attend and assist the City with substantial completion inspection(s) and walk-thru including concurrent TAS inspection; issue punch list for incomplete items including time for completion and issuing letter of substantial completion (1 meeting).

The consultant will attend and assist the Citywith final inspection for acceptance of project and issue letter of concurrence (1 meeting).

The consultant will assist the City in acquiring final close-out documents, warranties, accurate as-built drawings, and other documents required to close-out project.

The consultant will assist with review and approval of contractor’s final Application and Certification for Payment including retainage.

II. CLIENT RESPONSIBILTIES AND PROJECT ASSUMPTIONS

Reyes Mashburn Nelms Park Phase 1 is approximately 18 acres located at the east side of N. Fairgrounds Road, between Park Road and E. Cuthbert Road in Midland, Texas.

Since the park is greater than one acre in size, the preparation and development of an erosion control pan for the contractor to use as part of his Stormwater Prevention Plan (SWPPP) in accordance with Texas Pollution Discharge Elimination System (TPDES) requirements is required.

No construction phase surveying services are included in this scope of services.

The anticipated City of Midland Reyes Mashburn Nelms Park Phase 1 improvement elements included for design under the scope of services include:

- Four (4) softball/baseball fields with synthetic turf entire field, dugouts, bull pens, spectator areas (Fields 1-4).
- Pre-fabricated Restroom/Concession building
- On-site walkways and trails.
- On-site roadways within the Attachment B project area and parking for 207 vehicles.
- On-site storm water retention/detention and storm water conveyance.
- On-site wet utilities, includes service to the onsite proposed Corworth building.
- Landscape and irrigation improvements in common areas, parking lots, main entry.
- Ballfield lighting design.
- Ballfield Scoreboards.
- Park entry Marque and Kiosk signs.
- Site Electric Primary/Secondary distribution and lighting.

The proposed City of Midland Reyes Mashburn Nelms Park Phase 1Improvements are estimated at $7,884,000 for construction only.

Through discussions with City Staff, it is anticipated that the proposed Concession/ Restroom Buildings (approximately 900 SF) will be a prefabricated structure like the one installed to service the (4) multi-use fields at the Scharbauer Sports Complex. No architectural design services for a custom concession /restroom building are provided as part of this scope of services.

Conditioned building space will only include concession areas.

Final Phase 1 design will be based on refined schematic design of master plan dated June 2020.

On-site water and wastewater services will be used to serve the restroom/concession buildings, however adjustments and relocation may be required. Water and wastewater design outside of the park boundary will require additional scope and fee.

According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Number 48329C0087F (dated 9-16-2005) some improvements will be in the floodplain (Zone AE and Zone X Shaded). Improvements may be planned within the 100-year Floodplain and may require a flood study to demonstrate "no adverse impact". A Floodplain Study is not being provided as part of this scope of services; if future design impacts warrant that a floodplain study be provided the consultant will enter into discussions with the City for a Floodplain Study to be provided as an additional service.

The floodplain note will be based on the current flood insurance rate maps prepared by F.E.M.A. or City approved drainage study only.

The fee does not include preparation of a floodplain study or research to determine if one is necessary or has been performed, or detailed drainage studies to analyze conveyance of off-site runoff involving HEC-1, HEC-2 or other similar hydrologic or hydraulic analyses including survey cross sections, field notes and easements. The fee does not include CLOMR or LOMR preparation or communication with F.E.M.A.

Our understanding is that the project does not have any Planned Development District (PDD) restrictions for parks.

The following services are excluded unless specifically included in the proposal:

- Public stakeholder meetings and/or other presentations/facilitation beyond those described in scope of services.
- Increase in construction documentation, regulatory entitlement, bidding assistance and construction phase services resulting from increase in development budget of more than 10% beyond design development phase.
- Revisions to drawings previously approved by the CITY and regulatory entities due to changes in: Project scope, budget, schedule, unforeseen subsurface construction conditions or when such revisions are inconsistent with written approvals or instructions previously given; enactment or revision codes, laws, or regulations after the preparation of such documents.
- Preparation of phased bid package(s) with reduced scope of items defined herein, including construction drawings and specifications not included as part of phase 1 development.

- Any design work that will require work in the ROW or impact traffic entering and exiting the public and private ROW not accounted for in basic scope of services.
- Traffic Impact Analysis.
- Detailed cost estimating services or independent cost estimating by a third party.
- Energy/Utility modeling of buildings.
- Preparation of re-bid documents due to unsuccessful bid and value engineering beyond City and consultant control.
- Temporary Traffic Control Plans conforming to Texas MUTCD.
- Reviewing and evaluating alternate designs proposed by contractor during construction.
- Construction Staking.
- Construction quality control and materials testing.
- As built/Improvements surveys after construction.
- Structural design for retaining walls, drainage structures, etc.
- Structural design calculation package(s).
- Storm Water Pollution Prevention Plan (SWPPP), to be provided by contractor.
- Services required after final acceptance of constructed work.
- Preparation of presentation materials for marketing or purposes other than in-progress approvals.
- Provide consultation, drawings, reports and other work products related to permits, approvals and ordinances not described in scope of services.
- Providing professional services for the field selection of plant materials.
- Shade Structure Design (other than pre-engineered structures).
- Bridge Design (other than pre-engineered structures).
- Voice/Data System, Fiber Optic Network, Access Control/Security System and Audio System design. (Provisions – jboxes and extra conduit provided into building structures only).
- Natural Gas design.
- LEEDs/Green Building/LID/SITES compliant design.
- Engineering Commissioning, required on buildings with more than 40 tons A/C.
- Energy Re-sale load and Energy Rebate forms.
- Utility coordination for relocations.

- Design of utility extension(s) to the project site.
- Analyzing or simulating water supply networks.
- Design or specifications of grinder pumps, force mains, lift stations and sump pumps.
- Design of irrigation pump stations.
- Site lighting design and photometrics.
- Detailed Flood Plain Analysis.
- FEMA CLOMR and/or LOMR preparation or submittal.
- Waters of the US 404 permitting through Army Corp of Engineers (USACE)
- Environmental services (Threatened & Endangered Species Evaluation).
- Archeological Assessment. Hazardous Site Assessments.
- Property Title Research.
- Coordination with individual property owners.
- Legal Lot Determinations unless defined within scope of services.
- Preparation of multi-use agreement(s), license agreement(s), unified development agreement(s), restrictive covenant(s), and exhibits.
- Survey documents for right-of-way and easements.
- Preparation and processing of Waivers, Variances or Exceptions.
- Variances from City codes and regulations.
- Zoning services.
- Any services related to ROW and Land Acquisition.
- ROW mapping exhibits and meets and bounds documentation required for ROW acquisition.
- Assistance or representation in litigation concerning the property of proposed project.
- Conflict Resolution.
- Engineer's certificates. The Engineer shall not be required to execute any documents after the signing of this Agreement that in any way might, in the judgment of the Engineer, increase the Engineer's risk or the availability or cost of his professional or general liability insurance.
- Providing services other than those outlined in scope of services.

An asbestos survey for any existing buildings is not included in this scope of services.

The project will be bid as a single bid contract but may include bid alternates as determined by the Client and the Consultant. Preparing documents for separate or sequential bids and providing out-of sequence services requested by the Owner are specifically not included in this scope of services.

III. SCHEDULE FOR COMPLETION (PRELIMINARY)

The anticipated schedule for completion of the Phase 1 scope of services is outlined below:

Anticipated Contract Award Date	February 22, 2022
Anticipated Notice to Proceed	March 1, 2022
Schematic Design Plan Preparation	April 8, 2022
Design Development Plan Preparation	June 2, 2022
Construction Document Plan Preparation	August 4, 2022
Anticipated Issue to Bid	September 2022
Anticipated Start of Construction	November 2022
Anticipated Phase 1 Construction Completion Date	November 2023

IV. BASIS OF COMPENSATION

The fees for services stated will be as follows:

Item 1	Description – Construction Documents Preparation for Hogan Park Phase 2	Fee Basis	Fee
A	Design Survey Allowance for Reyes Mashburn Nelms Park Phase 1	Lump Sum	$16,500
B	Geotechnical Evaluation	Lump Sum	$8,600
C	Schematic Plan Development (30% Construction Document Completion)	Lump Sum	$41,700
D	Design Development (60% Construction Document Completion)	Lump Sum	$60,375
E	Construction Documents Preparation (100% Construction Document Completion)	Lump Sum	$78,925
F	Regulatory Services	Lump Sum	$18,050
G	Bidding Services	Lump Sum	$14,600
H	Construction Phase Services	Lump Sum	$46,000
I	Reimbursable Expenses	Estimated Lump Sum	$11,000
		Total Design Fee	**$295,750**

Billing will be monthly as work progresses.

Reimbursable expenses (billed as cost) will be billed in addition to the total design fee as reimbursable expenses are accrued.

Additional services (all services not shown on Scope of Services) will be billed on an agreed upon lump sum fee. This proposal does not include services performed prior to the execution of this agreement or services not specifically addressed in "The Scope of Services".

We appreciate the opportunity to be of service and look forward to assisting you in the development of this project. Upon your review of this proposal, please call if you have any questions.

Respectfully submitted,

Brent Luck, PLA
Park Planner / Landscape Architect

FIELD SIZE CHART

Fields	Center Field	Foul Line
1,3,4	300'	250'
2	350'	290'
5	280'	250'
6-8	350'	325'
9-13	150'	150'

MIDLAND | LUCK DESIGN TEAM | HALFF

Reyes-Mashburn-Nelms Park

0 250 500 1,000 Feet

June 24, 2020

NORTH

City Council Meeting

Item Number: 7

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS PUMP STATION REHABILITATION PROJECT TO EDGARDO MADRID & ASSOCIATES, LLC, FOR AN AMOUNT OF $2,725,387.00; APPROVING $681,346.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a contract for the Paul Davis Pump Station Rehab Project for the Utilities Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY22 Utilities Fund operating budget and will be appropriated to the Paul Davis Pump Station Project.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the Paul Davis Pump Station Rehab Project. The bid request was sent to ninety (90) companies. We received one (1) bid. Staff recommends awarding a contract to the sole bidder, Edgardo Madrid and Associates, LLC., for the amount of $2,725,387.00. Please see the attached memo from Carl Craigo, Utilities Director, for more information.

Therefore, please consider a resolution awarding a contract for the Paul Davis Pump Station Rehab Project to Edgardo Madrid and Associates, LLC., of Midland, Texas for the amount of $2,725,387.00 plus contingencies of $681,346.75 for a project cost of $3,406,733.75.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz, Purchasing Manager

FROM: Carl Craigo, PE, Utilities Director

SUBJECT: Consider a resolution awarding a construction contract Paul Davis pump station.

DATE: February 11, 2022

HDR under the Utilities on call program prepared plans and specification for the Paul Davis pump station. The project is to construct a pump station at the Paul Davis Well field, replacing two nonfunctioning existing pumps along with ancillary electrical work. The Paul Davis well field is the City of Midland's emergency water supply and is used as needed to supplement water flow and maintain regulatory requirements. Resolution No. 2019-083 approved the scope to prepare plans and specifications to send for proposal.

One responsive bid was received from Edgardo Madrid & Associates, LLC. The total bid price was $3,406,733.75 which includes a 25% contingency. Funds will be allocated from previous the Water and Sewer Operating Fund.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS PUMP STATION REHABILITATION PROJECT TO EDGARDO MADRID & ASSOCIATES, LLC, FOR AN AMOUNT OF $2,725,387.00; APPROVING $681,346.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the Paul Davis Pump Station Rehabilitation Project; and

WHEREAS, Bid No. 22001650 was opened on January 26, 2022, with the sole bid being submitted by Edgardo Madrid & Associates, LLC, 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 Edgardo Madrid & Associates, LLC, to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Edgardo Madrid & Associates, LLC, for the Paul Davis Pump Station Rehabilitation Project; and

WHEREAS, the City Council finds it to be in the public interest to approve $681,346.75 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 Edgardo Madrid & Associates, LLC, for the Paul Davis Pump Station Rehabilitation Project for an amount of $2,725,387.00. 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 $681,346.75 for contingencies is hereby approved for said agreement.

SECTION THREE. That funds are available in the FY22 Utilities Fund operating

budget and will be appropriated to the Paul Davis Pump Station Project.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Edgardo Madrid & Associates, LLC, pursuant to the terms of said contract from funds available in the Paul Davis Pump Station Project for said purpose upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22001650

Paul Davis Pump Station Rehab

OPENED January 26, 2022

Edgardo Madrid & Associates, LLC
6216 Spahn St
MIDLAND, TX 79706
432-940-9683
Edgardom@edguardomadrid.com

ITEM	QTY	DESCRIPTION	Unit Cost	Total Cost
1	1 LS	Lump Sum Bid Price for Base Bid - Installation of a new pump station improvements, selective demolition, and associated structural, eletrical, mechanical, and instrumentation and control items.	$2,725,387.00	$2,725,387.00
		SUBTOTAL PUMP STATION BAS E BID		$2,725,387.00
		OWNER'S CONTINGENCY (25%) OF SUBTOTAL PUMP STATION BASE BID		$681,346.75
		TOTAL BASE BID FOR PUMP STATION IMPROVEMENTS		**$3,406,733.75**
		ALTERNATE BID A IMPROVEMENTS		
1	2 EA	Demolition: Remove existing 30-inch butterfly valves on suction side of pump.	$10,500.00	$21,000.00
2	2 EA	Furnish, install, and test new 30-inch buttterfly valves and electric motor actuators, complete.	$112,846.00	$225,692.00
		SUBTOTAL PUMP STATION BAS E BID		$246,692.00
		OWNER'S CONTINGENCY (25%) OF SUBTOTAL PUMP STATION BASE BID		$61,673.00
		TOTAL BASE BID FOR PUMP STATION IMPROVEMENTS		**$308,365.00**
		TOTAL PROPOSAL		$3,715,098.75

Bidding Summary:

90 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

89 **Bidders did not respond.**

February 10, 2022

Mr. Cory Moose, Assistant Utilities Director
City of Midland
300 N Loraine
Midland, TX 79701
Via email to: cmoose@midlandtexas.gov

RE: Paul Davis Wellfield Pump Station Improvements
Recommendation to Award Construction Contract

Dear Mr. Moose:

On January 26, 2022, HDR Engineering assisted the City of Midland in opening bids for the above referenced project. The bid included a base bid item for Installation of a new pump station improvements, selective demolition, and associated structural, electrical, mechanical, and instrumentation and control items and alternate bid items for two valve motorized valve actuators.

One responsive bid proposal was submitted for constructing the project, with a total bid price of $3,406,733.75 for the base bid items, including 25% for Owner's contingency, and $308,365.00 for the alternate bid items. Based on our review of the bid submitted, Edgardo Madrid & Associates, LLC is the low bidder for both the base bid and alternate bid items.

I was able to reach one of the references for Edgardo Madrid & Associates, for the City of Odessa. Their input is that Edgardo Madrid & Associates provided quality work in a timely and professional manner and was very cooperative to work with. Additionally, Madrid appears to have a strong financial condition, credit rating, and payment history based on our review of the most current Dunn & Bradstreet Financial Analytics report.

Based on the information presented, HDR recommends the City of Midland accept the base bid from Edgardo Madrid & Associates for the total of $3,406,733.75. We will prepare the Notice of Award Letter and other contract documents to be forwarded to Edgardo Madrid & Associates if the City concurs with this recommendation.

Sincerely,
HDR Engineering, Inc.

Greg Pierson, PE
Project Manager

THE CITY OF MIDLAND

CONTRACT

Contract No. 22001650

THIS CONTRACT, effective the 23 day of February, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Edgardo Madrid and Associates, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 2,725,387.00 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for Paul Davis Pump Station Rehab in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

3. **City:** The words "CITY's Representative" or "representative" shall mean 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 180 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

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

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

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

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

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

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

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

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

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

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

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party

beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

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

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

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

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

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

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

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

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

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

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §

§

COUNTY OF_____ §

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

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

_____

Notary Public, State of _____

BID FORM

PAUL DAVIS WELLFIELD PUMP STATION IMPROVEMENTS

ARTICLE 1 – BID RECIPIENT

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 a Contract 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 – BIDDER'S ACKNOWLEDGEMENTS

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

2.02 BIDDER will sign and deliver the required number of counterparts of the AGREEMENT with the Bonds and other documents required by the Bidding Requirements within 15 days after the date of OWNER's Notice of Award.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating

to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. 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 any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. 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.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. 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;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "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;

3. "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; and

4. "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 e execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price:

PUMP STATION BASE BID				
Description	**Quantity**	**Unit**	**Unit Price**	**TOTAL**
Lump Sum Bid Price for Base Bid – Installation of a new pump station improvements, selective demolition, and associated structural, electrical, mechanical, and instrumentation and control items.	1	LS	$2,725,387.00	$2,725,387.00
SUBTOTAL PUMP STATION BASE BID				$ 2,725,387.00
OWNER'S CONTINGENCY (25%) OF SUBTOTAL PUMP STATION BASE BID				$ 681,346.75
TOTAL BASE BID FOR PUMP STATION IMPROVEMENTS				$3,406,733.75

ALTERNATE BID A IMPROVEMENTS				
Item No.	Description	Quantity	Unit Price	TOTAL
1	Demolition: Remove existing 30-inch butterfly valves on suction side of pump.	2 EA	$10,500.00	$21,000.00
2	Furnish, install, and test new 30-inch butterfly valves and electric motor actuators, complete.	2 EA	$112,846.00	$225,692.00
SUBTOTAL ALTERNATE BID A IMPROVEMENTS				$246,692.00
OWNER'S CONTINGENCY (25%) OF SUBTOTAL ALTERNATE BID A IMPROVEMENTS				$ 61,673.00
TOTAL BASE BID FOR ALTERNATE BID A IMPROVEMENTS				$308,365.00

Bid Total Summary:	
Total Pump Station Package Base Bid Price	$ 3,406,733.75
Total Alternate Bid A Price	$ 308,365.00

In addition to providing the individual prices for the items above, Contract shall write the total base bid amount in the sum of Three Million Four hundred six thousand seven hundred thirty three dollars and seventy five cents total.

Bidder to include in other Bid item(s) the other costs (if any) associated with accepting such assignment and administering the assigned contract.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete within 180 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 210 calendar days after the date when the Contract Times commence to run.

6.02 Bidder accepts the provisions of the Contract as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

A. Required Bid security;

B. List of Proposed Subcontractors;

C. List of Proposed Suppliers;

D. List of Project References;

E. Evidence of authority to do business in the state of Texas;

F. Bidder's Questionnaire, Section 00 45 13.

ARTICLE 8 – DEFINED TERMS

8.01 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 9 – BID SUBMITTAL

BIDDER: *Indicate correct name of bidding entity*

Edgardo Madrid & Associates, LLC

By:
Signature _____

Printed name Edgardo J. Madrid

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
Signature _____

Printed name EDGARDO MADRID

Title: PRESIDENT

Submittal Date: 01/25/22

Address for giving notices:

6216 Spahn St.
Midland, TX 79706

Telephone Number: 432-940-9683

Fax Number:

Contact Name and e-mail address: Edgardo Madrid edgardom@edgardomadrid.com

Bidder's License No.:
(where applicable)

SECTION 00 45 13
BIDDER'S QUESTIONNAIRE

The following information is required for evaluation of the low Bidder's qualifications and experience.
Complete this form and return it with your Proposal.

1. Bidder Name: Edgardo Madrid & Associates, LLC
2. Years in business under present business name: 7 years
3. Attach a list of similar projects completed in the past five years. Provide the name of Owner and Engineer for each project and include the name and telephone number of the contact person for each organization.
4. Attach a list of current projects. Provide the name of the Owner and Engineer for each project and include the name and telephone number of the contact person for each organization. Indicate the total value of each contract and the percentage of the work remaining.
5. Have you ever failed to complete any work awarded to you?
   No ✓ Yes _____ If yes, explain: _____
6. Have you ever received a Notice of Default from an Owner?
   No ✓ Yes _____ If yes, explain: _____
7. Are you presently involved in any litigation or lawsuits involving construction work of any type?
   No ✓ Yes _____ If yes, explain: _____
8. Identify the individuals you proposed to serve in the following functions and list the project and contract value of the most recent project they served in the same capacity on:
   Project Manager: Edgardo Madrid
   Previous Project: City of Odessa 338 Pump Station
   Project Superintendent: Asael Garcia
   Previous Project: City of Odessa 338 Pump Station
9. Identify your principal bank: American Momentum Bank
   Contact Person: Toby Latham Phone: 432-214-5912
10. Identify your bonding company/agent: Brunswick Companies
    Contact Person: Mark Levinson Phone: 330-865-4218
11. What percent of annual volume is in electric utility-related construction? 5% of annual volume
12. Volume of gross construction business during the last three years:
    2020 $ 13,328,909.00
    2019 $ 13,481,733.10
    2018 $ 8,401,623.31

13. Has the company received an OSHA citation during the most recent 12 months?
No ✓ Yes _____ If yes, explain: _____

14. How many lost time accidents has the company had in the last year? 0
If any, describe accidents and amounts of time lost: _____

THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL

END OF SECTION

EDGARDO MADRID & Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

RECENT PROJECTS SIMILAR TO PAUL DAVIS WELL FIELD PUMP IMPROVEMENTS

PROJECT :	City of Odessa, Water Reclamation System, East Loop 338 Pump Station
OWNER :	City of Odessa
CONTRACT AMOUNT :	**$1,441,337.70**
COMPLETION DATE :	**Completed**
CONTACT INFORMATION :	Thomas Kerr, Utilities Director, 119 W. 4th Street, Odessa, TX 79761, (432) 335-4625
SCOPE :	Construction of Pump Water Station including: 5 booster pumps, 2 standpipes, plant piping, 2 water meters, and 840 linear feet of 24" PVC water transmission line.

EDGARDO MADRID
& Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

PROJECT :	City of Odessa Dixie 18" Transmission Waterline
OWNER :	City of Odessa
ENGINEER:	Yervand Hmayakyan, 411 W 8th Street, Odessa, TX 79760, (432)335-3243
CONTRACT AMOUNT :	**$2,210,573.67**
COMPLETION DATE :	**Completed**
CONTACT INFORMATION :	Robert Hougland, Construction Supervisor, 411 W 8th St, Odessa, TX 79761, (432)335-3227
SCOPE :	Furnish and Install 10800 lf of 18" PVC Waterline, 16 each 18" Gate Valves, 2 each 150 lf Bore and Casing, 5000 sy of Asphalt Patch and necessary fittings.

EDGARDO MADRID
& Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

PROJECT :	Reeves County Hospital District
OWNER :	Reeves County
ENGINEER:	Dunaway, 4000 N Big Spring Suite 101 Midland, TX 79705
CONTRACT AMOUNT :	**$2,630,677.29**
COMPLETION DATE :	**Completed**
CONTACT INFORMATION :	Blair Hansen, Project Manager, 6900 N. Dallas Parkway Suite 100 Plano, TX (214)438-3780
SCOPE :	Install 15",12",8",6",4" Sewer Lines w/ man holes and cleanouts - Waterlines 8",6",2" w/ service connections - ADS Storm Pipe 24", 18", 15",12",10",6" and culvert pipe 24"

EDGARDO MADRID & Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

PROJECT :	Meadowbrook Addition Infrastructure Phase 1
OWNER :	Town of Pecos City
CONTRACT AMOUNT :	**$2,436,975.90**
COMPLETION DATE :	**Completed**
CONTACT INFORMATION :	Howdy Lisenbee, Assistant City Manager 115W. 3rd St. Pecos, TX 79772 432-445-2421
SCOPE :	Furnish and Install 5000 LF of 8" Waterline w/ fire hydrants and service connections
	2760 LF of 6", 1060 LF of 8", 1700 lf of 10" SDR 35 Sewer Line along w/ 60 Sewer Connections

EDGARDO MADRID & Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

REFERENCES

Thomas Kerr, Utilities Director of Public Works/ Utilities City of Odessa (432) 335-3244	tkerr@odessa-tx.gov
Yervand Hmayakyan,Head Engineer, City of Odessa (432) 335-3243	yhmayaky@odessa-tx.gov
Robert Hougland, Construction Supervisor,City of Odessa (432) 335-3227	rhouglan@odessa-tx.gov
Bobby Wojciechowski, Construction Manager, City of Midland (432) 685-7519	bwojciechowski@midlandtexas.gov
Blair Hansen, Project Manager, Robins & Morton (214) 438-3780	bhansen@robinsmorton.com

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: MIDLAND, TX.

BIDDER:

EDGARDO MADRID & ASSOCIATES, LLC
(Company Name)

By EDGARDO MADRID
(please print)

Address: 6216 SPAHN ST

Signature: _____

Title: PRESIDENT
(please print)

MIDLAND TX 79706
City State Zip

THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL

END OF SECTION

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BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. N/A

KNOW ALL MEN BY THESE PRESENTS, THAT

Edgardo Madrid & Associates, LLC

(hereinafter called the Principal), as Principal, and Merchants National Bonding, Inc.

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

Five percent of the total amount bid.....5% DOLLARS

($ 5%), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to Paul Davis Wellfield Pump Station Improvments.

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 21 day of January, 20 21.

Edgardo Madrid & Associates, LLC

Principal

By _____

Address 6216 Spahn Street

Midland, TX 79706

Merchants National Bonding, Inc.

Surety

By _____

Todd A. Stein Attorney-in-fact

Address 6700 Westown Parkway

West Des Moines, IA 50266

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

MERCHANTS BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Jeff McQuate; Mark G Levinson; Mary E Brenner Miller; Michelle Hirsch; Ruth M Pell; Sandy Kruger; Todd A Stein

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and aut hority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 1st day of October , 2020 .

MERCHANTS NATIONAL BONDING, INC. -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) -o- 1933

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.
On this 20th day of April 2020 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

NOTARIAL SEAL IOWA

POLLY MASON
Commission Number 750576
My Commission Expires
January 07, 2023

Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 21 day of January , 2021 .

MERCHANTS NATIONAL BONDING, INC. -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) -o- 1933

William Warner Jr.
Secretary

Texas Department of Insurance
Amended Certificate of Authority

License no. 95778

Licensed since: April 16, 2003

Department Certification

Merchants National Bonding, Inc.
(foreign stock casualty company)
organized under the laws of the state of Iowa

This entity has complied with the laws of the state of Texas, as applicable, and is authorized to transact the following lines of insurance:

Burglary & Theft, Fidelity & Surety, Liability Other than Auto

This amended certificate of authority is in full force and effect until it is revoked, canceled, or suspended according to law.

Given under my hand and official seal of office
in the city of Austin,

September 23, 2015

DAVID C. MATTAX
COMMISSIONER OF INSURANCE

BY _____
Godwin Ohaechesi, Director
Company Licensing and Registration
Commissioner's order no. 3632

MERCHANTS BONDING COMPANY℠

MERCHANTS NATIONAL BONDING, INC.

Statements of Admitted Assets, Liabilities, and Surplus - Statutory Basis

	Dec. 31, 2020
Admitted Assets	
Cash and Invested Assets	
Bonds	$ 36,172,310
Common Stocks	8,789,479
Cash and Short-Term Investments	4,516,851
Other Invested Assets	145,288
Total Cash and Invested Assets	49,623,928
Investment Income Due and Accrued	197,917
Premiums in the Course of Collection	5,977,322
Reinsurance Recoverable from Reinsurers	71,712
Current Federal Income Taxes Recoverable	30,692
Net Deferred Tax Asset	14,690
Total Admitted Assets	$ 55,916,261
Liabilities & Surplus	
Liabilities	
Losses	$ 1,431,853
Reinsurance Payable on Paid Losses and LAE	35,594
Loss Adjustment Expenses	1,290,481
Commissions Payable	327,859
Other Expenses	818,093
Taxes, Licenses, and Fees	10,533
Unearned Premiums	7,579,167
Dividends Declared to Policyholders	670,415
Reinsurance Payable to Reinsurers	5,758,955
Payable to Parent, Subsidiary and Affiliates	12,440,415
Total Liabilities	30,363,365
Surplus	
Common Capital Stock	3,000,000
Gross Paid In and Contributed Surplus	6,088,655
Unassigned Funds (Surplus)	16,464,241
Total Surplus	25,552,896
Total Liabilities and Policyholders' Surplus	$ 55,916,261

I, Don Blum, Treasurer of Merchants National Bonding, Inc., do hereby certify that the foregoing is a true and correct statement of the balance sheet of said Corporation as of December 31, 2020, to the best of my knowledge and belief.

Don Blum, CFO & Treasurer

March 2, 2021
Date

street 6700 Westown Parkway, West Des Moines, IA 50266-7754
mailing P.O. Box 14498, Des Moines, IA 50306-3498
toll free 800.678.8171 **local** 515.243.8171 **fax** 515.243.3854
email info@merchantsbonding.com **website** merchantsbonding.com

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY
Date Received

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

Edgardo Madrid & Associates, LLC

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

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

N/A

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

N/A

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

7

Signature of vendor doing business with the governmental entity

01/25/2022

Date

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: EDGARDO MADRID & ASSOCIATES, LLC

Local Address (must be within the City limits): 6216 SPAHN ST, MIDLAND, TX 79706

1. Is the above address the principal place of business for the business named above? ☑ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? 6
3. Year your business was established in the City of Midland: 2014
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 3-20597-8110-7

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

   EDGARDO MADRID & ASSOCIATES, LLC
   6216 SPAHN ST
   MIDLAND, TX 79706

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: 01/25/22

Printed Name and Title: EDGARDO MADRID, PRESIDENT.

EDGARDO MADRID & Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

CURRENT PROJECTS

PROJECT :	Betenbough Homes Shenandoah Phase 1
OWNER :	Betenbough Homes
ENGINEER:	
CONTRACT AMOUNT :	**$1,964,697.76**
COMPLETION DATE :	**0% Completion (award phase)**
CONTACT INFORMATION :	Jason Price 432-488-9804
SCOPE :	Installation of LF of 16",8",and 6" water and sewer line along with three hydrants, five gate valves, and 37 residential water and sewer connections.

PROJECT :	Lamesa Waterline
OWNER :	City of Lamesa
ENGINEER:	
CONTRACT AMOUNT :	**$1,264,899.48**
COMPLETION DATE :	**75%**
CONTACT INFORMATION :	Jillian Nava 806-473-3712
SCOPE :	Furnish and Install 18,800 lf of 8" PVC Waterline, 16 each 18" Gate Valves, 2 each 150 lf Bore and Casing, 5000 sy of Asphalt Patch and necessary fittings.

PROJECT :	City of Odessa Utility Contract
OWNER :	City of Odessa
ENGINEER:	Thomas Kerr, Utilities Director, 119 W. 4th Street, Odessa, TX 79761, (432) 335-4625
CONTRACT AMOUNT :	**$2,021,342.25**
COMPLETION DATE :	**1/1/2024**
CONTACT INFORMATION :	Thomas Kerr, Utilities Director, 119 W. 4th Street, Odessa, TX 79761, (432) 335-4625
SCOPE :	3 Year long contract with the City of Odessa installing water taps, sewer taps, fire hydrants , valves and line extensions on a work order basis.

PROJECT :	Loving, NM Man Camp
OWNER :	Corporate Hospitality Housing
ENGINEER:	Maverick Engineering, 1909 W Wall Street, Midland, TX, (432) 262-0999
CONTRACT AMOUNT :	**$1,983,561.72**
COMPLETION DATE :	**In Progress 90%**
CONTACT INFORMATION :	Ravi Mehta, Owner, 125 East John Carpenter Freeway, Irving, Texas (817)307-9251
SCOPE :	Construction of a 320 bed facility that includes 40 mobile homes. Construction consists in site clearing, grading, caliche base, paving, utilities and water and sewer connections.

EDGARDO MADRID
& Associates

Edgardo Madrid
President
edgardo@edgardomadrid.com
432-940-9683
6216 Spahn Street, Midland, TX 79706

PROJECT :	City of Pecos Cropac Lift Station
OWNER :	City of Pecos
ENGINEER:	West Texas Consultants 405 SW 1st St. Andrews TX 79714
CONTRACT AMOUNT :	**$614,828.90**
COMPLETION DATE :	**In Progress 85%**
CONTACT INFORMATION :	City of Pecos Cropac Lift Station 432-523-2181
SCOPE :	Construction of a package lift station and tie ins to existing mains.

COMPANY AGREEMENT
OF
EDGARDO MADRID & ASSOCIATES, LLC
A Texas Limited Liability Company

This COMPANY AGREEMENT OF **Edgardo Madrid & Associates, LLC** (this *"Agreement"*), dated as of April 18, 2016, is adopted, executed, and agreed to, for good and valuable consideration, by the Members (as defined in Sec. 2.01).

Article 1
Organization

1.01. *Formation.* Edgardo Madrid & Associates, LLC (the *"Company"*) has been organized as a Texas limited liability company by the filing of a Certificate of Formation with the Texas Secretary of State (the *"Certificate"*) under and pursuant to the Business Organizations Code (as amended from time to time, the "*BOC*").

1.02. *Name.* The name of the Company is "**Edgardo Madrid & Associates, LLC**" and all Company business must be conducted in that name or such other names that may be selected by a Majority Interest (as defined in Sec. 5.02) and that comply with applicable law.

1.03. *Registered Office; Registered Agent; Offices.* The registered office and registered agent of the Company in the State of Texas shall be as specified in the Certificate or as designated by a Majority Interest in the manner provided by applicable law. The offices of the Company shall be at such places as a Majority Interest may designate, which need not be in the State of Texas.

1.04. *Purposes.* The purposes of the Company are those set forth in the Certificate.

1.05. *Foreign Qualification.* Prior to the Company's conducting business in any jurisdiction other than Texas, the Members shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction.

1.06. *Term.* The Company commenced on the date of the filing of the Certificate with the Secretary of State of Texas and shall continue in existence until its business and affairs are wound up and the Company is terminated as provided in Article 8 of this Agreement.

1.07. *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 2
Membership; Dispositions of Interests

2.01. *Members; Sharing Ratios.* The Members of the Company are the Persons executing this Agreement as of the date hereof as members and each Person that is hereafter admitted to the Company as a member in accordance with this Agreement. If a Member shall have made a Disposition of all or any portion of its Membership Interest but shall have retained any rights therein, then solely with respect to the Membership Interest (or portion thereof) so disposed, all references to "Member" that appear in Article 4 and Sec. 8.02(b) shall be deemed to refer to the assignee of such Membership Interest but such assignee shall have no other rights or privileges hereunder. The *Sharing Ratio* of each initial Member is set forth on *Exhibit* A.

2.02. *Dispositions of Membership Interests.* A Member may not make a sale, assignment, transfer, conveyance, gift, exchange, or other disposition (voluntarily, involuntarily, or by operation of law) ("*Disposition*") of all or any portion of its rights or interest in the Company ("*Membership Interest*"), other than a Disposition resulting from the death of such Member, except with the consent of a Majority Interest (calculated without regard to the Member making such Disposition). Any attempted Disposition of all or any portion of a Membership Interest,

other than in strict accordance with this Sec. 2.02, shall be null and void *ab initio*. A Person to whom a Membership Interest is Disposed (including as a result of the death of a Member) may be admitted to the Company as a member only with the consent of a Majority Interest (calculated without regard to the Member making such Disposition); and (without limiting the generality of Sec. 5.02) each Member's consent may be given or withheld in the Member's sole and absolute discretion, with or without cause, and subject to such conditions as it shall deem appropriate ("*Sole Discretion*"). In connection with any Disposition of a Membership Interest or any portion thereof, and any admission of an assignee as a Member, the Member making such Disposition and the assignee shall furnish the other Members with such documents regarding the Disposition as a Majority Interest may request (in form and substance satisfactory to a Majority Interest), including a copy of the Disposition instrument, a ratification by the assignee of this Agreement (if the assignee is to be admitted as a Member), a legal opinion that the Disposition complies with applicable federal and state securities laws, and a legal opinion that the Disposition will not result in the Company's termination under Sec. 708 of the Internal Revenue Code of 1986 (as amended from time to time, the "*Code*").

2.03. *Encumbrances of Membership Interests*. A Member may not pledge, mortgage, subject to a security interest or lien, or otherwise encumber (voluntarily, involuntarily, or by operation of law) all or any portion of its Membership Interest without the consent of a Majority Interest, calculated without reference to the Member desiring to make such encumbrance.

2.04. *Creation of Additional Membership Interests*. Additional Membership Interests may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members, at the direction of a Majority Interest, on such terms and conditions, and with such Sharing Ratios as a Majority Interest may determine at the time of admission. A Majority Interest may reflect the admission of any new Members or the creation of any new class or group of Member in an amendment to this Agreement that need be executed only by a Majority Interest.

2.05. *Withdrawal*. A member does not have the right or power to withdraw from the Company.

2.06. *Information*. In addition to the other rights specifically set forth in this Agreement, each Member and each assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to the BOC under the circumstances and subject to the conditions therein stated.

2.07. *Liability to Third Parties*. No Member shall be liable for the debts, obligations, or liabilities of the Company, including under a judgment decree or order of a court.

2.08. *Expulsion*. A Member may not be expelled from the Company.

2.09. *Spouses of Members*. Spouses of the Members do not become Members as a result of such marital relationship.

2.10. *Death of a Member*. Upon the death of a Member, the Company must have the first option to purchase the deceased Member's interest.

Article 3
Capital Contributions

3.01. *Initial Contributions*. Each Member shall provide $500.00 as initial contribution of capital.

3.02. *Subsequent Contributions*. Without creating any rights in favor of any third party, each Member may contribute to the Company, an amount of cash, that in the judgment of a Majority Interest is necessary to enable the Company to cause the assets of the Company to be properly operated and maintained and to discharge its costs, expenses, obligations, and liabilities

3.03. *Return of Contributions*. A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account or its Capital Contributions. An unrepaid

Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

3.04. *Advances by Members.* If the Company does not have sufficient cash to pay its obligations, any Member(s), with the consent of a Majority Interest, may advance all or part of the needed funds to or on behalf of the Company, at such interest rate and on such other terms as such Member and a Majority Interest may agree. An advance described in this Sec. 3.04 constitutes a loan from the Member to the Company and is not a Capital Contribution.

Article 4
Distributions and Allocations

4.01. *Distributions.* At such time as determined by a Majority Interest, but in no event no less often than annually on or before the thirtieth (30th) day after the end of the fiscal year, Net Cash Flow (as defined in this Sec. 4.01) for each fiscal year (or such shorter period for which the distribution is made) shall be distributed to the Members in proportion to their Sharing Ratios. The term "Net Cash Flow" shall mean all cash funds derived by the Company (including interest received on reserves, borrowings, and capital transactions), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses, debt payments, capital improvements, replacements, and establish reasonable reserves for future expenses and costs as determined by a Majority Interest.

4.02. *Allocations.* Except as may be required by Code Sec. 704(c) and Treasury Regulation Sec. 1.704-3, all items of income, gain, loss, deduction, and credit of the Company shall be allocated to the Members in their Sharing Ratios.

Article 5
Management

5.01. *Management by Members.* The management of the Company is fully reserved to its Members, and the Company shall not have "managers," as that term is used in the BOC. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of its Members. In managing the business and affairs of the Company and exercising its powers, the Members shall act (a) collectively through resolutions adopted at meetings and in written consents pursuant to Secs. 5.02 and 5.06; and (b) through committees and individual Members to which authorities and duties have been delegated pursuant to Sec. 5.04. No Member has the right, power, or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company, except in accordance with the immediately preceding sentence. Decisions or actions taken by the Members in accordance with this Agreement (including this Sec. 5.01 and Sec. 5.02) shall constitute decisions or actions by the Company and shall be binding on each Member, Officer (as defined in Sec. 5.07), and employee of the Company.

5.02. *Meetings of Members.* Regular meetings of the Members may be held on such dates and at such times as shall be determined by Members holding among them at least a majority of all Sharing Ratios (a *"Majority Interest"*), with notice of the establishment of such regular meeting schedule being given to each Member that was not present at the meeting at which it was adopted. Special meetings of the Members may be called by Members holding among them at least ten percent of the Sharing Ratios of all Members, by notice thereof (specifying the place and time of such meeting) that is delivered to each other Member at least three days prior to such meeting. Neither the business to be transacted at, nor the purpose of, such special meeting need be specified in the notice (or waiver of notice) thereof. Unless otherwise expressly provided in this Agreement, at any meeting of the Members, a Majority Interest, represented either in person or by proxy, shall constitute a quorum for the transaction of business, and an act of a Majority Interest shall be the act of the Members. Each Member may, with respect to any vote, consent, or approval that it is entitled to grant pursuant to this Agreement, grant or withhold such vote, consent, or approval in its Sole Discretion.

5.03. *Decisions Requiring Supermajority Consent.* Notwithstanding any power or authority granted a Majority Interest under the BOC, the Certificate or this Agreement, (a) a Majority Interest may not make any decision or take any action for which the consent of a greater number of the Members is expressly required by the

Certificate or this Agreement, without first such obtaining such consent, and (b) a Majority Interest may not make any of the following decisions or actions without first obtaining the consent of Members holding among them at least 66% of all Sharing Ratios.

5.04. *Committees of Members; Delegation of Authority to Individual Members.* A Majority Interest may designate one or more committees, each of which shall be comprised of one or more of the Members, and may designate one or more of the Members as alternate members of any committee. Except for matters that cannot be delegated to such a committee pursuant to Article 2.18(B) of the BOC (but notwithstanding the last sentence of Article 2.18(A) of the BOC), any such committee, to the extent provided in the resolution establishing it, shall have and may exercise all of the authority that may be exercised by a Majority Interest. Regular and special meetings of such committee shall be held in the manner designated by a Majority Interest or, if not so designated, by such committee. A Majority Interest may dissolve any committee at any time. In addition, a Majority Interest may delegate to one or more Members such authority and duties, and assign to them such titles, as a Majority Interest may deem advisable. Any such delegation may be revoked at any time by a Majority Interest.

5.05. *Compensation.* The Members shall receive such compensation, if any, for their services in the management of the Company as may be designated by a Majority Interest. In addition, the Members shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service in the management of the Company.

5.06. *Provisions Applicable to All Meetings.* In connection with any meeting of the Members or any committee thereof, the following provisions shall apply:

(a) *Place of Meeting.* Any such meeting shall be held at the principal place of business of the Company, unless the notice of such meeting (or resolution of the Members or committee, as applicable) specifies a different place, which need not be in the State of Texas.

(b) *Waiver of Notice Through Attendance.* Attendance of a Person at such meeting (including pursuant to Sec. 5.06(e)) shall constitute a waiver of notice of such meeting, except where such Person attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) *Proxies.* A Person may vote at such meeting by a written proxy executed by that Person and delivered to another Member or member of the committee, as applicable. A proxy shall be revocable unless it is stated to be irrevocable.

(d) *Action by Written Consent.* Any action required or permitted to be taken at such a meeting may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the Members or members of the committee, as applicable, having not fewer than the minimum number of Sharing Ratios or votes that would be necessary to take the action at a meeting at which all Members or members of the committee, as applicable, entitled to vote on the action were present and voted.

(e) *Meetings by Telephone.* Members or members of the committee, as applicable, may participate in and hold such meeting by means of conference telephone, videoconference, or similar communications equipment by means of which all Persons participating in the meeting can hear each other.

5.07. *Officers.* A Majority Interest may designate one or more Persons to be officers of the Company ("*Officers*"), and any Officers so designated shall have such title, authorities, duties, and salaries as a Majority Interest may delegate to them. Any Officer may be removed as such, either with or without cause, by a Majority Interest.

5.08. *Limitations on Duties and Liabilities of Members.* A Member shall be liable to the Company and the other Members for acts or omissions in the management of the Company only in the case of gross negligence, willful misconduct or breach of this Agreement by such Member; but a Member shall not be liable to the Company or any other Member for any other acts or omissions, including the negligence, strict liability or other fault or

responsibility (short of gross negligence, willful misconduct or breach of this Agreement) by such Member. Except for such duties as may be expressly set forth in this Agreement, a Member shall not be subject to any duties (including fiduciary duties) in the management of the Company.

5.09. *Conflicts of Interest.* Subject to the other express provisions of this Agreement, each Member, Officer, or affiliate thereof may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member or Officer the right to participate therein. The Company may transact business with any Member, Officer, or affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

5.10. *Indemnification.* The Company shall indemnify, defend, protect and hold harmless each Member from and against all actions, suits or proceedings (collectively, "*Proceedings*"), and all other claims, demands, losses, damages, liabilities, judgments, awards, penalties, fines, settlements, costs and expenses (including court costs and reasonable attorneys' fees), arising out of the management of the Company or such Member's service or status as a Member. **THIS INDEMNITY SHALL APPLY TO MATTERS THAT ARISE OUT OF THE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY BY SUCH MEMBER; PROVIDED, HOWEVER, THAT THIS INDEMNITY SHALL NOT APPLY TO MATTERS ARISING OUT OF THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THIS AGREEMENT BY SUCH MEMBER.** The Company, by adoption of a resolution of a Majority Interest, may indemnify an Officer, employee, or agent of the Company to the same extent and subject to the same conditions under which it may indemnify Members under the proceeding sentence. The Company may purchase and maintain insurance to protect itself and any Member, Officer, employee, or agent of the Company.

Article 6
Taxes

6.01. *Tax Returns.* The Company shall prepare and timely file all federal, state, and local tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver a copy of each such return to the Members on or before ten days prior to the due date of any such return, together with such additional information as may be required by the Members in order for the Members to file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

6.02. *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

(a) to adopt a fiscal year beginning January 1st, and ending December 31st;

(b) to adopt the cash basis method of accounting and to keep the Company's books and records on the income-tax method;

(c) if a distribution of the Company's property as described in Code Sec. 734 occurs or upon a transfer of Membership Interests as described in Code Sec. 743 occurs, on request by notice from any Member, to elect, pursuant to Code Sec. 754, to adjust the basis of Company's properties;

(d) to elect to amortize the organizational expenses of the Company ratably over a period of 60 months as permitted by Code Sec. 709(b); and

(e) any other election a Majority Interest may deem appropriate and in the best interests of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of

applicable state law and no provision of this Agreement (including Sec. 1.07) shall be construed to sanction or approve such an election.

6.03. *Tax Matters Member.* A Majority Interest shall designate one Member to be the "tax matters partner" of the Company pursuant to Code Sec. 6231(a)(7) (the "*Tax Matters Member*"). The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each other Member to become a "notice partner" within the meaning of Code Sec. 6223. The Tax Matters Member shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Tax Matters Member shall take no action without the authorization of a Majority Interest, other than such action as may be required by applicable law. Any cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

Article 7
Books, Records, and Bank Accounts

7.01. *Books and Records.* The Members shall keep or cause to be kept at the principal office of the Company complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business, and minutes of the proceedings of its Members and each committee thereof. The books and records shall be maintained with respect to accounting matters in accordance with sound accounting practices, and all books and records shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

7.02. *Reports.* Within seventy-five days after the end of each taxable year, the Company shall cause to be sent to each Member at the end of the taxable year a complete accounting of the financial affairs of the Company for the taxable year then ended.

7.03. *Accounts.* The Members shall establish one or more separate bank and investment accounts and arrangements for the Company, which shall be maintained in the Company's name with financial institutions and firms that a Majority Interest determine. The Members may not commingle the Company's funds with the funds of any Member.

Article 8
Winding Up and Termination

8.01. *Events Requiring Winding Up.*

(a) Subject to Sec. 8.01(b), the Company shall be wound up on the first to occur of the following events:

(i) the expiration of the period, if any, fixed for the duration of the Company in the Certificate;

(ii) the consent of **a Majority Interest;**

(iii) entry of a decree of judicial dissolution of the Company under Sec. 11.314 of the BOC; and

(iv) the occurrence of an event described in Sec. 11.056 of the BOC and the failure of the legal representative or the successor of the Member to take the actions required by Sec. 11.056 of the BOC within the time specified therein.

No other event (including an event described in Sec. 11.056 of the BOC) will cause the Company to be wound up.

(b) If an event described in subparagraph (i) of Sec. 8.01(a) shall occur and there shall be at least one other Member remaining, the Company shall not be wound up, and the business of the Company shall be continued, if all of the Members, so agree within 60 days of the occurrence of such event. If such election is made following the

occurrence of an event described in subparagraph (i) of Sec. 8.01(a), the Members shall promptly cancel or revoke the event requiring the winding up in the manner specified in BOC Chapter 101.

8.02. *Winding Up and Termination.*

(a) On the occurrence of an event described in Sec. 8.01(a), unless an election is made to continue the business of the Company pursuant to Sec. 8.01(b), the Members shall act as liquidator or may appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company as provided in the BOC. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of a Majority Interest. The costs of winding up shall be borne as a Company expense.

(b) Any assets of the Company remaining at the conclusion of the winding-up process shall be distributed among the Members in accordance with their Sharing Ratios. All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination. The distribution of cash and/or property to a Member in accordance with the provisions of this Sec. 8.02(b) constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented within the meaning of the BOC.

(c) On completion of such final distribution, the Members shall file a Certificate of Termination with the Secretary of State of Texas, cancel any other filings made pursuant to Sec. 1.05, and take such other actions as may be necessary to terminate the existence of the Company.

8.03. *No Restoration of Capital Accounts.* No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance that may exist from time to time in any capital or similar account maintained for such Member for any purpose.

Article 9
General Provisions

9.01. *Offset.* Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

9.02. *Notices.* All notices, requests, or consents under this Agreement shall be (a) in writing, (b) delivered to the recipient in person, by courier or mail or by facsimile, or similar transmission, (c) if to a Member, delivered to such Member at the applicable address on *Exhibit* A or such other address as that Member may specify by notice to the other Members, and (d) effective only upon actual receipt by such Person. Whenever any notice is required to be given by applicable law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

9.03. *Entire Agreement; Supersedure.* This Agreement constitutes the entire agreement of the Members relating to the Company and supersede all prior contracts or agreements with respect to the Company, whether oral or written.

9.04. *Effect of Waiver or Consent.* A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company.

9.05. *Amendments of Certificate and Agreement.* The Certificate and this Agreement may be amended or restated only with the unanimous approval of the Members; provided, however, that amendments of the type described in Sec. 2.04 may be adopted as therein provided.

9.06. *Binding Effect.* Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

9.07. *Governing Law, Severability.* **THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING ITS CONFLICT-OF-LAWS RULES).** If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by applicable law.

9.08. *Construction.* Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter; (b) the word "including" means "including, without limitation"; (c) references to Articles and Sections refer to Articles and Sections of this Agreement; and (d) references to Exhibits are to Exhibits attached to this Agreement, each of which is made a part hereof for all purposes.

9.09. *Further Assurances.* In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and per- form the provisions of this Agreement and those transactions.

9.10. *Counterparts.* This Agreement may be executed in any number of counterparts, all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Members have adopted and executed this Agreement as of the date first set forth above.

MEMBERS

By: _____ 04/18/16
Edgardo Madrid — Date

By: María Teresa Madrid 04/18/16
Maria Teresa Madrid — Date

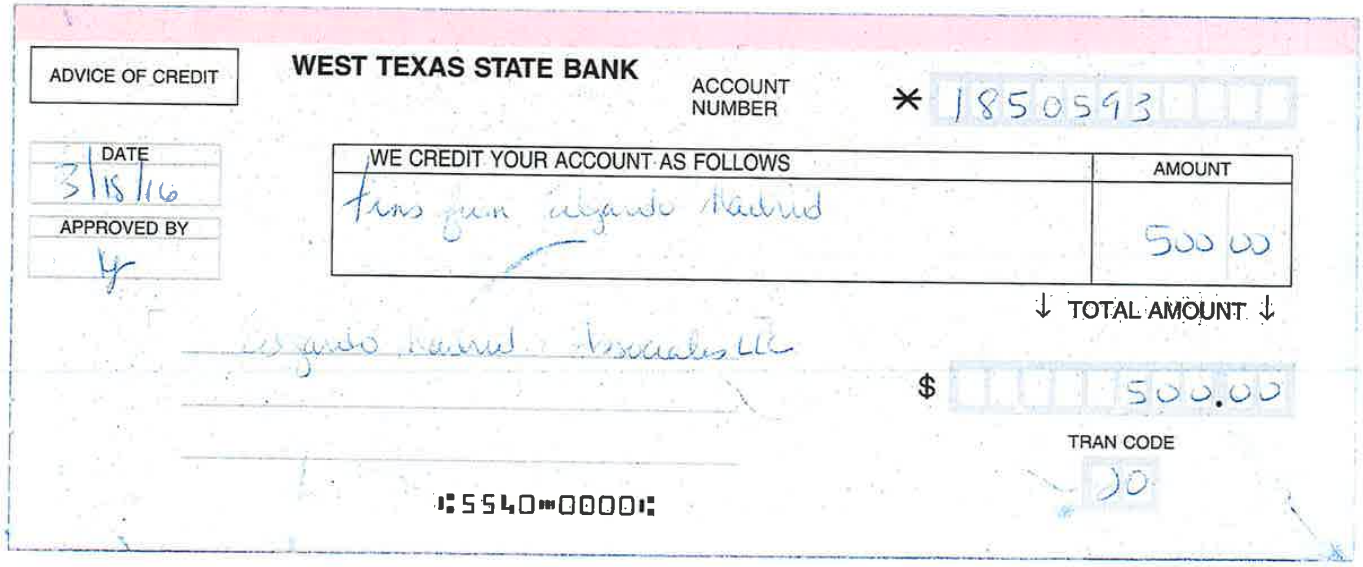
By: _____ 04/18/2016
Edgardo J. Madrid — Date

EXHIBIT A

Edgardo Madrid
Initial Capital Contribution: $500.00
Sharing Ratio: 34%

Maria Teresa Madrid
Initial Capital Contribution: $500.00
Sharing Ratio: 33%

Edgardo J. Madrid
Initial Capital Contribution: $500.00
Sharing Ratio: 33%



ADVICE OF CREDIT

WEST TEXAS STATE BANK

ACCOUNT NUMBER * 1850593

DATE 3/15/16

APPROVED BY

WE CREDIT YOUR ACCOUNT AS FOLLOWS	AMOUNT
Trans gran Abgado Madrid	500 00

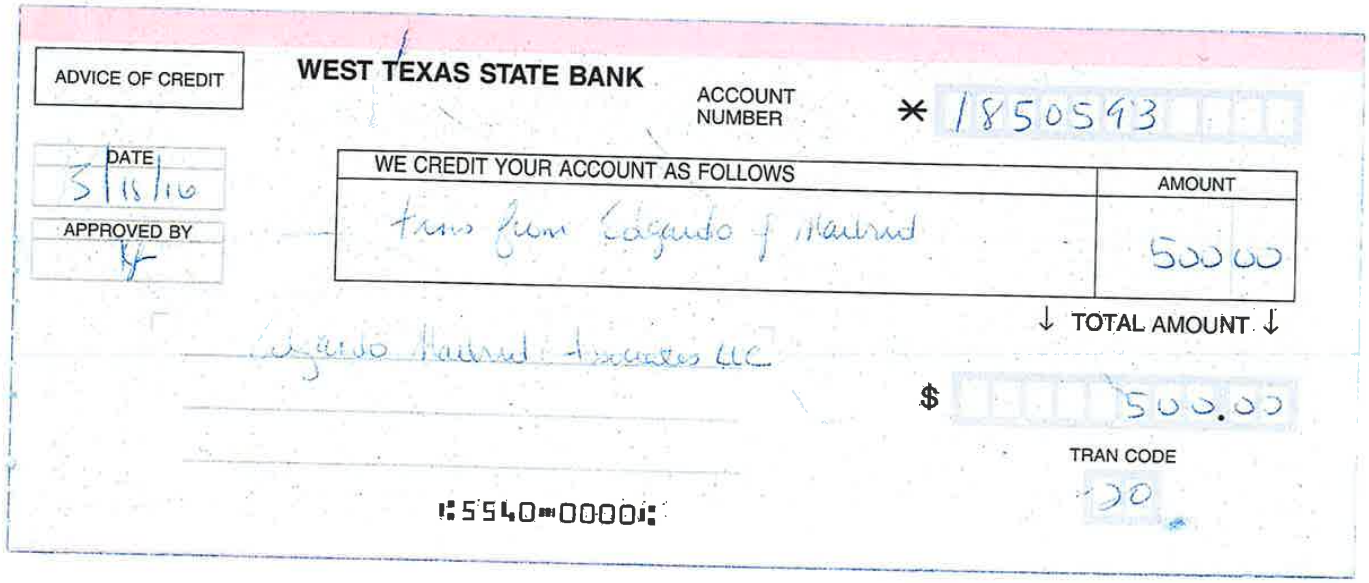
↓ TOTAL AMOUNT ↓

$ 500.00

TRAN CODE 10

⑆5540⑈0000⑆

Abgado Madrid Associates LLC



ADVICE OF CREDIT

WEST TEXAS STATE BANK

ACCOUNT NUMBER * 1850593

DATE 3/15/16

APPROVED BY

WE CREDIT YOUR ACCOUNT AS FOLLOWS	AMOUNT
trans from Edgardo of Madrid	500 00

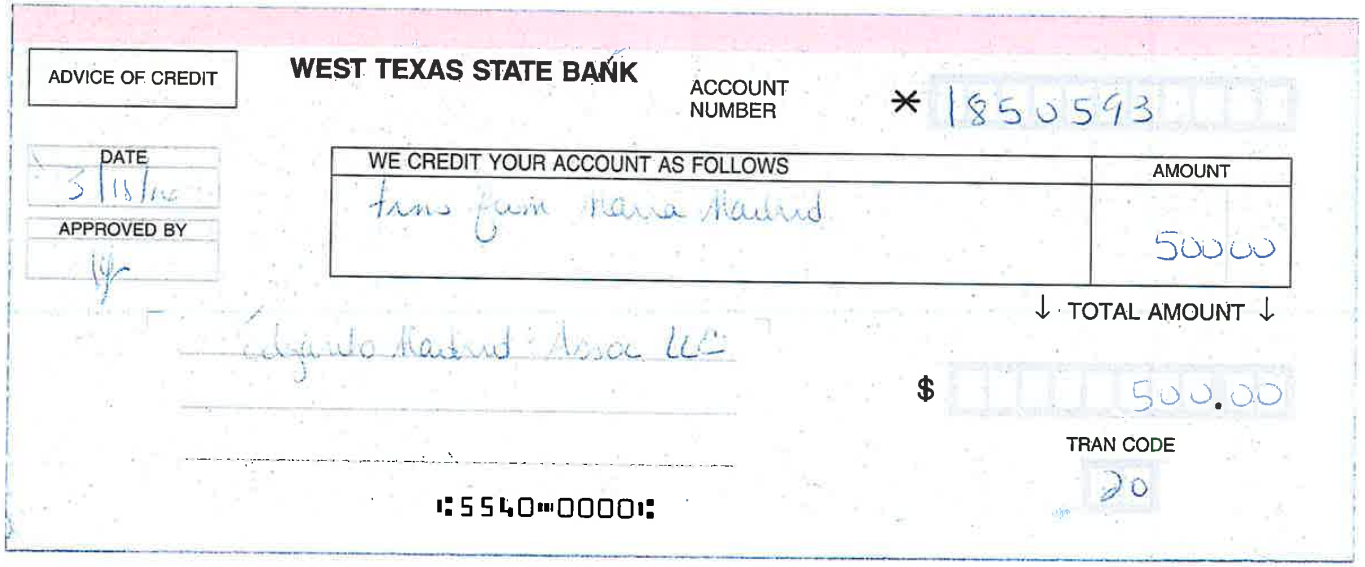
↓ TOTAL AMOUNT ↓

Edgardo Madrid Investments LLC

$ 500.00

TRAN CODE 20

⑆5540⑆0000⑆



ADVICE OF CREDIT

WEST TEXAS STATE BANK

ACCOUNT NUMBER * 1850593

DATE 3/15/22

APPROVED BY

WE CREDIT YOUR ACCOUNT AS FOLLOWS	AMOUNT
trans from Maria Madrid	5000

↓ TOTAL AMOUNT ↓

$ 500.00

TRAN CODE 20

Edgardo Madrid Assoc LLC

⑆5540⑈0000⑆

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PO BOX 13087 MC-178 ✦ AUSTIN TEXAS 78711-3087

Pursuant to authorization from the Executive Director of the Texas Commission on Environmental Quality, the Manager of the Operator Licensing Section of the Permitting and Registration Support Division has issued the enclosed WATER DISTRIBUTION OPERATOR certificate and pocket card.

RECEIPT OF PAYMENT

Fee Type: RENEWAL APPLICATION
Date Fee Paid: 05/31/2019
Amount Paid: $ 111.00

TEST SCORE: N/A

CONTACT INFORMATION
WATER LICENSING
(512)239-6133

For general information about licensing visit:
www.tceq.texas.gov/licensing
Pursuant to 30 TAC 30.24(k), you are required to notify the TCEQ of any contact information changes within 10 days of the date the change occurs.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EDGARDO MADRID
Is hereby licensed as a
WATER DISTRIBUTION OPERATOR

Class	License Number	Expires
C	WD0013289	06/01/2022

SIGNATURE EXECUTIVE DIRECTOR

TCEQ VIPP Form oce3 (09-07-06)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Be it known that

EDGARDO MADRID

has fulfilled the requirements in accordance with the laws of the State of Texas for

CLASS C WATER DISTRIBUTION OPERATOR

License Number: **WD0013289**
Issue Date: **06/05/2019**
Expiration Date: **06/01/2022**

Executive Director
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Be it known that

ASAEL GARCIA

has fulfilled the requirements in accordance with the laws of the State of Texas for

CLASS C WASTEWATER TREATMENT OPERATOR

License Number: **WW0058414**
Issue Date: **09/16/2020**
Expiration Date: **11/16/2023**

Executive Director
Texas Commission on Environmental Quality

Edgardo Madrid & Associates, LLC

Financial Report
December 31, 2019

weaver
Assurance · Tax · Advisory

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Independent Accountant's Review Report

To the Members of
Edgardo Madrid & Associates LLC
Midland, Texas

We have reviewed the accompanying financial statements of Edgardo Madrid & Associates LLC (the Company) which comprise the balance sheet as of December 31, 2019 and the related statements of operations, changes in members' equity, and cash flows for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Accountant's Responsibility

Our responsibility is to conduct the review in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

Accountant's Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Weaver and Tidwell, L.L.P.
400 West Illinois Avenue, Suite 1550 | Midland, Texas 79701
Main: 432.683.5226

The Members of
Edgardo Madrid & Associates, LLC

Other Matter

The supplemental schedule appearing on pages 15 through 16 is presented for purposes of additional analysis and is not a required part of the basic financial statements. The information is the representation of management. We have reviewed the information and, based on our review, we are not aware of any material modifications that should be made to the information in order for it to be in accordance with accounting principles generally accepted in the United States of America. We have not audited the information and, accordingly, do not express an opinion on such information.

Weaver and Tidwell, L.L.P.

WEAVER AND TIDWELL, L.L.P.

Midland, Texas
August 27, 2020

Edgardo Madrid & Associates, LLC

Balance Sheet

December 31, 2019

ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$	162,245
Certificate of deposit		50,053
Construction contract receivables		1,955,529
Retainage receivables		68,875
Costs and estimated earnings in excess of billings on uncompleted contracts		784,856
Total current assets		3,021,558
PROPERTY AND EQUIPMENT		
Machinery and equipment		1,384,567
Vehicles & Trailors		360,196
Land		1,382,676
Total property and equipment		3,127,439
Less accumulated depreciation		484,545
Property and equipment, net		2,642,894
TOTAL ASSETS	$	5,664,452
LIABILITIES AND MEMBERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	$	509,846
Billings in excess of costs and estimated earnings on uncompleted contracts		94,330
Accrued liabilities		229,363
Current maturities of long-term debt		351,301
Total current liabilities		1,184,840
LONG-TERM DEBT, net of current maturities		1,149,492
Total liabilities		2,334,332
MEMBERS' EQUITY		
Members' equity		3,330,120
TOTAL LIABILITIES AND MEMBERS' EQUITY	$	5,664,452

The notes to financial statements are an integral part of this statement.

Edgardo Madrid & Associates, LLC

Statement of Operations
Year Ended December 31, 2019

CONSTRUCTION REVENUE	$ 14,139,274
CONSTRUCTION COSTS	10,858,708
Gross profit	3,280,566
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	897,722
Operating income	2,382,844
OTHER EXPENSES	
Interest expense	87,985
Income before provision for state income taxes	2,294,859
Franchise tax expense	11,740
NET INCOME	$ 2,283,119

The notes to financial statements are an integral part of this statement.

Edgardo Madrid & Associates, LLC

Statement of Changes in Members' Equity
Year Ended December 31, 2019

BALANCE, January 1, 2019	$	1,411,706
Net income		2,283,119
Distributions		(364,705)
BALANCE, December 31, 2019	$	3,330,120

The notes to financial statements are an integral part of this statement.

Edgardo Madrid & Associates, LLC

Statement of Cash Flows
Year Ended December 31, 2019

CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$	2,283,119
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation		(275,038)
Changes in operating assets and liabilities		
Construction contract receivables		(1,112,206)
Retainage receivables		(68,875)
Costs and estimated earnings in excess of billings on uncompleted contracts		(553,901)
Accounts payable		(106,206)
Accrued liabilities		216,798
Billings in excess of costs and estimated earnings on uncompleted contracts		(34,801)
Net cash provided by operating activities		348,890
CASH FLOWS USED IN INVESTING ACTIVITIES		
Decrease from redemption of certificates of deposit		(53)
Addition of fixed assets		(1,363,947)
Net cash used in investing activities		(1,364,000)
CASH FLOWS USED IN FINANCING ACTIVITIES		
Increase in notes payable		620,326
Distributions to members		(364,705)
Net cash provided by financing activities		255,621
Net decrease in cash and cash equivalents		(759,489)
CASH AND CASH EQUIVALENTS, beginning of year		921,734
CASH AND CASH EQUIVALENTS, end of year	$	162,245
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	$	89,939
Taxes paid	$	72,512

The notes to financial statements are an integral part of this statement.

Edgardo Madrid & Associates, LLC

Notes to Financial Statements

Note 1. Summary of Significant Accounting Policies

Business Activity

Edgardo Madrid & Associates LLC (the Company) acts as general contractor on commercial construction contracts primarily in Texas. Construction projects are normally completed within twelve months. The construction work is performed generally under fixed-price contracts, guaranteed maximum price contracts, or cost plus construction management at-risk contracts.

Principles of Revenue and Cost Recognition

The Company records revenues from its fixed-price, long-term contracts using the percentage-of-completion method, whereby revenues are recorded based on construction costs incurred as a percentage of total estimated construction costs. The percentage-of-completion, determined using total costs incurred to date as a percentage of estimated total cost at completion, reflects the actual physical completion of the project.

When the current contract estimate indicates a loss, provision is made for the total anticipated loss. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. The current asset caption, "Costs and estimated earnings in excess of billings on uncompleted contracts," represents revenues recognized in excess of amounts billed. The current liability caption, "Billings in excess of costs and estimated earnings on uncompleted contracts," represents billings in excess of revenues recognized.

Contract costs include all direct material and labor costs and those indirect costs related to contract performance, such as indirect labor, supplies, tools, repairs, and depreciation costs. Selling, general, and administrative costs are charged to expense as incurred.

Changes in job performance, job conditions, estimated profitability and final contract settlements may result in revisions to costs and income and are recognized in the period in which the revisions are determined. It is possible these estimates could be revised in the near term and these revisions could be material.

Management Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revisions in estimated contract profits are made in the year in which circumstances requiring the revision become known. For the year ended December 31, 2019, the effect of changes in estimates of contract profits was immaterial to the overall financial statements from that which would have been reported had the revised estimate been used as the basis of recognition of contract profits in the preceding year.

Cash and Cash Equivalents

For purposes of reporting cash flows, the Company considers all highly liquid investments with an initial maturity of less than three months to be cash equivalents.

Receivables and Credit Policies

Construction contract receivables are stated at the amounts management expects to collect from outstanding balances. The carrying amounts of construction contract receivables are reduced by a valuation allowance, if needed, that reflects management's best estimate of the amounts that will not be collected. Management individually reviews all receivable balances that exceed 90 days from invoice date and, based on an assessment of current creditworthiness, estimates the portion, if any, of the balance that will not be collected. Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts.

Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to the respective receivable account. There were no changes deemed necessary in the valuation allowance as of December 31, 2019.

Balance Sheet Classifications

The Company includes in current assets and liabilities retentions receivable and payable under construction contracts that may extend beyond one year. A one-year time period is used in classifying all other current assets and liabilities.

Property and Equipment

Property and equipment are stated at cost. The costs of renewals and betterments are added to the property accounts. Maintenance and repair costs are charged to expense as incurred. The cost and related accumulated depreciation applicable to assets sold or retired are removed from the accounts and the gain or loss on disposition is recognized. Depreciation expense for the year ended December 31, 2019 totaled $275,038. Depreciation of property and equipment is provided using the straight-line method over estimated useful lives as follows:

Machinery & Equipment	3 - 7 years
Vehicles & Trailers	3 - 7 years

Long-Lived Assets

The Company's long-lived assets and other assets to be held and used are reviewed for impairment in accordance with the guidance of the FASB ASC 360-10, *Property, Plant, and Equipment,* whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of an asset to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such asset is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. The Company has determined there are no impairment losses for the year ended December 31, 2019.

Income Taxes

For federal income tax purposes, the Company has elected to be treated as an S-Corporation. Under this provision, the net taxable income of the Company and any related tax credits are deemed to pass to the members and are included in their income tax returns even though such net taxable income or tax credits may not actually have been distributed. Accordingly, no federal tax provision has been made in the financial statements for this entity since the income tax is a personal obligation of the members.

Additionally, no provision has been made for amounts which may be advanced or paid as dividends and distributions to the members to assist in paying personal income taxes on taxable Company income which is deemed to flow to the individuals.

A provision for Texas Franchise tax under the Texas Margin Tax Bill totaling $11,742 was recorded in income tax expense within the financial statements for the year ended December 31, 2019.

The Company recognizes interest and penalties on state income taxes in general and administrative expenses. For the years ended December 31, 2019, the Company had no interest and penalties on state income taxes.

Other Taxes

The Company collects various taxes from customers and remits these amounts to applicable taxing authorities. The Company's accounting policy is to exclude these taxes from revenues and cost of sales. Sales tax payable of $1,775 is recorded within accrued liabilities as of December 31, 2019.

Uncertain Tax Positions

The Financial Statement Standards Board (FASB) Accounting Standards Codification (ASC) 740, *Income Taxes*, clarifies the accounting for uncertainties in income taxes by prescribing a minimum recognition threshold that a tax position is required to meet before being recognized in the financial statements. FASB ASC 740 requires that the Company recognize in its financial statements the financial effects of a tax position, if that position is more likely than not of being sustained upon examination, including resolution of any appeals or litigation processes, based upon the technical merits of the position.

FASB ASC 740 also provides guidance on measurement, classification, interest and penalties and disclosure. Tax positions taken related to the Company's pass-through status and those taken in determining their state income tax liability, including deductibility of expenses, have been reviewed, and management is of the opinion that material positions taken by the Company would more likely than not be sustained upon examination. Accordingly, the Company has not recorded an income tax liability for uncertain tax benefit as of December 31, 2019.

Warranties

Many construction contracts contain warranty provisions covering defects in equipment, materials, design or workmanship that generally run one year after the customer accepts the project. Because of the nature of the projects, including contract owner inspections of the work both during construction and prior to acceptance, the Company has not experienced significant warranty costs for these short-term warranties, and, therefore, the accrual for these costs at December 31, 2019 is not material to the financial statements.

Concentration of Credit Risk

The Company's financial instruments that are subject to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company provides construction contracting services to commercial, institutional, and retail customers primarily in Ector and surrounding counties. Collateral is not required for credit extended to the Company's customers in the form of accounts receivable. The Company maintains statutory lien rights on construction projects which effectively serve as collateral for contract receivables. The Company places its cash and cash equivalents in a financial institution. At times, such balances may be in excess of the FDIC insurance limits.

Major customers are defined as those customers comprising more than 10% of the Company's annual revenues. For the year ended December 31, 2019 the Company had four customers representing approximately $10,906,609 or 81% of the Company's revenue, and two major customers encompassed 71% of total contract receivables as of December 31, 2019.

Major vendors are defined as those vendors comprising more than 10% of the Company's annual expense. For the year ended December 31, 2019, the Company had 3 major vendors representing approximately $5,108,888 or 46% of the Company's vendor expenses, and two major vendors encompassed 86% of total accounts payable as of December 31, 2019.

Recent Accounting Pronouncements

In November 2018, the FASB issued ASU No. 2018-18, "Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606," (ASU 2018-18) which, among other things, clarifies that (i) certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606 when the collaborative arrangement participant is a customer in the context of a unit of account, (ii) adds unit-of-account guidance in Topic 808 to align with the guidance in Topic 606 and (iii) requires that in a transaction with a collaborative arrangement participant that is not directly related to sales to third parties, presenting the transaction together with revenue recognized under Topic 606 is precluded if the collaborative arrangement participant is not a customer. ASU 2018- 18 is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years and early adoption is permitted. The amendments in this update should be applied retrospectively to the date of initial application of Topic 606. An entity should recognize the cumulative effect of initially applying the amendments as an adjustment to the opening balance of retained earnings of the later of the earliest annual period presented and the annual period that includes the date of the entity's initial application of Topic 606.

The FASB and the international Accounting Standards Board (IASB) initiated a joint project to clarify the principles for recognizing revenue and to develop a common revenue standard for US GAAP and IFRS.

The FASB has amended the FASB Accounting Standards Codification and created Topic 606, *Revenue from Contracts with Customers*. The core principle of the guide is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

To achieve that core principle, an entity should apply the following steps:

Step 1: Identify the contract(s) with a customer.
Step 2: Identify the performance obligations in the contract.
Step 3: Determine the transaction price.
Step 4: Allocate the transaction price to the performance obligations in the contract.
Step 5: Recognize revenue when (or as) the entity satisfies a performance obligation.

The amendments in this update are affective for annual reporting periods beginning after December 15, 2019.

In February 2016, the FASB issued ASU 2016-02, Leases. The guidance requires lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by leases with terms of more than 12 months. ASU 2016-02 also requires disclosures designed to give financial statement users information on the amount, timing, and uncertainty of cash flows arising from leases. The standard will be effective for annual and interim periods beginning after December 15, 2021, with earlier application permitted.

The Company is evaluating the effect of these pronouncements on the financial statements.

Note 2. Construction Contract Receivables & Liabilities

Construction contract receivables at December 31, 2019 consisted of the following:

Contract receivables billed		
Completed contracts	$	1,881,088
Contracts in progress		74,441
Retainage receivables		68,875
Total construction contract and service receivables	$	2,024,404

Construction contract receivables at December 31, 2019 are aged as follows:

0-30 days	$	1,732,308
31-60 days		7,952
61-90 days		215,269
Retainage receivables		68,875
Total construction contract and service receivables	$	2,024,404

Note 3. Costs, Estimated Earnings and Billings on Uncompleted Contracts

Costs incurred on uncompleted contracts	$	6,029,853
Estimated earnings recognized to date		1,941,174
Total		7,971,027
Less billings to date		(7,280,501)
Total	$	690,526
Costs and estimated earnings in excess of billings on uncompleted contracts	$	784,856
Billings in excess of costs and estimated earnings on uncompleted contracts		(94,330)
Net total	$	690,526

Note 4. Operating Leases

The Company leases office spaces and yards under non-cancelable agreements classified as operating leases. Future minimum lease payments under these leases are as follows:

Year Ending December 31,	
2020	160,500
2021	113,400
	$ 273,900

Total rent expense for the year ended December 31, 2019 totaled $125,379 and is allocated to selling, general, and administrative expense and cost of sales.

Note 5. Long-Term Debt

Long-term debt at December 31 consisted of the following:

Note payable to a financial institution maturing in April 2024; 60 month term loan, variable interest rate, monthly payments of $14,029, secured by real property.	$ 657,892
Note payable to a financial institution maturing in September 2027; 12 month term loan, variable interest rate, monthly payments of $1,742, secured by real property.	125,970
Note payable to a financial institution maturing in May 2023; 60 month term loan, fixed interest rate of 6%, monthly payments of $609, secured by real property.	26,181
Note payable to a financial institution maturing in November 2022; 60 month term loan, fixed interest rate of 5.95%, monthly payments of $2,057, secured by real property.	64,235
Note payable to a financial institution maturing in May 2023; 48 month term loan, fixed interest rate of 6.45%, monthly payments of $3,216, secured by real property.	112,293
Note payable to a financial institution maturing in August 2024; 60 month term loan, fixed interest rate of 6%, monthly payments of $2,646, secured by real property.	102,308
Note payable to a financial institution maturing in November 2024; 60 month term loan, fixed interest rate of 4.5%, monthly payments of $3,150, secured by real property.	166,861
Note payable to a financial institution maturing in March 2023; 60 month term loan, fixed interest rate of 5.5%, monthly payments of $1,274, secured by real property.	44,634
Note payable to a financial institution maturing in April 2023; 60 month term loan, fixed interest rate of 9.65%, monthly payments of $890, secured by real property.	30,710
Note payable to a financial institution maturing in October 2022; 36 month term loan, fixed interest rate of 8.95%, monthly payments of $1,482, secured by real property.	44,341
Note payable to a financial institution maturing in January 2021; 26 month term loan, fixed interest rate of 2.9%, monthly payments of $1,805, secured by real property.	41,742
Note payable to a financial institution maturing in September 2022; 48 month term loan, fixed interest rate of 10.2%, monthly payments of $1,070, secured by real property.	31,945
Note payable to a financial institution maturing in July 2022; 36 month term loan, fixed interest rate of 3.9%, monthly payments of $1,812, secured by real property.	51,681
Total	1,500,793
Less current maturities	351,301
Long-term debt	$ 1,149,492

Long-term debt at December 31 consisted of the following:

Year Ending December 31,		
Current	$	351,301
2021		372,326
2022		351,340
2023		259,431
Thereafter		166,395
	$	1,500,793

Note 6. Backlog

Backlog, representing the amount of revenue the Company expects to realize from work to be performed on uncompleted contracts in progress at December 31, 2019, totaled approximately $5,600,000.

Note 7. Surety Bonds

The Members are occasionally required to furnish performance and payment bonds to its contract owners as a condition for entering its construction contracts. The bonds are secured by receivables from bonded contracts and a general guarantee from the Members. At December 31, 2019, the Company did not have any material surety bonds for contracts.

Note 8. Subsequent Events

The Company evaluated all events or transactions that occurred after December 31, 2019 and through August 27, 2020, the date the financial statements were available to be issued. The Company had no material recognizable subsequent events.

Note 9. Risk and Uncertainties

COVID-19

The extent of the operational and financial impact the COVID-19 pandemic may have on the Company has yet to be determined and is dependent on its duration and spread, any related operational restrictions and the overall economy. The Company is unable to accurately predict how COVID-19 will affect the results of its operations because the virus's severity and the duration of the pandemic are uncertain. However, while it is premature to accurately predict its full impact we expect our results for the period ending August 27, 2020, to be significantly impacted with potential continuing, adverse impacts beyond August 27, 2020.

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Supplemental Schedule

Edgardo Madrid & Associates, LLC

Schedule of Contracts

Year Ended December 31, 2019

CONTRACT	Total Contract Amount Including Change Orders To Date	At Completion			Total Costs Incurred in CY	Total Costs Incurred To Date
		Estimated Total Cost	Gross Profit	Gross Profit Percent		
COMPLETED JOBS						
19-013 Odessa Dixie Water Line	2,332,809	1,817,666	515,143	22%	240,715	1,817,666
19-007 Eagle Lodge	2,048,256	1,567,120	481,136	23%	1,248,081	1,567,120
19-000 City of Odessa	1,496,970	1,066,712	430,257	29%	1,019,483	1,066,712
19-020 Orla man Camp	1,020,973	1,049,830	(28,856)	-3%	1,003,348	1,049,830
19-009 Odessa Lodge	518,722	522,075	(3,354)	-1%	498,960	522,075
Jobs under $500,000	1,995,931	1,494,394	501,536	25%	1,387,436	1,493,778
Total Completed Jobs	9,413,661	7,517,798	1,895,862	20%	5,398,024	7,517,182
JOBS IN PROGRESS						
19-004 Brandywine	9,201,371	6,431,699	2,769,672	30%	2,324,667	3,143,638
19-017 Meadow Brook Addition	2,365,996	2,088,772	277,224	12%	1,349,079	1,411,577
19-008 CHH Loving NM	1,816,928	1,192,169	624,759	34%	1,141,623	1,141,623
Jobs under $500,000	241,538	347,759	(106,221)	-44%	333,015	333,015
Total Jobs in Progress	13,625,833	10,060,398	3,565,435	26%	5,148,384	6,029,853
Total all Jobs	$ 23,039,494	$ 17,578,197	$ 5,461,296	24%	$ 10,546,408	$ 13,547,035

Estimated Costs to Complete	Estimated % Complete	Total Gross Profit Recognized To Date	Gross Profit Recognized in Previous Periods	Gross Profit Recognized in Current Period	Total Costs and Gross Profit	Amount Billed To Date	Billings in Excess of Costs and Estimated Earnings	Estimated Earnings in Excess of Billings
-	100%	515,143	86,079	429,064	2,332,809	2,332,809	-	-
-	100%	481,136	86,761	394,375	2,048,256	2,048,256	-	-
-	100%	430,257	-	430,257	1,496,970	1,496,970	-	-
-	100%	(28,856)		(28,856)	1,020,973	1,020,973	-	-
-	100%	(3,354)		(3,354)	518,722	518,722	-	-
-	100%	501,537	(7,155)	509,308	1,995,931	1,995,931	-	-
-		1,895,863	165,685	1,730,794	9,413,661	9,413,661	-	-
3,288,060	49%	1,353,740	391,402	962,338	4,497,378	3,933,954	-	563,425
677,195	68%	187,346		187,346	1,598,923	1,377,492	-	221,431
50,546	96%	598,270	-	598,270	1,739,893	1,816,928	77,034	-
14,744	96%	(198,183)	-	(198,183)	134,832	152,127	17,295	-
4,030,545		1,941,174	391,402	1,549,772	7,971,027	7,280,501	94,330	784,856
$ 4,030,545		$ 3,837,037	$ 557,087	$ 3,280,566	$ 17,384,688	$ 16,694,162	$ 94,330	$ 784,856

Edgardo Madrid & Associates, LLC

Financial Report
December 31, 2020

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Assurance • Tax • Advisory

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Independent Accountant's Review Report

To the Members of
Edgardo Madrid & Associates LLC
Midland, Texas

We have reviewed the accompanying financial statements of Edgardo Madrid & Associates LLC (the Company) which comprise the balance sheets as of December 31, 2020 and 2019 and the related statements of operations, changes in members' equity, and cash flows for the years then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Accountant's Responsibility

Our responsibility is to conduct the review in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

Accountant's Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 1 to the financial statements, the Company adopted Accounting Standards Update (ASU) No. 2014-09, Revenue from Contracts with Customers (Topic 606) effective January 1, 2020. This change in accounting principle did not have a material effect on the financial statements. Our conclusion is not modified with respect to this matter.

Weaver and Tidwell, L.L.P.
400 West Illinois Avenue, Suite 1550 | Midland, Texas 79701
Main: 432.683.5226

The Members of
Edgardo Madrid & Associates, LLC

Other Matter

The supplemental schedule appearing on pages 18 through 19 is presented for purposes of additional analysis and is not a required part of the basic financial statements. The information is the representation of management. We have reviewed the information and, based on our review, we are not aware of any material modifications that should be made to the information in order for it to be in accordance with accounting principles generally accepted in the United States of America. We have not audited the information and, accordingly, do not express an opinion on such information.

Weaver and Tidwell, L.L.P.

WEAVER AND TIDWELL, L.L.P.

Midland, Texas
April 9, 2021

Edgardo Madrid & Associates, LLC

Balance Sheets

December 31, 2020 and 2019

	2020	2019
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 176,181	$ 162,245
Certificate of deposit	50,053	50,053
Construction contract receivables, net	1,059,206	1,955,529
Retainage receivables	257,263	68,875
Contract assets	750,884	784,856
Prepaid and other current assets	29,417	-
Total current assets	2,323,004	3,021,558
PROPERTY AND EQUIPMENT		
Machinery and equipment	1,769,211	1,384,567
Vehicles and trailers	535,003	360,196
Land	1,382,676	1,382,676
Total property and equipment	3,686,890	3,127,439
Less accumulated depreciation	927,916	484,545
Property and equipment, net	2,758,974	2,642,894
TOTAL ASSETS	$ 5,081,978	$ 5,664,452
LIABILITIES AND MEMBERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	$ 472,839	$ 509,846
Accrued liabilities	162,824	229,363
Contract liabilities	365,075	94,330
Current maturities of long-term debt	523,632	351,301
Total current liabilities	1,524,370	1,184,840
LONG-TERM DEBT, net of current maturities	745,317	1,149,492
Total liabilities	2,269,687	2,334,332
MEMBERS' EQUITY		
Members' equity	2,812,291	3,330,120
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 5,081,978	$ 5,664,452

The notes to financial statements are an integral part of these statements.

Edgardo Madrid & Associates, LLC

Statements of Operations

Years Ended December 31, 2020 and 2019

	2020	2019
CONSTRUCTION REVENUE	$ 12,967,421	$ 14,139,274
CONSTRUCTION COSTS	10,906,431	10,858,708
Gross profit	2,060,990	3,280,566
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	1,886,798	897,722
Operating income	174,192	2,382,844
OTHER EXPENSES		
Interest expense	77,730	87,985
Income before provision for state income taxes	96,462	2,294,859
Franchise tax expense	7,487	11,740
NET INCOME	$ 88,975	$ 2,283,119

The notes to financial statements are an integral part of these statements.

Edgardo Madrid & Associates, LLC

Statements of Changes in Members' Equity
Years Ended December 31, 2020 and 2019

BALANCE, January 1, 2019	$	1,411,706
Net income		2,283,119
Distributions		(364,705)
BALANCE, December 31, 2019		3,330,120
Net income		88,975
Distributions		(606,804)
BALANCE, December 31, 2020	$	2,812,291

The notes to financial statements are an integral part of these statements.

Edgardo Madrid & Associates, LLC

Statements of Cash Flows

Years Ended December 31, 2020 and 2019

	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$ 88,975	$ 2,283,119
Adjustments to reconcile net income to net cash provided by operating activities		
Bad debt expense	774,940	-
Depreciation	443,371	275,038
Changes in operating assets and liabilities		
Construction contract receivables	121,383	(1,112,206)
Retainage receivables	(188,388)	(68,875)
Contract assets	33,972	(553,901)
Prepaid and other current assets	(29,417)	-
Accounts payable	(37,007)	(106,206)
Accrued liabilities	(66,539)	216,798
Contract liabilities	270,745	(34,801)
Net cash provided by operating activities	1,412,035	898,966
CASH FLOWS USED IN INVESTING ACTIVITIES		
Decrease from redemption of certificates of deposit	-	(53)
Additions of fixed assets	(559,451)	(1,914,023)
Net cash used in investing activities	(559,451)	(1,914,076)
CASH FLOWS USED IN FINANCING ACTIVITIES		
Borrowings of long-term debt	496,748	1,444,662
Repayments of long-term debt	(728,592)	(824,336)
Distributions to members	(606,804)	(364,705)
Net cash (used in) provided by financing activities	(838,648)	255,621
Net change in cash and cash equivalents	13,936	(759,489)
CASH AND CASH EQUIVALENTS, beginning of year	162,245	921,734
CASH AND CASH EQUIVALENTS, end of year	$ 176,181	$ 162,245
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	$ 77,730	$ 89,939
Taxes paid	$ -	$ 7,487

The notes to financial statements are an integral part of these statements.

Edgardo Madrid & Associates, LLC

Notes to Financial Statements

Note 1. Summary of Significant Accounting Policies

Business Activity

Edgardo Madrid & Associates LLC (the Company) acts as general contractor on commercial construction contracts primarily in Texas. Construction projects are normally completed within twelve months. The construction work is performed generally under fixed-price contracts, guaranteed maximum price contracts, or cost plus construction management at-risk contracts.

Implementation of Revenue Recognition Guidance

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2014-09, Revenue from Contracts with Customers (Topic 606). The amendments in this update are effective for fiscal years and interim periods within those years beginning after December 15, 2019 and supersedes any previous revenue recognition guidance. On January 1, 2020 the Company adopted ASU 2014-09 using the modified retrospective approach which only applies to contracts that were not completed as of the date of initial application. Recognition of revenue involves a five step approach including identifying the contract, identifying the separate performance obligations, determining the transaction price, allocating the price to the performance obligations and recognizing revenue as the obligations are satisfied.

Adoption of this new standard did not have a material impact on the Company's financial statements. When comparing the Company's historical revenue recognition to the newly applied revenue recognition under Topic 606, there was no material change to the amount or timing of revenue recognized. Therefore, no quantitative adjustment was required to be made to the prior periods presented in the financial statements. Upon adoption, the Company had not altered its existing information technology and internal controls outside of the contract review processes in order to identify impacts of future revenue contracts the Company may enter into.

Revenue Recognition Policy

The Company derives revenue from its fixed-price, long-term construction contracts primarily in the United States. The Company's construction contracts are generally each accounted for as a single unit of account (i.e., as single performance obligation).

Throughout the execution of construction contracts, the Company recognizes revenue with continuous transfer of control to the customer. The customer typically controls the assets under construction by either contractual termination clauses of by the Company's right to payment for work already performed on the asset under construction that does not have an alternative use for the Company.

Because control transfers over time, revenue is recognized to the extent of progress towards completion of the performance obligations. The selection of the method to measure progress towards completion requires judgement and is based on the nature of the products or services provided. The Company generally uses the cost-to-cost method for its contracts, which measures progress towards completion for each performance obligation based on the ration of cost incurred to date to the total estimated costs at completion for the respective performance obligation. Incurred cost represents work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Revenue, including estimated fees or profits, is recorded proportionately as cost incurred. Cost of operations includes labor, materials, subcontractor costs, and other direct and indirect costs, including depreciation and amortization.

Due to the nature of the work required to be performed on many of the Company's performance obligations, estimating total revenue and cost at completion is complex, subject to many variables and requires significant judgement. Assumptions as to the occurrence of future events and the likelihood and the amount of variable consideration, including the impact of change orders, claims, contract disputes and the achievement of contractual performance criteria, and award or other incentive fees are made during the contract performance period. The Company estimates variable consideration and the most likely amount it expects to receive. The Company includes estimated amounts in the transaction price to extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the certainty association with the variable consideration in resolved. Estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of anticipation performance and all information (historical, current and forecasted) that is reasonably available to management.

Changes in Estimates on Construction Contracts

The Company's estimates of contract revenues and costs are highly detailed and many of the Company's factors change during a contract performance period that result in a change to contract profitability. These factors include, but are not limited to, differing site conditions; availability of skilled contract labor; performance of major material suppliers and subcontractors; on-going subcontractor negotiations and buy-out provisions; unusual weather conditions; changes in the timing of scheduled work; change orders; accuracy of the original bid estimate; changes in estimated labor productivity and costs based on experience to date; achievement of incentive-based income targets; and the expected, or actual, resolution terms for any claims. The factors that cause changes in estimates vary depending on the maturation of the project within its lifecycle. Generally, if the contract is at an early stage of completion, the current period impact is smaller than if the same change in estimate made to the contract at a later stage of completion. Management evaluates the changes in estimates on a contract-by-contract basis and discloses significant changes, if material, in the Notes to the Financial Statements. The cumulative catch-up method is used to account for revisions in estimates.

Changes to the total estimated total contract revenue or cost, either due to unexpected events or revisions to management's initial estimates, for a project are recognized in the period in which they are determined. For the years ended December 31, 2020 and 2019, the effect of changes in estimates of contract profits was immaterial to the overall financial statements from that which would have been reported had the revised estimate been used as the basis of recognition of contract profits in the preceding year.

Disaggregation of Revenue

The following categories below disaggregate revenue by location, contract type, and category, which the Company believes best depicts how the nature, amount, time and uncertainty of its revenue and cash flows are affected by economic factors.

Revenue by Location: The Company performs contract obligations in both Texas and New Mexico. There are differing income tax considerations as well as employee tax considerations within the two states. Note that in the years ended December 31, 2020 and 2019, the Company performed 90% of their contract obligations within the state of Texas.

Fixed price: Fixed price is the only type of contracts recognized by the Company. Fixed price or lump sum contracts generally commit the Company to provide all of the resources required to complete a project for a fixed sum. Usually, fixed price contracts transfer more risk to the Company, but offer the opportunity for greater profits. Billings on fixed price contracts are typically based on estimated progress against predetermined contract milestones.

Revenue by Category: The Company has four major revenue categories. Below is the percentage of revenue in each category for the years ended December 31, 2020 and 2019 recognized by the Company.

Percentage of Revenue by Category for the year ended December 31, 2020			
Municipal Taps	Municipal Infrastructure	Commercial Taps	General
9%	22%	4%	65%

Percentage of Revenue by Category for the year ended December 31, 2019			
Municipal Taps	Municipal Infrastructure	Commercial Taps	General
11%	10%	3%	76%

Management Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

For purposes of reporting cash flows, the Company considers all highly liquid investments with an initial maturity of less than three months to be cash equivalents.

Receivables and Credit Policies

Construction contract receivables are stated at the amounts management expects to collect from outstanding balances. The carrying amounts of construction contract receivables are reduced by a valuation allowance, if needed, that reflects management's best estimate of the amounts that will not be collected. Management individually reviews all receivable balances that exceed 90 days from invoice date and, based on an assessment of current creditworthiness, estimates the portion, if any, of the balance that will not be collected. Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts.

Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to the respective receivable account. Based on management's review, the Company has deemed it necessary to have an allowance of $0 as of December 31, 2020 and 2019. Bad debt expense of $774,940 and $0 and was allocated to selling, general, and administrative expenses for the years ended December 31, 2020 and 2019, respectively.

Balance Sheet Classifications

The Company includes in current assets and liabilities retentions receivable and payable under construction contracts that may extend beyond one year. A one-year time period is used in classifying all other current assets and liabilities.

Property and Equipment

Property and equipment are stated at cost. The costs of renewals and betterments are added to the property accounts. Maintenance and repair costs are charged to expense as incurred. The cost and related accumulated depreciation applicable to assets sold or retired are removed from the accounts and the gain or loss on disposition is recognized. Depreciation expense for the years ended December 31, 2020 and 2019 totaled $443,771 and $275,038, respectively. Depreciation of property and equipment is provided using the straight-line method over estimated useful lives as follows:

Machinery & Equipment	3 - 7 years
Vehicles & Trailers	3 - 7 years

Long-Lived Assets

The Company's long-lived assets and other assets to be held and used are reviewed for impairment in accordance with the guidance of the FASB ASC 360-10, *Property, Plant, and Equipment,* whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of an asset to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such asset is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. The Company has determined there are no impairment losses for the years ended December 31, 2020 and 2019.

Income Taxes

For federal income tax purposes, the Company has elected to be treated as an S-Corporation. Under this provision, the net taxable income of the Company and any related tax credits are deemed to pass to the members and are included in their income tax returns even though such net taxable income or tax credits may not actually have been distributed. Accordingly, no federal tax provision has been made in the financial statements for this entity since the income tax is a personal obligation of the members.

Additionally, no provision has been made for amounts which may be advanced or paid as dividends and distributions to the members to assist in paying personal income taxes on taxable Company income which is deemed to flow to the individuals.

A provision for Texas Franchise tax under the Texas Margin Tax Bill estimated at $7,487 and $11,740 for the years ended December 31, 2020 and 2019, was recorded in income tax expense within the financial statements.

The Company recognizes interest and penalties on state income taxes in general and administrative expenses. For the years ended December 31, 2020 and 2019, the Company had no interest and penalties on state income taxes.

Other Taxes

The Company collects various taxes from customers and remits these amounts to applicable taxing authorities. The Company's accounting policy is to exclude these taxes from revenues and cost of sales. There was $5,061 and $1,775 of sales tax payable recorded within accrued liabilities as of December 31, 2020 and, 2019, respectively.

Uncertain Tax Positions

The Financial Statement Standards Board (FASB) Accounting Standards Codification (ASC) 740, *Income Taxes*, clarifies the accounting for uncertainties in income taxes by prescribing a minimum recognition threshold that a tax position is required to meet before being recognized in the financial statements. FASB ASC 740 requires that the Company recognize in its financial statements the financial effects of a tax position, if that position is more likely than not of being sustained upon examination, including resolution of any appeals or litigation processes, based upon the technical merits of the position.

FASB ASC 740 also provides guidance on measurement, classification, interest and penalties and disclosure. Tax positions taken related to the Company's pass-through status and those taken in determining their state income tax liability, including deductibility of expenses, have been reviewed, and management is of the opinion that material positions taken by the Company would more likely than not be sustained upon examination. Accordingly, the Company has not recorded an income tax liability for uncertain tax benefit as of December 31, 2020 or 2019.

Warranties

Many construction contracts contain warranty provisions covering defects in equipment, materials, design or workmanship that generally run one year after the customer accepts the project. Because of the nature of the projects, including contract owner inspections of the work both during construction and prior to acceptance, the Company has not experienced significant warranty costs for these short-term warranties, and, therefore, the accrual for these costs at December 31, 2020 and 2019 is not material to the financial statements.

Concentration of Credit Risk

The Company's financial instruments that are subject to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company provides construction contracting services to commercial, institutional, and retail customers primarily in Ector and surrounding counties. Collateral is not required for credit extended to the Company's customers in the form of accounts receivable. The Company maintains statutory lien rights on construction projects which effectively serve as collateral for contract receivables. The Company places its cash and cash equivalents in a financial institution. At times, such balances may be in excess of the FDIC insurance limits.

Major customers are defined as those customers comprising more than 10% of the Company's annual revenues. For the year ended December 31, 2020 the Company had three customers representing approximately 63% of the Company's revenue, and four major customers encompassed 86% of total contract receivables as of December 31, 2020. For the year ended December 31, 2019, the Company had four customers representing approximately 81% of the Company's revenue, and two major customers encompassed 71% of total contract receivables as of December 31, 2019.

Major vendors are defined as those vendors comprising more than 10% of the Company's annual expense. For the year ended December 31, 2020, the Company had 3 major vendors representing approximately 33% of the Company's vendor expenses, and two major vendors encompassed 81% of total accounts payable as of December 31, 2020. For the year ended December 31, 2019, the Company had 3 major vendors representing approximately 46% of the Company's vendor expenses and two major vendors encompassed 86% of total accounts payable as of December 31, 2019.

Reclassifications

Certain reclassifications have been made to the 2019 amounts to conform to the 2020 presentation.

Recent Accounting Pronouncements

In November 2018, the FASB issued ASU No. 2018-18, "Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606," (ASU 2018-18) which, among other things, clarifies that (i) certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606 when the collaborative arrangement participant is a customer in the context of a unit of account, (ii) adds unit-of-account guidance in Topic 808 to align with the guidance in Topic 606 and (iii) requires that in a transaction with a collaborative arrangement participant that is not directly related to sales to third parties, presenting the transaction together with revenue recognized under Topic 606 is precluded if the collaborative arrangement participant is not a customer. ASU 2018- 18 is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years and early adoption is permitted. The amendments in this update should be applied retrospectively to the date of initial application of Topic 606. An entity should recognize the cumulative effect of initially applying the amendments as an adjustment to the opening balance of retained earnings of the later of the earliest annual period presented and the annual period that includes the date of the entity's initial application of Topic 606.

In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments–Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," (Topic 326) which replaces the current "incurred loss" methodology for recognizing credit losses with an "expected loss" methodology. This new methodology requires that a financial asset measured at amortized cost be presented at the net amount expected to be collected. This standard is intended to provide more timely decision-useful information about the expected credit losses on financial instruments. In November 2018, the FASB issued ASU No. 2018-19, "Codification Improvements to Topic 326, Financial Instruments-Credit Losses," which makes amendments to clarify the scope of the guidance, including the amendment clarifying that receivables arising from operating leases are not within the scope of Topic 326. The standard will be effective for annual and interim periods beginning after December 15, 2020.

In February 2016, the FASB issued ASU 2016-02, Leases. The guidance requires lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by leases with terms of more than 12 months. ASU 2016-02 also requires disclosures designed to give financial statement users information on the amount, timing, and uncertainty of cash flows arising from leases. The standard will be effective for annual and interim periods beginning after December 15, 2021, with earlier application permitted.

The Company is evaluating the effect of these pronouncements on the financial statements.

Note 2. Contract Assets & Liabilities

Contract assets include amounts due under costs and estimated earnings in excess of billings. The amount included on the Balance Sheet at December 31 includes:

	2020	2019
Contract receivables billed		
Completed contracts	$ 363,097	$ 1,881,088
Contracts in progress	696,109	74,441
Total contract receivables, net	1,059,206	1,955,529
Retainage receivables	257,263	68,875
Total construction contract and service receivables, net	$ 1,316,469	$ 2,024,404
0-30 days	$ 789,733	$ 1,732,308
31-60 days	-	7,952
61-90 days	-	215,269
90+ days	269,473	-
Total contract receivables, net	1,059,206	1,955,529
Retainage receivables	257,263	68,875
Total construction contract and service receivables, net	$ 1,316,469	$ 2,024,404
Retainage Receivable	$ 257,263	$ 68,875
Total Costs and estimated earnings in excess of billings on uncompleted contracts	750,884	784,856
Total contract assets	$ 1,008,147	$ 853,731

Retainage receivable represents amount invoiced to customers where payments have been partially withheld pending the completion of certain milestones, satisfaction of other contractual conditions or the completion of the project. Retainage agreements vary from project to project and balances could be outstanding for several months or years depending on a number of circumstances, such as contract-specific terms, project performance and other variables that may arise as the Company makes progress towards completion. As of December 31, 2020 and 2019, the Company had a total of $257,263 and $68,875 of retainage receivables, respectively.

Costs and estimated earnings in excess of billings represent the excess of contract costs and profits (or contract revenue) over the amount of contract billings to date and are classified as current asset. Costs and estimated earnings in excess of billing result when either: 1) the appropriate contract revenue amount has been recognized over time in accordance with ASC 606, but a portion of the revenue cannot be billed currently due to the billing terms defined in the contract, or 2) costs are incurred related to certain claims and unapproved change orders. Claims occur when there is a dispute regarding both a change in the scope of work and the price associated with that change. Unapproved change orders occur when a changes in the scope of work results in additional work being performed before the parties have agreed on the corresponding change in the contract price. The Company routinely estimates recovery related to claims and unapproved change orders as form of variable consideration at the most likely amount it expects to receive and to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration in resolved. Claims and unapproved change orders are billable upon the agreement and resolution between the contractual parties and after the execution of contraction amendments. Increases in claims and unapproved change orders typically result from costs being incurred against existing or new positions; decreases normally result from resolutions and subsequent billings. The resolution of these claims and unapproved change orders may require litigation or other forms of dispute resolution proceedings. Other unbilled costs and profits are billable in accordance with the billing terms of each of the existing contractual arrangements and, as such, the timing of contract billing cycles can cause fluctuation in the balance of unbilled costs and profits. Ultimate resolution of other unbilled costs and profits typically involves incremental progress towards contractual requirements or milestones.

Contract liabilities include amounts owed under billings in excess of costs and estimated earnings. The amount on the Balance Sheet includes:

	2020	2019
Retainage payable	$ -	$ -
Billings in excess of costs and estimated earnings on uncompleted contracts	365,075	94,330
Total contract liabilities	$ 365,075	$ 94,330

Retainage payable represents amounts invoiced to the company by subcontractors where payments have been partially withheld pending the completion of certain milestones, other contractual conditions or upon the completion of the project. Generally, retainage payable is not remitted to subcontractors until the associated retainage receivable from customers is collected. As of December 31, 2020 and 2019, the Company did not have payables of this nature.

Billings in excess of costs and estimated earnings represent the excess of contract billings to date over the amount of contract costs and profits (or contract revenue) recognized to date. The balance may fluctuate depending on the timing of contract billings and the recognition of contract revenue.

	2020	2019
Costs incurred on uncompleted contracts	$ 14,811,151	$ 6,029,853
Estimated earnings recognized to date	3,436,456	1,941,174
Total	18,247,607	7,971,027
Less billings to date	(17,861,798)	(7,280,501)
Total	$ 385,809	$ 690,526
Costs and estimated earnings in excess of billings on uncompleted contracts	$ 750,884	$ 784,856
Billings in excess of costs and estimated earnings on uncompleted contracts	(365,075)	(94,330)
Net total	$ 385,809	$ 690,526

Note 3. Operating Leases

The Company leases office spaces and yards under non-cancelable agreements classified as operating leases. Future minimum lease payments under these leases are as follows:

Year Ending December 31,	
2021	$ 99,225
2022 and Thereafter	-
	$ 99,225

Total rent expense for the years ended December 31, 2020 and 2019 totaled $109,902 and $125,379, respectively, and is allocated to selling, general, and administrative expense and cost of sales.

Note 4. Long-Term Debt

Long-term debt at December 31 includes:

	2020	2019
Note payable to a financial institution maturing in April 2024; 60 month term loan, variable interest rate, monthly payments of $14,029, secured by real property.	$ 412,192	$ 657,892
Note payable to a financial institution maturing in September 2027; 12 month term loan, variable interest rate, monthly payments of $1,742, secured by real property.	-	125,970
Note payable to a financial institution maturing in May 2023; 60 month term loan, fixed interest rate of 6%, monthly payments of $609, secured by real property.	-	26,181
Note payable to a financial institution maturing in November 2022; 60 month term loan, fixed interest rate of 5.95%, monthly payments of $2,057, secured by real property.	-	64,235
Note payable to a financial institution maturing in May 2023; 48 month term loan, fixed interest rate of 6.45%, monthly payments of $3,216, secured by real property.	60,068	112,293
Note payable to a financial institution maturing in August 2024; 60 month term loan, fixed interest rate of 6%, monthly payments of $2,646, secured by real property.	78,020	102,308
Note payable to a financial institution maturing in November 2024; 60 month term loan, fixed interest rate of 4.5%, monthly payments of $3,150, secured by real property.	135,514	166,861
Note payable to a financial institution maturing in March 2023; 60 month term loan, fixed interest rate of 5.5%, monthly payments of $1,274, secured by real property.	31,209	44,634
Note payable to a financial institution maturing in April 2023; 60 month term loan, fixed interest rate of 9.65%, monthly payments of $890, secured by real property.	22,451	30,710
Note payable to a financial institution maturing in October 2022; 36 month term loan, fixed interest rate of 8.95%, monthly payments of $1,482, secured by real property.	30,210	44,341
Note payable to a financial institution maturing in January 2021; 26 month term loan, fixed interest rate of 2.9%, monthly payments of $1,805, secured by real property.	21,110	41,742
Note payable to a financial institution maturing in September 2022; 48 month term loan, fixed interest rate of 10.2%, monthly payments of $1,070, secured by real property.	20,518	31,945
Note payable to a financial institution maturing in July 2022; 36 month term loan, fixed interest rate of 3.9%, monthly payments of $1,812, secured by real property.	31,549	51,681
Note payable to a financial institution maturing in September 2023; 36 month term loan, fixed interest rate of 4.5%, monthly payments of $1,319, secured by real property.	42,040	-
Note payable to a financial institution maturing in September 2023; 36 month term loan, fixed interest rate of 4.5%, monthly payments of $3,759, secured by real property.	116,459	-
Note payable to a financial institution maturing in September 2023; 36 month term loan, fixed interest rate of 3.5%, monthly payments of $4,926, secured by real property.	159,215	-
Note payable to a financial institution maturing in October 2023; 36 month term loan, fixed interest rate of 4.5%, monthly payments of $1,124, secured by real property.	36,797	-
Note payable to a financial institution maturing in October 2023; 36 month term loan, fixed interest rate of 5.25%, monthly payments of $2,211, secured by real property.	71,597	-
Total	1,268,949	1,500,793
Less current maturities	523,632	351,301
Long-term debt	$ 745,317	$ 1,149,492

Future maturities of long-term debt at December 31, 2020 includes:

Year Ending December 31,	
2021	$ 523,632
2022	389,742
2023	321,463
2024	34,112
Thereafter	-
	$ 1,268,949

The Company's debt includes certain financial covenants including maintaining a current ratio greater than 1.25 and maintaining a debt coverage ratio greater than 2.00. The Company was non-compliant with the debt coverage ratio covenant as of December 31, 2020. However, subsequent to year-end a waiver was issued from the financial institution for non-compliance.

Note 5. Backlog

Backlog, representing the amount of revenue the Company expects to realize from work to be performed on uncompleted contracts in progress at December 31, 2020 and 2019, totaled approximately $2,500,000 and $5,600,000, respectively.

Note 6. Surety Bonds

The Members are occasionally required to furnish performance and payment bonds to its contract owners as a condition for entering its construction contracts. The bonds are secured by receivables from bonded contracts and a general guarantee from the Members. At December 31, 2020, surety bonds for contracts totaling approximately $4,500,000 had been issued with a current backlog of approximately $500,000. At December 31, 2019 the Company did not have any material surety bonds for contracts.

Note 7. Subsequent Events

The Company evaluated all events or transactions that occurred after December 31, 2020 and through April 9, 2021, the date the financial statements were available to be issued. The Company had no material recognizable subsequent events.

Note 8. Risk and Uncertainties

COVID-19

The extent of the operational and financial impact the COVID-19 pandemic may have on the Company has yet to be determined and is dependent on its duration and spread, any related operational restrictions and the overall economy. The Company is unable to accurately predict how COVID-19 will affect the results of its operations because the virus's severity and the duration of the pandemic are uncertain.

Supplemental Schedule

Edgardo Madrid & Associates, LLC

Schedule of Contracts

Year Ended December 31, 2020

Contract	Total Contract Amount Including Change Orders To Date	At Completion Estimated Total Cost	At Completion Gross Profit	At Completion Gross Profit Percent	Total Costs Incurred To Date
Completed jobs					
19-007 Eagle Lodge	$ 2,051,490	$ 1,621,882	$ 429,608	21%	$ 1,621,882
20-005 City of Odessa	1,214,103	893,229	320,874	26%	893,229
19-009 Odessa Lodge	527,722	679,735	(152,014)	-29%	679,735
Jobs under $500,000	1,456,921	777,196	679,725	47%	777,196
Total completed jobs	5,250,236	3,972,043	1,278,193	24%	3,972,043
Jobs in progress					
19-004 Brandywine	9,286,682	7,580,354	1,706,328	18%	6,700,910
20-001 Hospital Replacement	2,833,281	1,865,848	967,433	34%	1,704,695
19-008 CHH Loving NM	2,761,709	1,989,763	771,946	28%	1,651,650
19-017 Meadow Brook Addition	2,365,996	2,322,322	43,674	2%	2,297,008
20-012 Thomason Dr./Water Main	2,154,136	2,126,846	27,290	1%	1,862,441
20-007 Spine Road Park Legado	580,311	328,203	252,108	43%	312,285
Jobs under $500,000	774,990	567,095	207,895	27%	282,163
Total jobs in progress	20,757,105	16,780,430	3,976,675	19%	14,811,151
Total all jobs	$ 26,007,341	$ 20,752,473	$ 5,254,868	20%	$ 18,783,194

Estimated Costs to Complete	Estimated % Complete	Total Gross Profit Recognized To Date	Gross Profit Recognized in Previous Periods	Gross Profit Recognized in Current Period	Total Costs and Gross Profit	Amount Billed To Date	Billings in Excess of Costs and Estimated Earnings	Estimated Earnings in Excess of Billings
$ -	100%	$ 429,608	$ 481,136	$ (51,528)	$ 2,051,490	$ 2,051,490	$ -	$ -
-	100%	320,874	-	320,874	1,214,103	1,214,103	-	-
-	100%	(152,014)	(3,354)	(148,660)	527,722	527,722	-	-
-	100%	679,724	-	690,453	1,467,648	1,456,920	-	-
-	-	1,278,192	477,782	811,139	5,260,963	5,250,235	-	-
879,445	88%	1,508,366	1,353,740	154,626	8,209,276	7,871,880	-	337,396
161,153	91%	883,876	(10,368)	894,244	2,588,571	2,631,157	42,586	-
338,113	83%	640,773	598,270	42,502	2,292,423	2,344,248	51,825	-
25,314	99%	43,198	187,346	(144,148)	2,340,206	2,606,270	266,064	-
264,405	88%	23,897	-	23,897	1,886,339	1,741,791	-	144,548
15,918	95%	239,881	57,616	182,265	552,166	515,026	-	37,139
284,933	50%	96,465	-	96,465	378,628	151,426	4,599	231,800
1,969,280	-	3,436,456	2,186,605	1,249,851	18,247,607	17,861,797	365,075	750,884
$ 1,969,280	-	$ 4,714,648	$ 2,664,387	$ 2,060,990	$ 23,508,570	$ 23,112,032	$ 365,075	$ 750,884

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

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

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

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

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

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

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

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

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

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

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

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

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

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

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

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

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

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

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

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

Structures.....$ 13.52

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

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

Servicer.....$ 13.98

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

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

City Council Meeting

Item Number: 8

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Justine Ruff, Director of Airports

Subject: **Motion ratifying the City of Midland's acceptance of Concessions Rent Relief Airport Rescue Grant No. 3-48-0150-067-2022 in the amount of $576,026.00, which is distributed by the Federal Aviation Administration in accordance with the American Rescue Plan Act Grant Program; and ratifying the execution of all documents necessary to evidence the City of Midland's acceptance of said grant funds (DISTRICT 4) (AIRPORTS)**

Purpose:

Motion ratifying the acceptance of Concessions Rent Relief Airport Rescue Grant Offer, Grant No. 3-48-0150-067-2022, distributed by the Federal Aviation Administration (FAA), in accordance with the American Rescue Plan Act (ARPA) Grant Program (ACRGP) funding for Midland International Air & Space Port in the maximum amount of $576,026; and authorizing the execution of all documents necessary to accept said grant funds.

Recommended City Council Action:

Approve

Fiscal Impact:

Grant Proceeds: Not to exceed $576,026

Discussion:

The American Rescue Plan Act (ARPA) has provisions for the FAA to grant federal funds to reimburse Airport Sponsors for providing relief from rent and minimum annual guarantees (MAG) to each eligible in-terminal airport concession at Midland International Air & Space Port. This grant hereby obligates $460,821 to in-terminal Small Airport Concessions and $115,205 to in-terminal Large Airport Concessions per the ARPA Act. The obligations are to provide relief from rent and MAG obligations, as applicable, to each eligible in-terminal airport concession in an amount that reflects each eligible in-terminal airport concessions' proportional share of the total amount of the rent and MAG at Midland International Air & Space Port by legislative prescribed category (Small or Large Airport Concession), for relief provided no earlier than March 11, 2021, in accordance with an FAA-approved Concessions Rent Relief Airport Rescue Plan, until the funds have been fully expended. The FAA requested that this grant be executed prior to February 11, 2022, as they are trying to process this group of grants as soon as possible.

Tina Gaug

City Manager's Office

U.S. Department of Transportation Federal Aviation Administration

Airports Division Southwest Region Texas

FAA ASW-650 Texas Airports District Office: 10101 Hillwood Pkwy Fort Worth, TX 76177-1524

Concessions Rent Relief Airport Rescue Grant Agreement Transmittal Letter

January 31, 2022

Ms. Justine Ruff
9506 La Force Blvd
Midland, Tx 79711

Dear Ms. Ruff:

Please find the following electronic Concessions Rent Relief Airport Rescue Grant Offer, Grant No. 3-48-0150-067-2022 for Midland International Air And Space Port Airport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.

b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than **February 18, 2022** in order for the grant to be valid.

c. You may not make any modification to the text, terms, or conditions of the grant offer.

d. The grant offer must be digitally signed by the sponsor's legal signatory authority and then routed via email to the sponsor's attorney. Once the attorney has digitally attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR §200.305, each Concessions Rent Relief Airport Rescue Plan Reimbursement under this grant must be made electronically via the Delphi eInvoicing System. The terms and conditions of this agreement require you draw down and expend these funds within four years.

An airport sponsor may use these funds to provide rent relief to its in-terminal concessions. Please refer to the Airport Rescue Grants Frequently Asked Questions for further information.

To receive reimbursement of your Concessions Rent Relief Airport Rescue Grant funds, upload a Concessions Rent Relief Airport Rescue Plan into Delphi. The Concessions Rent Relief Airport Rescue Plan should include enough detail to permit FAA to verify compliance with the American Rescue Plan Act (Public Law 117-2).

As part of your final reimbursement request, you are required to include in Delphi:

- A signed SF-425, *Federal Financial Report*
- A signed close-out report (a sample report is available here).

Until the grant is completed and closed, you are responsible for submitting a signed and dated SF-425 annually, due 90 days after the end of each Federal fiscal year in which this grant is open (due December 31 of each year this grant is open).

I am readily available to assist you and your designated representative with the requirements stated herein. The FAA sincerely values your cooperation in these efforts.

Sincerely,

Kim Brockman (Jan 31, 2022 16:38 CST)

Kim Brockman
Assistant Manager, Texas Airports District Office

U.S. Department of Transportation Federal Aviation Administration

CONCESSIONS RENT RELIEF AIRPORT RESCUE

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date January 31, 2022

Airport/Planning Area Midland International Air And Space Port Airport

Concessions Rent Relief Airport Rescue Grant Number 3-48-0150-067-2022

Unique Entity Identifier 073186579

TO: City of Midland
(herein called the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Concessions Rent Relief Airport Rescue Grant Application dated July 1, 2021, for a grant of Federal funds to reimburse the Sponsor for providing relief from rent and minimum annual guarantees (MAG) to each eligible in-terminal airport concession at Midland International Air And Space Port Airport, in accordance with the American Rescue Plan Act ("ARP Act"), Public Law 117-2, Section 7102;

WHEREAS, the Sponsor has accepted the terms of this Concessions Rent Relief Airport Rescue Grant Offer (the "Offer");

WHEREAS, in consideration of the promises, representations, and assurances provided by the Sponsor, the FAA has approved the Grant Application for the Midland International Air And Space Port Airport, consisting of the following:

WHEREAS, this Concessions Rent Relief Airport Rescue Grant Agreement (the "Grant" or "Agreement") is provided in accordance with the ARP Act to provide certain amounts of grant assistance, as described below, to eligible sponsors in amounts to specific airports derived by legislative formula (See Section 7102 of the Act);

WHEREAS, this Grant hereby obligates $460,821 to in-terminal Small Airport Concessions per the ARP Act, and $115,205 to in-terminal Large Airport Concessions per the ARP Act. The obligations are to provide relief from rent and MAG obligations, as applicable, to each eligible in-terminal airport concession in an amount that reflects each eligible in-terminal airport concession's proportional share of the total amount of the rent and MAG at Midland International Air And Space Port Airport by legislatively prescribed category (Small or Large Airport Concession), as further defined herein, for relief provided no earlier than March 11, 2021, in accordance with an FAA-approved Concessions Rent Relief Airport Rescue Plan (herein called "the Plan"), until the funds have been fully expended;

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, Section 7102, the representations contained in the Concessions Rent Relief Airport Rescue Grant Application, and in consideration of, (a) the Sponsor's acceptance of this Offer for a Grant, the terms, conditions, and assurances of this Grant Agreement ("Grant Agreement" or "Agreement"); and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant, and in compliance with the conditions and requirements as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% of the allowable concessions rent and MAG relief as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This offer is made on and **SUBJECT TO THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS**:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **$576,026**, allocated as follows:

   $115,205 ARPA Large Concessions KY2022

   $460,821 ARPA Small Concessions KZ2022

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

   a. The Period of Performance:

      1. Shall start on the date the Sponsor formally accepts this Grant and is the date signed by the last Sponsor signatory to the Grant Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant.

      2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)

   b. The Budget Period:

      1. The Budget Period for this Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.

2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

c. Closeout and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (payoff) all obligations incurred under this award no later than 120 calendar days after the end date of the Period of Performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the Period of Performance end date with the information available at the end of 120 days. (2 CFR § 200.344)

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340 or other Federal regulatory or statutory authorities as applicable.

3. **Unallowable Reimbursable Rent Relief.** The Sponsor shall not seek reimbursement for any concessions rent and MAG relief that the FAA has determined to be unallowable under the ARP Act.

4. **Final Federal Share of Reimbursable Rent Relief.** The United States' share of allowable Grant concessions rent relief is 100%.

5. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and provide the concessions rent and MAG relief without undue delays and in accordance with this Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from the project eligible under the Grant that exceeds three months or a 25% reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this Agreement and any addendum that may be attached hereto at a later date by mutual consent.

6. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. **Offer Expiration Date.** This Offer will expire and the United States will not be obligated to pay any part of the costs unless this Offer has been accepted by the Sponsor on or before **February 18, 2022**, or such subsequent date as may be prescribed in writing by the FAA.

8. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

9. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons that may arise from, or relate to, this Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Grant Agreement.

10. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

    a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit, or governmental entity. A UEI may be obtained from SAM.gov at https://sam.gov/SAM/pages/public/index.jsf.

11. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

12. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all concessions rent and MAG relief provided under this Grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.

13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

14. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

15. **Audits for Sponsors.**

    PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than $750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

16. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

    a. Verify the non-Federal entity is eligible to participate in this Federal program by:

1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or
3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.

b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., subcontracts).

c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debars a contractor, person, or entity.

17. **Ban on Texting While Driving.**

a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Grant or subgrant funded by this Grant.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Grant.

18. **Trafficking in Persons.**

a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –

1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
2. Procure a commercial sex act during the period of time that the award is in effect; or
3. Use forced labor in the performance of the award or subawards under this Grant.

b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

1. Is determined to have violated a prohibition in paragraph a. of this condition; or

2. Has an employee who is determined by the agency official authorized to terminate the Grant Agreement to have violated a prohibition in paragraph a. of this condition through conduct that is either –

   A. Associated with performance under this Grant Agreement; or

   B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),"as implemented by the FAA at 2 CFR Part 1200.

c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition during this Grant Agreement.

d. Our right to terminate unilaterally that is described in paragraph a. of this condition:

1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), and

2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Grant Agreement.

19. **Employee Protection from Reprisal.**

a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a2. of this condition, information that the employee reasonably believes is evidence of:

   a. Gross mismanagement of a Federal grant;
   b. Gross waste of Federal funds;
   c. An abuse of authority relating to implementation or use of Federal funds;
   d. A substantial and specific danger to public health or safety; or
   e. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:

   a. A member of Congress or a representative of a committee of Congress;
   b. An Inspector General;
   c. The Government Accountability Office;
   d. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
   e. A court or grand jury;
   f. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
   g. An authorized official of the Department of Justice or other law enforcement agency.

3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this section may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

20. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Grant Agreement.
21. **Face Coverings Policy.** The Sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the Sponsor continue to require masks until Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel is no longer effective.
22. **Small and Large Concessions Rent Relief Set-Asides.** The Sponsor agrees that funds under this Grant are available for the Sponsor to provide relief from rent and MAG to eligible in-terminal Small Airport Concessions, per the Act, in the amount listed in condition 1 above, and for the Sponsor to provide relief from rent and MAG to eligible in-terminal Large Airport Concessions, per the Act, in the amount listed in condition 1 above. The Sponsor shall provide relief from rent and MAG from March 11, 2021, until the Sponsor has provided relief equaling the total grant amount, to the extent practicable and to the extent permissible under State laws, local laws, and applicable trust indentures.
23. **Concessions Rent Relief Airport Rescue Plan.** The Sponsor agrees to submit to the FAA a Concessions Rent Relief Airport Rescue Plan ("the Plan") identifying the in-terminal Small and Large Airport Concessions, as defined in 49 CFR § 23.3, eligible to receive proportional funding under this Grant, in accordance with the ARP Act. The Sponsor agrees that the FAA will reimburse the Sponsor after the FAA accepts the Plan submitted by the Sponsor. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with the ARP Act.
24. **Small Airport Concessions Rent Relief Set-Aside.** The Sponsor's Plan must specify relief from rent and MAG obligations to eligible in-terminal Small Airport Concession, meaning a small concession business with gross receipts, averaged over the previous three fiscal years, of less than $56,420,000; or joint ventures as defined in 49 CFR § 23.3. The Sponsor agrees that relief provided to eligible in-terminal Small Airport Concessions will be a proportional share based on rent and MAG collected during a baseline time-period.
25. **Large Airport Concessions Rent Relief Set-Aside.** The Sponsor's Plan must specify relief from rent and MAG obligations to eligible in-terminal Large Airport Concessions, meaning a concession as defined in 49 CFR § 23.3, that has gross receipts, averaged over the previous three fiscal years, of

more than $56,420,000. The Sponsor agrees that relief provided to eligible in-terminal Large Airport Concessions will be a proportional share based on rent and MAG collected during a baseline time-period.

26. **Adjustments to Proportionality among Airport Concessions.**

    a. **Adjustments to Proportionality among Airport Concessions Set-Aside.** The Sponsor agrees that the FAA may approve reimbursement under the Act for rent and MAG relief provided to eligible in-terminal Airport Concessions on a proportional share based on rent and MAG collected during a baseline time-period. Adjustments from this proportionality amongst Airport Concessions within a respective Small or Large Concession Set-Aside are limited; must be supported by evidence and specific circumstances; and must be approved by the FAA prior to reimbursement. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with the ARP Act.

    b. **Adjustments between Small and Large Concession Set-Asides.** The Sponsor agrees that the FAA may approve reimbursement under the Act for concessions rent and MAG relief provided to eligible in-terminal Airport Concessions on a proportional share based on rent and MAG collected during a baseline time-period. Adjustments from this proportionality between Small and Large Concession Set-Asides are limited, must be supported by evidence and specific circumstances, and must be approved by the FAA prior to reimbursement. The Sponsor agrees the Plan will include all elements as prescribed by the FAA to facilitate review of reimbursement payments that comply with ARP Act.

27. **Sponsor Certification of Reimbursement Request.** To be reimbursed, the Sponsor shall provide the FAA with the Plan, and reporting data as requested, in lieu of invoices, and shall certify all information submitted is true and correct. The Sponsor may not use funds allocated herein for other airport purposes.

28. **Concession's Certification of Relief Funds.** Each airport concession to be provided relief with Grant funds shall certify to the Sponsor, prior to the Sponsor submitting a Plan, it has not and will not apply for other Federal assistance for the purpose of receiving rent and MAG relief on or after March 11, 2021.

The Sponsor's acceptance of this Offer and ratification and adoption of the Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and acceptance shall comprise a Grant, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the purpose of the ARP Act and compliance with the conditions as provided herein. Further, this Grant, inclusive of all terms, conditions, and assurances provided there, and become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated January 31, 2022

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

Kim Brockman (Jan 31, 2022 16:38 CST)

(Signature)

Kim Brockman

(Typed Name)

Assistant Manager, Texas ADO

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct. [1]

Dated February 3, 2022

City of Midland

(Name of Sponsor)

Patrick Payton (Feb 3, 2022 15:04 CST)

(Signature of Sponsor's Designative Official/Representative)

By: Patrick Payton

(Type Name of Sponsor's Designative Official/Representative)

Title: Mayor

(Title of Sponsor's Designative Official/Representative)

[1] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, John Ohnemiller , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of __Texas__. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for concessions and MAG Relief. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated at February 3, 2022

By: John Ohnemiller
John Ohnemiller (Feb 3, 2022 15:10 CST)

(Signature of Sponsor's Attorney)

CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Concession Rent Relief Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 ("ARP Act," or "the Act"), Public Law 117-2. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Grant Offer by the sponsor, these assurances are incorporated into and become part of this Concessions Rent Relief Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Grant, that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including, but not limited to, the following:

FEDERAL LEGISLATION

a. 49 U.S.C. Chapter 471, as applicable
b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.
c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.
d. Hatch Act — 5 U.S.C. 1501, et. seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.
f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).
g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.
l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
m. Rehabilitation Act of 1973 — 29 U.S.C. 794.
n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

q. American Indian Religious Freedom Act, P.L. 95-341, as amended.

r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.

s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.

t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.

u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.

v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.

w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.

x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.[2]

y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

a. Executive Order 11246 – Equal Employment Opportunity

b. Executive Order 11990 – Protection of Wetlands

c. Executive Order 11998 – Flood Plain Management

d. Executive Order 12372 – Intergovernmental Review of Federal Programs

e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction

f. Executive Order 12898 – Environmental Justice

g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.[3, 4]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.

d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.

e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.

f. 29 CFR Part 1 – Procedures for predetermination of wage rates.[1]

g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]

h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]

i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).[1]

j. 49 CFR Part 20 – New restrictions on lobbying.

k. 49 CFR Part 21 – Nondiscrimination in Federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.

n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]

o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.

p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).

s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO CONCESSIONS RENT RELIEF AIRPORT RESCUE GRANT ASSURANCE B

[1] These laws do not apply to airport planning sponsors.
[2] These laws do not apply to private sponsors.
[3] Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
[4] Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing

and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.

c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Accounting System, Audit, and Record Keeping Requirements.

a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

7. Airport Revenues.

a. The Sponsor agrees that funds under this Grant are available for the Sponsor to provide relief from rent and MAG to eligible in-terminal Airport Concessions, per the ARP Act. Apart from this relief, in no event shall airport revenue or grant reimbursement proceeds be used for any purpose beyond the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s).

8. Reports and Inspections.

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

   1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

   2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.

b. Applicability

1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **City of Midland**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the

land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and

B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.

C. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

D. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

11. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

City Council Meeting

Item Number: 9

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: Motion approving an Economic Development Agreement between the Midland Development Corporation and the City of Midland, Texas, as authorized by Chapter 501 of the Texas Local Government Code; said agreement providing for certain costs associated with the Todd Drive Expansion and County Road 1160 Overpass Improvements Project (DISTRICT: ALL) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on February 7, 2022, the execution of an economic development agreement with the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project.

Recommended City Council Action:

Approve

Fiscal Impact:

$1,730,000.00

Discussion:

This agreement commits up to $1.73 million from the MDC for (1) right-of-way acquisition to widen Todd Drive from BI-20 to Golf Course Road, (2) right-of-way acquisition to widen Golf Course Road from Fairgrounds to Todd Drive, (3) right-of-way acquisition to extend Todd Drive from Loop 250 to Occidental Parkway, and (4) design an overpass at Todd Drive and Loop 250.

Morris Williams Jr.

City Manager's Office

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the **MIDLAND DEVELOPMENT CORPORATION** ("*MDC*"), an Economic Development Corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the **CITY OF MIDLAND, TEXAS** ("*City*"), a home-rule municipal corporation.

I.
Recitals

A. MDC and City desire to set forth the terms and conditions upon which One Million Seven Hundred Thirty Thousand and No/100 Dollars ($1,730,000.00) in incentive funds will be provided to City as consideration for its (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road, (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, (iii) acquisition of right-of-way along Todd Drive from Loop 250 to Occidental Parkway, and (iv) engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive (the "*Project*").

B. The Project will facilitate commercial and industrial development in the City of Midland.

C. The MDC Board of Directors (the "*Board*") and the City Council of the City of Midland, Texas (the "*Council*") find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.

D. The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City of Midland.

E. The Board and the Council find that this Agreement does not constitute a direct incentive to or expenditure on behalf of a business enterprise as described in Tex. Loc. Gov't Code § 501.158.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and City hereby agree as follows:

II.
MDC Funding

A. **ROW Funds.** Within five (5) days after receiving written notice from City that a purchase and sale agreement, or other such agreement, for the acquisition of right-of-way necessary and appropriate for the Project has been entered into by and between City and a landowner, MDC shall promptly provide City with written confirmation that MDC will provide to City incentive funds necessary for City's obligations under such agreement (an "*Eligible Agreement*"). Within three (3) days after City provides MDC a final closing or settlement statement issued by the title company for an Eligible Agreement, MDC shall provide to City incentive funds in an amount equal to the purchase price and closing costs that are the responsibility of City, as set forth in such closing or settlement statement (the "*ROW Funds*"). The ROW Funds shall be disbursed and repaid as provided in Section III. Notwithstanding any contrary provision contained herein, the ROW Funds due and payable pursuant to this Agreement shall not exceed a total of One Million Sixty Thousand and No/100 Dollars ($1,060,000.00).

B. **Design Funds.** Within fifteen (15) days after receiving written notice from the City that the City has entered into a contract with a third party for completion of engineering and design work necessary and appropriate for the design of an overpass located at the intersection of Todd Drive and Loop 250, the MDC shall provide to the City incentive funds for the City's obligations under such agreement (the "*Design Funds*"). Notwithstanding any contrary provision contained herein, the Design Funds due and payable pursuant to this Agreement shall not exceed a total of Six Hundred Seventy Thousand and No/100 Dollars ($670,000.00). The ROW Funds and the Design Funds are cumulatively referred to as the "*Funds*."

C. **Total Funds.** It is expressly understood that the Funds, cumulative in their amounts, shall not exceed a total of One Million Seven Hundred Thirty Thousand and No/100 Dollars ($1,730,000.00). MDC agrees to forgive repayment of the Funds if the conditions contained in Section III are met.

III.
Obligations of City

A. **The Project.** City agrees to engage in (or provide for) the following activities in furtherance of the Project: (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road, (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, (iii) acquisition of right-

of-way along Todd Drive from Loop 250 to Occidental Parkway, and (iv) engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive. A depiction of the Project scope is contained in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

B. **Completion.** Upon completion of the Project, City shall certify such to MDC in accordance with Section VII.B.

C. **Repayment of ROW Funds.** If City fails to acquire the right-of-way necessary for the Project by December 31, 2027 (the "*Land Acquisition Date*"), then City agrees to repay all unused ROW Funds to MDC. Any repayable ROW Funds shall be repaid, without interest, within thirty (30) days following City's receipt of written notice from MDC that any portion of the unused ROW Funds are due to be repaid pursuant to this Section.

D. **Repayment of Design Funds.** If City fails to provide for provide for the completion of the engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive by December 31, 2025 (the "*Design Completion Date*"), then City agrees to repay all unused Design Funds to MDC. Any repayable Design Funds shall be repaid, without interest, within thirty (30) days following City's receipt of written notice from MDC that any portion of the unused Design Funds are due to be repaid pursuant to this Section.

E. **Extensions.** The Project Completion Date and the Land Acquisition Date set forth herein may be extended upon a written request from City to MDC for an extension of the time allowed to complete the dates' respective tasks required by this Agreement, and MDC providing to City written approval of such request.

IV.
Term

Upon execution by all of the parties, this Agreement becomes effective on February 22, 2022 (the "*Effective Date*"), and shall terminate when the requirements set forth in Sections II and III are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V.
Law

The parties are aware of statutory limitations on the Funds and the use of the Funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties

acknowledge that the Funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

VI.
Documents

Prior to any payment by MDC, City shall deliver to MDC an executed copy of this Agreement.

VII.
Special Conditions

A. **Financial Commitment.** Notwithstanding any provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed One Million Seven Hundred Thirty Thousand and No/100 Dollars ($1,730,000.00) in the aggregate.

B. **Certification.** As to any certification required under this Agreement, City shall provide a letter from the City Manager. E-mail is an acceptable form of certification under this Agreement.

C. **Payments.** Payments to be made to City under Section II shall be made upon a written request from City and completion of all necessary supporting documentation. The payment request and documentation should be directed to MDC Executive Director, 200 North Loraine Street, Suite 610, Midland, Texas 79701.

VIII.
General Terms

A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

B. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and 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.

D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.

E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

H. **Law.** This Agreement is subject to all applicable state and federal laws, and the parties agrees that they will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by City without the

prior written consent of MDC.

J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:	**If to City:**
MDC Executive Director 200 N. Loraine St., Suite 610 Midland, Texas 79701	City Manager City of Midland P.O. Box 1152 Midland, Texas 79702

K. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.

L. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:	**If to City:**
MDC Executive Director 200 N. Loraine St., Suite 610 Midland, Texas 79701	City Manager City of Midland P.O. Box 1152 Midland, Texas 79702

M. MDC and City hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

N. This Agreement shall not be effective until approved by the Council.

IN WITNESS WHEREOF, MDC and City have executed this Agreement on the _____ day of _____ , 2022.

MIDLAND DEVELOPMENT CORPORATION

_____
Stephen Lowery, Chairman

ATTEST:

_____
Jill Pennington, Secretary

CITY OF MIDLAND, TEXAS

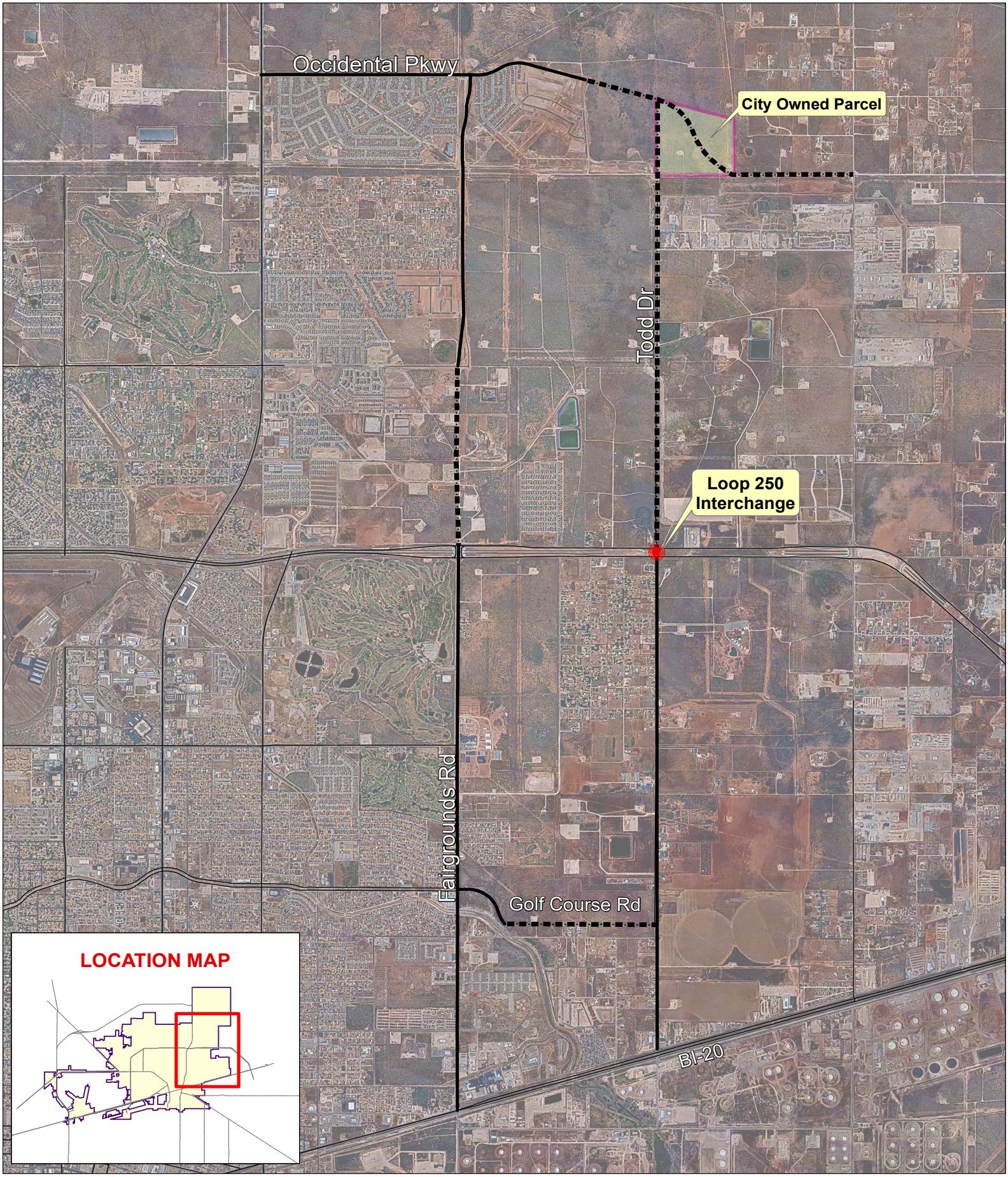
_____

Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary



Date: 1/26/2022

Loop250_Interchange
Existing Street
Proposed Street
City Owned Parcel

PACKET

Proposed Todd Drive Alignment

Exhibit A

February 22, 2022

0 1,500 3,000 Feet

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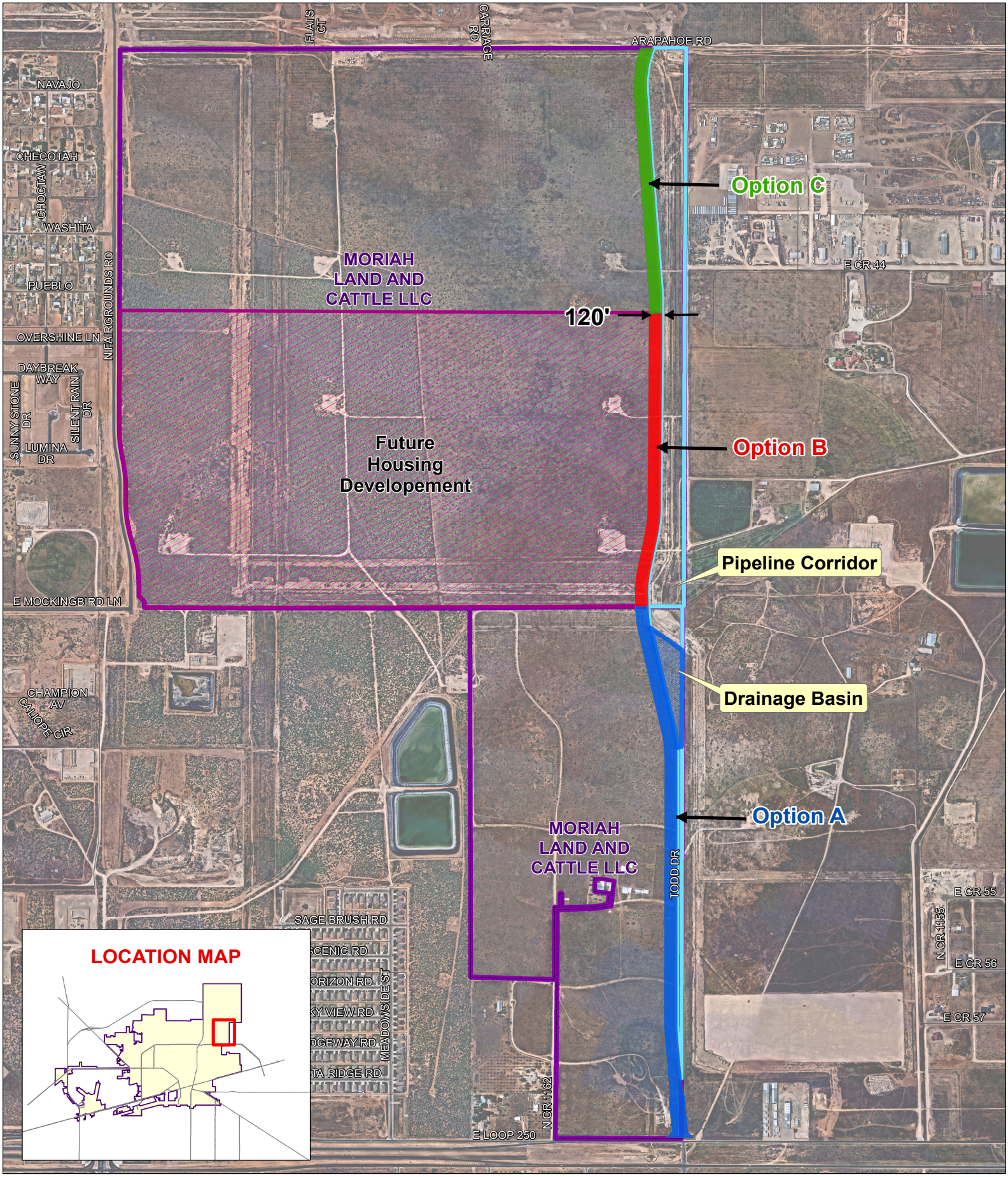
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Proposed ROW

- Option A (17.8 Acres)
- Option B (7.78 Acres)
- Option C (8.83 Acres)
- Pipeline Corridor (40.17 Acres)
- Future Housing Developement
- Parcel Boundary

PACKET 9.12

Todd Drive Proposed ROW

Total Acquisition Acreage: 34.41

Option A Acreage: 17.8
Option B Acreage: 7.78
Option C Acreage: 8.83

Date: 11/29/2021

February 28, 2022

0 500 1,000 Feet

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: **10**

Meeting Date: **February 22, 2022**

To: **City Council / City Manager**

From: **Tina Jauz, Assistant City Manager**

Subject: **Motion approving a Consultant Services Agreement between the Midland Development Corporation and InterFlight Global Corporation for services related to the procurement of new tenants for facilities located at the Spaceport Business Park (DISTRICT 4) (CITY MANAGER)**

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on February 7, 2022 a resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed $139,650.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park.

Recommended City Council Action:

Approve

Fiscal Impact:

$139,650.00

Discussion:

This consulting services agreement will serve to procure new aerospace tenants at the Space Port Business Park. In 2021, InterFlight Global supported familiarization tours with 24 different aerospace companies and the High Speed Aerospace Transportation Workshop with over 100 aerospace industry participants. The contract for 2022 continues the work of aerospace prospect development and industry advocacy.

Morris Williams Jr.

City Manager's Office

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 22nd day of February, 2022, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended ("*MDC*"), and INTERFLIGHT GLOBAL CORPORATION ("*COMPANY*").

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall provide consulting services and deliverables (the "*services*") in connection with procuring new tenants for City of Midland-owned properties located at Midland International Air & Space Port Business Park.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

2. COMPANY shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

1. MDC agrees to pay COMPANY in an amount not to exceed $139,650.00 for the consulting services described in **Exhibit A**. MDC agrees to pay COMPANY according to the schedule set forth in **Exhibit A**. The MDC Executive Director, or his/her designee, must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which COMPANY's invoice is received by MDC, MDC shall pay the full amount of such invoice; provided, however, that if MDC objects to any portion of an invoice, MDC shall notify COMPANY of MDC's objection and the grounds thereof 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. MDC in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

2. Expenses will be invoiced separately. Additional travel, lodging, and other direct or incidental expense guidelines include the following:

a. Privately-owned vehicle mileage will be reimbursed at the current GSA mileage rate;

b. When mileage is charged, a mileage usage log or approved alternate method must be maintained to support the charge. If mileage usage log is submitted, it must include at a minimum travel dates, times, locations and mileage traveled;

c. Car rental reimbursement will be limited to cost of full-sized vehicle, or SUV if multiple passengers, and necessary fuel;

d. Airfare reimbursement will be limited to cost of economy class fares;

e. Lodging reimbursement will be limited to the cost of standard rooms, upgrade expenses for studios and suites are not an allowable reimbursement expense;

g. Tips for service, i.e. meals, and parking greater than 20% are not an allowable reimbursement expense; and

h. Profit mark-ups are not allowable expense on other direct or incidental expenses.

ARTICLE IV. TERM

The term of this Agreement shall be from **February 22, 2022 until January 31, 2023**, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of MDC. The issue on whether or not to grant consent to an assignment is in the sole discretion of MDC.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that COMPANY shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between MDC and COMPANY, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC 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 MDC. 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. COMPANY shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the

work is done. MDC shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

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

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

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

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Agreement, except for Workers'

Compensation Insurance, shall name MDC as an additional insured on a claims occurred basis. MDC shall be provided the notice by COMPANY'S insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

Nothwithstanding any contrary provision contained herein, MDC's Executive Director, in his/her sole and absolute discretion, may modify the insurance requirements contained in this Article.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY 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), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL (i) RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND (ii) ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC 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 JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDMED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COMPANY AND MDC. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'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 SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'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 MDC, MDC'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 SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY AGREES THAT IT SHALL INDEMNIFY AND SAVE MDC 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 MDC 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 MDC 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 SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XV. GENERAL PROVISIONS

A. Waiver. No waiver by MDC 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 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 MDC: Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, Texas 79701

If to COMPANY: InterFlight Global Corporation
Miami Ceneter, 28th Floor
201 South Biscayne Boulevard
Miami, Florida 33131

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

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

requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, 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 ninety (90) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (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 so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

J. Prompt Pay Act. MDC and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

K. Compliance. COMPANY agrees that it shall comply with Texas Government Code

Section 2252.908, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, 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 MDC for the duration of the contract; (ii) promptly provide to MDC any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of MDC; and (iii) on completion of the Agreement, either (a) provide at no cost to MDC 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 MDC.

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 MDC is hereby made void and of no force or effect. MDC'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 Pages Follow]

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

MIDLAND DEVELOPMENT CORPORATION

_____
Stephen Lowery, Chairman

ATTEST:

_____
Jill Pennington, Secretary

[Signature Page Follows]

COMPANY:

By: Yvette Garcia Bordes

Name: Yvette Garcia Bordes

Title: Partner

STATE OF Texas §
§
COUNTY OF Collin §

BEFORE ME, the undersigned authority, on this 26th day of January, 20 22 personally appeared, Yvette Garcia Bordes of InterFlight Global, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26th day of January 2022 20xxxx.

NOTARY PUBLIC STATE OF TEXAS

Turkessa Roundtree

ID NUMBER
131532233
COMMISSION EXPIRES
April 16, 2022

Notary Public, State of Texas

Notary Public, State of Texas

131532233

04/16/2022

Notarized online using audio-video communication

City Council Meeting

Item Number: 11

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: RESOLUTION ESTABLISHING GUIDELINES FOR PERSONS SUBMITTING SPECIFIC REDISTRICTING PROPOSALS AND PROVIDING COMMENTS (DISTRICT: ALL) (CITY MANAGER)

Purpose:

Resolution establishing guidelines for persons submitting specific redistricting proposals and providing comments.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

This is one of two resolutions that are required for the city's redistricting process. Bickerstaff Heath Delgado Acosta LLP is facilitating the redistricting process. Since the city's councilmember districts are out of population balance, the city will need to redistrict. Adoption of the two resolutions begins the process for the city.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ESTABLISHING GUIDELINES FOR PERSONS SUBMITTING SPECIFIC REDISTRICTING PROPOSALS AND PROVIDING COMMENTS

WHEREAS, the City Council has certain responsibilities for redistricting the City's council member districts under federal and state law including but not limited to Amendments 14 and 15 to the United States Constitution, U.S.C.A.; Section 2 of the Voting Rights Act, 52 U.S.C.A. §10301; and Tex. Gov't Code Ann. §§ 2058.001 and 2058.002; and

WHEREAS, it is necessary to provide for the orderly consideration and evaluation of redistricting plans which may come before the City Council; and

WHEREAS, these guidelines relate to persons who have specific redistricting plans they wish the City Council to consider; and

WHEREAS, the City Council also welcomes any comments relevant to the redistricting process;

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

SECTION ONE. That in order to make sure that any comments regarding the redistricting process and any redistricting plan that might be submitted are of maximum assistance to the City Council in its decision-making process, the City Council hereby sets the following guidelines to be followed by each person submitting a comment or a redistricting plan for consideration:

1. Proposed plans must be submitted in writing and be legible. If a plan is submitted orally, there is significant opportunity for misunderstanding, and it is possible that errors may be made in analyzing it. The City Council wants to be sure that all proposals are fully and accurately considered.

2. Any plan must show the total population and voting age population for African-Americans, Hispanics, Asians, and Anglo/Other for each proposed council member district based on the 2020 census data. If a plan is submitted without a population breakdown, the City Council may not have sufficient information to give it full consideration.

3. Plans should redistrict the entire City. The City Council will be considering the effect of any plan on the entire City. Any plan is subject to the Voting Rights Act, which protects various racial and language minorities. Thus, as a matter of federal law, the City Council will be required to consider the

effect of any proposal on multiple racial and ethnic groups. If a plan does not redistrict the entire City, it may be impossible for the City Council to assess its impact on one or more protected minority groups.

4. Plans should conform to the redistricting criteria the City Council will be using in drawing the council member districts.

5. Comments must be submitted in writing and be legible, even if the person also makes the comments orally at a public hearing.

6. Persons providing comments and those submitting proposed plans must identify themselves by full name and home address and provide a phone number and, if available, an email address. The City Council may wish to follow up on such comments or obtain additional information about submitted plans.

7. All comments and proposed plans must be submitted to the City Council by the close of the public hearing.

SECTION TWO. This resolution shall be effective upon passage by the City Council.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:

_____

John Ohnemiller, City Attorney

City Council Meeting

Item Number: 12

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: RESOLUTION ADOPTING CRITERIA FOR USE IN THE CITY OF MIDLAND'S 2022 REDISTRICTING PROCESS (DISTRICT: ALL) (CITY MANAGER)

Purpose:

Resolution adopting criteria for use in the City of Midland's 2022 Redistricting process.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

This is one of two resolutions that are required for the city's redistricting process. Bickerstaff Heath Delgado Acosta LLP is facilitating the redistricting process. Since the city's councilmember districts are out of population balance, the city will need to redistrict. Adoption of the two resolutions begins the process for the city.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ADOPTING CRITERIA FOR USE IN THE CITY OF MIDLAND'S 2022 REDISTRICTING PROCESS

WHEREAS, the City Council has certain responsibilities for redistricting under federal and state law including but not limited to Amendments 14 and 15 to the United States Constitution, U.S.C.A.; Section 2 of the Voting Rights Act, 52 U.S.C.A. §10301; and Tex. Gov't Code Ann. §§ 2058.001 and 2058.002; and

WHEREAS, a review of the 2020 census data reveals that a population imbalance exists among the City's council member districts requiring redistricting of those districts; and

WHEREAS, it is the intent of the City to comply with the Voting Rights Act and with all other relevant law, including *Shaw v. Reno* jurisprudence; and

WHEREAS, a set of established redistricting criteria will serve as a framework to guide the City in the formulation and consideration of redistricting plans; and

WHEREAS, redistricting criteria will provide the City a means by which to evaluate proposed plans; and

WHEREAS, redistricting criteria will assist the City in its efforts to comply with all applicable federal and state laws;

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

SECTION ONE. That the City, in its adoption of a redistricting plan for council member districts, will adhere to the following criteria to the greatest extent possible when establishing new council member district boundaries:

To the extent practicable:

1. Easily identifiable geographic boundaries should be followed.

2. Communities of interest should be maintained in a single district, and attempts should be made to avoid splitting neighborhoods.

3. Council member districts should be composed of whole voting precincts. Where this is not possible or practicable, districts should be drawn considering county election precincts. Avoid splitting census blocks unless necessary.

4. Although it is recognized that existing districts will have to be altered to reflect new population distribution in the City, any redistricting plan should be based on existing districts.

5. Districts must be configured so that they are relatively equal in total population according to the 2020 federal census. In no event should the total population deviation between the largest and the smallest district exceed ten percent as compared to the ideal district size.

6. The districts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as a geographical, dimension.

7. Consideration may be given to the preservation of incumbent-constituency relations by recognition of the residence of incumbents and their history in representing certain areas.

8. The plan should be narrowly tailored to avoid racial gerrymandering in violation of *Shaw v. Reno.*

9. The plan should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting or otherwise discriminate against protected groups so as to create liability under the Voting Rights Act.

SECTION TWO. The City Council will review all plans considering these criteria and will evaluate how well each plan conforms to the criteria.

SECTION THREE. Any plan submitted to the City Council by a citizen for its consideration should be a complete plan—*i.e.*, it should include all four (4) council member districts and should redistrict the entire City. The City Council may decline to consider any plan that is not a complete plan.

SECTION FOUR. All plans submitted by citizens, as well as plans submitted by staff, consultants, and members of the City Council should conform to these criteria

SECTION FIVE. This Resolution shall be effective upon passage by the City Council.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 13

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Cristina 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 carried 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 through the agreement.

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.

There were a few changes made to the agreement this year:

- The concession fee was removed and was replaced with a tournament fee of $25 per team.
- Outside food vendors must be approved by the Parks and Recreation Division prior to their use at any sporting activity.
- Associations cannot schedule any third-party rentals of park property or playing fields.

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.

Robert Patrick

Morris Williams Jr.

City Manager's Office

MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the 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. The 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 the City or the 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)** - 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 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.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

A. Two weeks prior to the start of Association play, the 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 the City in writing and no less than 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 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 "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 $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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport

activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) 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 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue of whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Midland United Girls Softball Association, Inc. P.O. Box 10574 Midland, Texas 79702 Rick Maddox, President

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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 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 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 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 the City from any liability whatsoever. The 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.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the Association's programs, special events, organized sanctioned teams and other services related to soccer for adults and youth at Beal Park, Hogan Park, Reyes/Mashburn/Nelms Park, and Windlands Park. The 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 the City or the 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 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.

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 weeks prior to the start of Association play, the 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 the City in writing and no less than 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 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, i.e.: 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 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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare fields "unplayable" for games and practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) 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 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 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Midland Soccer Association, Inc. 1405 W. Illinois Midland, Texas 79701 Clint Brunson

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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 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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the Association's programs, special events, organized sanctioned teams and other services related to cricket at Beal Park. The Association shall have the right to collect fees and income generated by Association's cricket activities. This Agreement does not preclude the City or the 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 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 "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 the 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.

L. 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 weeks prior to the start of Association play, the 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 the City in writing and no less than 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 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 $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. 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 the City.

A. Abide by all requirements and obligations as set out in this Agreement.

B. The City of Midland reserves the right to declare the fields “unplayable” for games and practice due to wet and adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association’s use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term

of the Agreement without penalty to the City. The 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 9417 Andrews Highway Odessa, Texas 79765 Sam Patel, President

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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

Before the Association shall 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 the 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-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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

UNDER THE LIGHTS FLAG FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the 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. The Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude the City or the 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 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. **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 weeks prior to the start of flag football events, the 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 the City in writing and no less than 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 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 (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 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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Under the Lights Flag Football 2406 Humble Ave. Midland, Texas 79707 League Representative

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE

ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY. THE ASSOCIATION 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 XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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

Before the Association shall 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 the 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 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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

YMCA OF MIDLAND
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the Association's programs, special events, and other services related to flag football, kickball, and soccer activities for youth and adult participants at Hogan Park. The Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude the City or the 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 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. **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 weeks prior to the start of youth sporting events, the 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 the City in writing and no less than 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 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 "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, 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 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 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use

of an outside food vendor is in the sole and absolute discretion of the 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

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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

the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	YMCA of Midland 800 N. Big Spring Street Midland, Texas 79701 Contact: Madeline Meier, Sports Director

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY. THE ASSOCIATION 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 XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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

Before the Association shall 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 the 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-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 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 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 the City from any liability whatsoever. The 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 _____, 2022.

_____
Notary Public, State of Texas

GREATER MIDLAND FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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) years old at the Scharbauer Sports Complex. The Association shall have the right to collect fees and income generated by Association's football activities for youth ages eight (8) to twelve (12) years old. This Agreement does not preclude the City or the 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 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. **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.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

A. Two weeks prior to the start of Association play, the 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 the City in writing and no less than 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 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 "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 $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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the 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 will 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. 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 the 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 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 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: (1) 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, (2) 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 the City. The issue of whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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 P.O. Box 10894 Midland, Texas 79702 Kyle Huckaba, President

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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 shall 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 the 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-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 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 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 the City from any liability whatsoever. The 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.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

MIDLAND JUNIOR BASEBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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. The 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 the City or the 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.

L. Coordinate with Association regarding provision and permitting/licensing of vendors.

M. 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 weeks prior to the start of Association play, the 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 the City in writing and no less than 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 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 $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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 1) uses Park Property for the performance of the sport

activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) 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 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Midland Junior Baseball Association, Inc. P.O. Box 52101 Midland, Texas 79710 Lee Martin, Commissioner

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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 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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the 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. The 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 the City or the 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)** - 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 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.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

A. Two weeks prior to the start of Association play, the 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 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 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 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 $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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the field "unplayable" for games or practice due to wet and adverse weather conditions that damage or kill the grass and potentially require months to repair.

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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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.

The City does not have the right to control the means, methods, or details of Association's work. The 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 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 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) 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 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Midland Softball Association, Inc. 4487 Hackberry Ct. Midland, Texas 79707 Tommy Hawkins

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE ASSOCIATION 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 XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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 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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

WEST TEXAS BMX
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the Association's programs, special events, and other services related to BMX riding and racing at Reyes/Mashburn/Nelms Park. The Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude the City or the 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 1 - DEFINITIONS

A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.

B. **Race track** - 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) Race track 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 the 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 race track 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 race tracks 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 weeks prior to the start of BMX events, the 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 the City in writing and no less than 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 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 "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, 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 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. 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 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 the Association's use of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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 the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	West Texas BMX 4060 Faudree Rd., Suite 104A #406 Odessa, Texas 79765 Donald Davis, President

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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY. THE ASSOCIATION 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 XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, the City is not waiving its governmental immunity and retains all immunity from suit. The 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

The 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

The 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

Before the Association shall 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 the 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 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 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 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 the City from any liability whatsoever. The 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:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

_____
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 _____, 2022.

_____
Notary Public, State of Texas

BOYS AND GIRLS CLUB OF THE PERMIAN BASIN
SPORTS AGREEMENT

This Agreement entered into and effective this 23rd day of February, 2022, 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 the Association's programs, special events, and other services related to flag football and soccer activities for youth and adult participants at Taylor Park. The Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude the City or the 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 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. **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, the 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 the City in writing and no less than 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 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 "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, 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 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 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 the City.

S. Abide by all requirements and obligations as set out in this Agreement.

T. The City of Midland reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions that can damage or kill the grass and potentially require months to repair.

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 the Association's use

of an outside food vendor is in the sole and absolute discretion of the 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, 2022, through February 22, 2023. 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

the 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 the 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. The City does not have the right to control the means, methods, or details of Association's work. The 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 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 the 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 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 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: (1) 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, (2) 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 the City. The issue on whether to grant consent to an assignment is in the sole discretion of the 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. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The 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:	Boys and Girls Club of the Permian Basin 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, the 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 THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE 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 THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY. THE ASSOCIATION 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 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

The 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

Before the Association shall 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 the 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 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 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 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 the City from any liability whatsoever. The 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]

BOYS AND GIRLS CLUB
OF THE PERMIAN BASIN

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 Boys and Girls Club of the Permian Basin.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2022.

_____
Notary Public, State of Texas

City Council Meeting

Item Number: 14

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Cristina Odenborg Burns, Director of Community Services

Subject: RESOLUTION REAPPOINTING SHARLA HOTCHKISS TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (DISTRICT 2) (COMMUNITY SERVICES)

Purpose:

Consider a resolution reappointing Sharla Hotchkiss to the Midland Downtown Park Conservancy Board of Directors; and directing the City Manager to deliver a copy of this resolution to the Midland Downtown Park Conservancy.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

None

Discussion:

In August 2018, the City Council appointed three (3) directors to the Midland Downtown Park Conservancy Board of Directors. The three directors all have staggered terms. Ms. Hotchkiss' term will expire on September 31, 2022, and desires to be reappointed. If approved, the director would enter into a new three-year term.

When the City entered into a Downtown Open Space Development Agreement, part of the agreement references a Conservancy Board of Directors to oversee the operations and maintenance of the downtown park.

The Board of Directors include a total of seven (7) members. Three appointed by the City, one appointed by the Scharbauer Foundation, one appointed by Concho, one by the Downtown Midland Management District, and one at-large. The current City appointed directors include: Barry Beal, Jr.; David Byrd; and Sharla Hotchkiss.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION REAPPOINTING SHARLA HOTCHKISS TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY

WHEREAS, the City of Midland, Texas and the Midland Downtown Park Conservancy (the "*Conservancy*") entered into that certain Downtown Open Space Development Agreement for the purpose of developing Lot 1A, Block 54, and Lot 1A, Block 55, Original Town Addition, Section 14, City and County of Midland, Texas, as a high quality urban park and open space, with related facilities and amenities for the use and enjoyment of residents and visitors of the City for recreational and educational purposes, and for the beautification of and to attract business and business patrons to downtown Midland; and

WHEREAS, the bylaws of the Conservancy provide that three (3) positions on the Conservancy's Board of Directors shall be filled by a duly-approved resolution of the City Council of the City of Midland, Texas; and

WHEREAS, the term of one of the three positions on the Conservancy's Board of Directors is set to expire; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to reappoint Sharla Hotchkiss to the Conservancy's Board of Directors;

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

SECTION ONE. That Sharla Hotchkiss is hereby reappointed to the Board of Directors of the Midland Downtown Park Conservancy.

SECTION TWO. That the City Manager is hereby directed to deliver a copy of this Resolution to the Midland Downtown Park Conservancy.

On motion of Council member _____, seconded by Council member

_____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 15

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,690 FEET WEST OF RANKIN HIGHWAY AND 605 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well CM MIPA ALLOC #H105WA; said well being generally located 1,690 feet west of Rankin Highway and 605 feet south of I-20. 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 site in detail and recommends approval with updated exhibit. A 16 ft. sound wall will be used during drilling and completion operations being located on the south side of location. There have been previous permitted applications on this well pad requiring the same variances. The operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee,

Permian Deep Rock Oil is requesting the following variances:

(1) Permian Deep Rock Oil Company requests variance to residence or commercial structure within 269 feet.
(2) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(3) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(4) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation due to no city water is available.
(5) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,690 FEET WEST OF RANKIN HIGHWAY AND 605 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A 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 11, 2022; 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:

CM MIPA ALLOC #H105WA

located in Section 10, Block 39, T-2-S, T&P RR Co. 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 the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 22, 2022, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's CM MIPA ALLOC #H105WA oil and gas well shall be 240 feet from the west line and 1,690 feet from the east line, Section 10, Block 39, T-2-S, T&P RR Co. 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 22, 2022 through February 22, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 269 feet of an occupied residence or commercial structure.

2. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

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.

4. No landscaping or irrigation is required because City water is not available.

5. No road repair agreement is required because no City streets will be used to access the well site.

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 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of February 2022.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
11/01/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. / Rep. Fax
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped Rangeland, service company yards and apartment complex
Surface ownership: Two residences, apartment complex and service company yards:

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,
Current Tax Roll from Midland Central Appraisal District), **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: CM MIPA ALLOC #H105WA

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 240' FNL & 1,690' FEL, Section 10
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M: **No city roads will be used**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

Attached as Exhibit V: Applicants variances

Permian Deep Rock Oil Co. LLC
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

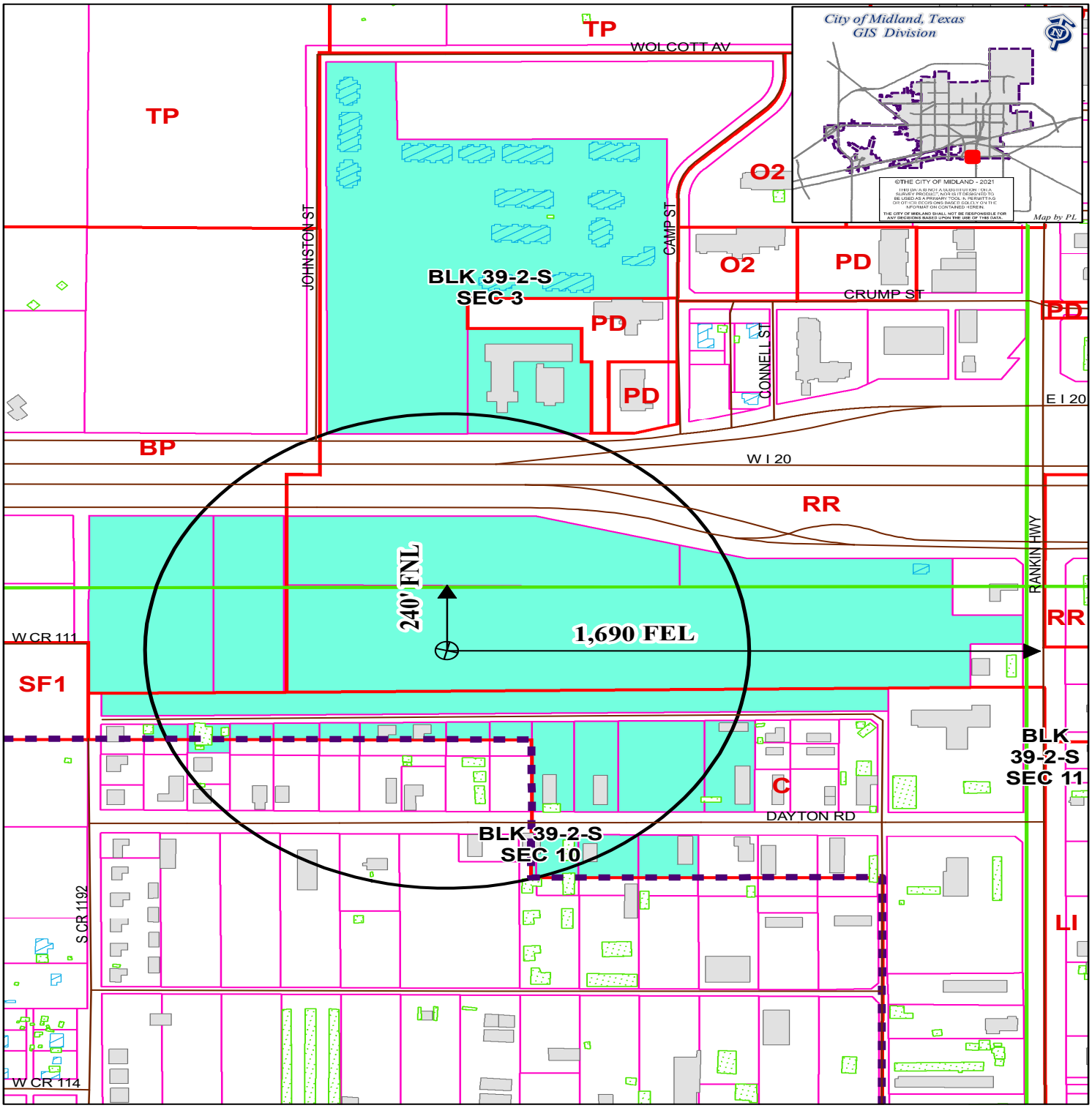
County of Midland)

Keith E. Bucy, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Lindsay Jonell Venerable
Notary Public, State of Texas

LINDSAY JONELL VENERABLE
Notary ID #128754089
My Commission Expires
September 29, 2023

SEAL



LOCATION AND ZONING MAP

Oil - 039200 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 240' FNL and 1,690' FEL, Section 10, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,690 feet west of Rankin Highway and 605 feet south of I-20.

CM MIPA ALLOC #H105WA

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
RE, 1F, 2F1, 2F2, 2F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 22, 2022, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's CM MIPA ALLOC #H105WA oil and gas well shall be 240 feet from the west line and 1,690 feet from the east line, Section 10, Block 39, T-2-S, T&P RR Co. 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 22, 2022 through February 22, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 269 feet of an occupied residence or commercial structure.

2. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

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.

4. No landscaping or irrigation is required because City water is not available.

5. No road repair agreement is required because no City streets will be used to access the well site.

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 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of February 2022.

Permian Deep Rock Oil Co., LLC

By: _____

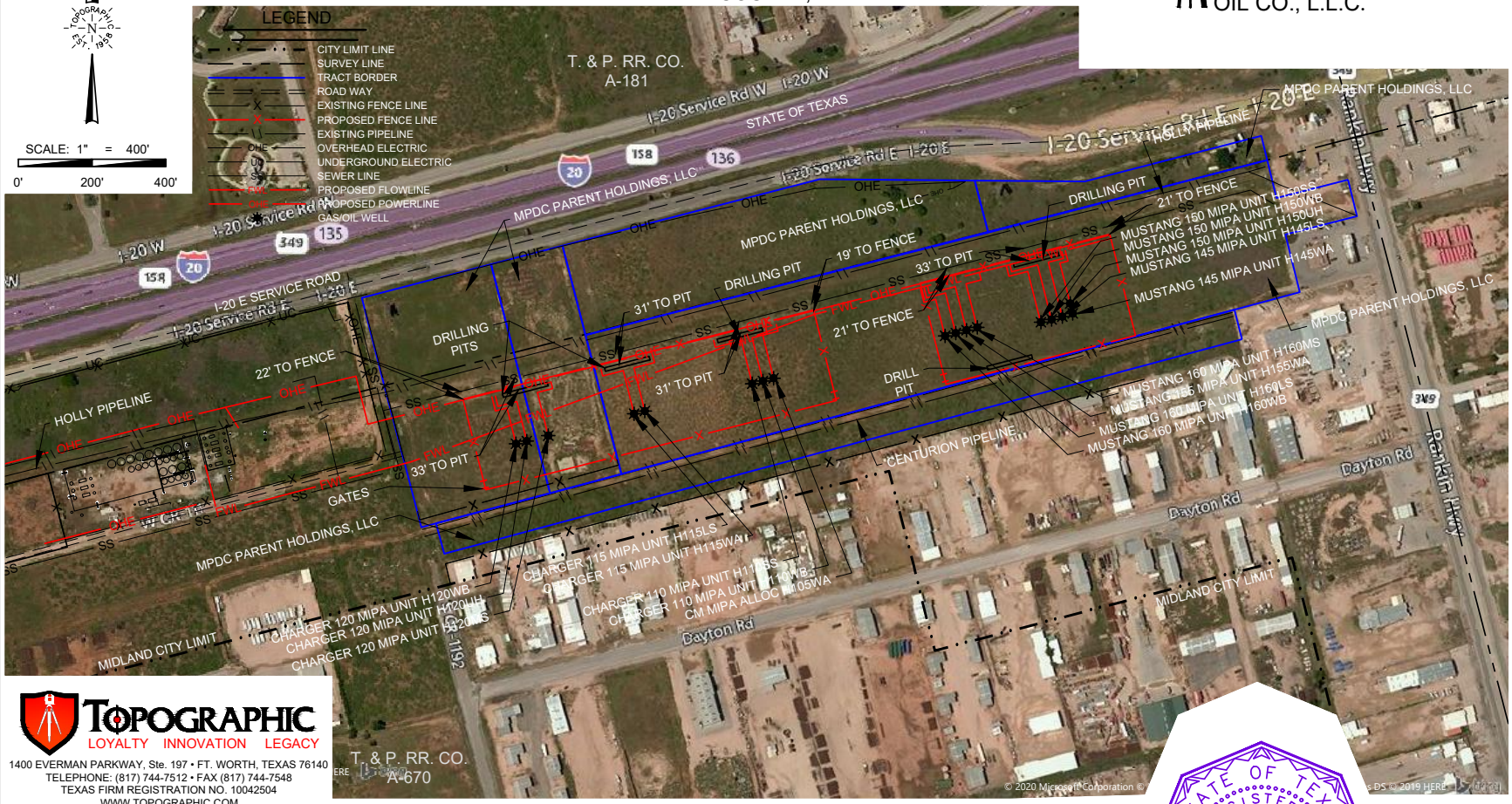
Kyle M. Hammond

General Manager

EXHIBIT "G"

SECTION 3, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-181 &
SECTION 10, BLOCK 39, T2S, H. MCCLINTIC SURVEY, A-670
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.



TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 197 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

CHARGER UNIT CITY PERMIT		REVISION:	
		DRH	06/04/21
		DRH	06/15/21
		DRH	06/16/21
DATE:	03/28/2018	DRH	07/21/21
FILE:	SK_MUSTANG_UNIT_A_CHARGER_UNIT_A_PERMIT_REV19	DRH	08/09/21
DRAWN BY:	GJU	DRH	10/13/21
SHEET :	3 OF 12	DRH	12/10/21

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. CERTIFICATION IS MADE ONLY FOR PROPOSED UTILITIES AND SITES, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY PERMIAN DEEP ROCK OIL CO., L.L.C. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS EASEMENT, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ALL PROPOSED INFRASTRUCTURE SHOWN HEREON IS SOLELY FOR THE PURPOSE OF APPLYING FOR A PERMIT WITH THE CITY OF MIDLAND, TEXAS. THIS IS EXHIBIT IS NOT TO BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH THE T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THESE ARE FOR PLANNING PURPOSES ONLY.
5. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
6. D.R.M.C.T. = DEED RECORDS MIDLAND COUNTY, TEXAS
7. C.C.O.R.M.C.T. = C. C. OFFICIAL RECORDS MIDLAND COUNTY, TEXAS

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: JUNE 11, 2021

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\SKETCH\SK_MUSTANG_UNIT_A_CHARGER_UNIT_A_PERMIT_REV19.DWG 12/10/2021 10:42:30 AM dharris

SCALE: 1" = 300'

0' 150' 300'

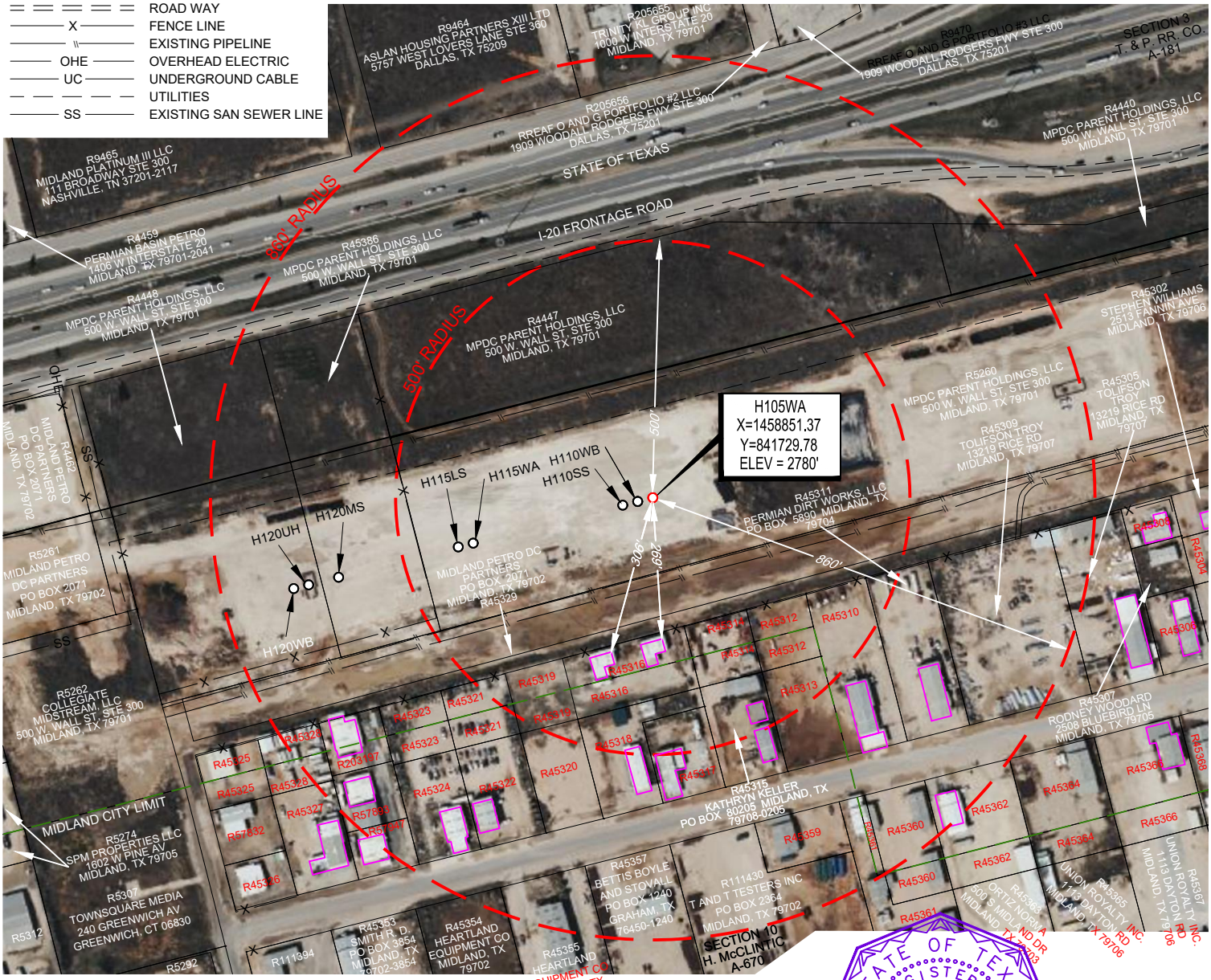
LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- X — FENCE LINE
- EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- UC — UNDERGROUND CABLE
- UTILITIES
- SS — EXISTING SAN SEWER LINE

SECTION 10, T. & P. RR. CO. SURVEY, A-670
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **CHARGER H105WA**
240' FNWL & 1690' FNEL (SECTION 10)

PERMIAN DEEP ROCK OIL CO., L.L.C.



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1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

Jeffrey N. Lueders, R.P.L.S. No. 6512
OCTOBER 7, 2021
Field note description of even date accompanies this plat.

CM MIPA ALOCC H105WA	REVISION:	
	INT	DATE
	DRH	10/21/2021
DATE: 10/12/2021		
FILE: CD_CHARGER_H105WA_REV1		
DRAWN BY: DRH		
SHEET : 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. THIS PROPOSED LOCATION HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, OFFICIAL SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED PERMIAN DEEP ROCK OIL CO., LLC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE.
4. OWNERSHIP INFORMATION SHOWN HEREON WAS TAKEN FROM THE CITY OF MIDLAND, TEXAS GIS SITE.
5. DISTANCES SHOWN HEREON TO EXISTING STRUCTURES ARE SCALED PER AERIAL MAP.

PACKET 15.20 February 22, 2022

S:\SURVEY\ARRINGTON\CHARGER_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD_27\CD_CHARGER_H105WA_REV1.DWG 10/21/2021 6:15:22 AM dharris

City Council Meeting

Item Number: 16

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,365 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permit to Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well Mustang 110 MIPA Unit #H110WB; said well being generally located 2,365 feet east of Rankin Highway and 170 feet south of I-20. 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 site in detail and recommends approval with updated exhibits. This pad was approved for two permits on February 12, 2018 that have expired. A 16 ft. tall and 160 ft. long sound wall will be used during drilling and completion operations being located on the North perimeter of location. The tank battery is

located in the county. The operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Permian Deep Rock Oil is requesting the following variances:

(1) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(2) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(3) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation due to no city water is available.
(4) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,365 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A 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 11, 2022; 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:

Mustang 110 MIPA Unit #H110WB

located in Section 2, Block 39, T-2-S, T&P RR Co. 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 the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 22, 2022, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Mustang 110 MIPA Unit #H110WB oil and gas well shall be 2,365 feet from the west line and 110 feet from the south line, Section 2, Block 39, T-2-S, T&P RR Co. 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 22, 2022 through February 22, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations and use of a workover rig during the completion process directly following the fracing operations.

2. 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.

3. No landscaping or irrigation is required because City water is not available.

4. No road repair agreement is required because no City streets will be used to access the well site.

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 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of February 2022.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
11/01/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. / Rep. Fax
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions within Mustang Unit

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped Rangeland, service company yards and apartment complex
Surface ownership: Two residences, apartment complex and service company yards:

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ***Current Tax Roll from Midland Central Appraisal District),*** **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Mustang 110 MIPA Unit #H110WB

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 110' FSL & 2,365' FWL, Section 2
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M: **No city roads will be used**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V: Applicants variances

Permian Deep Rock Oil Company LLC
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

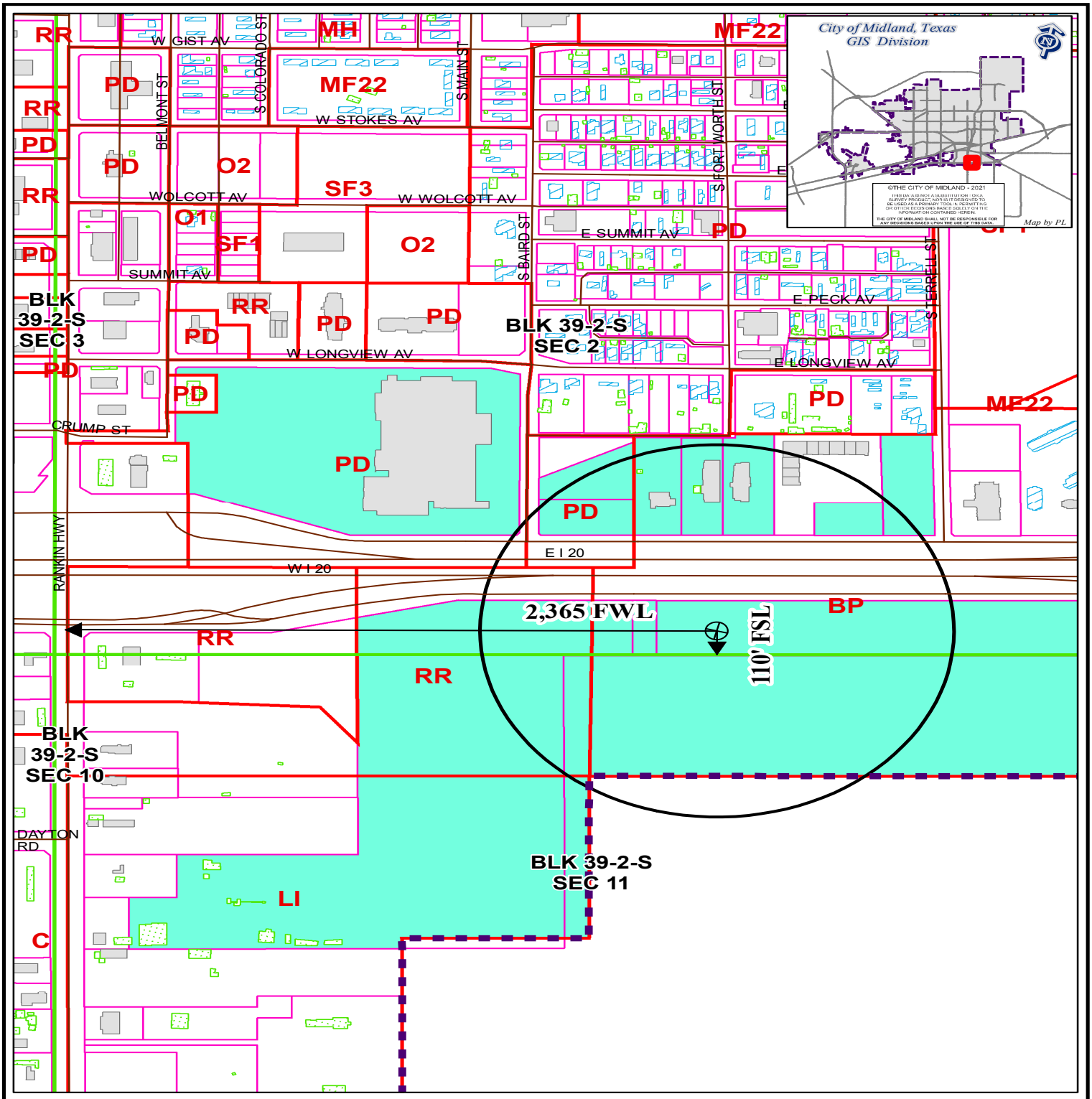
County of Midland)

Keith E Bury, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

_____
Notary Public, State of Texas

CHRISTOPHER HALL
Notary Public, State of Texas
Comm. Expires 08-11-2019
Notary ID 128701314

[SEAL]



LOCATION AND ZONING MAP

Oil - 039201 - 2021 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 110' FSL and 2,365' FWL, Section 2, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 2,365 feet east of Rankin Highway and 170 feet south of I-20.

Mustang 110 MIPA Unit #H110WB

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, SF3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 22, 2022, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Mustang 110 MIPA Unit #H110WB oil and gas well shall be 2,365 feet from the west line and 110 feet from the south line, Section 2, Block 39, T-2-S, T&P RR Co. 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 22, 2022 through February 22, 2023, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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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.

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3. No landscaping or irrigation is required because City water is not available.

4. No road repair agreement is required because no City streets will be used to access the well site.

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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 2022.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of February 2022.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

EXHIBIT "G"

SECTION 2, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-688 &
SECTION 11, BLOCK 39, T2S, H. MCCLINTIC SURVEY, A-63
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

MUSTANG
CITY PERMIT

DATE: 06/13/2018
FILE: SK_MUSTANG_CITY_PERMIT_REV9
DRAWN BY: AMD
SHEET : 3 OF 8

REVISION:	
JRH	10/30/18
DRH	09/23/21
DRH	09/28/21
DRH	09/29/21
DRH	10/29/21
DRH	11/30/21
DRH	12/10/21

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. CERTIFICATION IS MADE ONLY FOR PROPOSED UTILITIES AND SITES, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY PERMIAN DEEP ROCK OIL CO., L.L.C. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS EASEMENT, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ALL PROPOSED INFRASTRUCTURE SHOWN HEREON IS SOLELY FOR THE PURPOSE OF APPLYING FOR A PERMIT WITH THE CITY OF MIDLAND, TEXAS. THIS IS EXHIBIT IS NOT TO BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH THE T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THESE ARE FOR PLANNING PURPOSES ONLY.
5. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
6. D.R.M.C.T. = DEED RECORDS MIDLAND COUNTY, TEXAS
7. C.C.O.R.M.C.T. = C. C. OFFICIAL RECORDS MIDLAND COUNTY, TEXAS

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
LICENSED
LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: SEPTEMBER 20, 2020

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\SKETCH\SK_MUSTANG_CITY_PERMIT_REV9.DWG 12/10/2021 10:22:09 AM dharris

SCALE: 1" = 300'

0' 150' 300'

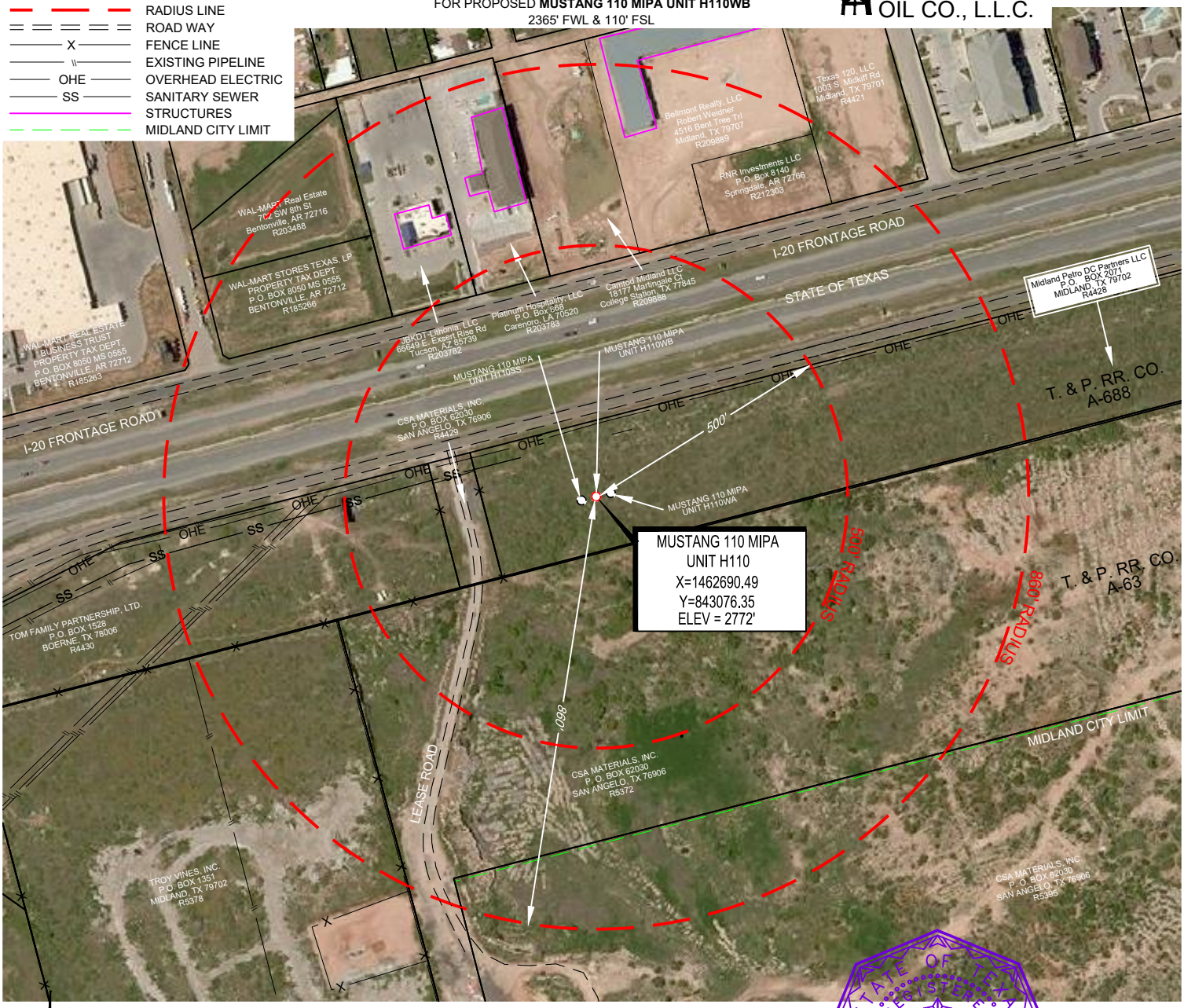
LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- X FENCE LINE
- EXISTING PIPELINE
- OHE OVERHEAD ELECTRIC
- SS SANITARY SEWER
- STRUCTURES
- MIDLAND CITY LIMIT

T. & P. RR. CO. SURVEY, A-688
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 110 MIPA UNIT H110WB**
2365' FWL & 110' FSL

PERMIAN DEEP ROCK OIL CO., L.L.C.



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STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
SEPTEMBER 20, 2021

MUSTANG 110 MIPA UNIT H110WB	REVISION:	
	JRH	6/21/18
	CDG	10/11/18
DATE: 05/08/18	DRH	9/23/21
FILE: CD_MUSTANG_H110WB_REV8	DRH	9/28/21
DRAWN BY: PACKET	DRH	10/29/21
SHEET : 1 OF 2	JF	12/13/21

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS COORDINATE SYSTEM OF 1927, CENTRAL ZONE, U.S. SURVEY FEET.
3. THIS PROPOSED LOCATION HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, OFFICIAL SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED PERMIAN DEEP ROCK OIL CO., LLC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE.
4. OWNERSHIP INFORMATION SHOWN HEREON WAS TAKEN FROM THE CITY OF MIDLAND, TEXAS GIS SITE.
5. DISTANCES SHOWN HEREON TO EXISTING STRUCTURES ARE SCALED PER AERIAL MAP.

16.20 February 22, 2022

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD27\CD_MUSTANG_H110WB_REV8.DWG 12/14/2021 6:05:56 AM dharris

City Council Meeting

Item Number: 17

Meeting Date: February 22, 2022

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (22-329-007) with Environmental Disposal Systems LLC, regarding City-owned property described as Section 21, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a temporary, two year, 50' wide right of way for Environmental Disposal Systems, a wholly subsidiary of Endeavor Energy to place multiple above ground water lines on Sprayberry Farm property. These temporary water lines are in direct support of ongoing drilling and completion activities on City owned and adjacent properties.

This Right-of-Way License is proposed for a two (2) year period with the option for a single one (1) year renewal. Terms are consistent with the City's standard license for facilities of this nature

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (pipelines) (373.92 rods x $90/rod): $33,652.80/ year – first 2 years paid in advance: $67,305.60

Tank rental space: 1.91 acres / 83,199.6 sq. ft ($0.12*83,199.6): $9,983.95

Surface Damages: included in new annual rate

Total Collected: $78,289.55

Discussion:

These temporary above ground pipelines and water tank storage right of ways will allow applicant to move and store fresh and recycled water from adjacent company work areas outside the Surface Use Agreement area.

Certificates of Insurance are on file

City Secretary to record all documents

Morris William Jr.

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: February 23, 2022

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Environmental Disposal Systems, LLC.

Licensee's Representative: **Robert Booth**

Licensee's Mailing Address: 110 N. Marienfeld St.
Midland, Texas 79701

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

License Number: 22-329-007

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of two (2) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of one (1) year, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of SEVENTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-NINE and 55/100 Dollars ($77,289.55) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Intentionally omitted.

C. Application Fee. At the same time the License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall

negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon certain property of Licensor, being fifty (50) feet in width of the location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described location, ground water lines and water storage tanks for the purpose of moving and storing fresh and recycled water. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the above ground water lines and water storage tanks described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the above ground water lines and water storage tanks described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. **Road Repair.** Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Intentionally omitted.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or

cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not (except to the extent of Licensor's gross negligence or willful misconduct) be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S ABOVE GROUND WATER LINES OR WATER STORAGE TANKS, ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or above ground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any of the above ground water lines or water storage tanks built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate Licensee's above ground water lines or water storage tanks, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Excess Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter

1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S ABOVE GROUND WATER LINES OR WATER STORAGE TANKS IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES, BUT ONLY TO THE EXTENT LICENSEE OWES LICENSOR AN INDEMNITY UNDER THIS PARAGRAPH.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE ABOVE GROUND WATER LINES OR WATER STORAGE TANKS AND DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND

OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S ABOVE GROUND WATER LINES OR WATER STORAGE TANKS IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, IN NO EVENT SHALL LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, DAMAGES, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT TO THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF LICENSOR OR ANY OF LICENSOR'S OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS OR EMPLOYEES.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The

granting of consent is in the sole discretion of Licensor's City Manager.

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

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH

PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LICENSE, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE WITH REGARDS TO THIS LICENSE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, LICENSOR'S NEGLIGENCE OR CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS; PROVIDED, HOWEVER, THAT SAID RELEASE SHALL NOT EXTEND TO ANY DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION RELATING TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF LICENSOR.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof,

the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that

it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Morris Williams Jr., Deputy City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
ENVIRONMENTAL DISPOSAL SYSTEMS, LLC

By:_____

Printed Name: _____

Title: _____

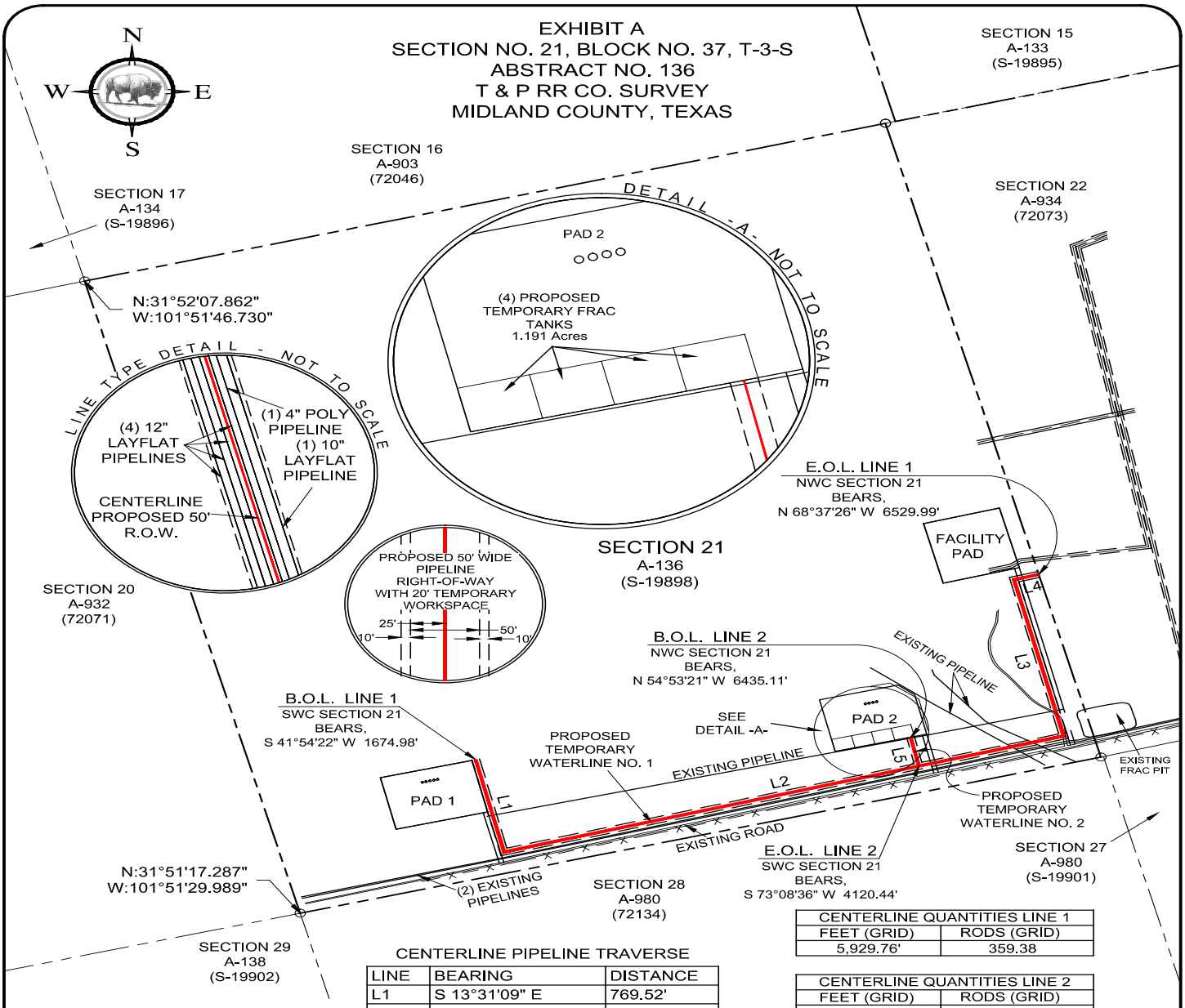
THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2022 personally appeared _____ an officer of Environmental Disposal Systems, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2022.

_____
Notary Public, State of _____

EXHIBIT A
SECTION NO. 21, BLOCK NO. 37, T-3-S
ABSTRACT NO. 136
T & P RR CO. SURVEY
MIDLAND COUNTY, TEXAS



CENTERLINE QUANTITIES LINE 1	
FEET (GRID)	RODS (GRID)
5,929.76'	359.38

CENTERLINE QUANTITIES LINE 2	
FEET (GRID)	RODS (GRID)
239.97'	14.54

CENTERLINE PIPELINE TRAVERSE

LINE	BEARING	DISTANCE
L1	S 13°31'09" E	769.52'
L2	N 75°14'50" E	3688.30'
L3	N 13°56'21" W	1309.16'
L4	N 75°06'36" E	162.78'
L5	S 12°41'00" E	239.97'

(CM) = CONTROLLING MONUMENT
B.O.L. = BEGINNING OF LINE
E.O.L. = END OF LINE

CENTERLINE COORDINATES LINE 1		
	NAD 83 COORDINATE	NAD 83 GEODETIC
B.O.L.	X:1,824,203.11	N:31°51'29.773"
	Y:10,642,845.66	W:101°51'17.217"
E.O.L.	X:1,827,791.67	N:31°51'45.134"
	Y:10,644,349.12	W:101°50'35.850"

CENTERLINE COORDINATES LINE 2		
	NAD 83 COORDINATE	NAD 83 GEODETIC
B.O.L.	X:1,826,975.09	N:31°51'31.952"
	Y:10,643,028.03	W:101°50'45.109"
E.O.L.	X:1,827,027.78	N:31°51'29.642"
	Y:10,642,793.91	W:101°50'44.461"

I, James P. Keene, Registered Professional Land Surveyor No. 5100, do hereby state that the survey map hereon, depicts and describes the results of an actual on the ground survey made on the 28th day of December 2021, under my direction and supervision. This survey substantially conforms to the Minimum Standards of Practice as approved by the Texas Board of Professional Land Surveyors. This statement is not a representation of warranty of title or guarantee of ownership.

This survey was conducted without the benefit of a current title commitment, other easements and restrictions may apply.

Coordinates: NAD 83 Texas North Central Zone. Basis of Bearing is the Texas State Plane Coordinate System North Central Zone, NAD 83. Distances must be multiplied by a combined scale factor of 1.0001275 to obtain surface distances. ANY USE OF THIS SURVEY FOR ANY OTHER PURPOSE OR BY OTHER PARTIES SHALL BE AT THEIR RISK AND THE UNDERSIGNED IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREOF.

STATE OF TEXAS
REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL
LAND SURVEYOR

SCALE: 1" = 1000'
1000 500 0 1000 2000
GRAPHIC SCALE

1-800-245-4545
WWW.TEXASONECALL.COM
TEXAS ONE CALL SYSTEM
CONSTRUCTION NOTE: UNDER GROUND UTILITIES MUST BE VERIFIED BY CONTRACTOR PRIOR TO EXCAVATING.

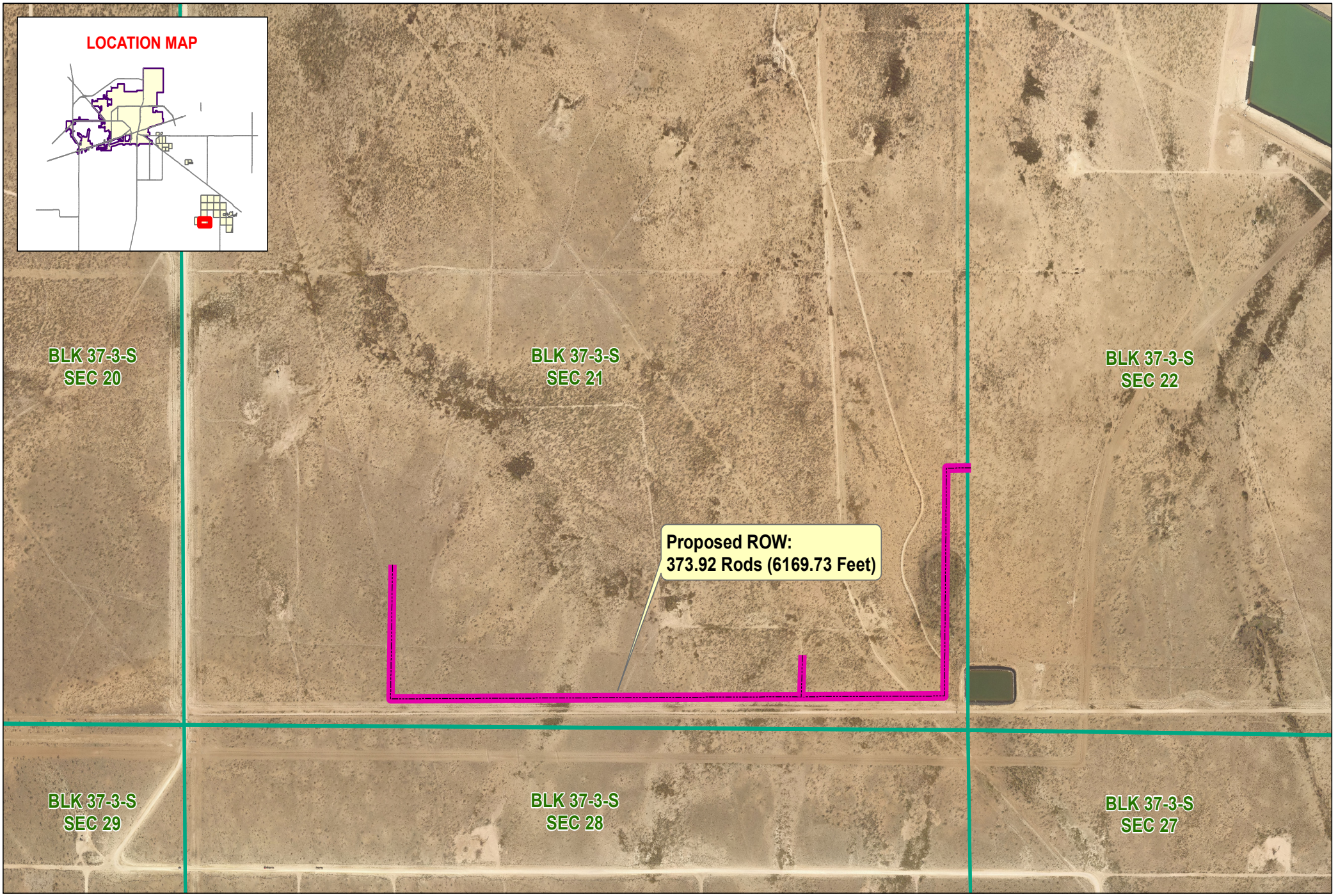
PAGE 5 OF 5
DATE: 01-10-22
SCALE: 1"= 1000'
DRAWN BY: JBH
APPROVED: JPK
FIELD CREW: JR
PROJ. NO. 16-0490-WTH 21-16 PROPOSED TEMP. WATERLINE

ENDEAVOR ENERGY RESOURCES, L.P.
(WTH 21-16)
PROPOSED 50 FEET WIDE TEMPORARY WATERLINE RIGHT-OF-WAY
LOCATED IN
SECTION 21, BLOCK 37, T-3-S,
T & P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

BISON CREEK
LAND SERVICES, LLC
WWW.BISON-CREEK.COM COPYRIGHT 2022
FIRM LICENSE NO. 10193880

February 22, 2022

PACKET 17.16



Date: 1/25/2022

PACKET 17.17 February 22, 2022

Endeavor Proposed Waterline ROW in Spraberry

Proposed ROW
Survey Section

0 250 500 Feet

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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 18

Meeting Date: February 8, 2022 (February 22, 2022)

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Well-Suited Property**,** is requesting a Zone Change from HI, Heavy Industrial District to SF-3 Single-Family Dwelling District at 601 North Madison Street, to construct a single-family residence.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

HI, Heavy Industrial District.

Surrounding Zoning and Land Use:

The properties to the north, east, and west are also zoned HI, Heavy Industrial District and the location of vacant land and single-family residences, respectively. The property to the south is zoned SF-3 Single-Family Dwelling District and the location of single-family residence, respectively.

Analysis:

The property is located at 601 N. Madison Street 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 HI, Heavy Industrial 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 HI, Heavy Industrial District. The property does not meet the minimum lot size requirements for the SF-3, Single Family Dwelling District, however; a special exception for the minimum lot dimensions was approved by the City Council on December 14, 2021.

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)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's

information only.]

No objections to plat. [For the Applicant's information only.]

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, "Future Land Use Map" as it designates this area for Urban Medium, a classification which calls for a mix of residential and non-residential uses. As the surrounding lots consist of vacant lots and residences, this zone change will follow the existing characteristics of the surrounding neighborhood and provide additional housing for residents of the City of Midland.

This request is set to be heard at the February 1, 2022 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from HI, Heavy Industrial District to SF-3, Single Family Dwelling District, subject to condition A.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of February 2, 2022.

Attachments:

Application
East Midland Plat
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 50, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM HI, HEAVY INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MADISON STREET AND SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 6, Block 50, East Midland Addition, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from HI, Heavy Industrial District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-21-0278

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Well Suited Property Solutions, LLC		Phone (432) 553-8756 Email ralph@wellsuitedps.com	
Address 601 N Madison Str.	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: 601 N Madison Street, Midland TX 79701

Legal Description R17105

Lot: Block: 6 Subdivision: 50 East Midland Addition Parcel

Current Zoning: HI

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To re-zone from HI to SF3

Present Use of Property: Vacant.

Proposed Use of Property: To build a single family home.

How would this zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation: None.

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): Ralph	Date: 12/20/21
Applicant (printed): Ralph Okugbere	
Property Owner (signature): Ralph	Date: 12/20/21
Property Owner (printed) : Ralph Okugbere.	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 1486	
Received By: JS	Date:

RECEIVED DEC 20 2021 BY:
RECEIVED DEC 15 2021 02 330
RECEIVED JUN 04 2020 BY:

****Application will not be considered for scheduling until reviewed by a planner.****

Do Not Remove
From Drafting Room 00

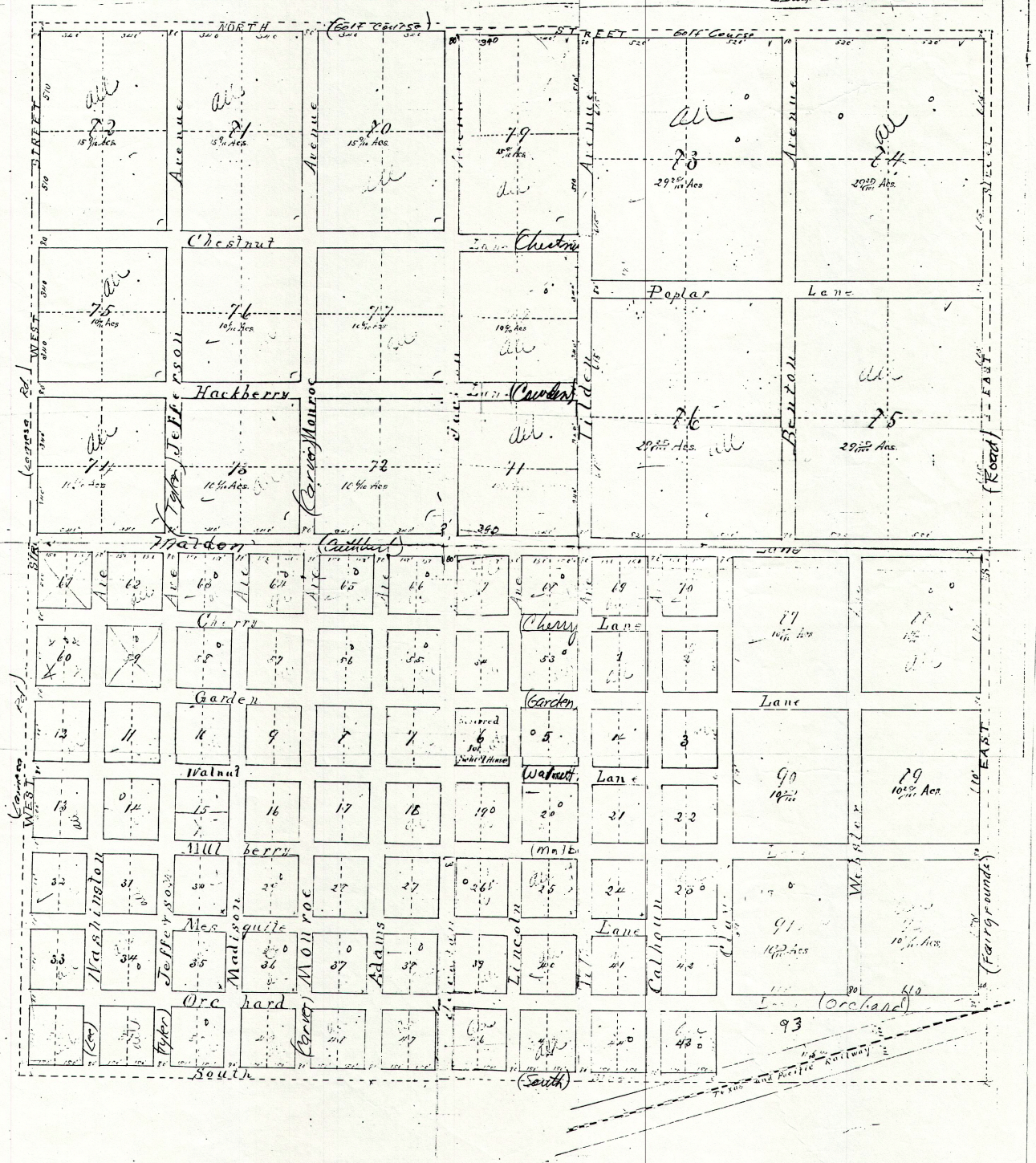
Map of

EASTMIDLAND

MIDLAND COUNTY
TEXAS

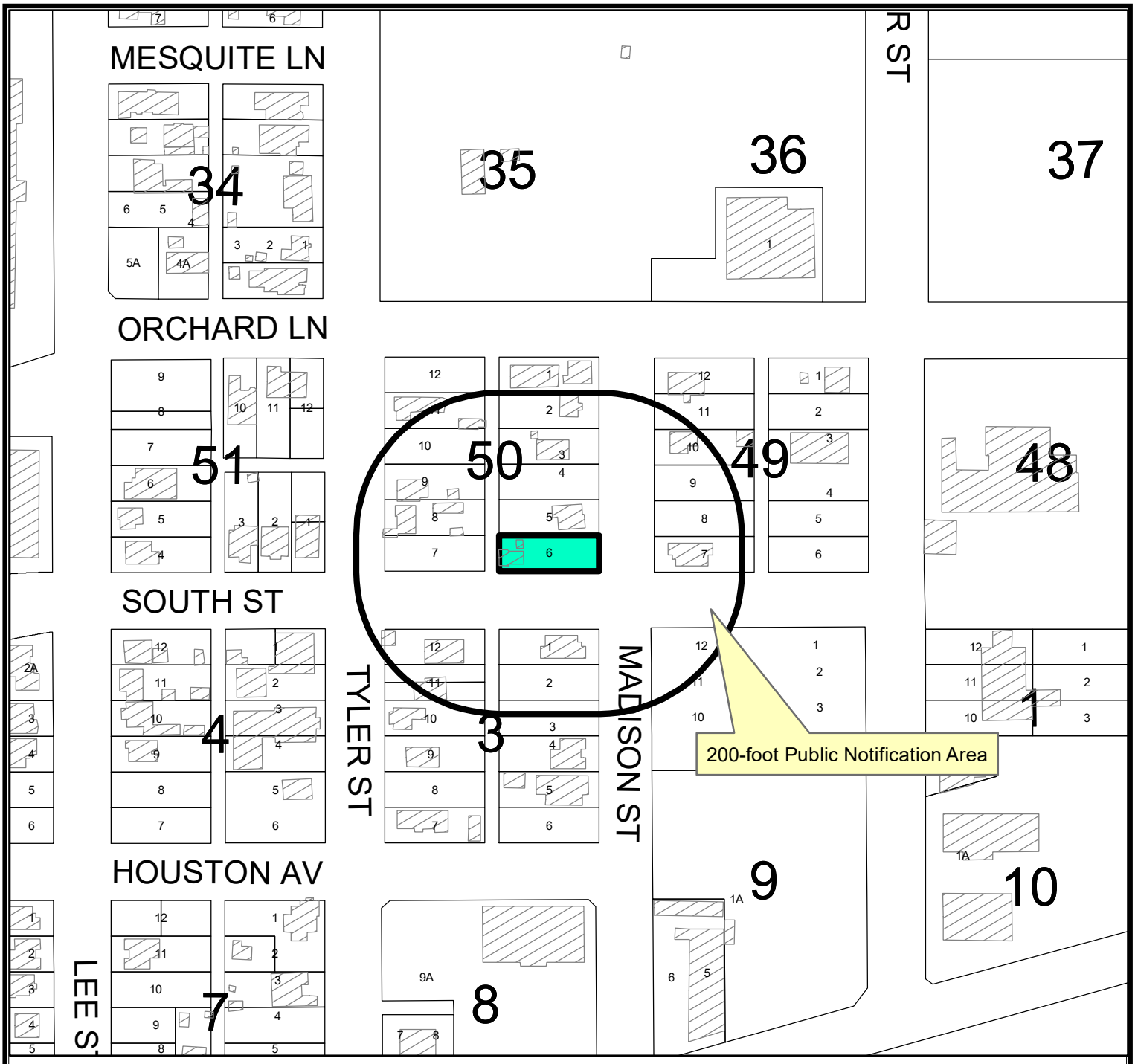
Being all of Section 25, Block 39
Township 1 South Texas and
Pacific Railway Company
Scale 400 ft = 1 inch

This Map is Recorded on pages
of Book of the Records
of Deeds of MIDLAND COUNTY Texas.



State of Texas }
Midland County } Know all men by these presents, That I, John Howard of Tarrant County, Texas and I, S. H. Griffith of Onida County, New York acting herein by my attorney in fact S. H. Griffith of said Tarrant County, Texas under Power of attorney dated September 21, 1885 and recorded in the records of deeds of Midland County, Texas Book I on Pages 86 & 87 and B. K. Brant of said Midland County, Texas have bargained granted and donated and by these presents do bargain

Bostwick's



LOCATION MAP

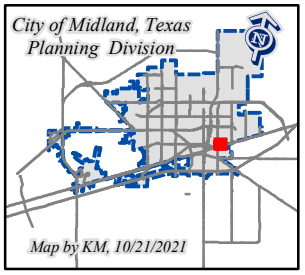
Z-21-0278 **Scale: 1" = 200'**

Consider a request by Well-Suited Property for a Zone Change from HI, Heavy Industrial District to SF-3, Single Family-Dwelling District on Lot 6, Block 50, East Midland, City and County of Midland, Texas.

Generally located on the northwest corner of the intersection of N Madison Street and South Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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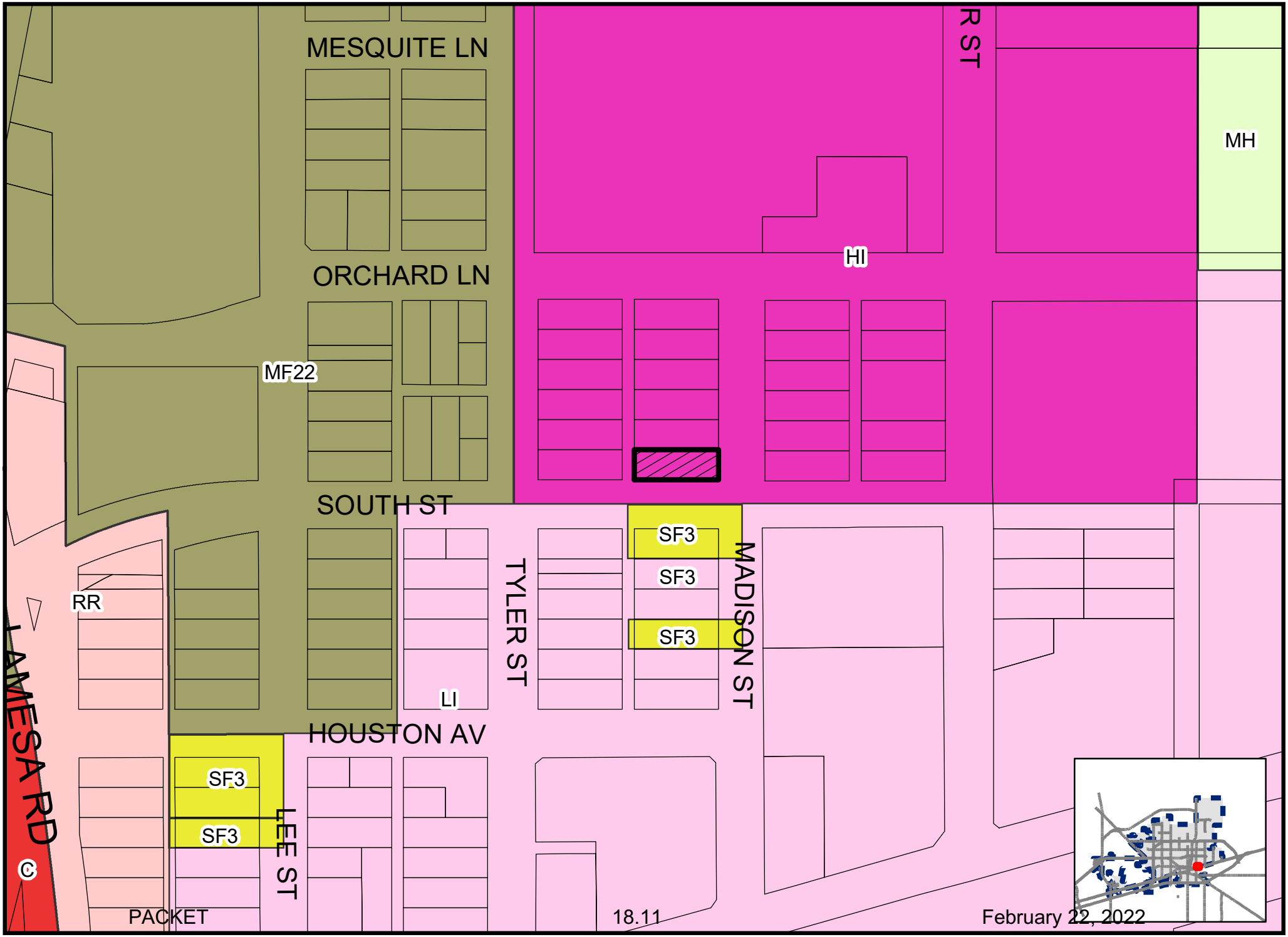
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 10/21/2021

Z-21-0278

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

GMC

City Council Meeting

Item Number: 19

Meeting Date: February 8, 2022 (February 22, 2022)

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.97-ACRE TRACT OF LAND OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO CE, COUNTRY ESTATE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF PIMLICO DRIVE, APPROXIMATELY 170 FEET EAST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Chukwuma Mbagwu, is requesting to rezone a 4.97-acre tract of land out of Lot 2, Block 2, Green Hill Terrace, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

AE, Agricultural Estate District

Surrounding Zoning and Land Use:

The properties to the north and east are zoned AE, Agricultural Estate District and the locations of residential homes. The properties to the south are zoned RR, Regional Retail District and AE, Agricultural Estate District, and the locations of vacant land, Green Hill Terrace pool and residential homes. The property to the west is zoned PD, Planned Development District, and the location of vacant land.

Analysis:

The applicant is requesting this zone change for the purpose of developing single family homes. The property is currently vacant and zoned AE, Agricultural Estate District. The lot is in the process of being replatted into several lots each of them would be (1) one acre or more. However, the proposed lots do not meet the minimum lot dimensions for the AE, 2 0 1 5 Agricultural Estate District. Per our Zoning Ordinance, the minimum lot area in the AE, Agricultural Estate District is two (2) acres. Rezoning the tract would allow the applicant to meet the lot area requirement in the CE, Country Estate District. It should be noted that about 50% or more of the surrounding properties in this area are zoned AE, Agricultural Estate District and are an acre or less per lot. Based on the acreage of these properties, the appropriate zoning for them would be CE, Country Estate District. Furthermore, the character of the neighborhood would not be adversely affected by any use permitted in the proposed zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. 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 plat. [For the Applicant’s information only.]

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant’s information only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

No objections to plat. [For the Applicant's information only.]

Planning:

The request does not fit with the Tall City Tomorrow Comprehensive Plan, Chapter 3- Land Use Vision. This designation calls for parks and open space. These areas are intended to remain undeveloped and natural or recreational in character. However, most of the surrounding land uses are residential homes; therefore, the development of single-family homes would not disrupt the character of the area. In addition to increasing the housing market with larger lots.

This request was recommended for approval at the January 18, 2022, Planning and Zoning Commission Meeting.

Therefore, staff recommends approval of this zone change from AE, Agricultural Estate District to CE, Country Estate District subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the CE, Country Estate District.

Letters of Objection:

Staff has not received any letters of objection as of February 2, 2022.

Attachments:

Application
Meets and Bounds (Exhibit A)
Survey Plat (Exhibit B)
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 4.97-ACRE TRACT OF LAND OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO CE, COUNTRY ESTATE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF PIMLICO DRIVE, APPROXIMATELY 170 FEET EAST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 4.97-acre tract of land out of Lot 2, Block 2, Green Hill Terrace, 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 CE, Country Estate 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 AE, Agricultural Estate District to CE, Country Estate District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all

other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

FIELD NOTE DESCRIPTION OF A 4.97 ACRE TRACT OF LAND, OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 26, PLAT OF RECORDS, MIDLAND COUNTY TEXAS; DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT, ALSO BEING THE SOUTHWEST CORNER OF LOT 2;

THENCE NORTH 14°17'26" WEST 468.10 FEET TO A 1/2" REINF BAR FOUND FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75°49'52" EAST 532.40 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 47°54'29" EAST 136.01 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 14°17'26" EAST 355.00 FEET TO A 1/2" REINF BAR SET FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°49'52" WEST 40.00 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE NORTH 14°17'26" WEST 207.06 FEET TO A 1/2" REINF BAR SET FOR AN INTERNAL CORNER OF THIS TRACT;

THENCE SOUTH 75°43'02" WEST 307.93 FEET TO A 1/2" REINF BAR SET FOR AN INTERNAL CORNER OF THIS TRACT;

THENCE SOUTH 14°17'44" EAST 206.45 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 75°49'52" WEST 259.79 FEET TO THE PLACE OF BEGINNING.

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

12-21-2021

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0279

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: **Chukwuma Mbagwu**		Phone (**432**) **296-1826** Email **chux_mbagwu@yahoo.com**	
Address ***4502 Mockingbird***	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address:

Legal Description
Lot: 2 Block: 2 Subdivision: Green Hill Terrace

Current Zoning: AE

Proposed Zone: CE
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To build houses on each lot with the lot requirements. Lot is in the process of being re-platted into 1 acre lots.

Present Use of Property: Vacant

Proposed Use of Property: Residential

How would this zone change affect the public health, safety and welfare? It doesn't

Describe how conditions affecting the property have changed since present zoning designation:

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): X	Date: 12/07/21
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.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Eduardo L. Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by ChuKwuma, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Eduardo L Aleman
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 7th day of December, 20 21, to certify which witness my hand and seal of office.

HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-05-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 1722	
Received By: KM	Date: RECEIVED DEC 21 2021

****Application will not be considered for scheduling until reviewed by a planner.****

FIELD NOTE DESCRIPTION OF A 4.97 ACRE TRACT OF LAND, OUT OF LOT 2, BLOCK 2, GREEN HILL TERRACE, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 26, PLAT OF RECORDS, MIDLAND COUNTY TEXAS; DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT, ALSO BEING THE SOUTHWEST CORNER OF LOT 2;

THENCE NORTH 14°17'26" WEST 468.10 FEET TO A 1/2" REINF BAR FOUND FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75°49'52" EAST 532.40 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 47°54'29" EAST 136.01 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 14°17'26" EAST 355.00 FEET TO A 1/2" REINF BAR SET FOR THE SOUTHEAST CORNER OF THIS TRACT;

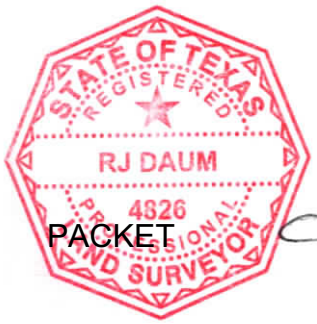
THENCE SOUTH 75°49'52" WEST 40.00 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE NORTH 14°17'26" WEST 207.06 FEET TO A 1/2" REINF BAR SET FOR AN INTERNAL CORNER OF THIS TRACT;

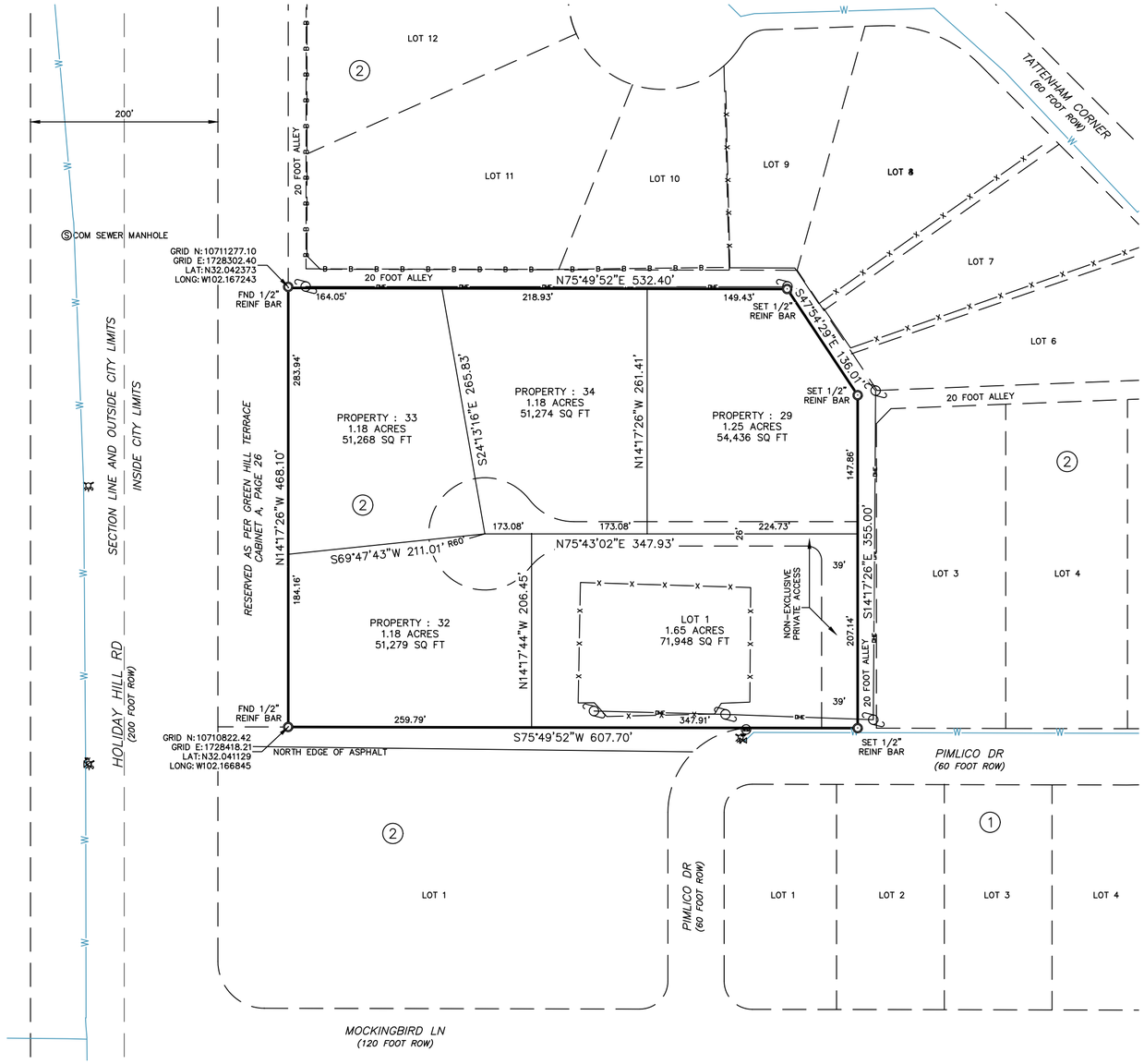
THENCE SOUTH 75°43'02" WEST 307.93 FEET TO A 1/2" REINF BAR SET FOR AN INTERNAL CORNER OF THIS TRACT;

THENCE SOUTH 14°17'44" EAST 206.45 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE SOUTH 75°49'52" WEST 259.79 FEET TO THE PLACE OF BEGINNING.



12-21-2021



SKETCH PLAN

GREEN HILL TERRACE, SECTION 19

BEING A RE-PLAT OF LOT 2, BLOCK 2, GREEN HILL TERRACE,
CITY AND COUNTY OF MIDLAND, TEXAS

STATE OF TEXAS

COUNTY OF MIDLAND

WHEREAS, I AM THE RECORD OWNER OF LOT 2, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE PARTICULARLY DESCRIBED HEREON.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT I DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS GREEN HILL TERRACE, SECTION 19, AN ADDITION TO THE CITY OF MIDLAND, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEY, AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.

WITNESS MY HAND AT MIDLAND, TEXAS, THIS ____ DAY OF _____, 20____ .

_____
CHUKWUMA MBAGWU

STATE OF TEXAS:
COUNTY OF MIDLAND:

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS____DAY OF _____, 20_____, CHUKWUMA MBAGWU.

_____
NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

OWNER:

CHUKWUMA MBAGWU
4502 MOCKINGBIRD
MIDLAND, TX 79705
(432) 296-1826
CHUX_MBAGWU@YAHOO.COM

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.

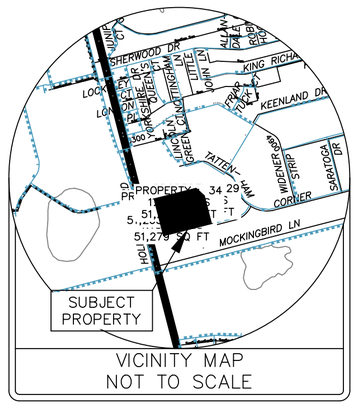
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.

3. BEARINGS, DISTANCES AND ACREAGE SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

4. THE INSTALLATION OF PUBLIC IMPROVEMENTS MAY BE REQUIRED BY THE CITY OF MIDLAND AS SUCH TIME AS: (1) THE 6.433 ACRE TRACT IS RE-PLATTED FOR SUBDIVISION INTO MORE THAN FIVE TRACT OR (2) THE PROPERTY IS REZONED FOR A MORE INTENSIVE USE.

5. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.

6. THIS PROPERTY IS DESIGNATED ZONE "X" AS PER THE FEDERAL EMERGENCY MAMAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FRIM) NUMBER 48329-C0066F. WITH THE EFFECTIVE DATE OF SEPTEMBER 16, 2005.



VICINITY MAP
NOT TO SCALE

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

SIGNED: _____
ONCOR ELECTRIC DELIVERY COMPANY

SIGNED: _____
AT&T TEXAS

SIGNED: _____
ATMOS ENERGY

SIGNED: _____
SUDDENLINK COMMUNICATIONS

SIGNED: _____
GRANDE COMMUNICATIONS

CERTIFICATE OF APPROVAL

FOR APPROVAL BY THE COMMISSION:

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF GREEN HILL TERRACE, SECTION 19 WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE CITY OF MIDLAND, ON THIS _____ DAY OF _____, 2022.

SIGNED: _____
CHAIRMAN LUCY SISNIEGA

ATTEST: _____
SECRETARY ELIZABETH SHAUGHNESSY

THAT I, RJ DAUM. A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

_____
RJ DAUM
TEXAS RPLS 4826

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO._____CABINET _____
DATE_____PAGE_____

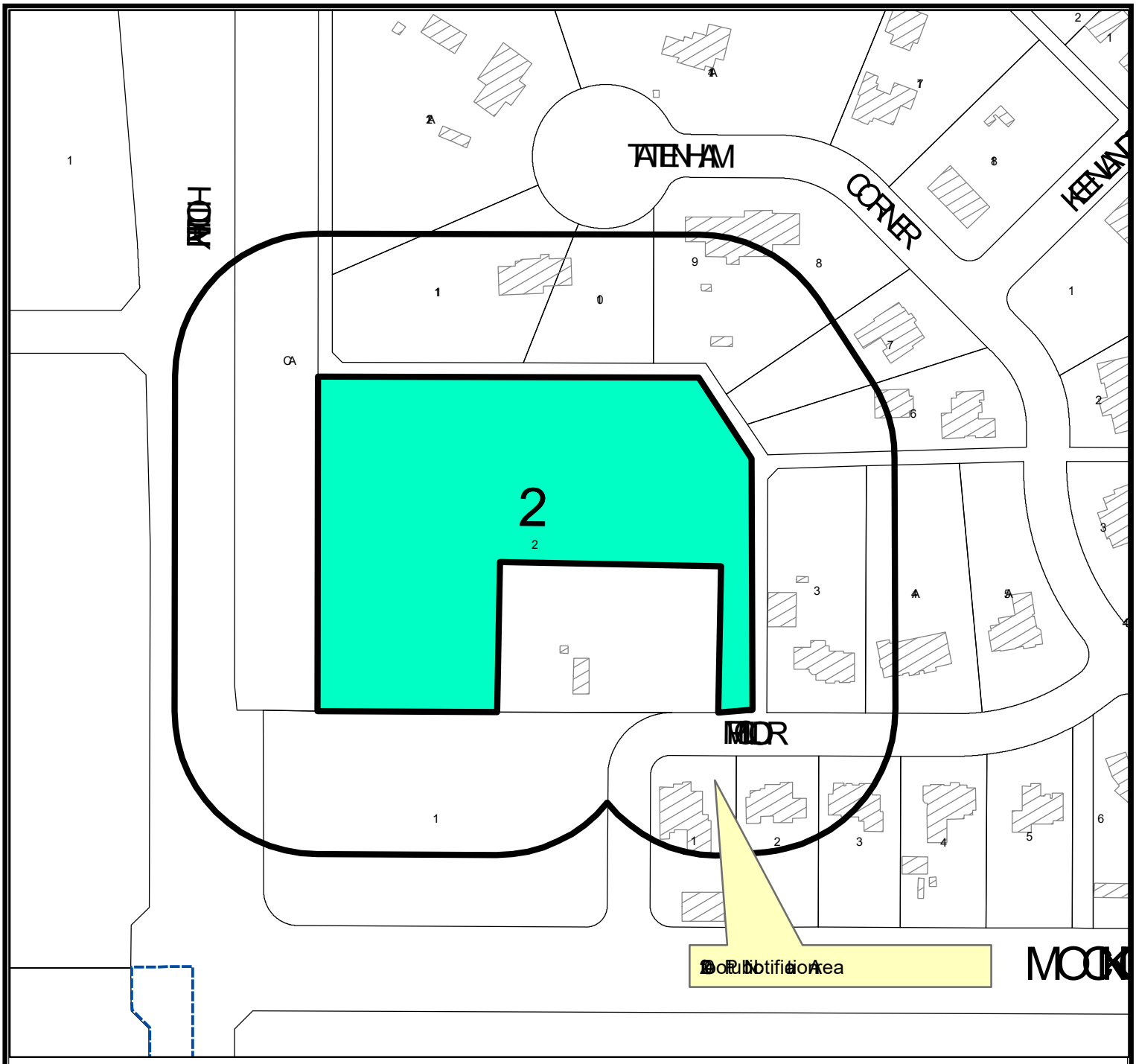
GRAPHIC SCALE
0 100' 200'
(IN FEET)
1 inch = 100 ft.

NO.	DATE	DESCRIPTION	BY
1	1/20/22	Preliminary Plan Prep.	ELA

DRAWN BY: KDS | DATE: 10/06/2021
CHECKED BY: RJD | DRAWING NO.: 78050
JOB NO.: 78,050 | SHEET 1 OF 1

SCHUMANN ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING - LAND SURVEYING
800 N. MARIENFELD STREET SUITE 100 MIDLAND, TEXAS 79701
TEXAS FIRM No. P1880 - TEXAS FIRM No. 10149500
Office (432) 684-5548

GREEN HILL TERRACE, SECTION 19



LOCATION MAP

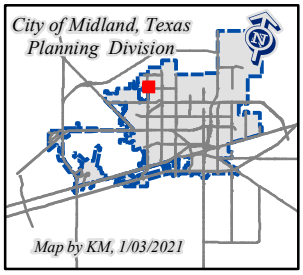
Z-21-0279 **Scale: 1" = 200'**

Consider a request by Chukwuma Mbagwu for a zone change from AE, Agricultural Estate District to CE, Country Estate District on a 4.97-acre tract of land out of Lot 2, Block 2, Greenhill Terrace, City and County of Midland, Texas.

Generally located on the north side of Pimlico Drive, approximately 170 feet east of Holiday Hill Road. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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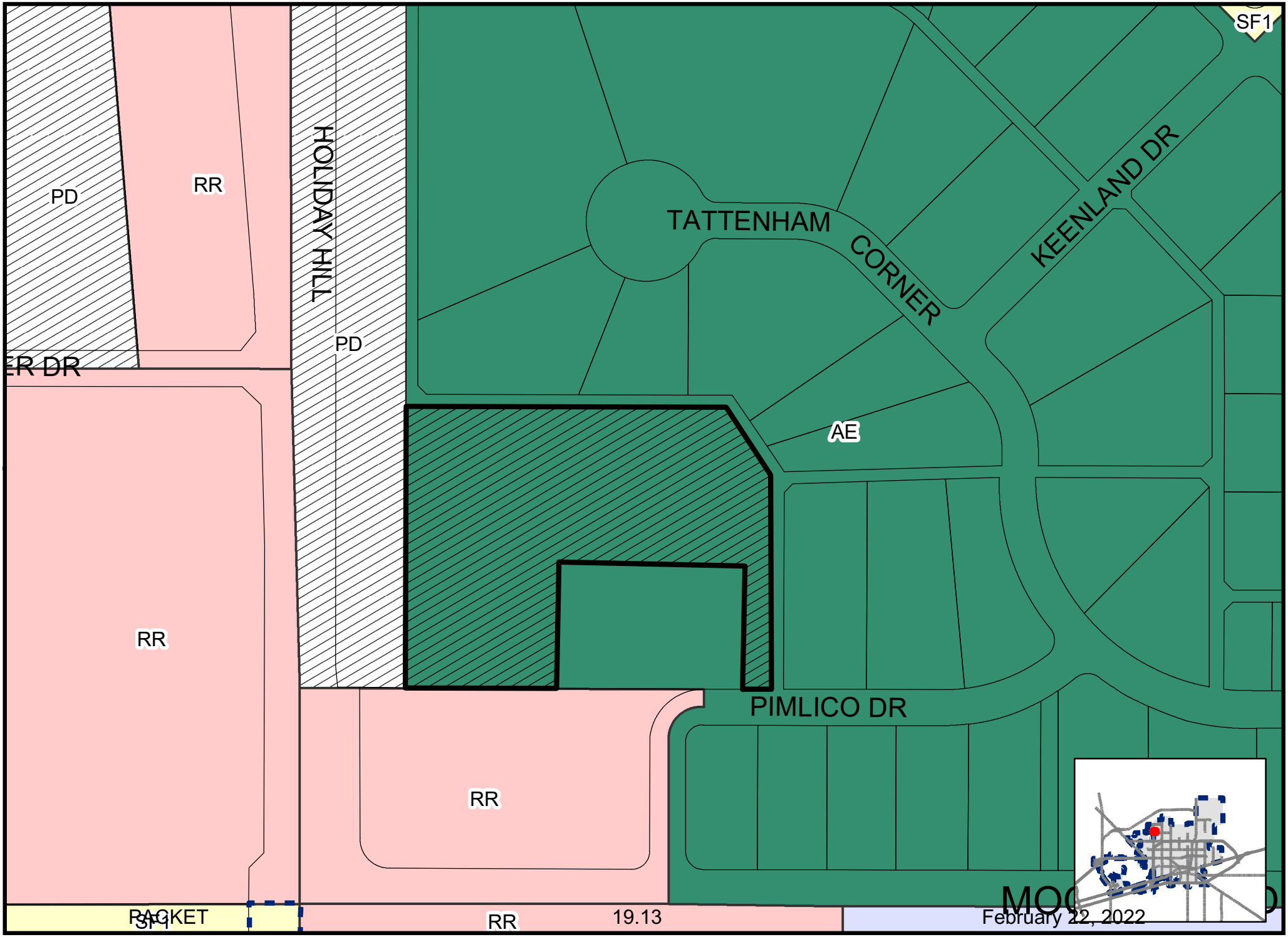


Map By KM, 01/03/2022

Z-21-0279

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 20

Meeting Date: February 8, 2022 (February 22, 2022)

To: City Council / City Manager

From: Justin Smith, Planner

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND RUBY DRIVE), BY PERMITTING A REDUCED MINIMUM FRONT YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE NORTH 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 4) (DEVELOPMENT SERVICES)**

Purpose:

The applicants, Elias and Elisa Padilla, are requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart*, concerning the minimum side and rear yard setback for a corner lot to comply with City Ordinance for an existing carport on the property.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 616 Ruby Drive, which is zoned SF-3, Single Family Dwelling

District.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

SF-3, Single Family Dwelling District
Lot dimensions
Minimum Front Yard Setback:
20 Feet
Minimum Side Yard Setback:
Interior Lot: 5 Feet

The applicant is requesting to reduce the required minimum side yard setback of the corner lot to be one and two tenths (1.2) of a foot and the minimum front yard setback to be five (5) feet from the property line in order to bring the existing carport into compliance. However, this property faces no hardships. The applicant already has an existing two car carport located in the rear lot, and an additional three accessory buildings, creating a total of four accessory buildings in where the maximum number of allowable accessory buildings is two. The property owner could park their vehicle in the existing carport when there is bad weather. Therefore, this request does not constitute a lack of reasonable use. There are extenuating circumstances on this particular structure. The applicant hired a contractor to erect the structure, but the contractor never applied for a building permit. Application for the building permit would have caught this ahead of time and the permit would have been refused.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No comments

Transportation: (Approved)

No comments

Fire: (Approved)

No comments

Code Compliance: (Approved)

No oil or gas issues.

Building:

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:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart* concerning the minimum side and front yard setback for the interior side of a corner lot.

Should the City Council approve this request, the property shall be subject to conditions A through C:

Conditions:

A. That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the minimum side yard setback for the proposed addition on the western side of the property shall be 1 and two tenths of a foot.

C. That the minimum front yard setback of the proposed addition shall be five feet from the property line.

Letters of Objection:

As of January 27, 2022, City Staff have not received any letters of objection.

Attachments:

Application
Proposed Site Plan (Exhibit A)
Aerial View
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, PERMIAN ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF THOMASON DRIVE AND RUBY DRIVE), BY PERMITTING A REDUCED MINIMUM FRONT YARD SETBACK AND A REDUCED MINIMUM SIDE YARD SETBACK ON THE NORTH SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 43, Permian Estates, City and County of Midland, Texas. Said special exception shall allow a reduced minimum front yard setback and a reduced minimum side yard setback on the north side of the lot.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum front yard setback shall be five feet (5').

B. That the minimum side yard setback on the north side of the lot shall be one and two-tenths of a foot (1.2').

C. That the property shall significantly conform to Exhibit "A", which is attached hereto and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

Site Plan

MIDLAND
Planning Division

Special Exception Application

Project Number: E-22-00167

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Elias Padilla / Elisa Padilla		Phone (432) 556-5918 Email	
Address 616 Ruby Dr.	City Midland	State TX	Zip 79703

Property Owner Printed Name: Elias / Elisa Padilla		Phone (432) 556-5918 Email	
Address 616 Ruby Dr.	City Midland	State TX	Zip 79703

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 616 Ruby Dr

Legal Description
Lot: 616 Block: Ruby Dr. Subdivision:

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: I would like to have my car under a carport when there is bad weather (The carport is existing)

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
JAN 06 2022

Signatures	
Applicant (signature): Elias Padilla / Elisa Padilla	Date: 12.21.21
Applicant (printed): Elias Padilla / Elisa Padilla	
Property Owner (signature): Elias Padilla / Elisa Padilla	Date: 12.21.21
Property Owner (printed): Elias Padilla / Elisa Padilla	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

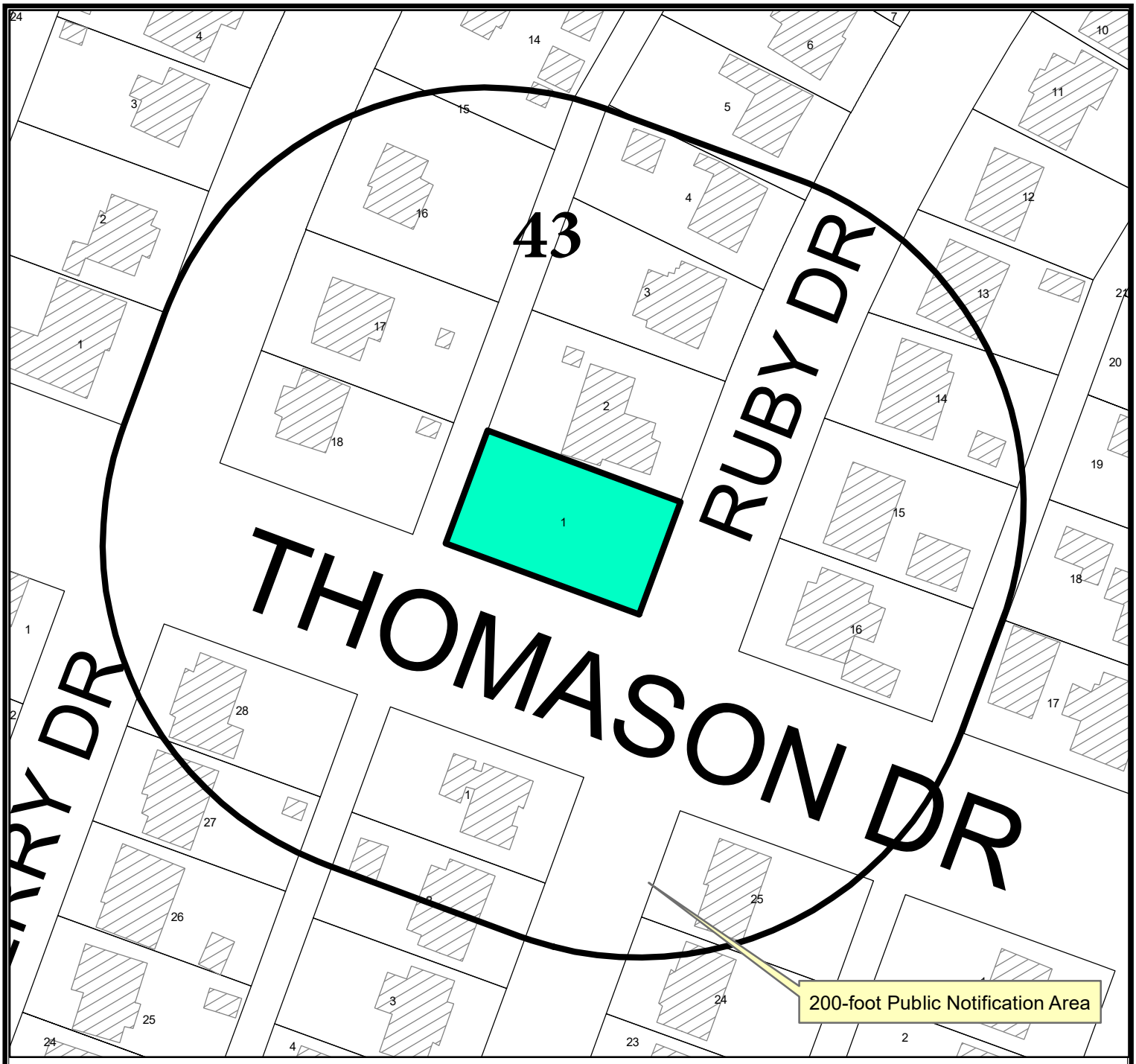
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG) none
Check # 1605	JAN 06 2022
Received By: ES	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

Site Plan

Aerial View



LOCATION MAP

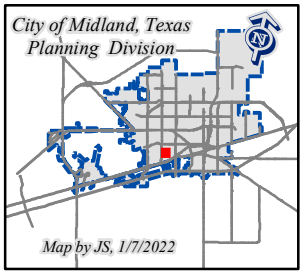
E-22-0067 **Scale: 1" = 1000'**

Request by Elias and Elisa Padilla for a Special Exception from the City of Midland Zoning Ordiance, Section 5.04 - Residential Zoning District Dimensional Regulations Chart, concering the minimum side and front yard setback for a corner lot on Lot 1, Block 43, Permian Estates, City and County of Midland, Texas.

Generally located on the northwest corner of the intersection of Thomason Drive and Ruby Drive. (Council District 4)

L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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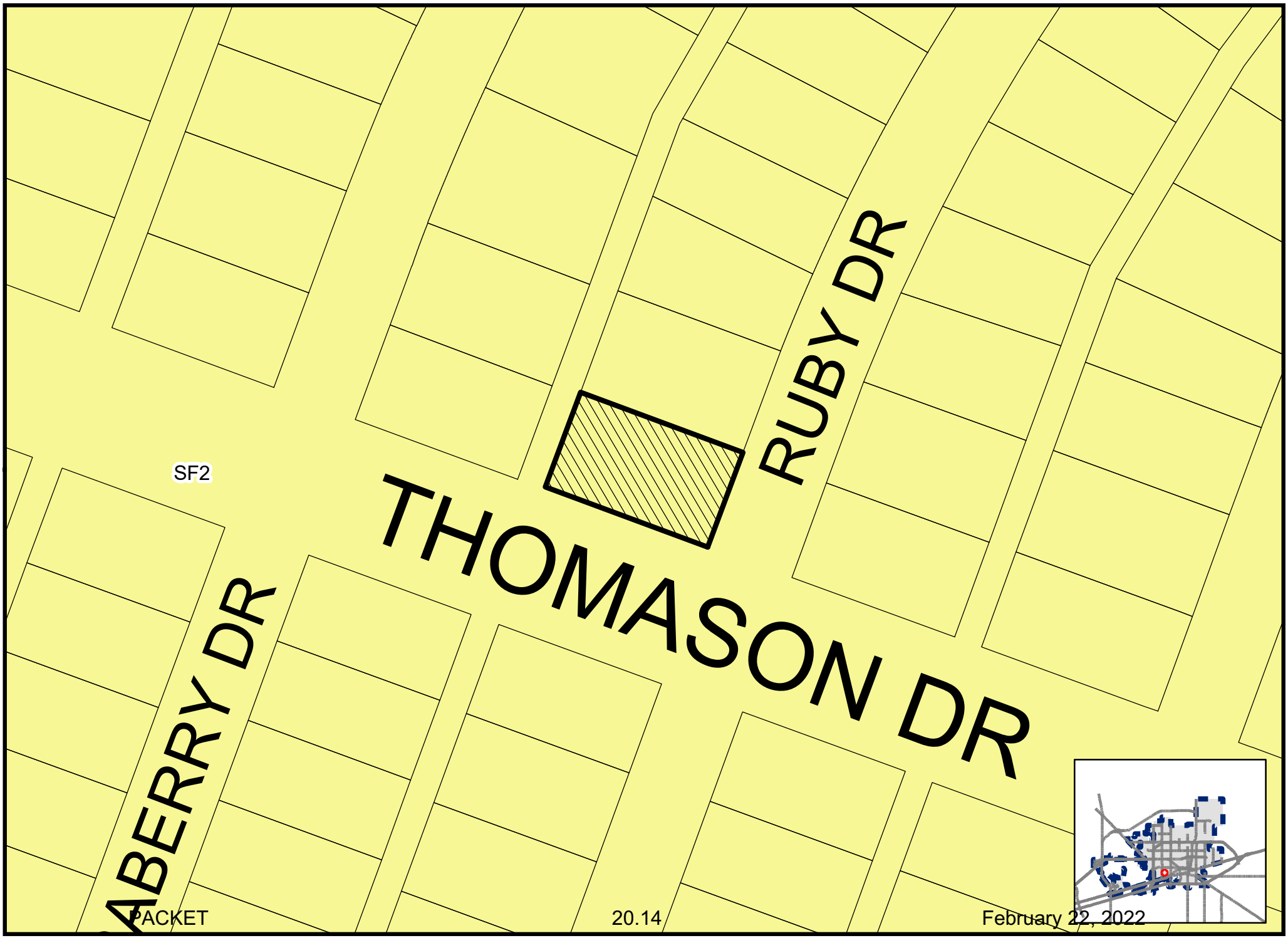

PACKET 20.14 February 22, 2022

Map By JS, 1/7/2022

E-22-0067

Scale: 1" = 1000'

ZONING MAP

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MIDLAND

Thomason
STOP

FRIENDS

City Council Meeting

Item Number: 21

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 6, EASTOVER ADDITION, THIRD EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH CALHOUN STREET, APPROXIMATELY 112 FEET SOUTH OF EAST ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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)**

Purpose:

The applicant, Louis Clay, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimension to be able to rezone the property into SF-3, Single-Family Dwelling District.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

.

Discussion:

The property is located at 311 N Calhoun Street and the location of vacant land. The applicant is requesting a special exception to the minimum lot width for the proposed SF-3, Single Family Dwelling District to be able to proceed with the application of rezoning the property to build a single-family home.

The property is currently zoned MF-22, Multi-Family District and does not meet the minimum lot dimensions for either its current district, or the proposed district.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

MF-22, Multiple-Family Dwelling District
Lot dimensions
Minimum Lot Depth:
Interior Lot: 150 Feet
Minimum Lot Width:
Interior Lot: 100 Feet

As shown on Eastover Second Addition plat, this property is currently 40 feet wide and 80 feet deep.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections

GIS: (Approved)

No objections.

Code Compliance: (Approved)

No Oil and Gas issues. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

Building: (Approved)

No issues. No Objections. Building shall still adhere to the required building and zoning setbacks

Planning Analysis:

While this request represents a deviation from the existing Zoning Ordinance, due to the unique circumstances surrounding the lot in question, staff is recommending approval of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 –
Residential Zoning District Dimensional Regulations Chart. This lot has been platted and zoned in a way that prohibits development, therefore, the City has inadvertently forced this property and others around it to remain vacant under the current zoning ordinance. During the initial adoption period of the new zoning ordinance, there were several lots in this area that were re-zoned to SF-3, single family dwelling district that fell into this same issue. Additionally, the area has dispersed single family housing that was developed before the new zoning ordinance took effect, therefore, developing this property as a single-family home would fit with the character of the neighborhood. This special exception is required to change the zoning to SF-3 to better conform to develop a single-family residence. This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land
Use Vision, “Future Land Use Map” as it designates this area for Urban Residential Medium, a classification which calls for “a mix of housing styles including single-family detached, single-family attached, and townhouses.” This special exception would allow for the development of a single-family residence on this lot that would otherwise remain vacant.

Due to these factors, staff is recommending approval of this special exception subject to conditions A through C:

Conditions:

A. **That approval of a zone change to SF-3, Single Family Dwelling District shall be required prior to any development on the property.**

A. That the minimum lot width of the property shall be forty (40) feet.

B. That the minimum lot depth of the property shall be eighty (80) feet.

Letters of Objection:

As of February 17, 2022, staff has not received any letters of objection.

Attachments:

Eastover Addition Third Extension Plat
Proposed Site Plan (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 3, BLOCK 6, EASTOVER ADDITION, THIRD EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH CALHOUN STREET, APPROXIMATELY 112 FEET SOUTH OF EAST ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the

purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 3, Block 6, Eastover Addition, Third Extension, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot area, a reduced minimum lot width, and a reduced minimum lot depth in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the Property's minimum lot area shall be 3,200 square feet.

B. That the Property's minimum lot width shall be 40 feet.

C. That the Property's minimum lot depth shall be 80 feet.

D. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Special Exception Application

Project Number: E-22-00068

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Louis Clay		Phone (434) 631-2909 Email tallcityboss@yahoo.com	
Address 1215 Lynn	City Midland	State Tx	Zip 79705

Property Owner Printed Name: Louis Clay		Phone ( ) Email	
Address 1215 Lynn	City Midland	State Tx	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 311 W. Calhoun

Legal Description
Lot: 3 Block: 6 Subdivision: Eastover Third Ext

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: Lot smaller than regulation

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): Louis Clay	Date: 1-22-2022
Applicant (printed): Louis Clay	
Property Owner (signature): Louis Clay	Date: 1-22-2022
Property Owner (printed) : Louis Clay	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

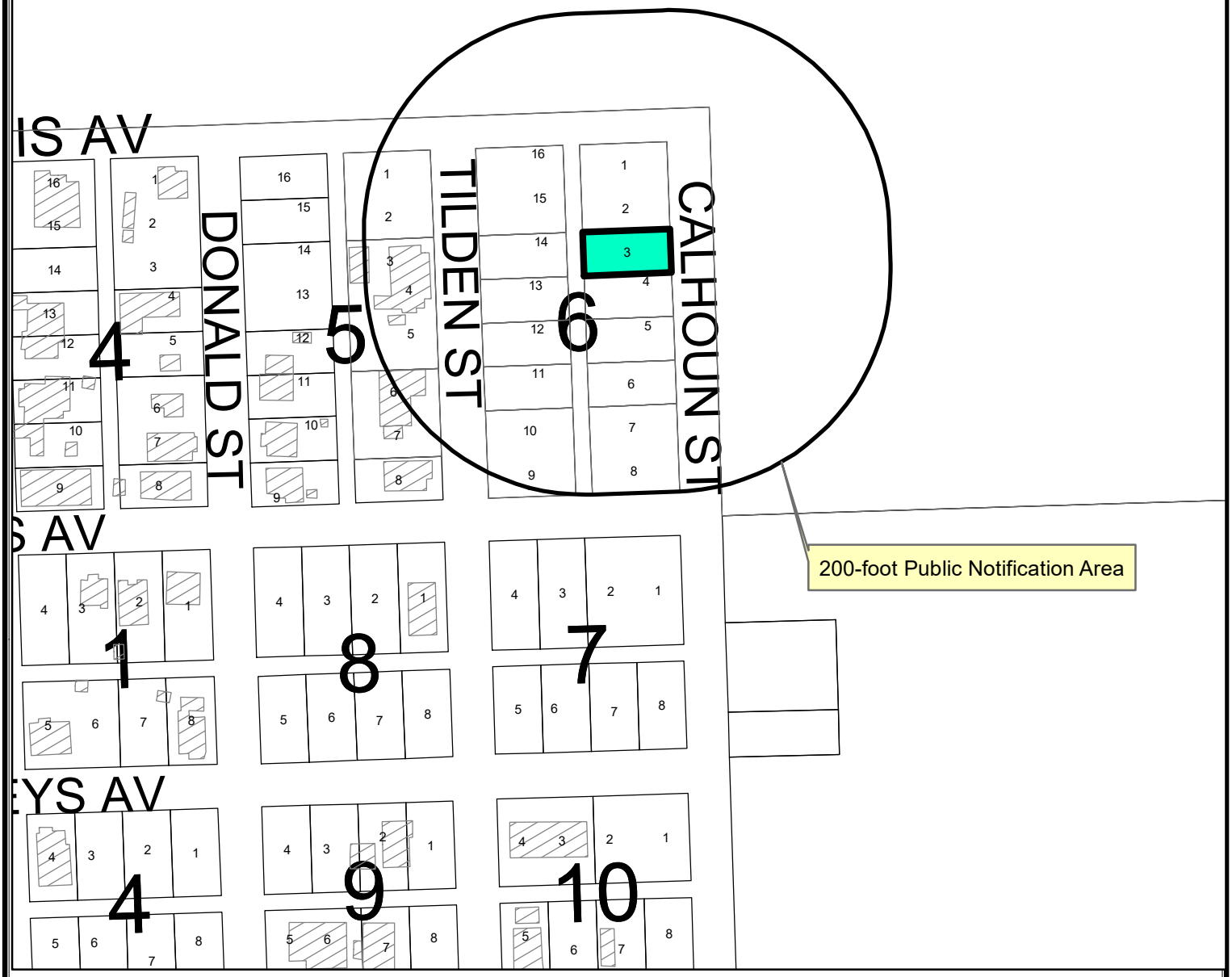
FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date: JAN 21 2022

****Application will not be considered for scheduling until reviewed by a planner.****

311 North CALHOUN Street
Show search results for 311 North CA...
313
80'
40'
11
Parcel: CALHOUN
SubTypeField COM Vacant
LandUse Vacant
SITENUM 311
PIN 328300060030
ADDRESS 311 N CALHOUN ST
MOPIN_PLUSFOUR
DATE_MOD
created_user SDE
created_date 2/5/2018, 3:14 AM
last_edited_user SDE
last_edited_date 6/25/2021, 10:14 AM
SW_Area
SW_Tier Drainage No Charge
Zoom to
208
206
305
20ft

JAN 2 1 2022



LOCATION MAP

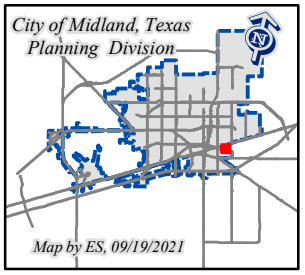
E-22-0068 **Scale: 1" = 200'**

A proposed Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimension on Lot 3, Block 6, Eastover Addition Third Extension Midland, City and County of Midland, Texas.

Generally located on the west side of N. Calhoun Street and 112 feet south of E. Illinois Ave. Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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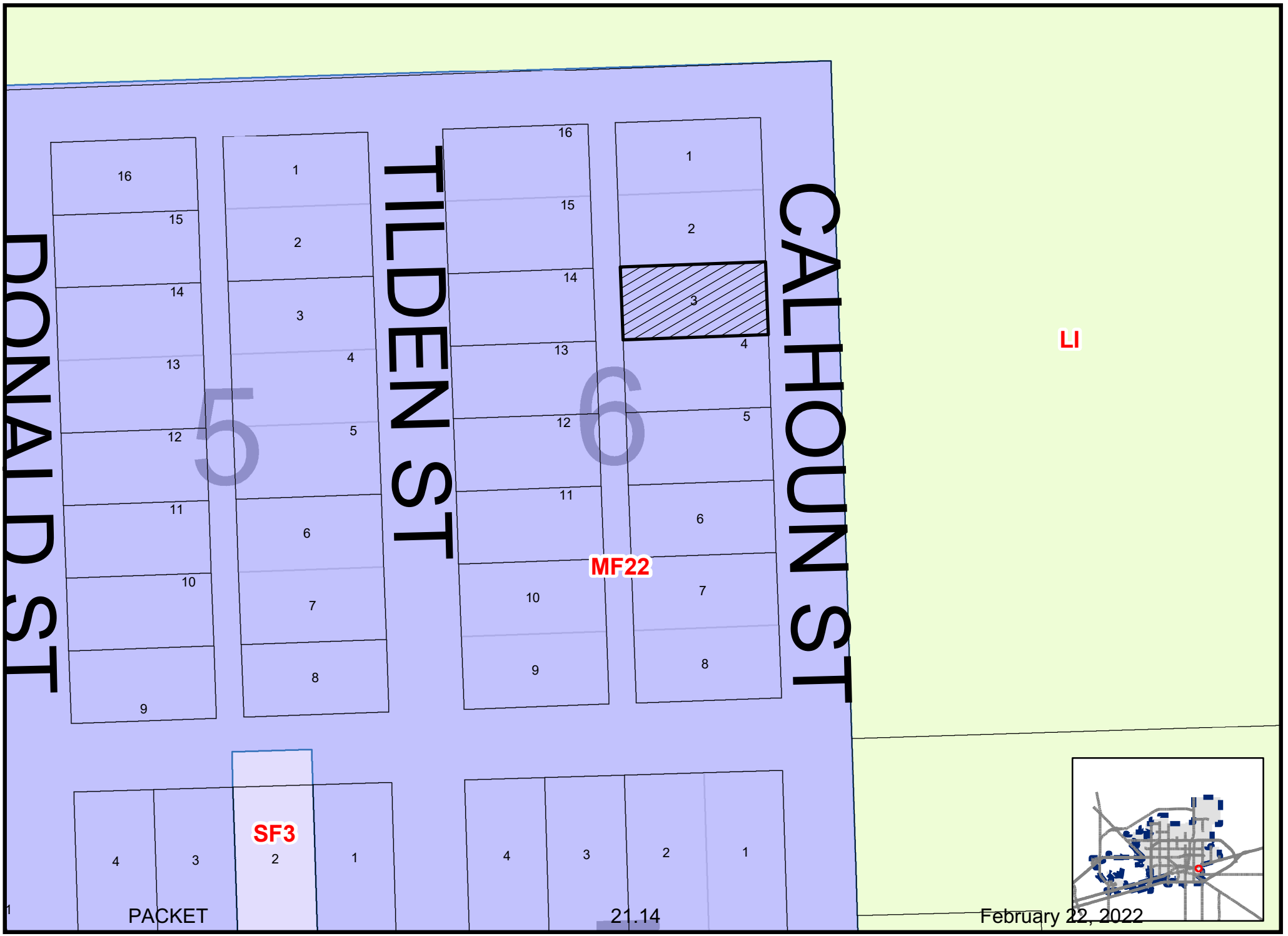
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By PR, 01/25/2022

E-22-0068

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 22

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Justin Smith, Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, EASTOVER ADDITION, SECOND EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF JESSE STREET AND ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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)

Purpose:

The applicants, Louis Clay, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot dimension to be able to rezone the property into SF-3, Single-Family Dwelling District.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 213 Jesse Street and the location of vacant land. The applicant is requesting a special exception to the minimum lot width for the proposed SF-3, Single Family Dwelling District to be able to proceed with the application of rezoning the property to build a single-family home.

The property is currently zoned MF-22, Multiple-Family Dwelling District and does not meet the minimum lot dimensions for either its current district, or the proposed district.

> Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*
>
> *MF-22, Multiple-Family Dwelling District*
> *Lot dimensions*
> *Minimum Lot Width:*
> *Corner Lot: 150 Feet*
> *Minimum Lot Depth:*
> *Corner Lot: 100 Feet*

As shown on Eastover Second Addition plat, this property is currently 40 feet wide and 80 feet deep.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No comments

Transportation: (Approved)

no comments

Fire: (Approved)

No comments

Code Compliance: (Approved)

No oil or gas issues.

Building: (Approved)

No objections. New structure will still have to abide by setback rules from the property lines and neighboring structures.

Planning Analysis:

While this request represents a deviation from the existing Zoning Ordinance, due to the unique circumstances surrounding the lot in question, staff is recommending approval of this application for a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart. This lot has been platted and zoned in a way that prohibits development, therefore, the City has inadvertently forced this property and others around it to remain vacant under the current zoning ordinance. During the initial adoption period of the new zoning ordinance, there were several lots in this area that were re-zoned to SF-3, single family dwelling district that fell into this same issue. Additionally, the area has dispersed single family housing that was developed before the new zoning ordinance took effect, therefore, developing this property as a single-family home would fit with the character of the neighborhood. This special exception is required to change the zoning to SF-3 to better conform to develop a single-family residence. This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land
Use Vision, "Future Land Use Map" as it designates this area for Urban Residential-Medium, a classification which calls for "a mix of housing styles including single-family detached, single-family attached, and townhouses." This special exception would allow for the development of a single-family residence on this lot that would otherwise remain vacant.

Due to these factors, staff is recommending approval of this special exception subject to conditions A through C:

Conditions:

A. That approval of a zone change to SF-3, Single Family Dwelling District shall be required prior to any development on the property.

B. That the minimum lot width of the property shall be forty (40) feet.

C. That the minimum lot depth of the property shall be eighty (80) feet.

Letters of Objection:

As of February 17, 2021, staff has not received any letters of objection.

Attachments:

Eastover Second Addition, Third Extension Plat
Aerial Map (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, EASTOVER ADDITION, SECOND EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF JESSE STREET AND ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH 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

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the

purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 1, Eastover Addition, Second Extension, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot area, a reduced minimum lot width, and a reduced minimum lot depth in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the Property's minimum lot area shall be 3,200 square feet.

B. That the Property's minimum lot width shall be 40 feet.

C. That the Property's minimum lot depth shall be 80 feet.

D. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Special Exception Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Louis Clay		Phone (432) 631-2909 Email tallcitybass@yahoo.com	
Address ~~[illegible]~~ 211 Jesse	City Midland	State Tx	Zip ~~[illegible]~~ 79705

Property Owner Printed Name: Louis Clay		Phone ( ) Email	
Address 1215 Lynn	City Midland	State Tx	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 213 Jesse

Legal Description
Lot: 1 Block: 1 Subdivision: Eastover Second

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: Lot too small

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)

JAN 21 2022

Signatures	
Applicant (signature): Louis Clay	Date: 1-22-2021
Applicant (printed): Louis Clay	
Property Owner (signature): Louis Clay	Date: 1-22-2021
Property Owner (printed) : Louis Clay	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

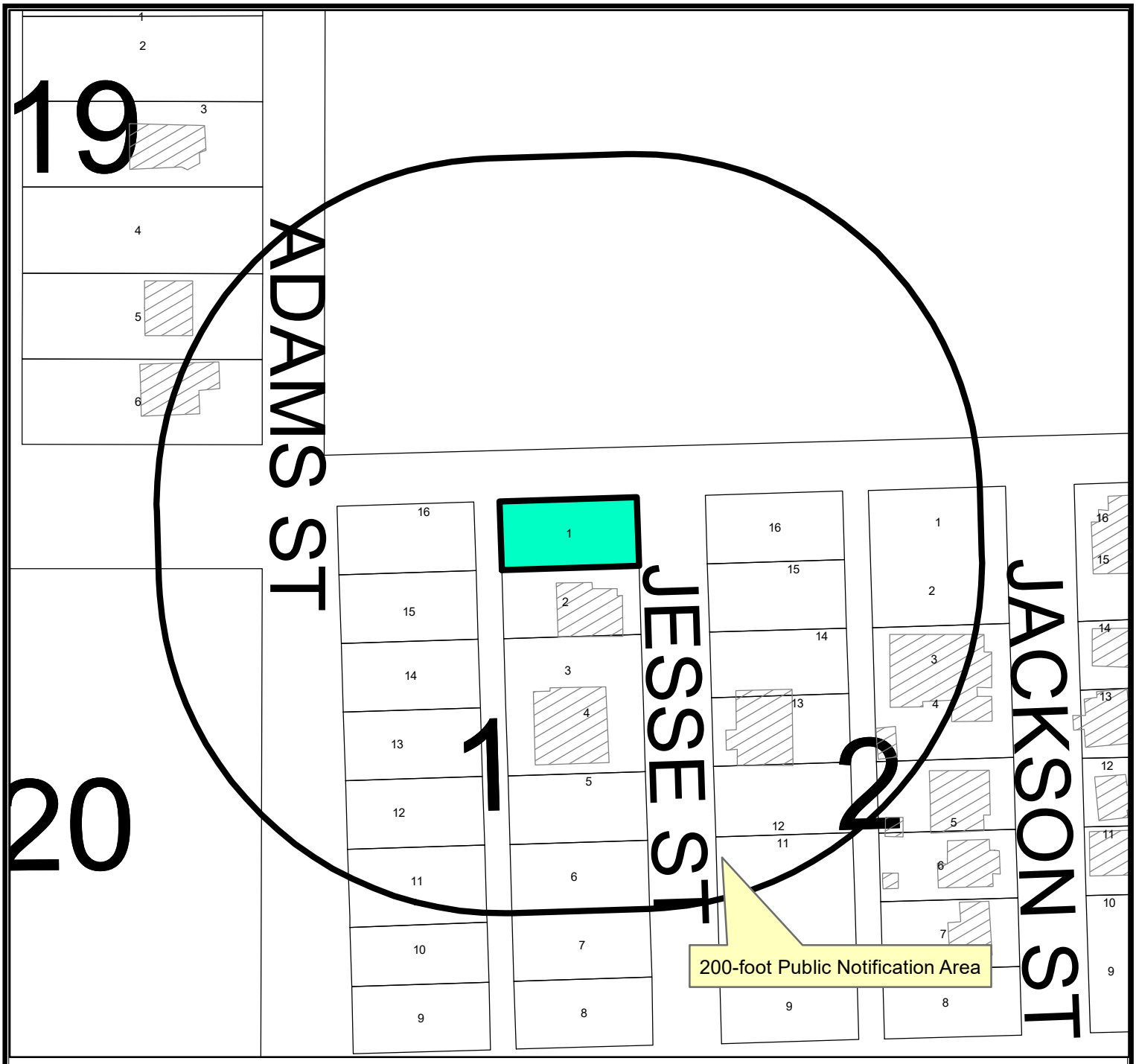
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 1565	
Received By: JS	Date: JAN 21 2022

****Application will not be considered for scheduling until reviewed by a planner.****

Aerial Map (Exhibit A)

RECEIVED
JAN 21 2022
BY: .....



LOCATION MAP

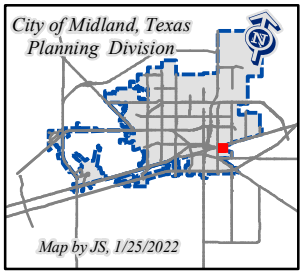
E-22-0069 **Scale: 1" = 1000'**

Consider a request by Louis Clay for a Special Exception from the City of Midland Zoning Ordnance, Section 5.04 - Residential Zoning District Dimensional Regulations Chart, concerning the minimum corner lot dimension on Lot 1, Block 1, Eastover Second Addition, City and County of Midland, Texas.

Generally located on the southwest corner of the intersection of Jesse Street and Illinois Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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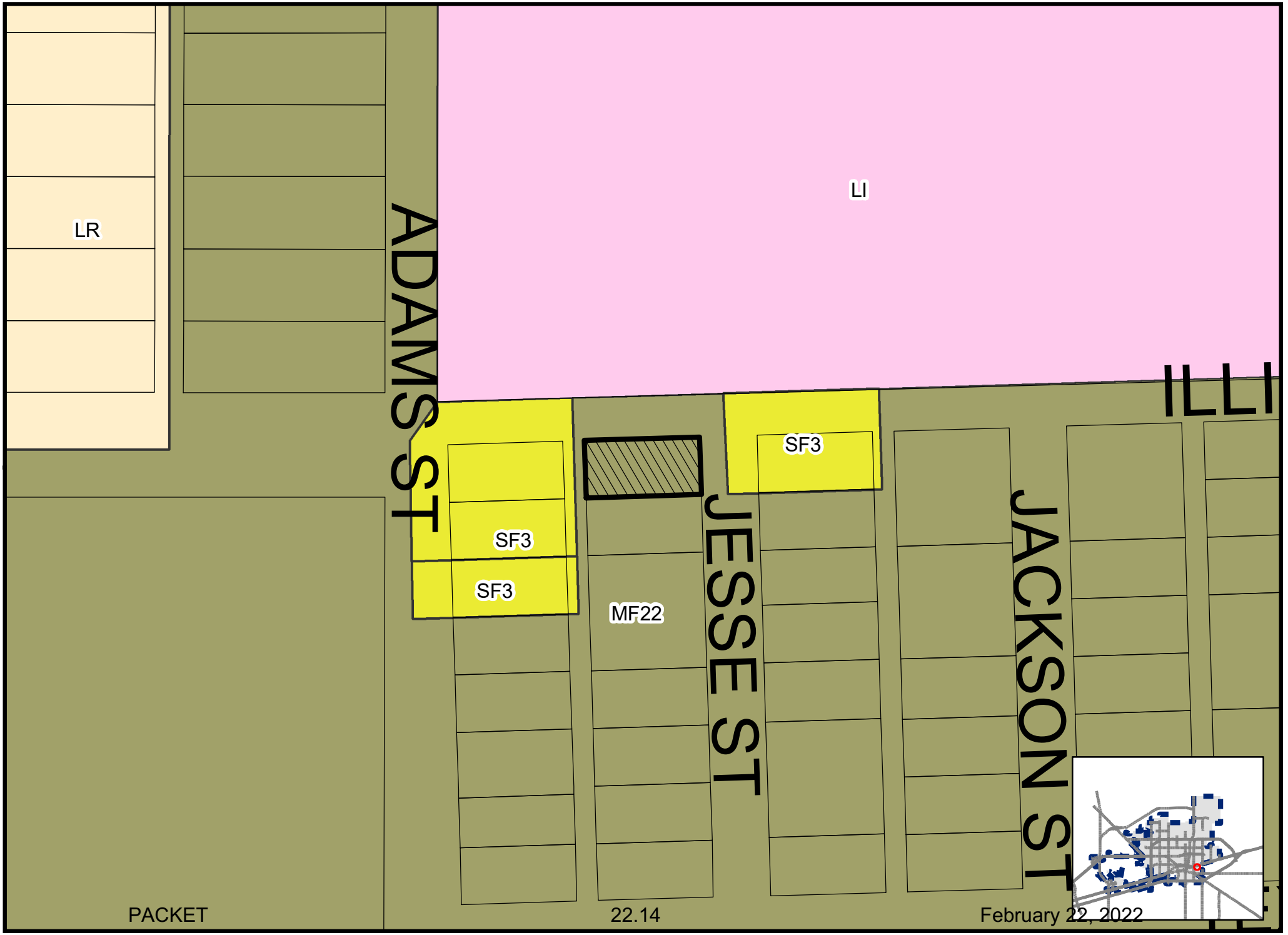

Map By JS, 1/25/2022

E-22-0069

Scale: 1" = 1000'

ZONING MAP

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Jesse

City Council Meeting

Item Number: 23

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BUNCHE STREET, APPROXIMATELY 250 FEET SOUTH OF CALIFORNIA 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, Oscar Medrano, is requesting a Zone Change from MF-22, Multiple Family Dwelling District to SF-3 Single Family Dwelling District at 809 Bunche Street, for construction of a single-family home.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Discussion:

Current Zoning:

MF-22, Multiple Family District

Surrounding Zoning and Land Use:

The properties to the north, south, east, and west are primarily zoned MF-22, Multiple Family Dwelling District, and are the locations of single-family residences and vacant land, respectively.

Analysis:

The applicant is requesting this zone change for the purposes of constructing a single-family home. The lot dimensions satisfy the minimum requirements for the SF-3, Single Family Dwelling District zoning.

Under the previous zoning ordinance, the current zoning district would have allowed for construction of single-family homes, which allowed for the proliferation of their construction in this area. Under the new zoning ordinance adopted in 2019, the construction of single-family detached dwellings were restricted to single family dwelling districts.

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 or Gas issues.

Transportation: (Approved)

No objection to zone change. [For the Applicant's information only.]

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential, a classification which calls for single family detached housing. This property also supports the existing neighborhood characteristics and uses of the area.

This request was approved at the February 1, 2022, Planning & Zoning Commission meeting.

Staff recommends approval of this zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District, subject to condition A.

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 February 17, 2022.

Attachments:

Application
Maps
Plat

.

Morris Williams Jr.

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 64, PARK AVENUE HEIGHTS, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF BUNCHE STREET, APPROXIMATELY 250 FEET SOUTH OF CALIFORNIA 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 16, Block 64, Park Avenue Heights, Second Section, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-22-0280

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone (432)557-8673 Email hilite_99@yahoo.com	
Address 710 Atlanta	City Midland	State Texas	Zip 79701

Property Owner Printed Name: Oscar Medrano		Phone (432) 557-8673 Email 432 557-8673	
Address 710 Atlanta	City Midland	State Texas	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone (432) 557-8673 Email	
Address	City	State	Zip

Street Address: 809 Bunche

Legal Description
Lot: 16 Block: 64 Subdivision: Park Avenue Heights (Second Section)

Current Zoning: MF-22	**Proposed Zone:** SF-3 *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Proposing to build single family home. Lot is small.

Present Use of Property: Empty lot.

Proposed Use of Property: Proposing to build single family home.

How would this zone change affect the public health, safety and welfare? None.

Describe how conditions affecting the property have changed since present zoning designation: None.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: 1-4-2022
Applicant (printed): Oscar Medrano	
Property Owner (signature):	Date: 1-4-2022
Property Owner (printed) : Oscar Medrano	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

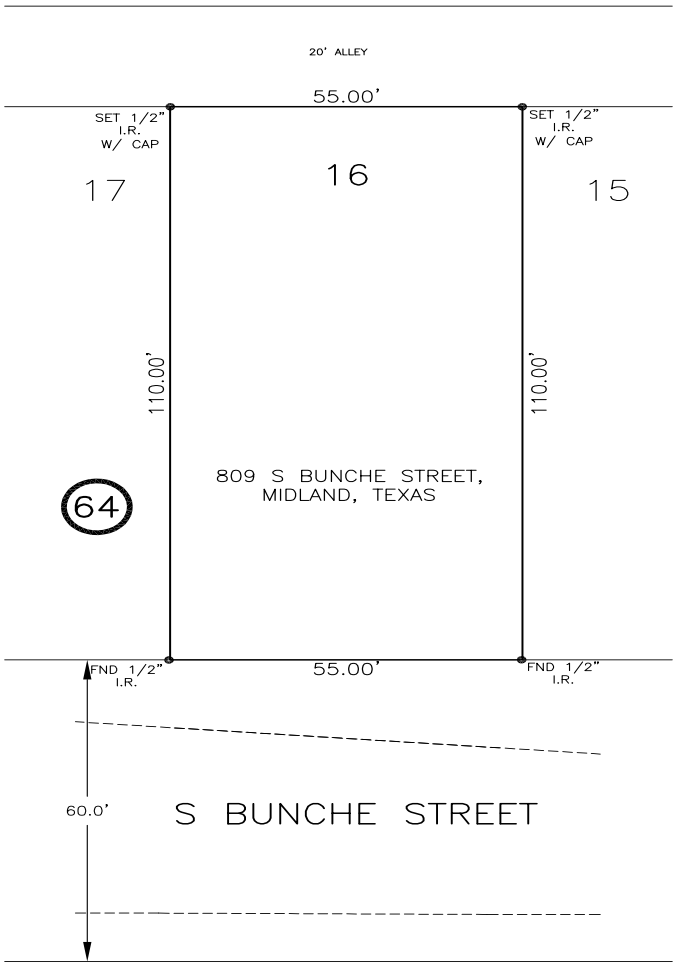
_____

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

Application will not be considered for scheduling until reviewed by a planner.



PLAT
OF
LOT 16, BLOCK 64, PARK AVENUE HEIGHTS SECOND SECTION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

30 0 30 60 90 Feet

TO LIEN HOLDER ISSUING THE INSURANCE UNDERWRITER

THIS SURVEY PLAT IS PROVIDED SOLELY FOR THIS TRANSACTION

PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER TRANSACTION.

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS OR RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND THIS SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY AS SHOWN.

PACKET

REGISTERED PROFESSIONAL LAND SURVEYOR

STATE OF TEXAS REGISTERED MICHAEL L. McBRAYER 4161 PROFESSIONAL LAND SURVEYOR

FILED IN CABINET B, PAGE 114, PLAT RECORDS, MIDLAND COUNTY, TEXAS.

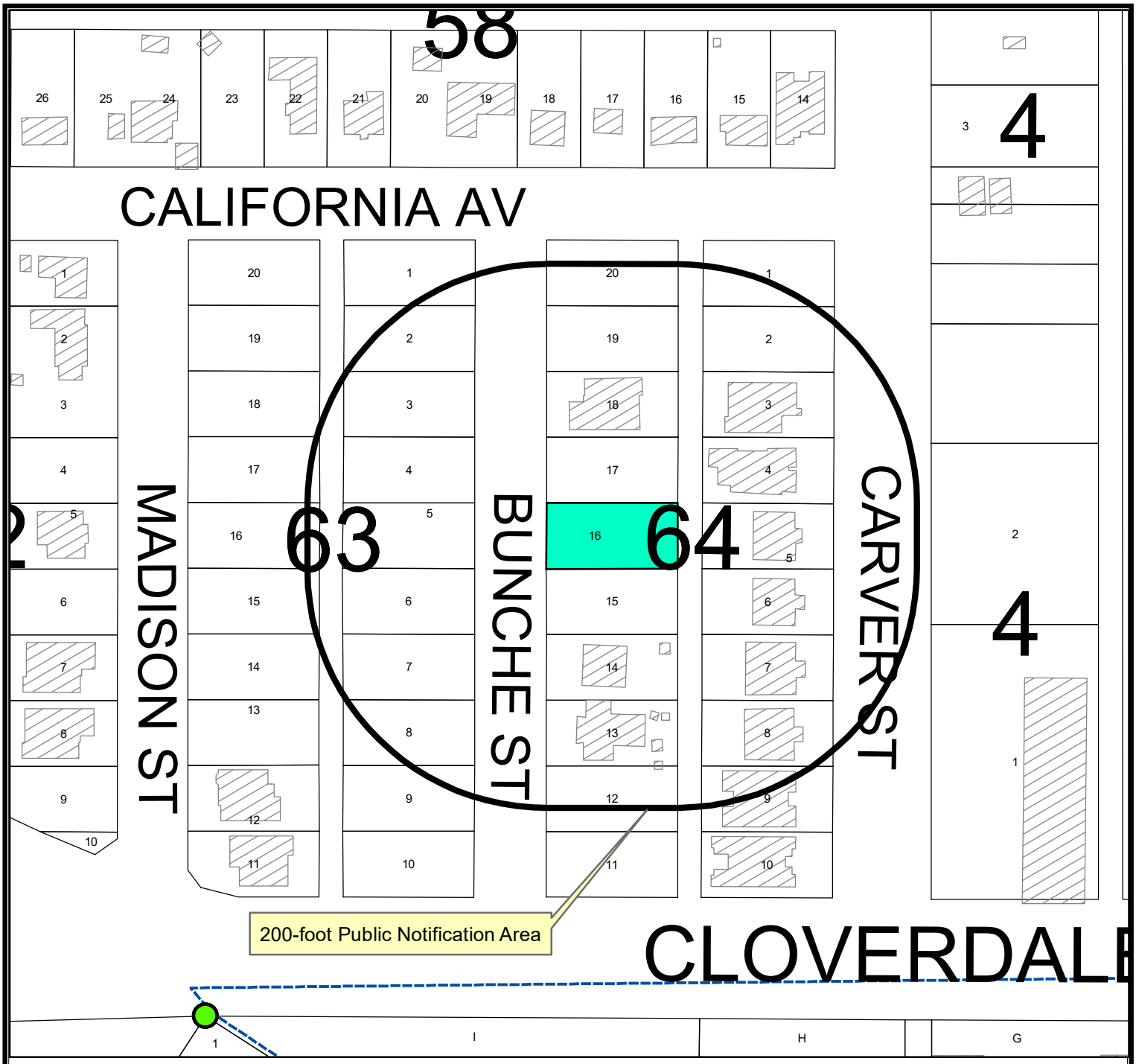
THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL 48329C0206 F. DATED SEPTEMBER 16, 2005.

Stored: 19092247

BRADSHAW AND ASSOCIATES, INC.
CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS
FIRM # 10122900/10122901
4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
(432) 682-4[illegible] FAX (432) 682-[illegible]

February 22, 2022

	Drawn	Chkd	Surveyed
By	VR	MLM	GB/CH
Date	10-7-2019	10-8-2019	10-7-2019



LOCATION MAP

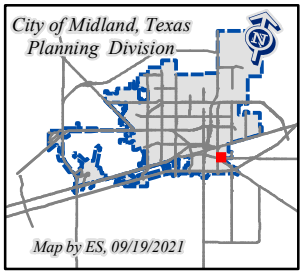
Z-22-0280 **Scale: 1" = 200'**

Request by Oscar Medrano for a zone change from MF-22, Multi-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 16, Block 64, Park Avenue Heights, Second Section, City and County of Midland, Texas.

Generally located on the east side of Bunche Street, approximately 250 feet south of E. California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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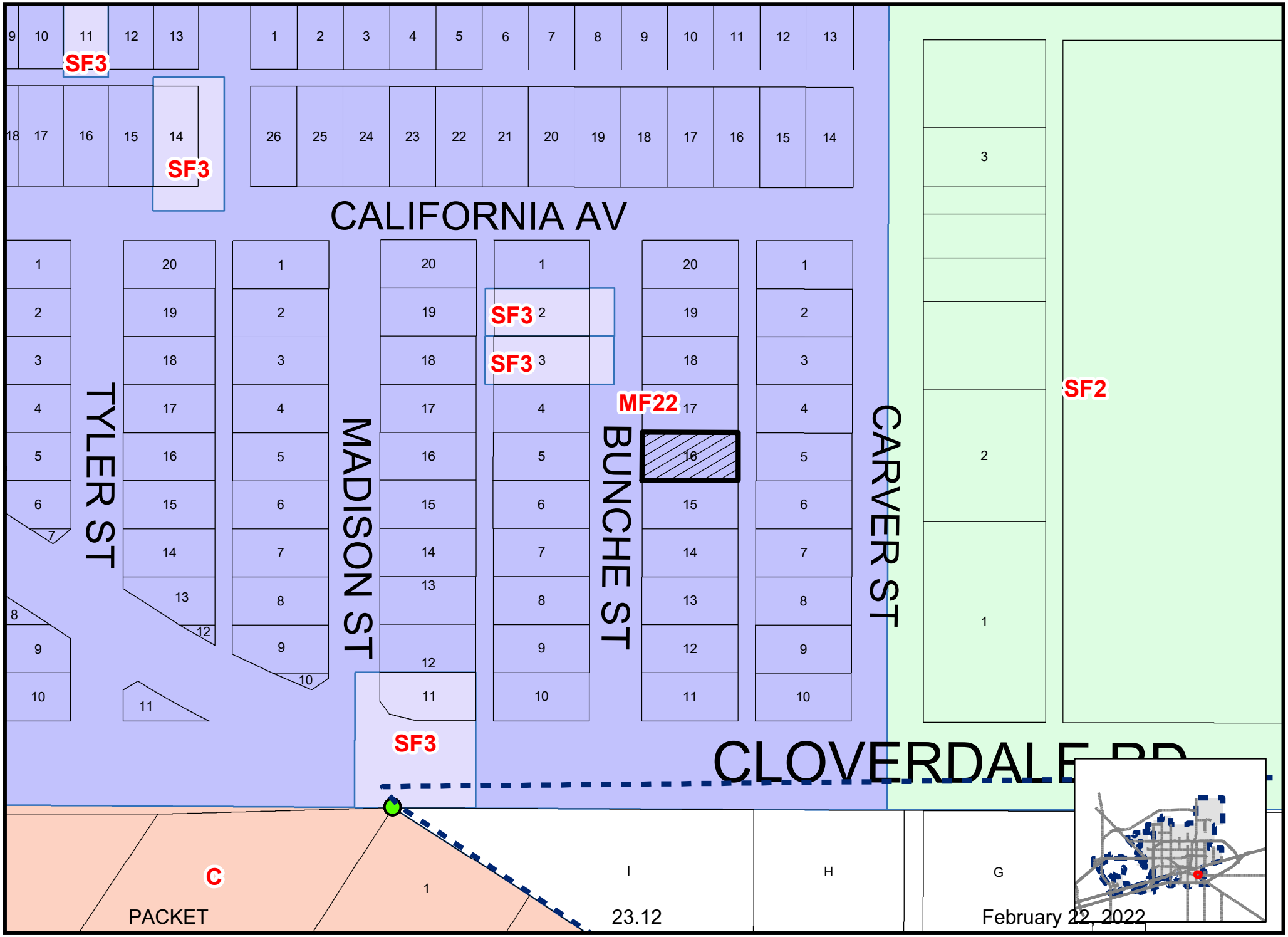
February 22, 2022



Map By PR, 1/6/2022

Z-22-0280

Scale: 1" = 200'

ZONING MAP

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Royal Homes

City Council Meeting

Item Number: 24

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Cole Furqueron,

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 11, BLOCK 5, AVALON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF HUMBLE AVENUE, APPROXIMATELY 145 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Kristina Leigh, is requesting a Special Exception to the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback at 1612 Humble Avenue.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Current Zoning:

SF-1, Single-Family Dwelling District

Discussion:

The property is located at 1612 Humble Avenue. The applicant is requesting a Special Exception to Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback of the SF-1, Single-Family Dwelling District, in order to be able to build a new two-story house on the property. The new house will be situated where the west side of the house will sit on the property line. Because of this, it is not in compliance with the City of Midland Zoning Ordinance concerning of minimum side yard setbacks.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

SF-1, Single-Family Dwelling District
Lot dimensions
Minimum Side Yard Setback:
Interior Lot: 5 Feet.

.

This request has been circulated and reviewed by all pertinent City departments and their comments, conditions, and requests are as follows:

Engineering: (Approved)

No objections.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Administration: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, and floodplain requirements if necessary. According to the site plan and floor plan the building in question will have separations less than 10 foot to the house and possibly to a neighboring structure. 10 ft is the fire separation requirement according to the International Building Code, if the owner is looking to reduce that separation then the structures located within that 10 foot must have rated fire barriers which is also a requirement of the International Building Code.

Planning: (Denied)

As this request represents a deviation from the existing Zoning Ordinance and no hardships have been shown, staff would recommend denial of this request for a Special Exception to the City of Midland Zoning Ordinance Section .09, Accessory Buildings and Uses, concerning the minimum side yard and rear yard setbacks, and the minimum separation from the principal building.

If this request is approved, the property shall be subject to the following conditions A and B.

Condition:

A. **That the location of all structures shall significantly conform to conditions as shown on the site plan attached hereto as Exhibit "A " and incorporated herein for all purposes.**

B. **That they shall be no minimum side yard setback for this property the west side of the lot, adjacent to the alley.**

Letters of Objection:

As of February 18, 2022, staff has not received any letters of objection to this request.

Attachments:

Floor Plans and Elevations (Exhibit A)
Applications
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 11, BLOCK 5, AVALON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF HUMBLE AVENUE, APPROXIMATELY 145 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 11, Block 5, Avalon Addition, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the west side of the lot.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum side yard setback on the west side of the lot shall be zero feet (0').

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., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

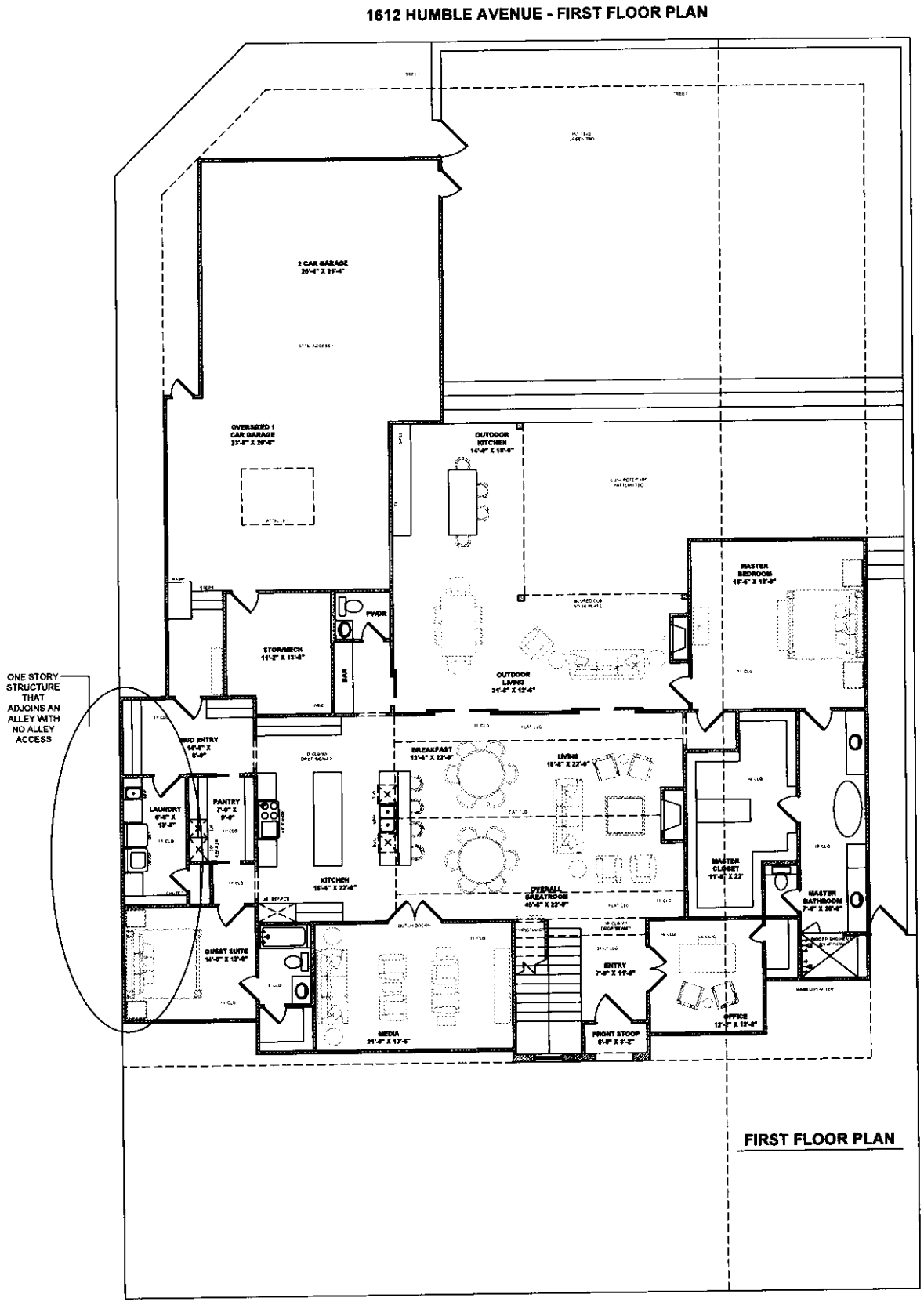
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

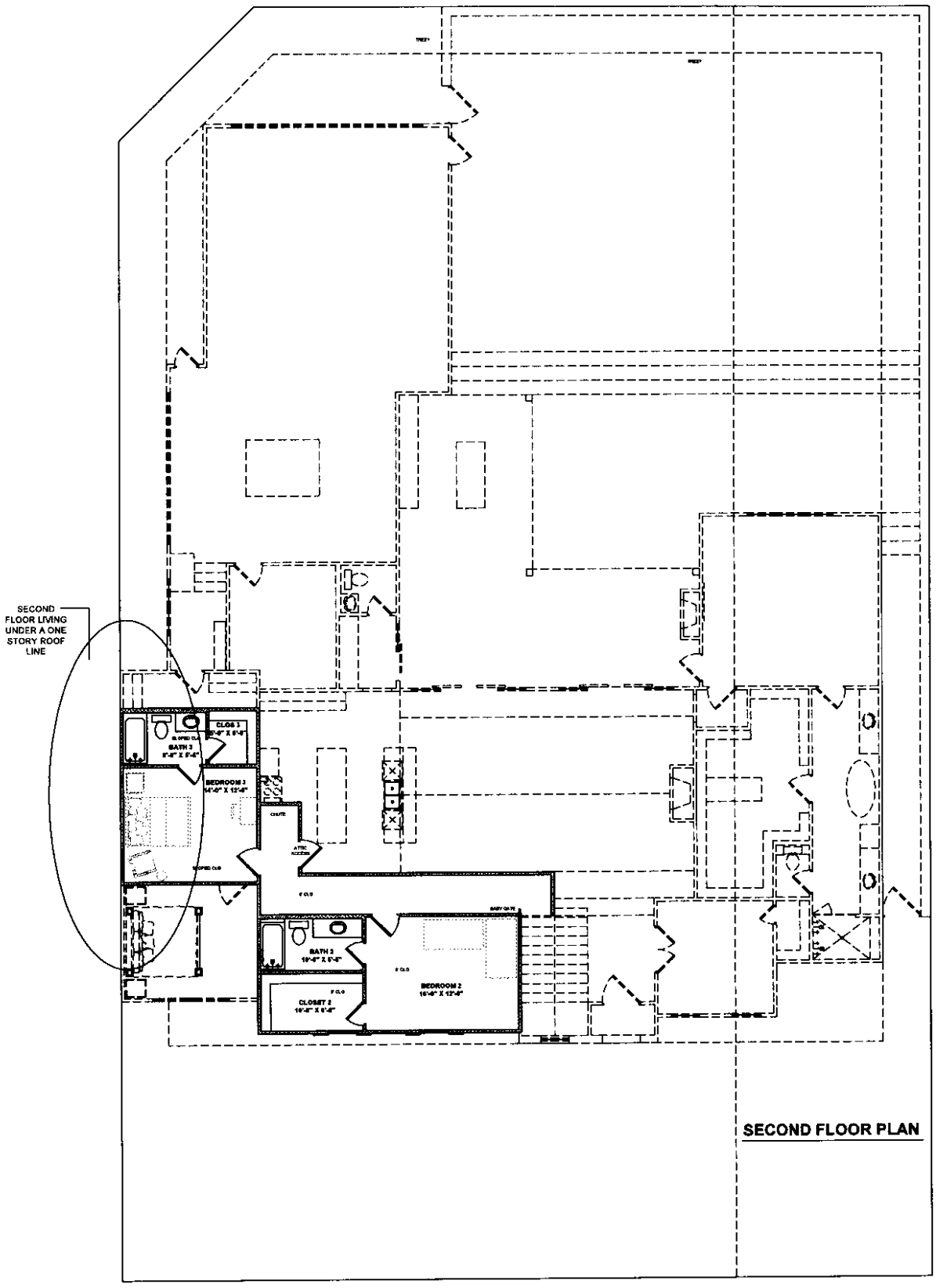
APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

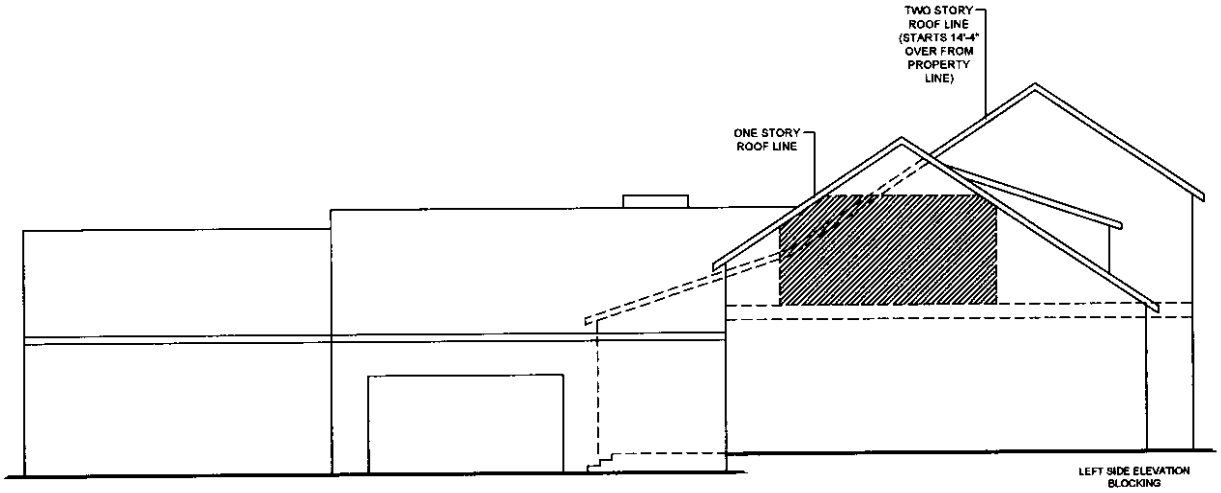
EXHIBIT "A"


1612 HUMBLE AVENUE - FIRST FLOOR PLAN
2 CAR GARAGE
OVERSIZED 1 CAR GARAGE
OUTDOOR KITCHEN
STOR/MECH
PWDR
BAR
OUTDOOR LIVING
MASTER BEDROOM
ONE STORY STRUCTURE THAT ADJOINS AN ALLEY WITH NO ALLEY ACCESS
BRKFST ENTRY
LAUNDRY
PANTRY
KITCHEN
BREAKFAST
LIVING
OVERALL GREATROOM
MASTER CLOSET
MASTER BATHROOM
GUEST SUITE
MEDIA
ENTRY
FRONT STOOP
OFFICE
FIRST FLOOR PLAN

1612 HUMBLE AVENUE - SECOND FLOOR PLAN



1612 HUMBLE AVENUE - ELEVATIONS



MIDLAND Planning Division

Special Exception Application

Project Number: E-22-0070

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: John Morris		Phone (432) 559-8996 Email john@morris-gc.com	
Address 9 Hanover	City Midland	State TX	Zip 79701
Property Owner Printed Name: Moriah Land & Cattle, LLC		Phone (432) 553-3598 Email kgkenergy@gmail.com	
Address P.O. Box 50465	City Midland	State TX	Zip 79710
Representative *(if different from Applicant or Property Owner)* Firm: Simply Kristina Leigh, LLC Printed Name: Kristina Leigh		Phone (432) 770-8337 Email kristina@kristinakeigh.net	
Address 4706 N. Midkiff, Ste. 22-229	City Midland	State TX	Zip 79705

Street Address: 1612 Humble Ave, Midland TX 79705

Legal Description
Lot: 11 Block: 5 Subdivision: Avalon Addition

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: To secure on the West side of the property a 0' setback for a span of 35' & a second floor living under a one story roof line within that same span, as was interpreted in July 2020 by city officials as being within the section 5: Zoning Dimensional Regulations of page 114 for a SF-1 Single Family Dwelling that adjoins alley on two sides.

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): John Morris	Date: 2-4-22
Applicant (printed): John Morris	
Property Owner (signature): Kirsten Kelley	Date: 2-4-22
Property Owner (printed): Kirsten Kelley	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared John Morris who, being by me duly sworn, upon oath says: That (s)he is authorized by Kirsten Kelley, 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.

John Morris
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 4th day of February, 20 22, to certify which witness my hand and seal of office.

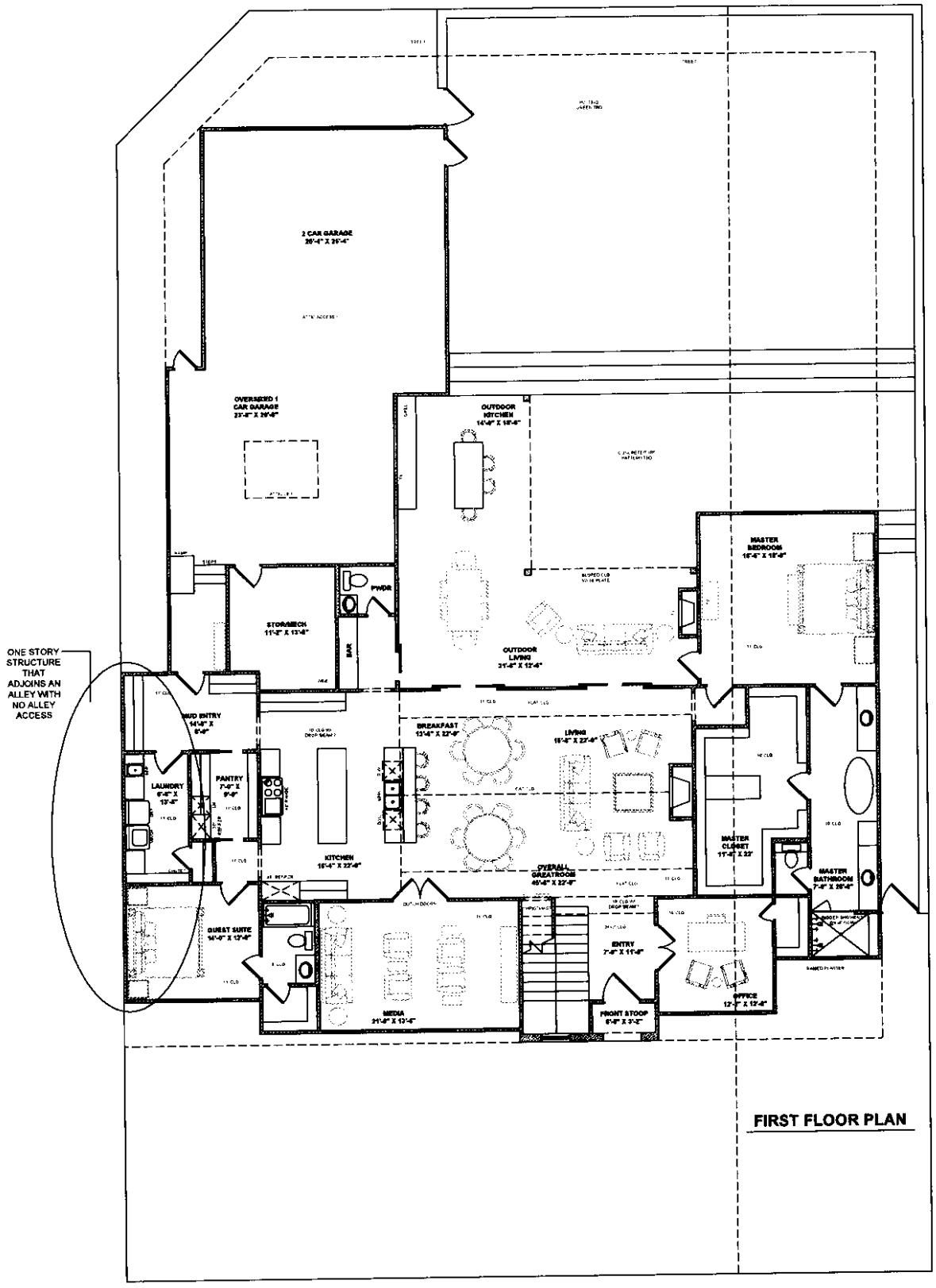
MARK ANDREW HOHENBERGER
Notary Public, State of Texas
Comm. Expires 10-27-2024
Notary ID 126705519

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

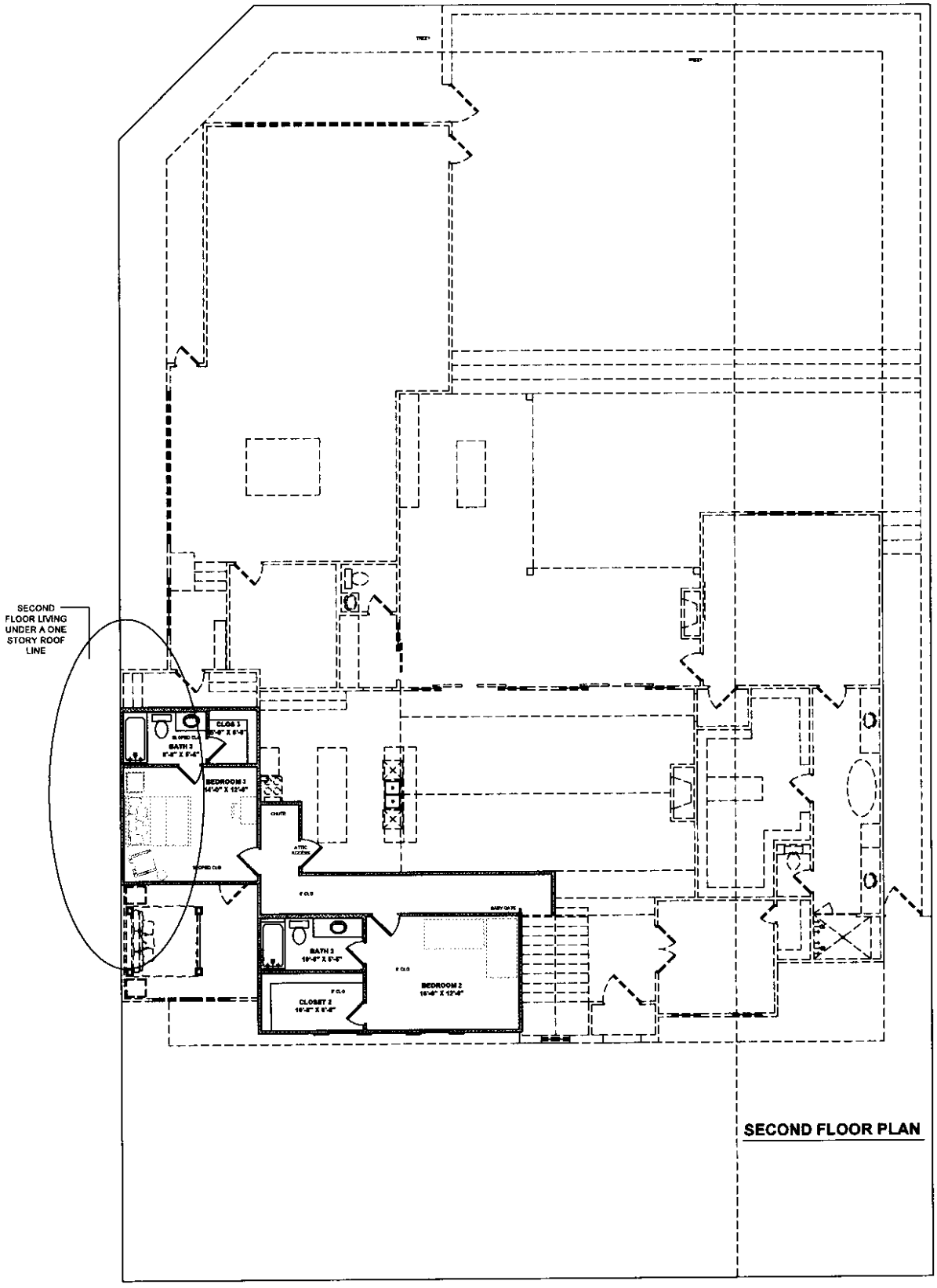
FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

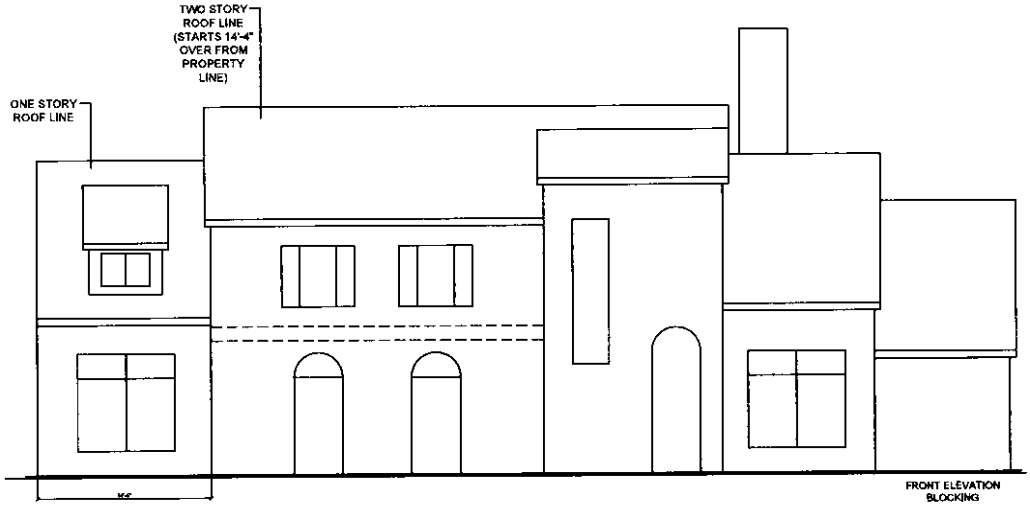
1612 HUMBLE AVENUE - FIRST FLOOR PLAN

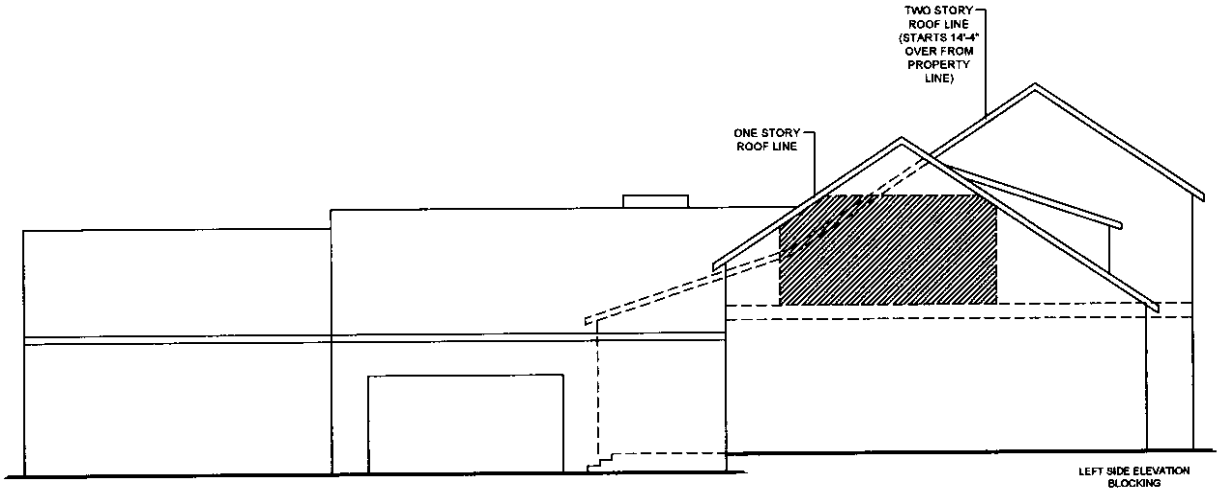


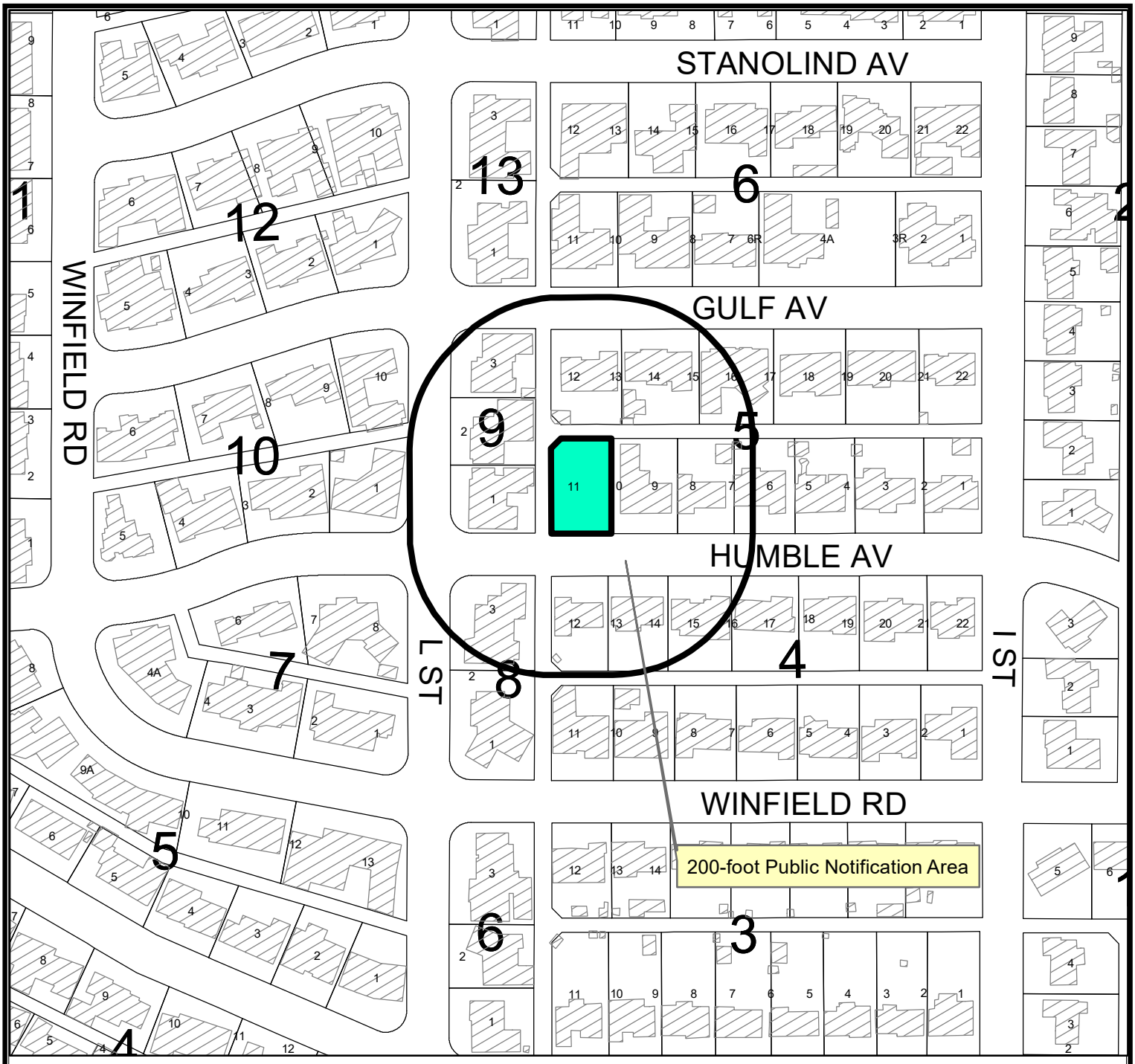
1612 HUMBLE AVENUE - SECOND FLOOR PLAN



1612 HUMBLE AVENUE - ELEVATIONS







LOCATION MAP

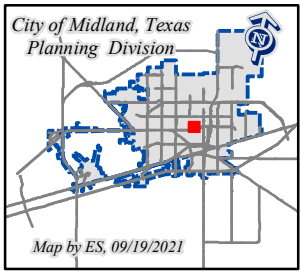
SUB-21-0458 **Scale: 1" = 200'**

Consider a request by Kristina Leigh 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 setbacks on Lot 11, Block 5, Avalon Addition, City and County of Midland, Texas.

Generally located on the north side of Humble Avenue, approximately 145-feet east of north "L" Street - (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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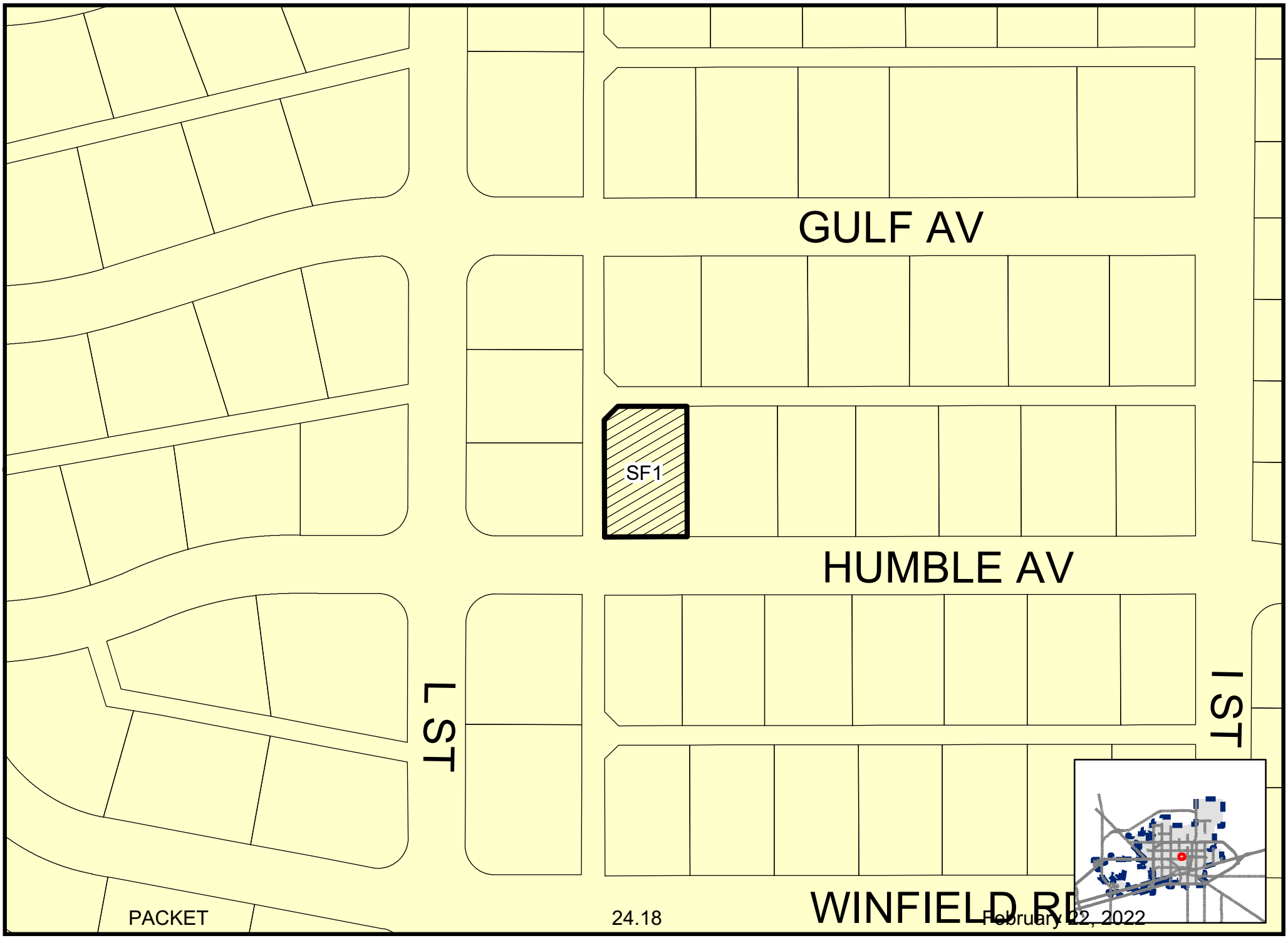
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By ES, 2/2/2022

E-22-XXXX

Scale: 1" = 200'

ZONING MAP

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STOP

City Council Meeting

Item Number: 25

Meeting Date: February 22, 2022

To: City Council / City Manager

From: Gabe McClelland,

Subject: AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 3, "FLOOD DAMAGE PREVENTION CODE", SO AS TO REVISE CERTAIN STANDARDS FOR CONSTRUCTION IN FLOOD HAZARD AREAS WITHIN THE CITY OF MIDLAND; SETTING FORTH VARIANCE AND APPEAL PROCEDURES; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: NONE) (ENGINEERING SERVICES)

Purpose:

Consider an ordinance amending Title XI, "Planning and Development", Chapter 3, "Flood Damage Prevention Code", so as to revise certain standards for construction in flood hazard areas within the City of Midland; setting forth variance and appeal procedures; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); containing a cumulative clause; containing a savings and severability clause; and ordering publication.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

In 1990, the Federal Emergency Management Agency (FEMA) launched the Community Rating System (CRS). CRS is a part of the National Flood Insurance Program (NFIP) and

awards discounts on flood insurance premiums based on communities' efforts to mitigate flood damage. The CRS program is administered by the Insurance Services Office (ISO).

While meeting with the ISO's regional CRS Specialist, the City of Midland's Engineering staff learned that the City's Flood Damage Prevention Code should be amended to better address the placement of manufactured homes. The NFIP's State Coordinator provided a model ordinance for our possible use.

The proposed amendment has been approved by the Texas Water Development Board and the City of Midland's Development Services Department. In addition, this proposed amendment will help the City of Midland achieve a better CRS score and improve our chances of maximizing the possibility of flood insurance discounts. Therefore, for the reasons listed above, City of Midland Engineering Department recommends approval of the proposed amendment to Title XI, "Planning and Development", Chapter 3, Flood Damage Prevention Code".

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

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

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the Midland City Code regarding the regulation of flood hazard areas; and

WHEREAS, in Section 16.315 of the Texas Water Code, the Legislature of the State of Texas has authorized all political subdivisions to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program in order to minimize flood losses; and

WHEREAS, the City Council finds that flood hazard areas within the City of Midland are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City Council finds that flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage; and

WHEREAS, the City Council finds that the public health, safety, and general welfare will be best served by such amendments;

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

SECTION ONE. That the recitals stated above are hereby adopted, approved, and incorporated herein for all purposes.

SECTION TWO. That the Midland City Code Title XI, "Planning and Development", Chapter 3, "Flood Damage Prevention Code", shall hereby be amended to read in its entirety as follows:

11-3-1. DEFINITIONS.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Alluvial fan flooding: Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex: A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure: A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future conditions flood hazard: The land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of shallow flooding: A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate-making has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AE, AH, AO, A1-30, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year; also called the "*base flood*."

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall: A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature: An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development: Any manmade change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Elevated building: For insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction: For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the Flood Insurance Rate Map (FIRM). "Existing construction" may also be referred to as "*existing structures*."

Existing manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision: The preparation of additional sites by the construction of facilities for serving the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

(A) the overflow of inland or tidal waters; or

(B) the unusual and rapid accumulation or runoff of surface water from any source.

Flood elevation study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM): An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): See *flood elevation study*.

Flood protection system: Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodplain or floodprone area: Any land area susceptible to being inundated by water from any source; see *flooding*.

Floodplain management: The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations: Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: See *regulatory floodway*.

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include longterm storage or related manufacturing facilities.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior; or

(2) Directly by the Secretary of the Interior in states without approved programs.

Levee: A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system: A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home: A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level: For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction: For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle: A vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizonal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine: Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area: See *area of special flood hazard*.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)): Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a "historic structure", provided that the alterations will not preclude the structure's continued designation as a "historic structure."

Variance: A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

Violation: The failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation: The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

11-3-2. PURPOSE.

It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(F) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(G) Insure that potential buyers are notified that property is in a flood area.

11-3-3. ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

11-3-4. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this Chapter.

11-3-5. ADMINISTRATION.

(A) *Designation of the Floodplain Administrator*. The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (the National Flood Insurance Program Regulations) pertaining to floodplain management. The term "Floodplain Administrator" also includes the City Engineer's designee or designees to whom any of the herein-described duties and responsibilities are delegated.

(B) *Duties and responsibilities of the Floodplain Administrator*. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter.

2. Review permit applications to ensure that the proposed building site or project, including the placement of manufactured homes, will be reasonably safe from flooding.

3. Review, approve or deny all applications for Floodplain Development Permits required by adoption of this Chapter.

4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334) from which prior approval is required.

5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual

field conditions) the Floodplain Administrator shall make the necessary interpretation.

6. Notify, in riverine situations, adjacent communities and the State coordinating agencies, which are the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

8. When Base Flood Elevation data has not been provided in accordance with Section 11-3-10 of this Code, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and floodway data available from a Federal, State, or other source, for administration of the provisions of Sections 11-2-5(A), 11-2-5(D), and 11-3-12 of this Code. The Floodplain Administrator shall determine or require determination of a Base Flood Elevation acceptable for rating flood insurance for every proposed structure in Zone A on the community's FIRM, and maintain a record of such determinations for use on nearby properties, as applicable.

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 0.1 foot at any point within the community. All proposed development must be in compliance with other City-adopted standards, which may impose stricter conditions.

10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by more than one foot provided that the community first completes all of the provisions required by Section 65.12.

(C) *Permit procedures*.

1. Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new or substantially improved structures.

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 11-3-12(B)2 of this Code.

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

(e) Maintain a record of all such information in accordance with Section 11-3-5(B)1 of this Code.

2. Approval or denial of a Floodplain Development Permit by the Flooplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage.

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(c) The danger that materials may be swept onto other lands to the injury of others.

(d) The compatibility of the proposed use with existing and anticipated development.

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems.

(g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(h) The necessity to the facility of a waterfront location, where applicable.

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(j) The relationship of the proposed use to the Comprehensive Plan for that area.

11-3-6. METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purpose, this Chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities.

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

(D) Control filling, grading, dredging and other development which may increase flood damage.

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

11-3-7. INTERPRETATION GENERALLY.

In the interpretation and application of this Chapter, all provisions shall be:

(A) considered as minimum requirements;

(B) liberally construed in favor of the governing body; and

(C) deemed neither to limit nor repeal any other powers granted under State statutes.

11-3-8. COMPLIANCE.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

11-3-9. LANDS TO WHICH THIS CHAPTER APPLIES.

This Chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Midland, Texas.

11-3-10. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled "Flood Insurance Study for Midland County, Texas, and Incorporated Areas," dated September 16,

2005, with accompanying Flood Insurance Rate Maps (FIRM) dated September 16, 2005, and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter.

11-3-11. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Midland, Texas, or any official or employee thereof, for any flood damages that result from reliance on this Code or any administrative decision lawfully made thereunder.

11-3-12. PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) *General standards*. In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. All new construction or substantial improvements shall be constructed with material resistant to flood damage.

4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities at least one foot above the base flood elevation.

5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into flood waters.

7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(B) *Specific standards*. In all areas of special flood hazards where Base Flood Elevation data has been provided as set forth in Section 11-2-5(D), 11-3-5(B)8, 11-3-10, or 11-3-12(C)3, the following provisions are required. Where no Base Flood Elevation data has been provided, the Floodplain Administrator shall establish or require the builder to establish a Base Flood

Elevation for the site, using methods that will be acceptable for rating of flood insurance, and the following provisions are required:

1. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above Base Flood Elevation. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation, as specified in Section 11-3-12(B)7. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection, as specified in Section 11-3-5(C)1(a), is satisfied, prior to the foundation inspection approval by the building official.

2. Nonresidential Construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below an elevation of one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation and floodproofing elevation, as specified in Section 11-3-12(B)7. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection prior to final approval of the utilities inspection of the utilities department. A record of such certification, which shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.

3. Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, such as crawlspaces and garages with floors below the BFE, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

   (a) A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

   (b) The bottom of all openings shall be no higher than one foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Manufactured Homes.

(a) Require that all manufactured homes to be placed within Zone A of a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated with the bottom of the steel frame one foot above an estimated BFE determined as described in 11-3-5(B)8 and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the bottom of the steel frame of the manufactured home is elevated to at least one foot above the Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The Floodplain Administrator can approve a reduction of up to one foot in the lowest steel frame elevation, as specified in Section 11-3-12(B)7.

(c) Require that manufactured homes being placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4)(b) of this section be elevated so that the bottom of the steel frame of the manufactured home is at least one foot above the Base Flood Elevation.

5. Recreational Vehicles. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 11-3-5(C)1, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

6. Electrical and Mechanical Service Facilities. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities must be designed and located at least one foot above the base flood elevation to prevent water from entering or accumulating in the components during flooding.

7. The Floodplain Administrator is authorized to approve a reduction of up to one foot in the lowest floor elevation, steel frame elevation for manufactured homes or floodproofing elevation required by the sections above. This approval shall not be granted for reasons of cost savings alone, but must be justified by other factors which, in the opinion of the Floodplain Administrator, offset the reduction in flood protection for the structure. Any request for a lowest floor elevation, steel frame elevation or floodproofing elevation below the Base Flood Elevation shall be considered as a variance as described in Section 11-3-13.

(C) *Standards for subdivision proposals*.

1. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with Sections 11-3-2 and 11-3-6 of this code.

2. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet Floodplain Development Permit requirements of Sections 11-3-5(C) and 11-3-12 of this code.

3. Base Flood Elevation data shall be generated by hydrologic and hydraulic analyses performed by a registered professional engineer for subdivision proposals and other proposed developments, including the placement of manufactured home parks and subdivisions, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)8 of this code.

   For all new subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, that are equal to or greater than 6 lots or 2 acres, whichever is the lesser, the registered professional engineer shall determine the regulatory floodway based on a one foot rise in BFE using standard engineering methods and practices, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)9 of this Code.

4. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

5. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(D) *Standards for areas of shallow flooding (AO / AH Zones)*. Located within areas of special flood hazard established in Section 11-3-10 are areas designated as areas of shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated to at least one foot above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

2. All new construction and substantial improvements of non-residential structures shall:

   (a) have the lowest floor (including basement) elevated to at least one foot above the Base Food Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified); or

   (b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below at least one foot above the Base Flood Elevation in an AH Zone, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 11-3-5(C) are satisfied.

4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(E) *Floodways*. Located within areas of special flood hazard established in Section 11-3-10 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If Section 11-3-12(E)1 above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 11-3-12.

3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

11-3-13. VARIANCE AND APPEAL PROCEDURES.

(A) The City Council shall hear and render judgment on requests for variances from the requirements of this Chapter.

(B) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.

(C) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(D) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.

(E) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 11-3-5(C)2 of this Code have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(F) Upon consideration of the factors noted above and the intent of this Chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter.

(G) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(H) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(I) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in this Section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

11-3-14. PREREQUISITES FOR GRANTING VARIANCES.

(A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(B) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(C) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11-3-15. PENALTY.

A violation of a provision of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor punishable by a fine in an amount not to exceed two thousand dollars ($2,000.00). Each day on which the violation shall exist shall constitute a separate and distinct offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION THREE. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00) pursuant to State law.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Morris Williams, Jr., Deputy City Manager

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND
February 22, 2022

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Scooter Brown	09/16	Sept 30 2022	Sept 30 2022
Wes Reeves	08/15*	Sept 30 2023	Sept 30 2023
Justin Kuethe	09/19	Sept 30 2022	Sept 30 2025
Nick McClure	09/19	Sept 30 2022	Sept 30 2025
Gena Linebarger	09/20	Sept 30 2023	Sept 30 2026
Butch Morgan	09/20	Sept 30 2023	Sept 30 2026
Benjamin Fietz	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	10/21	Sept 30 2024	Sept 30 2027
Dave Joyner	10/21	Sept 30 2024	Sept 30 2027
Robert Richards	10/21	Sept 30 2024	Sept 30 2027

Justine Ruff (Liaison)
Lori Blong (Council Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

Eligibility Requirements: Resident of Midland County

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)
(Membership - 7; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Leah Lewis (daily operations)	09/17	Sept 30 2025	Does not expire??
Robert “Robin” Donnelly (County)	11/13	Sept 30 2025	Sept 30 2025
Dr. (Erickson) Lee (Veterinarian)	05/14	Sept 30 2022	Sept 30 2022
Alyson Dial	09/18	Sept 30 2022	Sept 30 2026
Dr. J. Annette Jensen (Veterinarian)	04/20	Sept 30 2024	Sept 30 2028
Tasha Sport	04/20	Sept 30 2024	Sept 30 2028
Sharla Hotchkiss	04/20	Sept 30 2024	Sept 30 2028

Leah Lewis (Liasion)
Dan Corrales (Council Liaison)

Eligibility Requirements: 1 License Veterinarian, 1 Animal Shelter Employee, 1 Animal Welfare Organization Representative, 1 County or Municipal Official, 2 Citizens

BUILDING AND FIRE CODE REVIEW COMMITTEE/CONSTRUCTION BOARD OF ADJUSTMENTS & APPEALS

(Membership – 9; Terms – 6 Years)

Shall consist of two architects, a fire protection contractor or specialist, a general contractor, an electrical contractor, a homebuilder, a plumbing and mechanical contractor, a structural engineer, a City Council Liaison

	Appt Date	Term Expires	Eligibility Expires
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
Ron Ainsworth (Plumbing & Mechanical Contractor)	12/18	Sept 30 2024	Sept 30 2030
T.J. McClure (Architect)	12/18	Sept 30 2024	Sept 30 2030
Laurence Oeth (Structural Engineer)	12/18	Sept 30 2024	Sept 30 2030
David Hickman (Fire Protection)	12/18	Sept 30 2024	Sept 30 2030
Gary Glasscock (General Contractor)	12/18	Sept 30 2024	Sept 30 2030
Robert Anderson (Homebuilder)	12/18	Sept 30 2024	Sept 30 2030
Jeff Pinkstaff (Liaison)	12/18	Sept 30 2024	Sept 30 2030
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.)

	Appt Date
Carl Craigo	10/19
Walter Pate	06/18
Mark Payne	06/18
Courtney Black	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz (Liaison)	06/18
Lori Blong (Council Liaison)	

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Joey Hopkins	10/18	Sept 30 2022	Sept 30 2022
Alex Singh	10/18	Sept 30 2022	Sept 30 2022
Becky Wisdom	10/18	Sept 30 2022	Sept 30 2022
Brandon Ofield	09/20	Sept 30 2022	Sept 30 2024
Clint Williamson	04/21	Sept 30 2023	Sept 30 2025
Ellen K. Ramsey	10/18	Sept 30 2023	Sept 30 2023
Vicky Hailey	09/21	Sept 30 2023	Sept 30 2025
Amy Turner (Liaison)			
Lori Blong (Council Liaison)			

Eligibility Requirements: Members shall be thoroughly familiar with Chapter 351, “Municipal Hotel Occupancy Taxes”, 1 Member Representative of Hotel/Motel Association.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Robert McNaughton	11/15	Dec 31 2024

MIDLAND DEVELOPMENT CORPORATION

(Membership - 7; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/22	Jan 14 2025	Jan 14 2025
Wesley Bownds	07/15*	Jan 14 2022	Jan 14 2022
Barry Simpson	01/22	Jan 14 2025	Jan 14 2025
Stephen Lowery	01/17	Jan 14 2023	Jan 14 2023
P Lourcey Sams	04/20	Jan 14 2023	Jan 14 2026
Jill Pennington	04/20	Jan 14 2023	Jan 14 2026
Brad Bullock	04/21	Jan 14 2024	Jan 14 2027

Amy Turner (Liaison)
Lori Blong (Council Liaison)

Eligibility Requirements: No director or employee shall be related to a current City Council member.

MIDLAND DOWNTOWN PARK CONSERVANCY BOARD

(Membership - 7; City Appoints 3 Seats; Terms -3 Years - Staggered)
(Resolution of appointment is made each February and each appointment must be ratified by the Conservancy Board in March at their annual meeting)

	Appt Date	Term Expires	Eligibility Expires
Barry Beal Jr.	08/18	Sep 30 2024	Sep 30 2024
David Byrd	08/18	Sep 30 2023	Sep 30 2023
Sharla Hotchkiss	07/20*	Sep 30 2022	Sep 30 2025

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Curt Kamradt	**11/05***	**Jan 1 2014**	**Jan 1 2014**

Sharla Hotchkiss (Liaison)

MIDLAND HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 3 even & 2 odd.)
Appointments Made by Mayor (LGC 392.031)

	Appt Date	Term Expires
Wes Gotcher	09/20	Oct 2022
Robert Lehrer	09/20	Oct 2022
Latoya Mayberry	06/21	Oct 2023
Sylvestor Cantu	09/18*	Oct 2023
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2023

Isaac Garnett (Staff Liasion)

Eligibility Requirements: No member may be an officer or employee of the City of Midland.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)
(Membership – 12 with 6 appointed by Midland; Terms - 2 Years Staggered; Can serve 3 terms)

	Appt Date	Term Expires	Eligibility Expires
E. J. Baldridge	10/18	Sept 30 2022	Sept 30 2024
Iris Foster	06/18*	Sept 30 2022	Sept 30 2024
Joseph Sanchez	12/19	Sept 30 2023	Sept 30 2025
Jack Ladd	07/20	Sept 30 2022	Sept 30 2026
Daniel Norwood	04/21	Sept 30 2023	Sept 30 2027
Elizabeth Haigler	04/21	Sept 30 2023	Sept 30 2027

Charles Harrington (Liaison)

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)
2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	Appt Date	Term Expires	Eligibility Expires
Scott Bowden (Real Estate)	10/19	Sept 30 2022	Sept 30 2025
Ross Klabon (Petroleum Eng.)	10/19	Sept 30 2022	Sept 30 2025
Court Adkins (Petroleum Eng.)	09/17	Sept 30 2023	Sept 30 2023
Rhett Bullock (Petroleum Eng.)	09/21	Sept 30 2024	Sept 30 2026
Cameron Willmann (Real Estate)	10/21	Sept 30 2024	Sept 30 2026

Ron Jenkins (Liaison)

Eligibility Requirements: 3 Petroleum Engineers or Geologists and 2 with Property Development or Real Estate Experience.

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Connie Ferguson	09/16	Sept 30 2022	Sept 30 2022
Stephanie Martin	10/16	Sept 30 2022	Sept 30 2022
Laura Smith	10/19	Sept 30 2022	Sept 30 2025
Francis Schammel	10/19	Sept 30 2022	Sept 30 2025
Susannah Prucka	04/20	Sept 30 2023	Sept 30 2026
Lynn Rogers	04/20	Sept 30 2023	Sept 30 2026
Dal Watson	09/20	Sept 30 2023	Sept 30 2026
Ron Stroman	09/20	Sept 30 2023	Sept 30 2026
Shirley Howard	02/16*	Sept 30 2024	Sept 30 2024

Cristina Odenburg-Burns (Liaison)
John Norman (Council Liaison)

Eligibility Requirements: Resident Citizen, Taxpayer and Qualified Voter.

PERMIAN BASIN COMMUNITY CENTER FOR MH/MR (PermiaCare)

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires
Ryan Peckham (City)	08/20	June 2022
Derek Cook (City)	06/21	June 2023

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms. Mayor appoints.)

	Appt. Date
Scott Dufford	01/14
Hugh A. “Andy” Shaffer	09/05
Patrick Payton	01/20

Mark Widman (Liaison)

Eligibility Requirements: Board consists of two City Council members and one other member who is not a City employee.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 7; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/14*	Sept 30 2022	Sept 30 2022
Karmen Bryant	02/19*	Sept 30 2022	Sept 30 2025
Diane Williams	09/17	Sept 30 2023	Sept 30 2023
Lucy Sisniega	09/20	Sept 30 2023	Sept 30 2026
Stacey Jo Grosse	09/20	Sept 30 2023	Sept 30 2026
Zachary Deck	09/20	Sept 30 2023	Sept 30 2026
Adrian Carrasco	09/21	Sept 30 2024	Sept 30 2027
ALTERNATES:			
Emily Holeva	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	09/21	Sept 30 2024	Sept 30 2027

Elizabeth Shaughnessy (Liaison)

Eligibility Requirements: Resident citizen of City of Midland, owner of real property within the City Limits and qualified Voter.

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)
(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Reed Claybrook	03/19*	Sept 30 2022	Sept 30 2024
Derek Whiting	01/18*	Sept 30 2023	Sept 30 2023
E.J. Baldridge	02/18	Sept 30 2023	Sept 30 2023
Robert Gray	01/21	Sept 30 2024	Sept 30 2026
James Gerety	04/21	Sept 30 2024	Sept 30 2026
ALTERNATES: (not applicable to Airport Zoning)			
James Robert Franklin		Sept 30 2021	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	

Jeff Pinkstaff (Staff Liaison)

*** Indicates appointment to an unexpired term.**

MIDLAND DEVELOPMENT CORPORATION
(Membership - 7: Terms - 3 Years - Staggered)
September 2020 - August 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Chase Gardaphe	Jan 14 2025	82%	9	11	Yes	Appointed January 2022
Wesley Bownds	Jan 14 2022	100%	11	11	No	
Barry Simpson	Jan 14 2025	100%	11	11	Yes	Appointed January 2022
Stephen Lowery	Jan 14 2023	82%	9	11	Yes	
P Lourcey Sams	Jan 14 2023	100%	11	11	Yes	
Jill Pennington	Jan 14 2023	64%	7	11	Yes	
Brad Bullock	Jan 14 2024	36%	4	11	Yes	Appointed April 2021

Applicants Name	Additional Boards Applying to	COUNCIL NOTES
Michael Dietrich (D3)	P&R	
Nancy Ann Jones (D3)	PBA	
Amy Barnhill (D1)	MHAC, ASAC, P&Z	
Stephen Taylor (D3)		
Brandi Alexander (D1)		
Brennan Berry (D3)	CDHMADB	
Zachary Deck (D3)		
Garner Gonzalez (County)	BCRCCBAA	
Guy McKenzie (D1)		
Melissa Mosier (D2)	ZBA&AZBA	
Reggie Lawrence (D1)	APBD, PBA, CDHMAB	
Lucy Sisniega (D2)		

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 6/30/2021

Name: Michael "Mike" Dietrich

Phone: 281-513-4149 **(Home)**

Address: 2500 Seaboard Ave

_____ **(Business)**

Midland TX 79705

Email: Mike.wd1986@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 1.5 **years.**

Occupation: Business Development

Professional and/or Community Activities:

I serve on the membership committee of Midland Country Club.

What is your personal vision for the City?

I want to continue to keep Midland running efficiently to serve the people. After moving here last year, I realized how much I liked it here. One day I realized our dumpster lid was broken and I emailed the city about. LESS THAN 2 HOURS LATER the dumpster had a new lid. I was amazed and realized then I wanted to volunteer and help serve on a committee to continue these great efforts.

Please specify any time constraints you may have.

I have a rather flexible schedule since I am in sales for my occupation.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I love this city and want to be involved in the continued improvement and development for generations to come.

What contribution would you most like to make?

Before sales I was in finance and have a very analytical, yet rational, business outlook.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

As a parent of 2 young children we fell in love with the parks around town. I could bring a parent/user's perspective to the committee.

Additional pertinent information or references:

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Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

Michael "Mike" Dietrich

2500 Seaboard Ave
Midland, TX 79705

© +1 (281) 513-4149
Mike.wd1986@gmail.com

Clariant (March 2021 – Present) **Midland, TX**

Business Development Manager *March 2021 – Present*

Hoover Ferguson (October 2019 – Present) **Midland, TX**

Regional Sales *October 2019 – March 2021*

This role required relocating full-time to Midland, TX to spearhead local sales and growth of assets, services, and transportation in the Permian Basin. Day to day duties include:

- Cold call prospects to gain new business
- Call on and support existing customers to retain and grow current business
- Prospect and analyze the feasibility of breaking into new industries or offerings
- Market and preemptively sell our new wash and service center prior to the grand opening

Nalco Champion (April 2015 – October 2019) **Houston, TX**

Account Manager, Chemicals – WellChem Technologies *November 2018 – October 2019*

This role has the added responsibility compared to district representative of managing the account across the United States and Canada. Additional duties include:

- Manage the profitability of a product portfolio spanning 2 different countries and currencies.
- Work with logistics and supply chain to ensure all possible efficiencies are utilized to keep costs down when moving and storing products in Canada from the United States.
- Collaborate with regional teams to support the customer and identify opportunities, needs, and/or deficiencies.

District Representative, Chemicals – WellChem Technologies *June 2017 – October 2018*

Responsible for managing one of the largest customers in our portfolio and supporting them throughout the United States. In 2017 the account was ~$12mm annually in revenue. For the year ending 2018, the account revenue was ~$51mm. Specific duties include:

- Create and grow relationships within all levels of the customer, from the field inventory controllers up to and including the executive team.
- Maintain visibility into the customer's plans to stay ahead of inventory needs in all the regions to ensure the ability to react to new business opportunities on short notice.
- Attend and participate in customer's weekly chemical S&OP to maximize the product portfolio, efficiency, and profitability.
- Coordinate with our internal supply chain network to manage the outlook and demand of products and have them at the necessary regions stored for the customer.
- Research market trends and customer initiatives to help grow new business within the account.
- Constantly work with RD&E to stay ahead of the newly developed technologies to bring to the customer.
- With production constraints to largest product line, it was imperative to drive adoption to new and different product lines at all levels of the company from field personnel to executives.

Manager, Financial Analysis Projects *April 2015 – June 2017*

Duties and specific projects include:

- Helped build and facilitate the acquisition of Keedak, Nalco Champion's distributor, in Nigeria. This project started with building the plan of how to acquire them, working through compliance and regulatory issues along the way, and continued all the way through the new employee's onboarding. This project involved multiple trips to Port Harcourt and Lagos, both in Nigeria.
- Lead an initiative to find and implement a preferred tank supplier for OFC North America that will yield upwards of $1mm in savings annualized.
- Coordinate Enterprise Excellence for all of OFC. Entails meeting to facilitate ideation sessions for projects and then check the status of projects against goals for the year.
- Responsible any specific financial roll up and tracking that is required by the EVP. An example of this being month over month trends and what is needed for the remainder of the year to hit a specific YOY growth target.
- An as needed resource for the business unit when there are additional resources needed for projects.

Hercules Offshore (January 2013 – April 2015) **Houston, TX / Nigeria**

Marketing and Financial Analyst *May 2014 – April 2015*

Responsible for the analysis of data from both a market and financial viewpoint, I compile and organize data from our sales force to vet for viable options, whether it is standard vessel charters, mergers & acquisitions, divestments, or mobilizations between markets. I also am responsible for developing regions that do not have a full-time sales presence.

- Develop an annual marketing plan for International Liftboats division
- Sponsor and run a monthly sales meeting with all regions and BD personnel
- Develop strategies for Business Development activities and programs
- Track and record all leads, provide an initial response to all inquiries
- Review and analyze P&Ls to look for emerging trends and opportunities
- Develop pricing models and train others in their use, keeping a catalog of models for different scenarios of purchasing, moving, and selling assets
- Maintain responsibility for all commercial tenders and bid documents that are outside of our standard operating regions, including the receipt of the notices and the development and delivery of the tenders and supporting those regions without BD personnel
- Develop the marketing presentation for liftboat marketing and sales
- Presentations and Slides: responsible for using data to produce marketing presentations for executives and Board Meetings such as the supply/demand analysis
- Reports: Weekly Summary Report and Monthly Operations and Sales Reports will be compiled with data from the regions
- Salesforce leader in maintaining the data and reporting from Salesforce
- Develops all marketing materials

HERO Management Trainee *January 2013 – May 2014*

Responsible for rotating through the entire business by spending 14 days offshore working as a roustabout and floor hand. Working in the offshore business enabled the maximum amount of hands on learning. Being on the front line of issues including well control and various emergency drills, allowed operational knowledge enabling me to work more efficiently when making decisions in the office.

When not on the offshore rotation, I would work in the corporate headquarters in each of the departments helping various business initiates. These duties can be as simple as making client

presentations or as complex and confidential as running scenarios to determine if a potential acquisition is profitable in the long run.

Apex Systems, Inc. (November 2010 – October 2012) **Columbia, MD**

Account Manager *March 2012 – October 2012*

- Identifying and cultivating new business by utilizing strategies including cold calling, leveraging referrals/contacts, sponsoring user groups, and monitoring local business trends.
- Responsible for managing a business portfolio of clients including government, private, and commercial clients.
- Supporting clients by interacting via frequent phone calls and on-site meetings.
- Entertaining clients with luncheons, meals, catered events, happy hours, and out of office activities.
- Communicating with the delivery team to ensure the understanding of requisitions so that the clients are supported efficiently and quickly.
- Tracking placements, dollar amounts, and responsible parties by keeping and updating an office facing whiteboard and a shared drive excel file, which is accessible by employees up to and including executive vice presidents.
- Held accountable for achieving goals set forth by my direct supervisor/manager on a weekly, quarterly, and yearly basis.

Technical Recruiter *November 2010 – March 2012*

- Sourcing and placing candidates by requirement specific recruiting and proactive geographical canvassing.
- Qualifying requisitions, submitting candidates, coordinating interviews, and receiving/making offers by interacting with clients through on-site appointments, email correspondence, and phone conversations.
- Tracking placements, dollar amounts, and responsible parties by keeping and updating an office facing whiteboard and a shared drive excel file, which is accessible by employees up to and including executive vice presidents.
- An integral part in helping grow the Baltimore Office to a 10+ year all-time high for weekly volume/profit.
- Training new hires on all essential recruiting functions from our proprietary candidate tracking system to organizational best practices to communication habits/skills.
- Held accountable for achieving goals set forth by my direct supervisor/manager on a weekly, quarterly, and yearly basis.

Award/Honor

Baltimore Rookie Recruiter of the Year – 2011

EDUCATION

Kutztown University of Pennsylvania – BSBA (Marketing)

- *3-year letter winner and 2-year football starter*
- *Started as a walk on and earned a scholarship*

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 8-11-21

Name: Amy Barnhill

Phone: 432-262-3473 **(Home)**

Address: 3801 Crestgate Avenue

(Business)

Midland Texas 79707

Email: ABarnhill712@gmail.com

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ____yes _____no

I have lived in Midland 24 **years.**

Occupation: Environmental Specialist

Professional and/or Community Activities:

Board Member Ellen Noel Museum

Board Member Cas de Amigos

Volunteer for Meals on Wheels

What is your personal vision for the City?

I want to see our city prosper but not to the detriment of its citizens. I want our community to embrace its strengths and reach out to its citizens who struggle. I envision a community who works together to make our city great.

Please specify any time constraints you may have.

I do work a full time job but have the flexibility to attend meetings and attend community events.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Animal Services Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have a heart for those who cannot advocate for themselves and often times that is the elderly and animals. I believe these boards are a good place to start in service of the city.

What contribution would you most like to make?

I want to add value in whatever manner I can whether it is a new perspective or a fresh opinion. I want to serve the city of Midland as a valued member of the community and I want to contribute to its continued success.

Additional pertinent information or references:

I believe I have a lot to offer in terms of serving my community. I have lived in Midland for 24 years, had children and grandchildren in various schools and attend a couple of different churches. I have sat back and watched and listened and tried to learn a few things about our community. I believe it is now time to contribute.

(2) Name of Board/Commission:

Planning and Zoning Commission

Midland Development Corporation

What contribution would you most like to make?

These are other boards/commissions that I have interest in. I find it interesting how communities decide what businesses are of value to the community and the processes involved with the development and zoning of such entities.

Additional pertinent information or references:

I am a passionate worker bee. When I get involved with something I try to put a lot of passion behind it. I enjoy volunteering and working along side others to make our community a great place to be.

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Signature of Applicant

_____

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/4/2021

Name: Brennan Berry

Phone: (646) 460-4778 **(Home)**

Address: 1503 Harvard Ave.

(432) 242-8850 **(Business)**

Midland TX 79701

Email: bberry@erpfunds.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 5 **years.**

Occupation: Real Estate Investment

Professional and/or Community Activities:

Currently work as the Chief Operating Officer of ERP Funds, a Midland-based real estate investment fund that focuses on commercial real estate investments in the Permian Basin. I graudated from the Leadership Midland Class of 2018 and currently serve on the Midland Community Theater Board of Governors.

What is your personal vision for the City?

Midland is a city of entrepreneurs that have created an incredibly successful city however I think for Midland to really succeed in the future, we need to focus much more on quality of life and a big part of that is focusing on aesthetic improvements and amenities that all Midlanders can take advantage of.

Please specify any time constraints you may have.

Available to meet most weekdays, either during business hours or afterwards. I am generally pretty flexible in regards to timing.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIDLAND DEVELOPMENT CORPORATION

Please tell us why you are interested in serving on this board or commission.

The MDC plays a key role in business development in the city along with infrastructure improvements, both of which I am particularly interested in. As someone who does not directly work in Oil & Gas, I see the need to help diversify the local economy and encourage

small businesses to grow in our region.

What contribution would you most like to make?

With a backgroud in real estate, hospitality and project management, I believe I can share unique insights with the board and provide a small business perspective. I'd also like to specifically work on attracting new businesses to Midland that can help achieve some of the quality of life goals for the city.

Additional pertinent information or references:

I am a licensed real estate broker in Texas which I believe could be a qualification of interest to the board.

(2) Name of Board/Commission:

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

What contribution would you most like to make?

I'd like to help prioritize projects that can be funded from the Hotel/Motel Tax that would most benefit the city and attract visitors to the area, particularly with business and leisure travel starting to return in 2021. With a new convention center in place, it will be critical to promote Midland as a destination to help ensure its success.

Additional pertinent information or references:

Prior to moving to Midland and joining ERP, I worked for Four Seasons Hotels and Resorts in both Dubai and London, focusing on business development, which I believe would serve me well on this board.

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Date: 02/04/2021

Name: Brandi Alexander

Phone: 432-528-8920 **(Home)**

Address: 403 Pinewood Ct

432-617-9156 **(Business)**

Midland TX 79705

Email: balexander@firstbanktexas.com

(City) (State) (Zip)

I am [✓] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland 5 **years.**

Occupation: Marketing Director

Professional and/or Community Activities:

Current Board President for Midland Boys and Girls Club, Past Board President for Communities in Schools of the Permian Basin, Pa

Member of the Junior League of Odessa (7 years), Generations Graduate, Leadership Odessa Graduate

What is your personal vision for the City?

Personally, I would like to see more opportunities for families and education, such a Science Spectrum, or along those lines.

Midland has done a wonderful job at providing many restaurants, adequate housing, and shopping that are important

to our revenue streams and will be essential as we continue to grow.

Please specify any time constraints you may have.

I do work from 8:00 to 5:00 pm, but work allows for board meeting attendance.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have lived most of my life in the Permian Basin, and I am vested in making the area the best place to live. It is important to

have great opportunities for our families here and keep our area appealing.

What contribution would you most like to make?

I would like to contribute any expertise I can provide as an involved community member. In my years here, I have worked with several non-profits to grow our outreach through the communities and be effective. It has given me a clear view of many of our community needs and what we can do to make our city the best it can be.

Additional pertinent information or references:

Britney Mann: 432-556-4739, served with on past boards and have a strong business relationship with.

David Shipman: 432-212-8890, Currently work with at the bank and have served on boards with him.

Christi Callicoate: 432-553-6889, Strong business relationship and have worked together for non-profits

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Brandi Alexander

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/18/2021

Name: Garner Gonzales

Phone: 432-967-0699 **(Home)**

Address: PO Box 125

432-684-6410 **(Business)**

Midland Texas 79702

Email: garner@gonzalescontractors.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 25 **years.**

Occupation: Owner/General Contractor

Professional and/or Community Activities:

I serve as Vice President of Gonzales Contractors, LLC

Graduating this upcoming Summer 2021 with my Master of Business Administration from The University of Texas Permian Basin.

What is your personal vision for the City?

I am very passionate about my beautiful West Texas city of Midland.

I am eager to get involved in making Midland's growth and economic future prosperous.

My main goal is to make Midland a better place and leave Midland exponetially better for the next generation to come.

Please specify any time constraints you may have.

As I am the owner of my business, I am very flexible and can make time for any board meeting or gatherings.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

As I stated before, I am eager to get involved in making Midland's growth and economic future prosperous.

I want to get involved and truly see this as a great starting point.

What contribution would you most like to make?

I am a business owner and general contractor and would bring great aid and advice to making these development decisions.

Additional pertinent information or references:

Mayor Patrick Payton

Aron Marquez- CEO of Wildcat Oil Tools

Dale Redman - Former CEO of ProPetro Services Inc.

(2) Name of Board/Commission:

Building Codes Review Committee/Construction Board of Adjustments & Appeals

What contribution would you most like to make?

I am a business owner and general contractor and would bring great aid and advice to making these building code review decisions.

Additional pertinent information or references:

David Arrington - CEO of Arrington David H Oil & Gas

Justin Herricks-CEO of Precision Pipe Rentals

Zahir Noormohamed, CPA- Owner of Accounting Noormohamed Zahir

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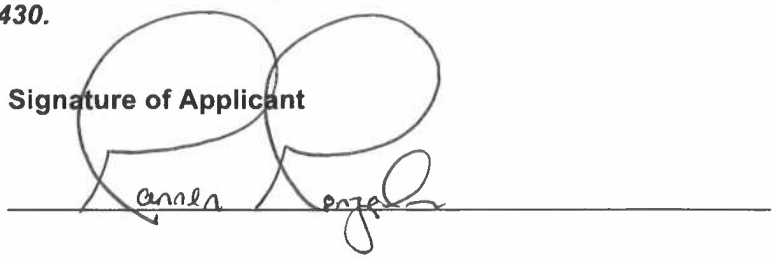
Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/11/2021

Name: Zachary Deck

Phone: 703-659-5911 **(Home)**

Address: 1607 W Tennessee Ave

(Business)

Midland TX 79701

Email: zachary.e.deck@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 15 **years.**

Occupation: Senior Production Engineer at Diamondback Energy

Professional and/or Community Activities:

Midland Planning and Zoning Commission, Midland Spaceport Development committee, Rock the Desert board of directors, Midland real estate investors group, Stonegate student leader

What is your personal vision for the City?

I would like to see Midland become a hub of activity for economic and personal growth for the residents of the Permian Basin. I envision growing economic diversity growing Midland's ability to be the leader of the Permian. I have a vision of the city becoming a place where recent transplants increasingly want to put down roots and make Midland their home for years to come.

Please specify any time constraints you may have.

Planning and Zoning commission every other Monday in the afternoon. Student leader once a week for the remainder of the school semester. The remaining commitments are on a monthly or quarterly basis.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

While some may say the transition has already taken place, I believe Midland is on the threshold of transitioning from an oil town to an economically diverse and resilient economy. I am interested in bringing my experience and exposure from Washington DC home

to Midland to help us think outside the box and help Midland become the bellwether of the Permian of which we all know it capable.

What contribution would you most like to make?

I am extremely encouraged with the development that has been taking place recently at the Spaceport as well as the downtown revitalization. I am passionate about entrepreneurs and business development and would love the opportunity to be a part of MDC and help fledgling and growing business realize all the resources MDC makes available.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Name: NANCY ANN JONES

Address: 706 EAST BROADWAY

MIDLAND TX 79701

(City) (State) (Zip)

Date: 7/15/2021

Phone: 432-230-5725 **(Home)**

432-682-3729 **(Business)**

Email: naevans@att.net

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

I have lived in Midland 30 **years.**

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

Occupation: accounting

Professional and/or Community Activities:

What is your personal vision for the City?

A place where people of all races, religions and financial backgrouns can live and enjoy life

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Personnel Board of Appeals

Please tell us why you are interested in serving on this board or commission.

I have a background in Human Resources and I feel that all grievances should be heard in a timely manner and each employee s

be able to do that in front of a non biased committee.

What contribution would you most like to make?

The ability to judge and make decisions on the information provided

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Development Corporation

What contribution would you most like to make?

As a tax payer in the city of Midland I feel that we shoulc be able to give our input on how our money is spent. I have seen how the board in the past has come under intense scrutiny for how they were spending our tax dollars.

Additional pertinent information or references:

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Signature of Applicant

Nancy Jones

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 4/13/2021

Name: Melissa Mosier

Phone: 4326409278 **(Home)**

4325619990 x 111 **(Business)**

Address: 708 Beckley Dr

Midland TX 79703

(City) (State) (Zip)

Email: mmosier@ez-rider.org

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 4 **years.**

Occupation:

Professional and/or Community Activities:

Member of Lifehouse Fellowship

What is your personal vision for the City?

I hope to see Midland continue to grow through the changes with economic downturn that we are facing. Providing affordabiilty in transportaton, housing, community out reach and growth. Being a transplant to this city, I want to learn and be apart of this city, I am looking for to this next chapter.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIDLAND DEVELOPMENT CORPORATION

Please tell us why you are interested in serving on this board or commission.

I have worked here in Midland for the last four years, and I know this is home now with my children and I. So I want to step up and be there for the community. Learn and grow for my interpersonal goals, and then assist with anything I can.

What contribution would you most like to make?

With my background in HR and working for the Transit District I can bring my knowledge and skills to the discussions. Help with strategic planning, and law regulations.

Additional pertinent information or references:

Doug Provance- dprovance@ez-rider.org

Jack Ladd jackladdjr@gmail.com

EJ Baldridge ejbaldridge@gmail.com

(2) Name of Board/Commission:

ZONING BOARD OF ADJUSTMENTS AND AIRPORT ZONING BOARD OF ADJUSTMENTS (

What contribution would you most like to make?

Stepping up for my community, learning my city and where different projects are happening and how to assist in those. Learning the infrastructure of the airport, all that comes with it. I am new, but I am ready to help.

Additional pertinent information or references:

Director of Support Services- EZ Rider

Khamilton@ez-rider.org

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

M Mosa

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MIDLAND
Feel the Energy!

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 3/24/2021

Name: Guy McKenzie

Phone: 432-770-1990 **(Home)**

Address: 5213 Green Tree Blvd

Same **(Business)**

Midland TX 79707

Email: primesourceguy@suddenlink.net

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 38 **years.**

Occupation: Real Estate Investor / Manager

Professional and/or Community Activities:

Lifetime Ambassador for the Midland Chamber or Commerce, Lifetime Member of The Kiwanis Club, Past Lt Governor of TX/OK District of Kiwanis, past Vice Chair of the Midland/Odessa Urban Transit, past member of the Tax Increment Reinvestment Zone Board, leader at MidCities Community Church, member of Midland Market Place. Served on various boards over the years.

What is your personal vision for the City?

For Midland to continue to be a nice place to raise a family, visit, move to and work. For Midland to be a leading innovator in making the quality of life better for its citizens. To be an entrepreneur of ideas and their implementation that would help attract people to come here and live. To continue to help diversify our industy and attract new business.

Please specify any time constraints you may have.

I have no time constraints. I am self employed. I also have no conflicts of interest with any business or personal items that would prevent me from making prudent decisions.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov***)**

(1) Name of Board/Commission:

MDC- Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I want to use my experience serving the city and helping promote and develop new and expanded businesses. I am motivated, interested, and I want to serve.

What contribution would you most like to make?

I would like to help in making wise funding decisions and coming up with ideas to keep our ecconomy to thrive. It is a great city and I want to help keep it that way.

Additional pertinent information or references:

I have the time and no conflicts of interest to serve on this board. References : Mike Davis - President, Lone Star State Bank 432-312-8609 c Greg Simmons - President, American Momentum Bank, 432-349-6061 c, Michael Trost - City Council, Garth Wright - SVP, Lone Star Bank, 853-1417 c,

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Date: 2/24/2021

Name: Stephen Taylor

Phone: 432-230-5969 **(Home)**

Address: 404 Veteerans Airpark Lane 432-262-2700 **(Business)**

Midland TX 79705

Email: steve.taylor@ngsgi.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 16 **years.**

Occupation: Engineer/Manager

Professional and/or Community Activities:

Board member-public company

President (past)-Homeowners Association

What is your personal vision for the City?

Midland should continue to promote its oil and gas heritage, but I think there is room to develop a reputation as a desirable place to retire. The weather here is good and the tax base advantages are excellent for the city.

Please specify any time constraints you may have.

I can pretty well adjust my schedule for meetings and other activities. I wouldn't anticipate any issues.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have an extensive background in business and I think I can contribute the perspective of what industries might be beneficial for Midland to pursue.

What contribution would you most like to make?

I'd like to see the MDC become more innovative, entreprenuerial and venture driven. Not to the point of frivolity because capital conservation and allocation is important, but to be seen as more dynamic. There needs to be a business aspect to it...does the money derived from MDC activities exceed the money spent?

Additional pertinent information or references:

Larry Lawrence-Midland College Trustee (cell 432-664-5511)

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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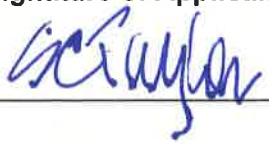
Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/29/2021

Name: James Michael Eisenwine

Phone: 432-234-3303 **(Home)**

Address: 1006 Almont pl

(Business)

Midland TX 79705

Email: jmeisenwine@gmail.com

(City) (State) (Zip)

I am [✓] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland .5 **years.**

Occupation: Commercial Banker

Professional and/or Community Activities:

Previously: Shamrock TX - Salvation Army Unit Leader, Volunteer Fire Department Officer, Elected School Board Member, Church finance and personell committee member. Miami Tx / Roberts County - Economic developement corporation officer, Community Developement Corporation Officer, Volunteer Fire Department Officer, ISD District Improvement Committee Member

What is your personal vision for the City?

Growth, economic power/stability, and family wellness

Please specify any time constraints you may have.

Early mornings Wednesday and some Tuesday/Thursday evenings in the spring semester. I attend hybrid night classes at MC

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(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Developement Corportation

Others as qualified

Please tell us why you are interested in serving on this board or commission.

I always have a passion for the development and maintenece of my local community, both civically and economically.

What contribution would you most like to make?

Sound, level headed judgement and creative thinking. I feel that the purpose of a board is to be a place to share and openly discuss new ideas, while also vetting and acting on the best of those ideas. I alway let my boards know that I am open, honest, and opiniated. I expect the board to vote based on their own judgement and always respect the board vote.

Additional pertinent information or references:

Education: Texas Tech University Bachelors of Business Administration in Management Information Systems

Texas Tech University Masters of Business Administration Concentration in Entrepreneurship

Work History: FNB-Amherst 2007-2014 AimBank 2014-2021 First Bank and Trust 2021 - present

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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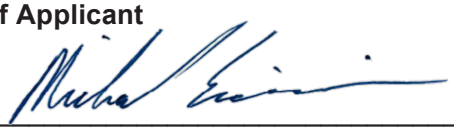
Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/3/2021

Name: J.Ross Lacy

Phone: 432-254-1126 **(Home)**

Address: 5007 Apple Creek Rd. 432-683-5542 **(Business)**

Midland TX 79707

Email: j.rosslacy@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 35 **years.**

Occupation: President

Professional and/or Community Activities:

Midland City Council 2014-2019

UT System Chancellor's Council Executive Committee, UTPB President's Executive Committee

UTPB College of Business Advisory Council, JBS Leadership Insitutue Advisory Council, PBPA

What is your personal vision for the City?

To see Midland continue to grow and proper. Our core functions of infrastructure, public safety, quality of life and place should be paramount in our quest to be the shining example of what the Permian Basin has to offer.

Please specify any time constraints you may have.

Limited can make almost all meetings and events.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I served as the city council liasion to the MDC during my time on the city council. I can bring a level of institutional knowledge and hit the ground running with the projects and direction currently being pursued.

What contribution would you most like to make?

To continue to give back to my community. The MDC is uniquely positioned to help with the demands of our future growth.

We need solid leaders that can push the vision of Midland to become our reality.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/27/2021

Name: Reggie Lawrence

Phone: 432.770.0881 **(Home)**

Address: 4721 Timber Lane

(Business)

Midland TX 79707

Email: Reggie@LawrenceTX.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☑ **yes** ☐ **no**

I have lived in Midland 18 **years.**

Occupation: Self Employed

Professional and/or Community Activities:

Business owner 2000-Present. City Development Advisory Committee 2010-2014. City of Midland Planning & Zoning Commissioner 2013-Present; Chair 2020-2021. Midcities Community Church member 1987-2013; Stonegate 2013-Present. Permian Basin Petroleum Association 2010-Present.

What is your personal vision for the City?

Over the years, as time seems to move faster, I've realized how slowly things have changed for our city. There are many decisions that need to be methodically made in order for time to move into place and bring to fruition the outcome of decisions. Without explanation, this statement may seem negative, but it is not. I see now, how and why, it is so important to have good leadership.

Please specify any time constraints you may have.

I'm flexible.

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(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation; Airport Planning and Development Board; Personnel Board of Appeals

Citizens Development and Hotel/Motel Advisory Board

Please tell us why you are interested in serving on this board or commission.

Being in business for most of my life, I have learned to appreciate large budgets and understand how to navigatate through rough financial times while maintaining the financial viability of a business.

What contribution would you most like to make?

A healthy vibrant city.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/28/2021

Name: Crystal "Emerald" McGinnis

Phone: 432-349-5471 **(Home)**

Address: 4122 Fox Hollow Ct.

432-818-0300 **(Business)**

Midland TX 79707

Email: emcginnis@greenacresmidland.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 39 **years.**

Occupation: Project Manager/Landman

Professional and/or Community Activities:

The majority of my professional career has been spent working as an in-house landman (Nadel and Gussman Permian and Pioneer Natural Resources). Since December of 2021 I've been the Project Manager at Green Acres Minigolf. I was hired for my business and project management acumen. Helping complete and open Green Acres has been a gratifying experience, not the least of which because Midlander's seem to love their experiences at Green Acres.

What is your personal vision for the City?

My personal vision is for Midland to fulfill its potential to be the best city in Texas to raise a family within ten years.

Please specify any time constraints you may have.

As I mentioned I have recently transitioned into a new career. My current employment is relatively flexible. I now have the bandwidth to commit to an endeavor such as this.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have always been interested in serving the community I grew up in. I volunteered for Habitat for Humanity and loved the experience because I was able to see a demonstrable benefit to the recipient. I have just recently (through my work at Green Acres) become

more familiar with MDC's purpose and I believe I can lend my previous experience to help MDC achieve its goals, and by extension see my personal vision realized.

What contribution would you most like to make?

I love a good project. I've spent my entire professional career taking on tough projects and getting them to the finish line. Whether that be an oil and gas acquisition or opening a minigolf course. The contribution I would most like to make is helping MDC tackle projects and get them to the finish line.

Additional pertinent information or references:

John Norman

Jeff Beard

Emily Statton-Smith

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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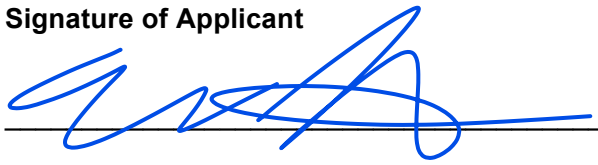
Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 12/3/2021

Name: Ronnie Scott

Phone: 432-631-8266 **(Home)**

Address: 2412 Briaroaks Court

432-296-4693 **(Business)**

Midland Texas 79707

Email: r9scott@outlook.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 28 **years.**

Occupation: Engineer / Manager

Professional and/or Community Activities:

Professional - CEO of Development Capital Resources a PE backed company with ~$1.2B of investments. Previously President of Henry Resources / Henry Petroleum / Henry Energy. Have served on six energy company boards - 3 public / 3 private. Serve on Midland Chamber Board & VP of Henry Foundation. Previously a Founding Director of Educate Midland; MISD Facilities Comm.

What is your personal vision for the City?

MIdland remains a safe, secure place to live and work. It maintains a vibrant, moderately diverse economy with an economic emphasis on energy which includes but is not limited to oil and gas. It incorporates quality of life not as a cliche but as a practice for its citizens. It provides and encourages pathways to economic self-sufficiency.

Please specify any time constraints you may have.

I have a flexible work schedule.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

MIdland Development Corporation Board

Please tell us why you are interested in serving on this board or commission.

I feel MDC has been and will remain an important part of accomplishing the vision for Midland articulated above. I would enjoy being part of that.

What contribution would you most like to make?

I would like to help Midland continue to expand as an energy hub incuding oil and gas, solar, wind, nuclear, and potentially other forms of energy. Areas of interest include energy production, energy research, energy employment, and incubation of ideas. Energy "adjacent" ideas are also of interest.

Additional pertinent information or references:

I can compile a list of references for the position but have not done so to date. Feel free to contact people who may know me but who I have not solicited as references. You will likely get honest feedback - both good and bad - from these "non-references". Consider Patrick Payton, Bobby Burns, Grant Billingsley, Jim Henry, Rick Davis, Stewart Doreen, Jay Edwards.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Ronnie Lart

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PLEASE TYPE OR PRINT CLEARLY:

Date: 11/30/2021

Name: Lucy D Sisniega

Phone: _____ **(Home)**

Address: 5408 Crowley blvd

(956) 2274500 **(Business)**

Midland TX 79707

Email: lucy@sisniegarealestate.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 7 **years.**

Occupation: Commercial Real Estate Agent, business owner

Professional and/or Community Activities:

S&S Commercial Real Estate- Vice President, M&L Distributors CEO, MRNHA-Chair, Midland P&Z Board, Midland Chamber of Com

I love to serve our Community, I volunteer my time in several non-profits programs. I financially support some of them.

What is your personal vision for the City?

My personal vision for the City is to create more programs for families, to bring developments that are family oriented, to create more jobs, not only for the oil industry but also to be the home of manufacturing, provide better education in schools. Midland is a beautiful Community, we should continue working on it and work in better plans for families to stay.

Please specify any time constraints you may have.

I am my own boss, I do my own schedule, I do travel for business, however, I am available most of the times.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Developmet Corporation

Please tell us why you are interested in serving on this board or commission.

I have 20+ experience in development, I believe I can be a great asset for this board. I have knowledge on City development and Real Estate, I had work in deals with big franchises and I can say I understand their needs.

What contribution would you most like to make?

My experience, my knowledge, I am a go getter, if I don't know the answer, I will find try to find it.

Additional pertinent information or references:

Former Mayor Jerry Morales, Former Mayor Ernest Angelo

Midland Mayor Patrick Payton

Midland Chamber of Commerce President - Bobby Burns, Congressman August Pfluger

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 1/2/2022

Name: Michael B, Trost

Phone: 432-528-3611 **(Home)**

Address: 3619 W Louisiana

_____ **(Business)**

Midland TX 79703

Email: mbtrost38@icloud.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 40 **years.**

Occupation: Retired

Professional and/or Community Activities:

Midland Community Theater-Volunteer & Midland Odessa Symphony Chorale and others

What is your personal vision for the City?

Continue moving Midland in the direction of becoming a world class city.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Development Corporation (MDC)

Please tell us why you are interested in serving on this board or commission.

Public service experience IE: City Council 9 years, MDC 3 years, MOUTD 4 years, and Parks & Recreations 5 .5 years

What contribution would you most like to make?

Continue moving Midland in the direction of becoming a world class city.

Additional pertinent information or references:

Justice Judge Keith Stretcher, John James, Former Mayer Bobby Burns

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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